

Child Support: a blessing or a curse?

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I. The Family Justice System: Support for when negotiations break down?

Child support proceedings can be deemed as one of the most significant components of the family justice system in the Caribbean, and yet, it can be aptly described as ‘an arena for gender wars’. Caribbean gender directives regarding children are clear: women are expected to be the primary caregivers; men are expected to provide financial support. When these socially prescribed roles are not fulfilled, it ‘creates an environment in which women and men engage in constant and sometimes violent negotiations over power’.⁴²⁴ “Power”, in child support conflict, refers to the desire to exercise control: women are seeking the power to gain and/or retain financial support for their children; men are seeking the power to determine when or to what extent they provide this financial support. This power struggle has the potential to quickly exceed cordial negotiations making reaching an amicable agreement unlikely. The ensuing aggression between partners often heightens and, when the option to seek compensation in court is pursued, this antagonism is transferred to and made worse by the nature of child support proceedings. Contrary to its objective, the manner in which applications for child support are handled at Magistrates’ Court and the High Court of Barbados actually contributes to gender aggression.

II. The Arena: Disparity in the System of Justice

There is no formal Family Court in Barbados; therefore, matters such as child support are processed both in the High Court and Magistrates’ Court. Research on how the courts resolve

⁴²⁴ Suzanne LaFont, “*Gender Wars in Jamaica*” 2007(2) *Identities* 233-260

applications for child support, the amount of awards and their enforcement found that there is a sharp distinction in the nature of proceedings in the superior and inferior courts⁴²⁵. Access to justice is not equitable and depends on the marital status and socio-economic status of the parents. Child support applications in the lower courts or '*poor people's court*' are usually for children born outside of marriage.⁴²⁶ Many of the laws governing the lower courts are said to be 'softened versions of old "*bastard*" laws dealing with children born outside of marriage that had their origins in early U.K. poor laws'.⁴²⁷ The High Courts, on the other hand, process fewer applications dealing specifically with child support and more cases of dissolution of a union – in which child support is usually automatically taken into account. These High Court proceedings usually require the services of a lawyer, which usually eliminates access to the High Court for persons who are not able to afford legal representation.

The High Court proceedings are seen as more dignified and prestigious as they occur behind closed doors, where lawyers are employed to represent the parties. In addition, the High Court processes are document based; therefore, an application would have been submitted with evidence of assets, liabilities and the needs of the parties. These requirements have been put in place to ensure a more orderly and efficient process on trial day. The Magistrates' Court, on the other hand, is a public affair. Applications have to be made in-person and this requires lining up in the public, with little or no privacy. The proceeding is also time consuming and if one is employed then it becomes embarrassing to reveal to an employer that their absence from work is as a result of

⁴²⁵ R. Clarke, J. Sealy-Burke, T. Robinson, "The Administration of Family Justice: Child Support, Shared Family Responsibilities and Gender Equality: Barbados Country Report" (2006) (The UNIFEM/UWI/LACC Child Support, Shared Family Responsibilities and Gender Equality Research Project).

⁴²⁶ Mindie Lazarus-Black, "My Mother Never Fathered Me: Rethinking Kinship and the Governing of Families" (1995) 44(1) SES.

⁴²⁷ Clarke (n 2) 72

child support court proceedings. The Magistrates' Courts is usually described as a venue for "commess and bacchanal", referring to the large crowd, long lines and the general confusion that surrounds the Magistrates' Courts.⁴²⁸

In deciding on the quantum for child support awards, the High Court usually takes into consideration the needs of the child and the income, assets and responsibilities of the parties. The Judge in Magistrates' Court, on the other hand, does not have any set guidelines for calculating child support awards and usually produces a figure by finding a reasonable balance between what one party requests and what the other offers. It was found that the awards made in the High Court are usually higher than those made in the Magistrates' Court⁴²⁹. However, both Judges and Magistrates do try to resolve child-support proceedings through mutual agreements between the parties. The Court is of the general assumption that both parents should contribute equally to the child's need regardless of an obvious difference in their financial position.

Finally, another flaw in the execution of justice in child support cases is the inefficiency in the enforcement of court awards. This is due to the 'overwhelming work load, inefficient administration records, poor enforcement mechanisms and long waiting periods before the enforcement for arrears begins'.⁴³⁰ It was also found that both the High Court and Magistrates' Court had a tendency of giving second chances and extension of time to make payments or allowing payments in installments rather than the lump sum that was already agreed on. The courts are usually reluctant to exercise the full length of the law for delinquent child support payment and this is evident in the few incidents of imprisonment for non-compliance.

