

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

GOVERNMENT OF THE VIRGIN ISLANDS,	)	
EX REL: MYRTA TANG HOW,	)	
	)	
	)	
Petitioner,	)	FAMILY S173/85
	)	
v.	)	
	)	ACTION FOR SUPPORT
	)	
WINSTON BRODHURST,	)	
	)	
Respondent.	)	
	)	

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PETERSEN, Judge

MEMORANDUM OPINION
January 10, 1986

This matter is before this Court after a contempt hearing. Petitioner asks the Court's assistance in enforcing the court-ordered child support which is part of the 1976 Divorce Decree.

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ISSUES

This Court is asked to determine whether Petitioner's action is barred by either the statute of limitations or the doctrine of laches; if not, whether a verbal agreement between the parties concerning the rental and management of jointly held property relieved Respondent of his duty to support and whether the amount set by the Court for child support in the parties' 1976 divorce decree should stand.

FACTS

Petitioner was granted a divorce absolute from Respondent by the District Court of St. Croix on March 15, 1976. See Civil No. 20/1976. Petitioner was awarded custody of the four minor children and Respondent was ordered to pay Petitioner One Hundred (\$100.00) Dollars per week for the support and maintenance of the couple's four children, namely Iris Hilda, now 24, born December 21, 1962, Jacquelyn now 20, born February 6, 1965, Dahlia now 17, born March 5, 1968 and Anna, now 13, born September 21, 1972.

Petitioner Tang How remarried on January 17, 1984. On June 4, 1985, Petitioner submitted an affidavit to this Court which alleges that Respondent without just cause has

failed to comply with the Court's order and as a result is in arrears as of June 3, 1985 in the amount of Thirty-Six Thousand, Seven Hundred and Twenty-Five (\$36,725.00) Dollars. Petitioner asks this Court to reduce the installment payments for support to a lump sum judgment and to enforce its order for the continued support of the remaining minor child.

DISCUSSION

I.

Respondent Brodhurst alleges that due to Petitioner's nine-year delay in bringing this action to enforce the court-ordered child support, her claim should be barred by laches. Petitioner asserts that her delay is justified because of her fear of continued physical abuse by her ex-husband as punishment for pursuing her claim.

Although laches is a proper defense in an action for delinquent support payments "exceptional circumstances must be shown to bar a claim." Armour v. Allen, 377 So.2d 798 (Fla. Dist. Ct. App. 1979). While there are any number of cases which recognize that an action for child support arrearages can be defeated by laches, it is rare, however, that the Courts find the requisite circumstances to warrant such a bar. In all events the welfare of the child is paramount and in the absence of extraordinary facts or strongly compelling

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circumstances, the action or inaction of a parent will not give rise to a defense of laches barring enforcement of child support arrearages. Id. at 800.

As the mere lapse of time does not constitute laches, neither does a simple assertion of laches as a defense. Only where inexcusable and unexplained delay has materially prejudiced the party asserting the defense may it be successfully invoked. Pukas v. Pukas, 247 A.2d 427, 429 (R.I. 1968). See also, the Restatement of Restitution §148 (1937) and Kelman v. Kelman D188/84, (Terr. Ct. St. T. May 15, 1985). In the instant case the record is completely void of any evidence whatsoever to persuade this Court that Respondent has been prejudiced by Petitioner's delay. The record demonstrates that Respondent has received substantial increases in his salary as a member of the Virgin Islands Police Department since the entry of the Divorce Decree. Although the Court is cognizant of the many financial obligations incurred by the Respondent, which are detailed in the record, it cannot excuse or condone his failure to meet his primary responsibility of providing for the welfare of his children.

The Court also finds that Petitioner has a valid explanation for her inaction. She testified and the Court so

finds that she was the victim of continuous physical abuse by her ex-husband and that his lone response to her repeated requests for the support due was more violence. As the facts indicate, Petitioner is now remarried and it can be inferred that perhaps the security of her new union has enabled her to pursue her legal right without further fear for her personal safety.

