

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHMT2018/0040

BETWEEN:

MARIE THOMASINE EDWARDS (nee CADASSE)

Petitioner

and

AMATUS EDWARDS

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mrs. Veronica Barnard for the Petitioner

Mrs. Esther Greene-Ernest for the Respondent

2022: March 17; (Trial)
April 14, 19; (Submissions)
2025: November 5. (Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J:** Before the Court is an application for ancillary relief filed by the petitioner on 14th May 2019. At the time of the grant of the Decree Nisi on 5th November 2018, the petitioner, Marie Thomasine Edwards ("Mrs. Edwards") and the respondent, Amatus Edwards ("Mr. Edwards") had been married for seventeen (17) years. The parties have two children who are now seventeen and fifteen years old. Ancillary matters in relation to the children were settled by the Order dated 28th July 2020. This decision is therefore only concerned with ancillary relief relating to property.

[2] By her notice of application, Mrs. Edwards seeks the following orders:

(a) that the only community property existing between she and Mr. Edwards is the property comprising house and land situate at Au Tabor, Anse La Raye registered as Block and Parcel 0241B 253 ("the Property");

- (b) that Mr. Edwards transfers all his rights, title and interest in the Property to Mrs. Edwards;
- (c) that Mrs. Edwards shall continue to pay the monthly mortgage in favour of Royal Bank of Canada in the sum of \$2,473.00;
- (d) that in respect of Mr. Edward's half share of the Property valued at \$460,207.00, Mrs. Edwards shall deduct the sum of \$103,841.00 as arrears of contribution to the loan and the sum of \$700.00 as Court ordered maintenance for the children;
- (e) that Mr. Edwards reimburses Mrs. Edwards half of the cost of the valuation in the sum of \$370.00;
- (f) That Mr. Edwards vacates the Property by a certain date being not more than 30 days of the date of the Court's Order;

Applicable Section

[3] It is noted that Mrs. Edwards' application does not identify what section of the **Divorce Act**¹ ("the Act") pursuant to which she seeks relief. Michel JA's pronouncements at paragraphs 33-34 of the case **Jonathan Lesfloris v Glenda Lesfloris**² are instructive in this regard. Michel JA said:

"[33] I consider the position in law to be that in making applications to a court for relief, it is important to state in the application the provision of the law under which the application is being made and/or the relief is being sought, because failure to do so may lead to the sort of ambush that the **Civil Procedure Rules 2000** and other modern rules of practice and procedure aim to avoid. This is particularly important in the making of applications under the **Divorce Act** and the Divorce Rules, because the requirements for the making of applications and for the grant of relief sometimes differ under different provisions of the Act and the Rules. Important though it is to state the specific provision in the Act or the Rules under which an application is being made or relief is being sought, the failure to do so will not necessarily be fatal to the application, particularly if the issue is being raised at the conclusion of the hearing of the application or, worse, on appeal.

[34] In divorce proceedings, a judge has a range of opportunities and material to make an assessment and determination of the section of the Act under which an application for relief is made, particularly a contested application, even if the application is

¹ Cap 4.01, Revised Laws of Saint Lucia, 2020.

² SLUHCVP2015/0018, (delivered 13th December 2019, unreported).

silent in that regard. Prior to the making of an order, the judge will have received a filed application, affidavits in support of and in opposition to the application. The court will also likely have the benefit of oral evidence and oral and (sometimes) written submissions. With all of this material, and with the opportunities which will be presented at the hearing for the judge to enquire into the nature of the relief sought and the section under which the application is brought, the judge is well positioned to make a determination as to the section invoked by the application before the court. The judge may get it wrong, but he is not likely to be short of material on the basis of which he could make a determination as to the section invoked by the application before the court.”

- [4] When I examine the application closely, I would have to agree with Counsel for Mr. Edwards, Mrs. Esther Greene-Ernest (“Mrs. Ernest”) that the only section which could be applicable is section 24 of the Act. Mrs. Edwards seeks the transfer of Mr. Edward’s share of the Au Tabor Property to her and this can only properly be done under section 24. I will therefore treat the application as having been made under that section.

