

**IN THE SUPREME COURT OF BELIZE, A.D. 2005  
(DIVORCE)**

**ACTION NO. 219**

	(ELENA USHER	PETITIONER
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BETWEEN(	AND	
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	(OSBERT ORLANDO USHER	RESPONDENT

**Coram: Hon. Justice Sir John Muria**

**Hearing: 17 October 2007**

**Ruling: 18 October 2007**

***Ms L. Young S.C. with Ms M. Marin Young for Petitioner***

***Mr. F. Lumor S.C. with Mrs Roberta Magnus-Usher for Respondent***

**Ruling**

***DIVORCE – Matrimonial Causes Rules (Cap.91s) – application for alimony pendente lite – Rules 57 and 61 – grant not automatic - test – petitioner to satisfy the court as to why she needs interim alimony pending suit – focus on the petitioner’s needs and ability of respondent to pay – court entitled to take provisional view of the parties’ means and circumstances.***

**MURIA J.:** The petitioner, Elena Usher, and respondent, Osbert Orlando Usher, were married on 12<sup>th</sup> August 1990. They have two issues to their marriage, namely Elena Usher (24 yrs) and Brendon Usher (16 yrs). The parties had lived together for some 15 years or more until their separation and presentation of this

petition in November 2005. This application by the petitioner is for alimony *pendente lite* following the presentation of her petition for divorce.

Alimony pending suit, now more commonly called “interim maintenance” has been recognized as part of the law of Belize as can be seen in Rule 57 of the *Matrimonial Causes Rules* (Cap. 91s) (MCR) which provides:

*“57. A wife who is petitioner in a cause, after filing her petition may file and after serving the same may serve a petition for alimony pending suit, and a wife after entering appearance to a petition may file and serve a petition for alimony pending suit.”*

I had expressed my view that in law there can be no doubt that the petitioner is entitled to come to this court and seek alimony *pendente lite*. However, it would seem that the grant of such temporary alimony is not automatic since the court is obliged to investigate the averments in the petition for the alimony, answer and reply and may hear evidence orally or by affidavits and may call for other documents if the court thinks fit. In other words the Petitioner has to satisfy the court that she is entitled to alimony pending the determination of her divorce petition. Rule 61 of the MCR would clearly anticipate that the Petitioner has to

satisfy the court that she is entitled to alimony *pendente lite*. Rule 61 is in the following terms:

*“61. The Court shall investigate the averments in the petition for alimony answer and reply, in the presence of the parties or their Attorneys-at-Law, and shall be at liberty to require the attendance of either party for the purpose of being examined or cross-examined, and to take the oral evidence of witnesses, and to require the production of any document, and to call for affidavits, and shall direct such order to issue as the Court shall think fit.”*

The test, in my view, at this stage in an application such as this, is that the petitioner needs to satisfy the court as to why she needs an interim alimony pending suit. The language of Rule 61 (above) appears to point to such a test, as the requirements under that Rule are obviously designed to ensure that the court is satisfied before alimony is ordered. This more in line with the English approach on interim payment applications. That is more rigorous than a mere *prima facie* case test favoured by the American Courts.

The focus, however, at this stage is nevertheless on the petitioner's needs and respondent's ability to pay so as to maintain her pending suit. This is no doubt in recognition of the common law right of a wife to be supported by her husband.

I make no conclusive finding as to the means of the petitioner and respondent at this stage. That will be done at the ancillary hearing and determination of the matrimonial property after detailed assessment of the evidence. For the moment, the focus is on the petitioner's needs and the ability of the respondent to pay pending the determination of the divorce petition.

Having considered the matters raised in the petition for alimony, answer and reply thereto, I am able to conclude, though provisionally, that at the minimum, the petitioner earns about \$1,000.00 while the respondent earns at the minimum of about \$12,000.00 per month. Like the respondent, the petitioner also has expenses to meet. They both acquired some assets, although the respondent has more than what the petitioner has. I am further satisfied that the petitioner is financially worse off than the respondent. In the circumstances, I am satisfied that the petitioner has established her need for financial support and that the respondent has the means sufficient enough to render that support to the Petitioner.

The quantum as sought by the petitioner is \$3,500.00 per month while the respondent suggests that he is only able to afford \$1,000.00 per month. The court notes that the respondent had once given financial assistance in the sum of \$5,000.00 to the petitioner. Again having taken a general view of the materials before the Court, I am satisfied that the Respondent has the ability to raise his offer above that which he suggested.

In my respectful opinion, bearing in mind that this is only a temporary alimony order, I feel the appropriate sum of alimony *pendente lite* in this case is one of \$2,500.00 per month.

I therefore order that the respondent pay the petitioner alimony *pendent lite* in the sum of \$2,500.00 per month, commencing at the end of this month, October 2007 until the determination of the divorce proceedings.

Hon Justice Sir John Muria