

**GLADYS M. VINCENT-HARDING**, Petitioner, *v.* **HIS HONOUR FRANK W. SMITH**, Circuit Court Judge presiding by assignment over the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, at its December Term, A. D. 1981, and  
**PROFESSOR DR. C. J. E. HARDING**, Respondents.

APPEAL FROM A RULING OF THE CHAMBERS JUSTICE DENYING THE  
ISSUANCE OF A WRIT OF CERTIORARI.

Heard: October 28, 1982. Decided: February 4, 1982.

1. The purpose of a writ of certiorari is to correct errors committed by a subordinate court or other body while a matter is pending, when such errors materially prejudice or injure the rights of a party.
2. A ruling awarding counsel fees or suit money in an auxiliary action growing out of an action of divorce is absolute in itself and leaves nothing more to be adjudicated, and subsequently, puts a finality to the auxiliary action for counsel fees. Hence, the remedy available from an adverse ruling in such action is appeal.
3. In an action of divorce, the court, in its discretion and as justice requires, may award counsel fees to enable the wife to defend the action, having regard to the circumstances of the case and of the respective parties.
4. An allowance, be it for counsel fees or alimony pendente *lite*, will be set aside on appeal where it is made in total disregard to the financial means and ability of the husband and who, by answer, had put them into issue.

These certiorari proceedings grew out of an action of divorce for incompatibility of temper instituted by Dr. C. J. E. Harding, co-respondent, against his wife, Gladys M. Vincent Harding, petitioner. Petitioner applied to the trial court for an award of counsel fees, which the Co-respondent Harding resisted as being exorbitant and out of the realm of legal support, considering his financial status and responsibilities. The court awarded petitioner \$600.00, to which she noted her exceptions and subsequently applied to the Justice in Chambers for a writ of certiorari.

Holding that the ruling of the co-respondent judge awarding counsel fees was absolute in itself and brought finality to the suit for counsel fees, the Justice in Chambers ruled that certiorari cannot lie, and denied the application. On appeal, the Supreme Court affirmed

the ruling.

*The Gibson & Gibson Law Firm* for petitioner. *Nelson Broderick* for respondent.

MR. JUSTICE KOROMA delivered the opinion of the Court.

On November 21, 1981, Dr. C. J. E. Harding instituted an action of divorce for incompatibility of temper against his wife, Gladys M. Vincent-Harding in the People's Civil Law Court, Sixth Judicial Circuit, Montserrado County. Pleadings having been exchanged, the case was assigned for disposition of law issues on January 22, 1982. When the case was called on this date, representation for the defendant was announced by Counselor Raymond A. Hoggard who, by permission of court, submitted on the records or minutes of court to the effect that: (1) they represent the defendant, now petitioner, wife of the plaintiff, now co-defendant, against whom the divorce proceedings had been instituted; (2) that the wife being unable financially to retain the services of a lawyer to adequately represent her, she authorized her counsel to collect from her husband, the plaintiff, the counsel fee charged and agreed upon; (3) that the information as to the counsel fees and the demand for payment was communicated to the co-respondent but that up to the call of the case he had failed to make settlement of same. Hence, counsel for petitioner was praying the court to order the payment of the counsel fee as a condition to offer legal services for the petitioner.

In resisting this submission, the co-respondents classified the counsel fee so charged as being exorbitant and out of the realm of legal support, especially, when consideration is given to the financial status and responsibilities of co-respondent and petitioner.

The court passed upon the submission and resistance after entertaining argument and awarded the amount of Six Hundred Dollars (\$600.00) as counsel fee and predicated the hearing of the divorce case upon the payment of this amount. To this ruling, the petitioner's counsel registered exceptions. When this amount was transmitted by the co-respondent to the petitioner's counsel, it was rejected on the grounds that it was too meager to pay for the legal services of the defendant's counsel, the Gibson and Gibson Law Firm and Counselor Raymond A. Hoggard. Following this rejection and the assignment of the divorce case for hearing, the petitioner petitioned the Chambers Justice to cause the issuance of the alternative writ of certiorari to review the ruling of the trial judge.

