

PAUL C. TOE, Appellant, v. **ALICE G. TOE**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Heard: April 5, 1995. Decided: July 27, 1995.

1. An award of alimony shall be limited to not more than one-third of the husband's income.

2. Where *alimony pendente lite* is prayed for, the court may direct the husband to provide suitably for the support of the wife as in the court's discretion and as justice requires, having regard to the circumstances of the case and of the respective parties.

Growing out of an action of divorce in the Civil Law Court for the Sixth Judicial Circuit, defendant/appellee, Alice G. Toe, petitioned the court for counsel fees and alimony *pendente lite*. The appellant failed to file an answer to the petition. Consequently, the judge granted the petition and ordered the appellant to pay the appellee \$500.00 per month as *alimony pendente lite* and \$7,500.00 as counsel fees. With respect to the counsel fees, the judge ordered that 50% be paid before the hearing of the divorce suit. From this ruling, appellant announced an appeal to the Supreme Court but failed to perfect the appeal. Whereupon, the appellee moved the Supreme Court to dismiss the appeal. However, the motion was denied because of the nonappearance of the movant and the case heard on its merits.

The Supreme Court, upon review of the records, held that the amount awarded for counsel fees was unreasonable, in that it amounted to the totality of the defendant/appellant's monthly salary, especially so when there was no showing in the records that he had any other income. Accordingly, the Court *affirmed* the judgment appealed from, but modified the same by reducing alimony award from \$500.00 to \$200.00 per month, effective as of the date of the judgment appealed from, and the counsel fees from \$7,500.00 to \$2,500.00.

Frederick Cherue for appellant. *Harper S. Bailey* for appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

The appellee in this case, Alice Toe, instituted an action of divorce for adultery against the appellant in the Civil Law Court, Sixth Judicial Circuit, Montserratado

County, on 29th *alimony pendente lite* and June 1994. She later sued for counsel fees on 6th July 1994, in the same court. In her complaint for alimony, appellee alleged that the appellant/ defendant was employed at the Ministry of Commerce and Industry as Director of Price Control, with a salary of five hundred dollars (\$500.00) per month. As for counsel fees, the plaintiff/appellee prayed for a sum of seven thousand five hundred dollars (\$7,500.00), and requested that fifty percent of this amount be paid before the hearing of the action of divorce was commenced. The appellant/defendant did not file an answer or returns.

On 7 October 1994, the trial judge entered a ruling in favour of the plaintiff/appellee for *alimony pendente lite* in the sum of five hundred dollars (\$500.00) per month, retroactive from the date of the filing of the alimony suit, that is, from 6 July 1994, and counsel fees of \$7,500.00, with fifty percent (50%) thereof to be paid before the hearing of the divorce suit. The defendant/appellant excepted to the ruling, announced an appeal from the said ruling, and filed a bill of exceptions. However, nothing further was done with respect to completing the process of appeal. Hence, the plaintiff/ appellee moved for the dismissal of the appeal. When the case was called on March 20, 1995 for the hearing of the motion to dismiss the appeal, both counsels for the appellant and the appellee were absent. The court thereupon decided to hear the case on the merits since the absence of the movant for the dismissal of the appeal and the failure of the appellant's counsel to file a resistance to the motion coupled with his absence, amounted to a default of motion.

Upon the call of this case for hearing on the merits, the Court observed that no brief was filed for the appellant. Whereupon appellant's counsel informed the Court that he waived the filing of a brief as well as oral argument, and that he was submitting the case to the Court for such judgment as the Court may deem just and proper from the records. Counsel for appellee also waived argument of the appellee's brief and submitted the case in like manner as was done by appellant's counsel.

As stated earlier, the plaintiff/appellee, in her complaint for alimony, said that the defendant/appellant was employed at the Ministry of Commerce and Industry as Director of Price Control, earning a salary of Five hundred Dollars (\$500.00) per month. The trial judge, in granting the plaintiff/appellee *alimony pendente lite*, awarded her Five Hundred Dollars (\$500.00) per month, retroactively from July 6, 1994, the date of the filing of her petition. This award amounted to the totality of the defendant/appellant's monthly salary. There is no showing in the records that he had any other income.

Prior to 1928, there was no provision in our law for alimony. Our courts therefore used the common law standard for awarding alimony. It was felt, however, that this resulted in harsh consequences for male spouses. The Legislature therefore enacted a statute in 1928, which provided that an award of alimony shall be limited to not more than one-third of the husband's income. *Anderson v. Anderson*, 9 LLR 301 (1947).

The Domestic Relations Law provides that where *alimony pendente lite* is prayed for, the Court may direct the husband to provide suitably for the support of the wife as in the court's discretion and justice requires, having regard to the circumstances of the case and the respective parties. See Domestic Relations Law, Rev. Code 9: 9.3. Needless to say, the award in the instant case is detrimental to and against the interest of the husband, which is the type of evil in the common law that the Legislature aimed at curing by the Alimony Statute of 1928.

Since the defendant/appellant's income was established to be \$500.00 per month, the award of alimony to the plaintiff/ appellee should have had regard to what justice and the circumstances of the parties required. We do not think that the trial court exercised the proper discretion mandated by the Domestic Relations Law.

With regard to counsel fees, it is inconceivable that the defendant/appellant can sustain counsel fees of \$7,500.00, out of an income of \$500.00 per month. The fees do not appear to be reasonable under the circumstances.

Section 9.3 of the Domestic Relations Law mandates the court, in its discretion and as justice requires, to grant support for the wife, having due regard to the circumstances of the case and of the respective parties. Accordingly, we are of the opinion that the alimony to be paid by the defendant/ appellant, considering his income, should be \$200.00 per month and that counsel fees should be \$2,500.00.

In view of the law and facts stated above, it is our opinion that the ruling of the trial court should be modified so that the *alimony pendente lite* awarded the appellee is fixed at Two Hundred Dollars (\$200.00) per month, effective as of the date of the judgment of the trial court, that is, October 7, 1994, and that counsel fees be set at Two Thousand Five Hundred Dollars (\$2,500.00).

The Clerk of this Court is hereby ordered to send a mandate to the judge of the lower court to give effect to this opinion. Costs are assessed against the appellant. And it is hereby so ordered.

Judgment affirmed with modification.