

**GLADYS M. VINCENT-HARDING**, Appellant, v. **Professor Dr. C. J. E. HARDING**,  
Appellee.

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

Heard: May 15, 1983. Decided: July 7, 1983.

1 The financial capacities of the parties will not necessarily relieve the husband of his legal obligations to support his wife since "a plea of poverty is to no avail to relieve him of such obligation."

2 Where a statute specifies the only manner in which an act is to be performed, no court has the authority to extrapolate the legislative intent beyond the specific wordings of such a statute.

3 Under the statute, the husband, in *pendente lite* is to provide suitably for the support of his wife as, in the court's discretion, and as justice require, having regard to the circumstances of the case and of the respective parties.

4 The financial capacity of the parties will not necessarily relieve the husband of his legal obligation to support her of such obligation.

5 An order or direction to the husband to support his wife does not require a separate action of maintenance and support, and the disposition of a demand for support is not governed by the rules obtained in regular actions.

6 The responsibility for the payment of rent to third party for the matrimonial residence of the parties rests upon the husband *pendente lite*.

7 Any act on the part of a party by which he implicitly recognizes the validity of a judgment against him operates as a waiver of his right to appeal therefrom.

8 The right of appeal is favored by law, and it will not be held to have been waived except upon clear and decisive grounds.

9 Where a judgment or decree involves distinct and severable matters or demand, a waiver of or estoppel as to only one or a part thereof, will not prevent an appeal as to the residues.

Appellant instituted an action for maintenance and support against her husband, the appellee herein. The lower court ruled that the wife was entitled to support, but that the husband had no responsibility to continue rental payments for her home if he did not reside therein. On appeal to the Supreme Court, the judgment was affirmed with the modification that in addition to other support, rental payments be continued.

*Raymond Hoggard* appeared for the appellant. *Nelson W. Broderick* appeared for the appellee.

MR. JUSTICE KOROMA delivered the opinion of the Court.

On January 23, 1982, Gladys M. Vincent-Harding filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, a three-count petition, praying the court to enter a decree commanding her husband, C. J. E. Harding, to provide maintenance and support for her and to continue to do so until such time when their marriage is dissolved, consequence to a divorce suit pending in court, or when her husband returns and assumes his marital duties. She contended in her petition that for no justifiable reason, her husband had abandoned their bed and abode in September 1981 and had refused to return and neglected to maintain and support her, although gainfully employed at various jobs and earning a minimum monthly salary of four thousand dollars.

In a three count answer, the respondent denied neglecting or refusing to support his wife to the effect that he pays rental and utility bills for the premises on which the petitioner, his wife, lived in the amount of more than \$4,000.00 per year, and which premises he, the respondent, was compelled to abandon because of the pugnacious attitude and tendency of his wife which was becoming imminently dangerous to his life and physical wellbeing. Respondent also contended that: (1) he earns a monthly salary of \$859.49 net and not \$4,000.00 while his wife makes a monthly salary of \$937.17 net in addition to other incomes she receives from business ventures; (2) that while he, the respondent, had the responsibility to provide support and maintain his wife, the petitioner, yet, she the petitioner, has the financial capacity to provide her own food and clothing; (3) that he, the respondent, alone without any help from petitioner, who is the mother, provides support for their four children studying abroad. Notwithstanding these circumstances, the respondent offered to provide monthly allowance for the petitioner in the sum of \$150.00 in addition to the annual rental payment for the premises where petitioner is living.

In a seven-count reply, the petitioner prayed for the dismissal of the answer on the ground that it is evasive and contradictory and that the averments therein amount to the crime of perjury. Petitioner contends that (1) the respondent had sworn to lies and false statements mainly intended to mislead the court and by so doing, to fraudulently suppress justice; (2)

that the respondent had falsely and contradictorily stated his monthly salary in these and the certiorari proceedings now before the Supreme Court; and (3) that he has falsely stated paying the utility bills for the petitioner and supporting the children abroad. On the contrary, petitioner contended that she is the one who pays the utility bills in order to discontinue the constant disconnection of the premises because of failure on part of the respondent to pay the said bills and that she, the petitioner, supports and maintains all the children. Petitioner further contended that under the laws of Liberia, the financial capacity of a wife is immaterial and irrelevant and constitutes no legal ground or defense in maintenance and support. Finally, petitioner contended that the respondent has no authority to assume the function of the court by suggesting what he is willing to pay monthly allowance for petitioner's support; that it is the court's authority to determine the amount for maintenance and support which should not be less than  $\frac{1}{5}$  nor exceed  $\frac{1}{3}$  of the respondent's income after due consideration is given to surrounding circumstances.

Following arguments of these issues raised in the petition, answer and reply, the trial court decreed that in view of the financial capacities of both parties, and the support given by the respondent to maintain the children, that: (1) the said respondent pays a monthly sum of \$300.00 to support the petitioner effective March 1, 1982; (2) that the payment of the rent for the premises where the petitioner lives would be the responsibility of the petitioner or respondent, depending on whosoever desires to live therein after March 31, 1982. And that the payment of the \$300.00 by respondent to the petitioner will continue until the divorce case pending between them is finally determined.