The issues raised in the petition and the returns for a writ of certiorari are summarized for the purpose of this opinion as follows: (1) whether the ruling of the co-respondent judge awarding the sum of \$600.00 (Six Hundred Dollars) as counsel fees is interlocutory or final? (2) Whether the \$600.00 (Six Hundred Dollars) awarded by the lower court is adequate legal

fees for two (2) contested cases considering the circumstances surrounding the case and the financial standing of the parties? (3) Whether the co-respondent judge abused his judicial discretion when he awarded only \$600.00 (Six Hundred Dollars) as counsel fees when the Co-respondent Harding had agreed and promised to pay petitioner's counsel \$3,000.00 (Three Thousand Dollars)? (4) whether the wife is earning sufficient money to pay her lawyers to defend her in the actions for divorce and maintenance and support? and (5) whether the wife's financial ability to pay her counsels, relinquishes or minimizes the husband's responsibility to pay her counsel fees?

In passing upon these issues in their order of presentation, the Chamber Justice ruled that certiorari will not lie, since the ruling of the co-respondent judge awarding the sum of \$600.00 (Six Hundred Dollars) as counsel fees was absolute in itself and left nothing more to be adjudicated, and consequently put finality to the suit for counsel fees. We confirm the position taken by our colleague who presided over this case in Chambers and reiterate that the corrective competence of the writ of certiorari had elapsed and rendered the certiorari proceedings belatedly impotent immediately when the trial judge entered ruling awarding \$600.00 (Six Hundred Dollars). The writ of certiorari, says Mr. Justice T. McCants-Stewart, is for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, where such errors materially prejudice or injure the rights of a party. *Williams v. Clarke*, 2 LLR 130 (1913).

The petitioner in this case strongly argued before us that the ruling of the respondent judge was not final but rather interlocutory, in that the main action of divorce for incompatibility of temper was still pending and ruling in the auxiliary action of suit money or counsel fees could not be considered final. In order to decide this issue, we will take recourse to the opinion of this Court, the statute and the common law.

In 1938, this Court, speaking through Mr. Justice Dossen, clearly gave the difference between a final and interlocutory judgment. A final judgment, he said, is one which disposes of the case, either by dismissing it before hearing is had upon its merit, or after trial, by rendering judgment either in favor of plaintiff or defendant. An interlocutory judgment is one which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of the cause, but does not adjudicate the ultimate rights of the parties. *Manning v. Karpeh*, 6 LLR 172, 174 (1938). In an action to declare the nullity of a void marriage, or to annul a voidable marriage, or for a divorce, the court may direct the husband to pay such sum or sums of money to enable the wife to carry on or defend the action as in the court's discretion and as justice requires, having regard to the circumstances of the case and of the respective parties. Domestic Relations Law, Rev. Code 9: 9.4. Since this statute does not provide for hearing an application for counsel fees on its

merits, prior to ordering the payment to the wife, reason dictates that an order which finally adjudicates the ultimate rights of the husband to part with a sum of money for the wife to defend the cause filed against her, is a decision which leaves nothing else undecided. (*Lex plus laudatur quando ratione probatur*). The law is most praiseworthy when it is in consonant with reason.

While our statute makes it mandatory that the auxiliary causes in a divorce action be disposed of prior to the final determination of the main cause of action, yet, it is silent as to what path a party may take when his/her ultimate rights are adjudicated in a ruling in the disposition of an auxiliary cause. That is, whether a party, as the husband or wife in this case, may appeal from or reserve his or her appeal until the principal suit is finally determined. Taking recourse to the common law, we find that an appeal is the appropriate course of action to be taken by the party if the allowance so ordered by the court is meager and inadequate or by the husband if such allowance is unreasonably awarded and beyond the financial capacity of the husband. 24 AM. JUR. 2d, *Divorce & Separation*, § 591. The ruling therefore of the co-respondent judge was final and not interlocutory and hence an appeal would lie and not certiorari.