⁴²⁸ Ibid 73

⁴²⁹ Ibid

⁴³⁰ Ibid 11

III. The Courts as an Arena for Gender Wars

Child support proceedings for the poor have been described as ‘warfare between women and men, with the courts as the battleground’.⁴³¹ Full examination of the family justice system in Barbados provides support for this view and underscores LaFont’s assessment that the Caribbean courts are ‘an arena for gender wars’.⁴³² A court proceeding for child support will usually commence after one party fails to live up to their responsibilities, therefore, the animosity usually precedes court proceedings. The proceeding usually heightens and fuels pre-existing conflicts, regardless of the socio-economic background of the complainants. However, the elite and middle class, who can afford to use the High Court, have the privilege of much greater privacy surrounding their gender behavior. Their fights take place indoors rather than in the public’s view. As a result, little is known about their ‘gender antagonism’.⁴³³

In the Magistrates’ Court of Barbados, only a single woman (and no men) can apply for child support. This stipulation renders the procedure one of women against men and reifies negative perceptions about the motives and morality of women who initiate child support proceedings. Men resent women who initiate child support proceedings when their motives are believed to be questionable and, in such cases, women are portrayed as being ‘vindictive, prompted by factors unrelated to child’s welfare and opportunistic’.⁴³⁴ These dynamics exacerbate the tension between the parties.

The quantum of awards in the Magistrates’ Court will unavoidably lead to conflict between the parties. The implied assumption that the parents should contribute equally is not usually

⁴³¹ Clarke (n 2) 13

⁴³² Suzanne LaFont, “*Gender Wars in Jamaica*” 2007(2) *Identities* 233-260

⁴³³ *Ibid* 236

⁴³⁴ Clarke (n 2) 13

reflected in the awards granted by the court. The custodial parent, who is almost always the mother, is at a disadvantage because the courts fail to consider factors such as: women usually earn less than men do and their being solely responsible for the daily care of the children diminishes their ability to earn. This supports the idea that the ‘system is disadvantageous to users, and in particular women’⁴³⁵. This further shows how the courts play a material role in ‘reinforcing the economic and social marginalization of poor women’.⁴³⁶ Poor unmarried women have to endure the imbrute act of lining up at the Magistrates’ Court to collect child support payments.

The family law in Barbados assumes that children born out of wedlock are the responsibility of their mothers. Women are then placed in a position where they are basically forced to be the custodial parent while the father is freed from the daily care and responsibilities of the child. Women are, therefore, forced to perform their gender role as caregiver. In contrast, it seems the Court sanctions, or, at the very least, does not do much to prevent men from exercising the “option” of if and when to provide child support. The family justice system is designed to promote justice, but it has failed to achieve this end.

IV. Collecting Child Support: An Elusive Right

Collecting child support can prove to be a difficult and often times frustrating process for women. Men who avoid paying child support are usually not accessible to the mothers because if they are not in hiding they have moved on to another relationship where the present partner often discourages contact with the previous partner.⁴³⁷ Women are then forced to take these men to

⁴³⁵ Ibid

⁴³⁶ Ibid

⁴³⁷ Barry Chevannes, “*Fatherhood in the African-Caribbean Landscape: an Exploration of Meaning and Context*” in C. Barrow(ed) *Children Rights, Caribbean Realities* (2002) 214-226.

court, which may be fuelled solely by genuine financial need, but may also be driven by a desire to embarrass or punish the man. The court then becomes the battle field because this is where they are usually forced to come in contact with each other; anger at past hurts and frustration over the current situation may then be expressed. The Court process adds to the frustration, with the long lines to both pay and collect child support. Further, delinquent payments by the fathers and the Court's failure to enforce child support orders, often result in payments not being available when the mothers go to collect.

V. Conclusion

The treatment of poor, unmarried women seeking child support at the Magistrates' Courts in Barbados is a clear indication that the law has played an instrumental role in shaping and maintaining women's subordination in society. The law has not been a positive force in encouraging social relations but it has reinforced divisions and disparities of power. Women are forced to endure a legal system that undervalues their job as the primary caregiver for the children, a system which question the paternity of their children if they are unmarried, and a system that does not consistently punish fathers who are delinquent with child support payments.