

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: AT KINGSHILL

|                                  |   |                      |
|----------------------------------|---|----------------------|
| GOVERNMENT OF THE VIRGIN ISLANDS | ) |                      |
| EX REL: BEATRICE CINTRON,        | ) |                      |
|                                  | ) | FAMILY NO. S184/1982 |
| Petitioner,                      | ) |                      |
|                                  | ) |                      |
| v.                               | ) |                      |
|                                  | ) | CONTEMPT SUPPORT     |
| HECTOR CINTRON,                  | ) |                      |
|                                  | ) |                      |
| Respondent.                      | ) |                      |
|                                  | ) |                      |

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PETERSEN, Judge

MEMORANDUM OPINION  
(September 4, 1987)

On March 6, 1987, this Court heard oral arguments on Defendant Hector Cintron's Motion to Dismiss or alternatively his Motion for Summary Judgment pursuant to Rules 12 and 56 respectively of the Federal Rules of Civil Procedure. For the reasons herein stated, the Defendant's Motion to dismiss the contempt citation is Granted and the Plaintiff's Motion to continue the Support payments is Granted.

FACTS

Hector Luis Cintron was granted a Divorce Absolute from Beatrice Athelia Cintron on September 7, 1976. Incorporated by reference into the Divorce Decree was a separation agreement dated March 30, 1976 which provided inter alia that Hector Cintron pay to Beatrice Cintron, Five Hundred (\$500.00) Dollars per month until June 30, 1976 and thereafter Four Hundred (\$400.00) Dollars per month for the support of the three minor children of the marriage until each child dies or reaches the age of eighteen years, whichever event first occurs. The children, Carmen Beatrice, Hector Clemente and Luis Antonio are now 25, 22 and 18 respectively.

On July 27, 1982, Beatrice Cintron filed for an increase in support. In the Petition, she represented that the Order for support provided for the amount of One Hundred Thirty Four (\$134.00) Dollars per child monthly and that she is requesting Two Hundred (\$200.00) Dollars per month per child.

The Petition for increase was denied on November 29, 1982. In May 1986, Beatrice Cintron filed another affidavit with this Court in which she represented that Hector Cintron was in arrears and asserted further that he had been ordered to pay One Hundred Thirty-Four (\$134.00) Dollars per month per child. This Petition was dismissed without prejudice. Subsequently in September 1986, another Petition for increase in support was

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filed. In this sworn Petition, Beatrice Cintron again alleged that Hector Cintron had been ordered to pay One Hundred Thirty Four (\$134.00) Dollars monthly for the support of his minor child.

Then in January 1987, Beatrice Cintron filed an amended affidavit representing that Cintron had been ordered by the Court "to pay for the support of his minor children, the sum of Four Hundred (\$400.00) Dollars beginning July 30, 1976" and that Hector Cintron neglected to comply with the Court's Order and was in arrears in the amount of Ten Thousand Eight Hundred Eighty-Four (\$10,884.00) Dollars as of December 30, 1986 and was therefore in contempt of the September 19, 1976 Order.

#### DISCUSSION

It is well established within this jurisdiction that the attainment of majority by one minor child would not ipso facto justify a pro rata reduction of current support obligation. Emanuel v. Emanuel, 15 V.I. 103 (D.V.I. 1978).

As the decree ordered payment of Four Hundred (\$400.00) Dollars per month to Beatrice Cintron for child support, the obligation to pay that sum is not affected by the fact that one of the children involved had been emancipated. Even if a reduction of those payments of the current obligation were in order, the emancipation standing alone would not justify

a pro rata reduction by one third. Moreover, the fact that the emancipation of one or more of the children might provide a good ground for modification of the support order does not give rise automatically to equitable considerations which preclude enforcement of the decree. Vincent v. Vincent, 584 S.W.2d 152 (1979). Parties to a divorce proceeding may not simply ignore or disregard proper orders of judicial tribunals. Adequate procedures are available to modify, as needed, judgment of courts to meet the changing conditions of divorced parties. Hart v. Hart, 539 S.W.2d 682 (1976).

This Court is aware that waiver by acquiescence as a defense to an action for past due support has been recognized in many jurisdictions. See Vincent v. Vincent, 584 S.W.2d, 152 (1979). In this case Hector Cintron has invoked the doctrine of equitable estoppel. He asserts that since their divorce, Mrs. Cintron consistently has represented to the Court that he owed One Hundred and Thirty-Four (\$134.00) Dollars for the support of each child. He further asserts that as a result of making such representations as well as accepting one-third reductions in support payments as each child became emancipated, Mrs. Cintron is estopped from asserting that he owed Four Hundred (\$400.00) Dollars per month regardless of whether any of the children became emancipated.

Estoppel is said to exist where a party has engaged in words, acts, conduct or acquiescence causing another to believe

in the existence of a certain state of things; where there is willfulness or negligence with regard to the acts, conduct or acquiescence and where there is detrimental reliance by the other party upon the state of things so indicated. Lovell Manufacturing v. Expert-Import Bank of United States, 777 F.2d 894 (3rd Cir. 1985).

To raise an equitable estoppel argument, the record must establish not only that the pleader relied upon a representation but also that he was justified in so doing. Justifiable reliance is fundamental. American Bank & T. Co. v. Trinity Universal Ins. Co., 205 So.2d 35, 40 (1967).

Hector contends that he relied on the Court's interpretation of the Decree in reducing his payments. Judge Silverlight indicated that there was to be a pro rata reduction in Ms. Cintron's support payments when each of the children attained the age of eighteen. <sup>1/</sup> This interpretation of the original support order contradicted the interpretation which was normally afforded support orders under Emanuel.

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<sup>1/</sup> In November, 1982, Judge Silverlight stated that "Under Para. 4 of the Separation Agreement, the obligation to pay Four Hundred (\$400.00) Dollars a month to support the three minor children in the wife's custody until each child dies or reaches the age of eighteen (18), whichever event first occurs. That language can only be construed to mean that as each child attains eighteen (18), one-third of that Four Hundred (\$400.00) Dollars is eliminated from the obligation of the Support." (Emphasis supplied)

Ms. Cintron had never requested a reconsideration or appeal Judge Silverlight's determination within the time permitted by law. Moreover, she accepted the monthly payments without complaint throughout the years. <sup>2/</sup> The inference is irresistible that Ms. Cintron's action and conduct coupled with Hector's belief that his action in reducing the payments was with the court's consent, may well have lulled Hector Cintron into inaction in the matter of securing a timely modification of the decree.

Under the totality of the circumstances herein, this Court concludes that there is a legitimate bar to Ms. Cintron's recovery of Ten Thousand Eight Hundred Eighty-Four (\$10,884.00) Dollars.

Ms. Beatrice Cintron has also urged this Court to extend support payments for Luis Cintron. Both parties concede that Luis now 18, is presently enrolled in school. See Rhymer v. Rhymer, Docket No. D193 (Terr. Ct. St. T. & St. J. 1984) (court has authority to order support for the education of children up to the age of 21) and 16 V.I.C. 341.

Accordingly, Mr. Cintron's obligation to support Luis

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<sup>2/</sup> However, it must be noted that, standing alone, acceptance of a sum less than that owed does not preclude a claim for the full amount. Vincent v. Vincent, supra.

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Cintron is extended while Luis is in attendance at high school  
or college.

  
EILEEN R. PETERSEN  
Judge