

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)

Application Nos.DP1/2004

BETWEEN **METUA ELLIS**

Applicant

AND **GEORGE ELLIS**

Respondent

C McCarthy for Applicant
T Arnold for Respondent

Date of hearing: 13 and 20 May 2004

Date of decision: *28th June 2004.*

DECISION OF GREIG CJ

[1] The Applicant, the wife of the Respondent, applied under the Matrimonial Property Act 1991-92 for orders for determination and division of the matrimonial property of the parties and under the Cook Islands Act 1915 for a maintenance order in her favour. The matters were heard together. At the end of the hearing a consent order was made in respect of the matrimonial property. The parties were not able to agree on maintenance which was left to the Court to determine.

[2] The parties separated in November 2003 after a lengthy marriage. The Applicant is aged 57 years and the Respondent 60 years. The Applicant was diagnosed with cancer

in about 1991. The cancer has progressed to the extent that she is unable to work. Indeed she is to undertake a course of chemo-therapy in a trial at Auckland Hospital for some weeks. She is unable to work. The Applicant receives a pension of \$6876.00 per annum and has been receiving a sum in lieu of maintenance out of a trust fund which was settled by the Respondent. The Applicant is one of the beneficiaries of the trust. It seems that the money paid out of that fund includes capital. If payment to the Applicant continues at the present rate the fund will be exhausted before long.

[3] The Applicant has received the matrimonial home and lives in it while she is in Rarotonga. It is said to need a number of maintenance and repair tasks to make it comfortable to live in and to prepare it for sale, if that were to be undertaken. A daughter lives in the house and is said to contribute towards the household expenses.

[4] The Applicant received in addition a share of matrimonial chattels, a motor vehicle, an earlier cash payment of \$50,000.00, the proceeds of her own bank account and an agreed entitlement to a settlement balance of \$76,289.00 of which \$61,490.00 was payable immediately and the balance of \$14,799.00 is payable within 3 months of 21 May 2004.

[5] Because of her state of health and the course of treatment she is to undergo the Applicant sought maintenance which would enable her to obtain accommodation in Auckland, meet her living and travel expenses and provide as necessary a caregiver or nursing attention. Apart from some mention of round figures as the cost of purchase of a unit or flat there was no evidence as to the costs likely to be incurred in Auckland. Nor was there any evidence as to the availability of assistance from Cancer Society and other similar domiciliary facilities. She sought a payment of \$450.00 per week which assumed no further payment from the trust.

[6] The Respondent is aged 60 years and has had ill-health episodes in the past. He is employed as a working Director at the salary of \$30,000.00 per annum plus the use of a company car. He too has a pension of \$6720.00 per annum. Both he and the Applicant have the benefit of medical insurance which it seems pays all medical expenses.

[7] All his assets have been transferred to the trust. He has a liability for tax estimated to be \$6000.00 and has contingent liabilities under guarantees which he estimates at the sum of \$780,000.00. He rents accommodation in which he lives with a partner. She is employed but it seems does not contribute to the household expenses. The Respondent provided a breakdown of his expenses which showed a weekly surplus of \$116.67. That breakdown appeared to me to be reasonable. I observe that it did not allow for clothing or entertainment. The only possible increase to the surplus could come from a contribution to the household from the partner.

[8] It is plain that the Respondent is unable to pay \$450.00 a week and there may well be a question whether the trust is able to continue payment to the Applicant alone. The need of the Applicant is obvious and pressing but the reality is that it cannot be met by the Respondent. There will have to be a reduction in expectation and a reduction in

expenditure. I consider that the Respondent can pay something more than the calculated surplus but only a small amount. He is entitled to reasonable living expenses though I do think that his partner should make some contribution. Equally the daughter living in the Applicant's house ought to make a contribution. It is not a case for nice or precise calculations but rather for an award which tries to take account of the needs of the Applicant and the constrained ability of the Respondent. I make an award of maintenance to the Applicant in the sum of \$125.00 per week.

[9] An award of costs was made in the matrimonial; property order. The two applications were heard together. In the circumstances I make no order for costs in this maintenance matter.

W. J. J. J.