From this ruling of the trial court, the petitioner noted exceptions and has appealed to this Court on a three-count bill of exceptions, two of which we consider germane to the final determination of this case and are herein summarized below:

(1) That the trial judge committed a reversible error when he entered a decree awarding the petitioner/appellant \$300.00 a month without taking evidence to determine the total earning of the respondent in order to decide the amount petitioner is entitled to receive.

(2) That the trial judge committed a reversible and prejudicial error when he ruled that the petitioner was gainfully employed and making higher salary than the respondent, and disregarded the averment that she, the petitioner, was exclusively responsible for the education and maintenance of the four children who are now in England.

Disposing of these issues in their reverse order, we take recourse to the records in this case commencing with the petition. In the two-count petition, the petitioner prayed for the court to enter decree, in keeping with the circumstances and award her an amount sufficient for

her adequate maintenance and support until at such time when the existing circumstances shall have been removed by a court of competent jurisdiction or when the respondent returns to his marital duties. There is nowhere in the petition that the petitioner averred maintenance and support for the four children who are now being educated in England nor did she pray for the decree to include such item. In filing this petition for support of dependent, the petitioner took advantage of chapter five, sub-section 5.3 (a) of the Domestic Relations Law, Rev. Code 9: 5.3(b), but did not include sub-section 5.3 (b) which requires a father to support his child or children. The petition being void of any allegation or averment as to the maintenance and support of the children, it could not be otherwise concluded that the respondent was performing this duty placed upon him by law. Hence in his answer to the petition, he admitted not supporting his wife as far as food and clothing were concerned but that he was exclusively maintaining and supporting his children abroad. The denial of this averment or allegation in the reply did not necessarily constitute a part of the petition filed in court for maintenance and support of the petitioner. If the respondent was not supporting and maintaining his children as the petitioner claims in her reply and she needed a redress for this statutory violation of the respondent's responsibility, it was obligatory on her part to have made this fact of neglect or refusal of a binding duty, an integral part of her petition to the court. Having failed to do so, the disposition made of this issue by the court constitute no error.

Further to this count of the bill of exceptions, this Court fails to see where the ruling of the trial court is prejudicial to the petitioner with respect to the fact of her financial capacity. For she has not denied earning a monthly net salary of \$937.17, running taxi and boutique businesses, all of which add up to a very gainful and lucrative employment. The mention of this fact by the trial judge, in our opinion, does not obliterate the respondent's legal obligation to his wife nor does it constitute a reversible prejudicial error.

In count one of the petitioner's bill of exceptions, she strongly and strenuously contended that the trial judge committed a reversible error when he did not take evidence in order to determine the total earning of the respondent, of which the petitioner is entitled to not less than 1/5 or more than 1/3. She argued that the exercise by the court in entering a decree without first taking evidence was an abuse of discretion and a denial of petitioner's entitlement, and therefore a reversible error. Our microscopic search of the statutes has failed to yield any findings as to the legal support for this argument. Neither chapter 5, sub-section 5.3 (a), nor chapter 9, sub-section 9.3, of the Domestic Relations Law supports the contention of the petitioner as to what constitutes her entitlement in an action for maintenance and support. The Domestic Relations Law, Rev. Code 9:93, under the caption *alimony pendente lite*, provides for the court to direct the husband *pendente lite* to provide suitably for the support of his wife as, in the court's discretion, and as justice requires, having

regard to the circumstances of the case and of the respective parties. In keeping with this statute, which should receive a sensible construction by the court so as to effectuate the legislative intention, it could not be better construed that the employment status and financial capacity of the parties constitute part of the embodiment of the circumstances of the case and of the respective parties. The financial capacity of the parties will not necessarily relieve the husband of his legal obligation to support his wife since "a plea of poverty is to no avail to relieve him of such obligation. *Dean v. Dean*, 7 LLR 47 (1939). However, such circumstances of the parties, as positively admitted by the wife in this case, will certainly mitigate the husband's obligation as justice requires. The time and conditions under which the court may direct the husband to support his wife is when an action is brought during the lifetime of their marriage, as in this case, divorce, and during the pendency of such action. Therefore, an order or direction to the husband to support his wife under subsection 9.3 of the Domestic Relations Law does not statutorily require a separate action of maintenance and support so as to demand disposition as in regular actions. It was therefore no reversible error on part of the trial court to have ordered or directed the husband to pay the amount of \$300.00 per month for the support of his wife without taking evidence. Count one of the bill of exceptions is therefore not sustained.

In the brief filed and argued before this Court, the respondent/ appellee raised two legal issues which deserve our judicial consideration.

(1) That the sum of money to be allowed as support by one spouse to the other in such cases, is within the court's discretion having regard to the circumstances of the case and which discretion can not be subject to review except where it is shown to be abused.

(2) That since the entry of the decree on March 1, 1982 ordering the respondent to pay the petitioner \$300.00 per month until the divorce action is finally determined, the said respondent has constantly paid while the petitioner has always received and acknowledged said payment. Having excepted to the decree and appealed therefore to this Court, the acceptance, receipt and acknowledgment of the monthly payment up to the present, is tantamount to acquiescence, ratification and confirmation of the decree of the trial court as rendered, thereby waiving and abandoning her right of appeal and is barred and estopped from proceeding with or prosecuting the said appeal.