Applicable Law

- [5] The starting point as stated very clearly in **Lesfloris v Lesfloris**³ is that the law recognizes only two types of matrimonial regimes: community and separate property. There is no middle ground and no discretion for the Court to vary the statutory entitlement as provided for in the **Civil Code of Saint Lucia**⁴ (“the Civil Code”). Therefore, once a marriage ends, each spouse becomes entitled to one-half of all community assets as of right. The task of the Court in ancillary relief proceedings is to determine which assets fall into the community and which do not and to make appropriate orders for division, transfer or sale, or other appropriate orders in the circumstances of a case in accordance with the **Divorce Act** and the **Civil Code**.
- [6] Section 24 of the Act allows the Court on granting a decree of divorce or nullity of marriage or at any time thereafter (whether, before or after the decree is made

³ At para 38-39.

⁴ Cap. 4.01, Revised Laws of Saint Lucia, 2020.

absolute) to make the following orders so far as relevant to the circumstances of this case:

- (a) an order that a party to the marriage shall transfer to the other party such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;
- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the Court for the benefit of the party to the marriage;
- (c) an order extinguishing or reducing the interest of either of the parties to the marriage under any such contract or settlement.

[7] Section 25 of the Act sets out the factors which the Court should have regard to when deciding whether to exercise the powers granted under sections 22 and 24 in relation to a party to the marriage.

[8] In assessing these factors, the Court's ultimate aim to place the parties so far as is practicable and just, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards each other. The parties' conduct is also a relevant consideration in the Court's assessment.

[9] The Court must view the situation broadly and aim to reach an outcome which is fair and reasonable given all the circumstances of the case.

Analysis of the Evidence

The Au Tabor Property

[10] There is no dispute that the property registered as Block and Parcel 0241B 253 together with the house situate on it is community property ("the Au Tabor Property"). The Au Tabor Property comprises a dwelling house and the 7,845 square feet of land on which it sits and is currently mortgaged to Royal Bank of Canada (now 1st National Bank Saint Lucia Limited). The balance as at January 2019 was \$267,550.65 according to Mrs. Edwards. No evidence of the balance was provided by either party. The Au Tabor Property was valued at \$460,207.00 as at 11th December 2018 by David Emmanuel and \$401,914.00 as per the 27th May 2021 valuation exhibited to Mrs Edwards' affidavit filed 15th June 2021. Mrs.

Edwards paid \$740.00 for the valuation and seeks to recover half of that expense from Mr. Edward.

- [11] Mr. Edwards in his response seeks to have the Court declare other properties as community and these will be discussed later.

Income, earning capacity, property and other financial resources
Financial needs, obligations and responsibilities

- [12] Mrs. Edwards at the time of trial was a numeracy coordinator with the Ministry of Education and was previously employed as a secondary school teacher. She was reassigned due to her illness. She receives a gross monthly salary of \$4,513.60 as seen from her Salary Slip.⁵

- [13] Mr. Edwards according to Mrs. Edwards is a qualified IT Manager and holds a degree in Management Studies. He last worked at St. Lucia Development Bank ("SLDB") where he earned a monthly salary of \$8,000.00. However, since 2012, Mr. Edwards does not appear to be working.

- [14] Mrs. Edwards puts her monthly expenses at \$4,999.82 which includes the full monthly mortgage payments, medical insurance, school fees for the children and utilities. No supporting documents were provided. She says she also tries to do a little saving for rainy days.

- [15] In 2006, Mr. and Mrs. Edwards took a loan of \$179,000.00 from the then Royal Bank of Canada to build their home. At the time Mr. Edwards was employed with National Research and Development Foundation. According to Mrs. Edwards, Mr. Edwards paid \$700.00, and she paid \$1,020.00 monthly towards the loan. Mr. Edwards then left his job in September 2006, and Mrs. Edwards had to pay the monthly sum of \$1,700.00 from her salary.