It is incumbent upon the party alleging laches to establish that he or she has been materially prejudiced. Scheibel v. Scheibel, 284 N.W.2d 572, 573 (1979). The alleging party must also demonstrate that Petitioner's delay in bringing the action is unexplained. Pukas, supra at 429. Having satisfied neither of the above requirements, this Court finds Respondent's reliance on laches as a defense is without merit. See, also, James v. Roberts, 16 V.I. 272, 282 (Terr. Ct. St. C. 1979).

The Court held in Watlington v. Canton, 18 V.I. 203, 206-7 (Terr. Ct. St. T. and St. J. 1982) that each installment support payment when due constitutes a separate and final judgment; as such, they fall squarely within 5 V.I.C. §31(1)B. Id at 206, see, also n. 4, at 206. Section 31(1) B provides a twenty (20) year statute of limitations for "An action upon a judgment or decree of any Court of the United States, or of any State, Commonwealth, or Territory within the United

States." Therefore, this action is not barred by the statute.

II.

Respondent Brodhurst asserts that Petitioner verbally agreed to waive child support payments in return for the control of the rental of the couple's jointly-owned property. Respondent contends that the Petitioner acquiesced in a plan whereby she would manage the former marital abode, collect the rent, pay the mortgage and apply any rental monies remaining towards Respondent's child support payments. Petitioner vehemently denies entering such an agreement. There is insufficient evidence in the record to support any such arrangement. Respondent has failed to establish the requisite elements of a contract by a preponderance of the evidence.

Even assuming arguendo, the existence of an agreement as described by Respondent, the record indicates that over the period in question, Petitioner, after paying the monthly mortgage, was oftentimes left without funds.

Respondent acknowledges that he is presently obligated to support Anna, who is presently thirteen (13) years.

The credible testimony indicates that Respondent is

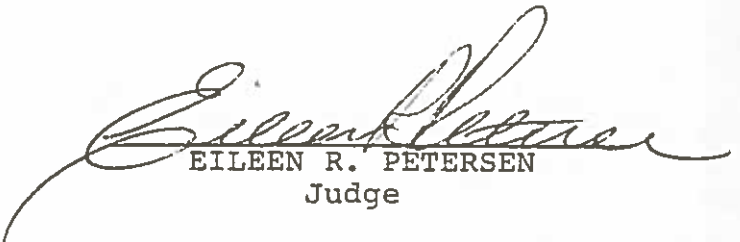
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in arrears as of June 3, 1985, in the amount of Thirty-Six Thousand Seven Hundred and Twenty Five (\$36,725.00) Dollars. Judge Henry Feuerzeig entered a Temporary Support Order dated September 4, 1985, requiring that Respondent pay Twenty-Five (\$25.00) Dollars per week for Anna's support. In partial compliance with Judge Feuerzeig's Order, the Respondent has paid One Hundred Fifty (\$150.00) Dollars. Adjusting the arrearage due to include the period from June 3, 1985 through December 31, 1985 and giving the defendant credit for the One Hundred Fifty (\$150.00) Dollars paid between September and the present date, this Court finds that Respondent Brodhurst owes Petitioner Thirty-Seven Thousand Three Hundred and Twenty-Five (\$37,325.00) Dollars.

The Court also finds that Respondent is still obligated to support Anna, the youngest daughter. The original support order fixed the amount of support at One Hundred (\$100.00) Dollars per week for the four children. The amount was never apportioned on a per-child basis. Therefore, it must be reiterated that because a child has reached the age of majority or is otherwise emancipated does not ipso facto proportionately reduce the support award. See, Gordon v. Ary, 358 S.W.2d (Mo. Ct. App. 1962). Children are individuals with individual needs. It is unreasonable to assume that a pro rata reduction in the amount of the support award is dictated

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by the emancipation of one or more of the children involved.
Emanuel v. Emanuel, 15 V.I. 103, 112-113 (Terr. Ct. St. T. and
St. J. 1978). However, after having considered the
Respondent's present financial circumstances, this Court shall
require the Respondent to pay Fifty (\$50.00) Dollars bi-weekly
towards the care and support of Anna, the one remaining minor
child.


EILEEN R. PETERSEN
Judge