In passing on the first argument, we take recourse to the decree of the trial court wherein we observe that the court disregarded the payment of money to a third person for real and personal property and services furnished to the wife especially when it ruled "Any one of them who desires to occupy the house rented by them will hereafter March 31, 1982, exclusively be responsible for the payment of the rents therefor." See court's decree, Sixth

Judicial Circuit, March Tenn A. D. 1982, 5<sup>th</sup> day's jury session, March 20, 1982. Where the statute specifies the only manner in which an act is to be performed, no court has the authority to extrapolate the legislative intent beyond the specific wording of such a statute. Our law does not give us authority either to add to or take away from what the Legislature has commanded unless the said command breaches provisions of the Constitution. *George v. Republic*, 14 LLR 158, 159 (1960). It is our holding that the trial court had no authority to terminate the rental payment to a third party for the real property that was being used by the petitioner, neither did it have any authority to make said rental payment optional to any of the parties living on the said property after March 31, 1982. Domestic Relations Law, Rev. Code 9:9.3., the responsibility for rental payment for the use of the real property of a third party does not shift. Therefore, the discontinuation of the rental payment consequence of the decree was not only an abuse of discretion but a violation of the statute made and provided in this case.

As to the award of \$300.00 decreed by the trial court, we hold that there was no abuse of discretion. However, this Court having the judicial authority to reverse, remand, affirm and/or modify judgments, rulings, orders or decrees of any subordinate court in its appellate consideration of such matter, shall take advantage of this authority at the conclusion and in the judgment of this opinion.

In connection with the second point of contention of the respondent/appellee, embracing waiver and estoppel, we shall take recourse to common law authorities in the settlement of this issue. Under consent to or acquiescence in judgment, we find the following:

"It has been broadly asserted that any act on the part of a party by which he impliedly recognizes the validity of a judgment against him operates as a waiver of his right to appeal therefrom, or to bring error to reverse it, and clearly one who voluntarily acquiesces in or ratifies a judgment against him cannot appeal from it. The acquiescence which prohibits an appeal, or destroys it when taken, is the doing or giving of the thing which the decree commands to be done or given. Failure to appeal from a portion of a judgment constitutes acquiescence in that portion." 4 AM JUR.2d., *Appeal and Error*, §242.

Further in *Corpus Juris Secundum*, it is held that: "A party may not only waive his right to appeal or maintain a proceeding in error by express agreement or stipulation, but a waiver may also be implied from, or the party may be estopped by an act, course of conduct, or agreement which is inconsistent with such right. A waiver or release of errors cannot be implied, however, nor can an estoppel arise from acts or agreements which are not clearly inconsistent with the right to appeal or bring error. The right of appeal is favored by the law, and it will not be held to have been waived except upon clear and decisive grounds, and

where a judgment or decree involves distinct and severable matters or demands, a waiver or estoppel as to only one or a part thereof will not present an appeal as to the residue." 4 C. J. S., *Appeal and Error*, § 211.

Applying these legal citations to the case at bar, we find that although the petitioner/appellant received and applied the fruits of the judgment (\$300.00 per month since March 1982) to her own benefit thereby impliedly ratifying the said judgment yet, she cannot suffer waiver and estoppel in prosecuting an appeal because the judgment or decree appealed from involves distinct and several matters. In that, while the trial judge awarded \$300.00 per month as support for the petitioner/appellant, he simultaneously decreed the discontinuation of the rental payment as provided by the Domestic Relations Law. By this act or decree of the trial judge, the payment for services furnished to the petitioner/appellant, wife of the respondent/appellee, were discontinued, contrary to the statutes made and provided for such cases. Hence, the right of appeal from said judgment or decree involving several matters cannot be considered waived and the respondent/appellee estoppel simply by the act of receiving \$300.00 per month. The argument of respondent/appellee in this respect is therefore not sustained.

Wherefore and in view of all the facts, legal citations and circumstances surrounding the case, it is our holding that the judgment appealed from should be and the same is hereby confirmed with the following modifications:

(1) That the amount of \$100.00 per month is hereby added to the \$300.00 award payable retroactively by the respondent/ appellee to the petitioner/appellant as of March 1, 1982 until the final determination of the divorce action now pending in court between the parties.

(2) The payment of the rental allowance and services (utility) bills, which were terminated on March 31, 1982 by virtue of the decree of the trial court, are to be resumed and done retroactively as of April 1, 1982 by the respondent/appellee to the petitioner/appellant for the real property on which the petitioner/appellant is living and for services (utilities) furnished her until the final determination of the divorce case. The payments of the rental allowance and services bills are strictly contingent upon convincing proof in the court below that the property and utilities for which said payments are being done, have been and are being used and utilized by the petitioner/appellant as justification for said payments.

(3) That besides the payments of these amounts, cost is disallowed. And it is hereby so ordered.

*Ruling affirmed as modified.*