In order to adequately pass upon the second, third and fourth points as listed earlier in this opinion, it is necessary to treat them jointly instead of determining them severally. The question as to whether the \$600.00 (Six Hundred Dollars) awarded by the respondent judge is adequate legal fees for two (2) contested cases, divorce and maintenance and support, are both issues to be answered when we consider the "circumstances of the case and of the respective parties."

In count three of the petition, the petitioner alleged that because of her financial inability to pay her chosen counsel, she authorized \$3,000.00 (Three Thousand Dollars) to be paid by her husband, the plaintiff below, to her counsel for her defense. She alleged further that her husband is gainfully employed as a professor at the Medical College of the University of Liberia and also runs a private medical clinic in Monrovia. In countering these averments in the returns, the co-respondent, C. J. E. Harding, argued that petitioner being gainfully employed as Manpower Specialist at the Ministry of Planning and Economic Affairs, gets a gross monthly salary of \$1,300.00 (One Thousand Three Hundred Dollars) or \$937.17 (Nine Hundred Thirty-seven Dollars/seventeen cents) net while her husband, the respondent earns a monthly salary of \$500.00 (Five Hundred Dollars) gross or \$415.83 (Four Hundred Fifteen Dollars Eighty-three Cents) net, as shown by copies of the enclosed returned checks. The returns also averred that the petitioner earns additional income from operating a taxi business and a boutique in Monrovia. These facts which were not specifically denied by the petitioner constitute "the circumstances of the case and of the respective parties" which

the statute requires the court to regard in passing upon any award for counsel fees.

In addition to the disparity in salary between the petitioner and Co-respondent C. J. E. Harding, the latter argued in count seven of the returns that he has the responsibility of up keeping and maintaining their four children who are studying abroad. These pertinent facts which stand in the co-respondent's returns unrebutted by an answering affidavit, constitute the surrounding circumstances of the case and the respective parties which under no condition the trial court could have overlooked in passing upon the award for counsel fees without strangulating transparent justice. Hence, we are of the opinion that the respondent judge did not abuse his discretion in awarding the amount of \$600.00 (Six Hundred Dollars), in view of adequate financial means of the petitioner. Moreover, no matter how clearly the necessities of the wife may appear, an allowance, be it for counsel fees or alimony *pendente lite*, will be set aside on appeal where it was made in total disregard to the financial means and ability of the husband, who by answer had put them into issue. 24 AM. JUR. 2d., *divorce & Separation*, § 604. The co-respondent judge therefore rightly exercised his discretion in awarding the amount of \$600.00 (Six Hundred Dollars) as counsel fees. Discretion being the act of determining by law what is just, (*Disortio est discernere per legem quid sit justum*) the co-respondent judge neither committed a reversible error, nor abused this exercise when he awarded \$600.00 (Six Hundred Dollars) but, rather his act was intended to minimize the husband's responsibility under the law as justice requires.

In conclusion, we hold that the ruling of the co-respondent judge awarding \$600.00 (Six Hundred Dollars) as counsel fees was not interlocutory but rather final since it adjudicated the ultimate rights of the parties. Further, it is our considered opinion that the financial means of the petitioner being substantially better than her husband as put into issues by the latter, justifies the ruling of the co-respondent judge in minimizing and not abrogating the husband's legal responsibility to his wife.

In the light of the above, it is abundantly obvious that certiorari does not lie where there is ample and complete remedy open to the aggrieved party, as in the case under review. The institution of these certiorari proceedings is without legal foundation and therefore does not merit the favor of this Bench.

The ruling of the Chambers Justice therefore denying the petition should be and same is hereby confirmed. And it is so ordered.

*Ruling affirmed; petition denied.*