- [16] Mr. Edwards remained unemployed until October 2007 and got a job with Constitutional Reform Commission in November 2007 by which time Mrs. Edwards says she had paid \$20,400.00 towards the mortgage. In 2008, the

⁵ Page 10 of TB.

parties reverted to the \$1,020.00 and \$700.00 monthly payments, with Mr. Edwards paying \$8,400.00 and Mrs. Edwards, \$12,240.00 for the year. In 2009 the mortgage was refinanced and the monthly payments increased to \$2,472.41. At that time, Mr. Edwards was employed at St. Lucia Development Bank ("SLDB"). Mrs. Edwards paid \$6,120.00 (which I note is six (6) monthly instalments) and Mr. Edwards \$8,400.00 respectively for 2009.

[17] From 2010 to March 2012, Mr. Edwards remained employed at SLDB. Mrs. Edwards says she paid a total of \$49,797 and Mr. Edwards paid \$39,231.00 for that period. From April 2012, Mrs. Edwards has been the only one making payments on the loan by way of direct debit from her salary. For the period April 2012 to January 2019, Mrs. Edwards says she has paid \$200,313.00. Mrs. Edwards puts her contribution to the loan at 82.63% and that of Mr. Edwards at 17.37%.

[18] Mr. Edwards lost his job at SLDB on 1st April 2012. According to him, he did several things to try to gain employment, including applications for jobs in and out of Saint Lucia, he developed an Electronic Voting System in 2017 which won the Idea of the Year Award by the Chamber of Commerce in 2016, construction and gardening jobs. He sent a proposal to the Government to try the voting system at the General Elections in 2016 but that did not bear any fruit.

[19] Mr. Edwards says he was severely ill-treated by Mrs. Edwards, depriving and hiding food and cooking utensils from him, depriving him of conjugal rights, constantly insulting, cursing and threatening to have the courts throw him out, and denying his participation in the financial decision making of the marital home.

[20] From 1st April 2019 to 30th June 2019, Mr. Edwards was employed with Saint Lucia Marketing Board and earned \$6,000.00 monthly. Mr. Edwards seems to be waiting for his settlement in these ancillary proceedings to fund the creation of an agriculture-based business to allow him to take care of himself and his children.

- [21] According to Mr. Edwards when he got the job in April 2019, he reached out to Mrs. Edwards seeking to discuss the welfare of the children but that did not happen. He says in May 2019, he offered and subsequently paid the excess on an insurance claim for medical expenses for their son.
- [22] Mr. Edwards says the reason he believes he has been having difficulty getting a job is that whilst he has a BSc in Management, he has no working experience in that field, and all his working experience is in the field of IT for which he has no certification. This has therefore affected his marketability and in addition, being over the age of 50 years old makes it difficult.
- [23] Mr. Edwards speaks of his business ventures which he tried in 2013 when he registered a company called Just-in Farm Products Ltd. funded through small loans from friends and relatives. He says he begged Mrs. Edwards to assist him to get a business loan to help capitalise the business, but she refused. This was based on her fears of business failure and possible foreclosure on the matrimonial home.
- [24] Mrs. Edwards, he says was un-cooperative and asked that her name be removed from the business and indicated that he should not expect her to assist him in his quest to get rich. Mr. Edwards speaks of another venture which he conceptualised, a modern newspaper business idea which he had got a local printer to print at a cost of \$14,000.00. He says that he asked Mrs. Edwards to assist him by taking a loan which he would repay from the operations of the newspaper but again, she cited the risk of business failure and did not assist.
- [25] Mrs. Edwards explained that Mr. Edwards had asked him to mortgage the matrimonial home for the sum of \$250,000.00 for the Just-in Farm business and she did not agree because at the time she was servicing the mortgage and could not take on any more debts. She says she supported his Electronic Voting Programme even if she was not in full agreement with the idea and she allowed him to use her vehicle to go around the island to promote the idea. Whilst he did this, she had to maintain the household, pay the bills, take care of the children with no assistance from Mr. Edwards.

- [26] Mr. Edwards says he even engaged in small scale farming on lots of land loaned to him by strangers in Anse La Raye, Mon Repos and Roseau but this effort was not very successful because of the small scale and the costs involved. He vehemently denies that he has refused to work. He says whilst he was employed he never neglected his obligations to his family.
- [27] Mrs. Edwards counters this and says that whilst Mr. Edwards was employed he did not consistently maintain the children of the family. Mr. Edwards started to give \$500.00 monthly but that was only after she had told him that she was not able to maintain the children and he had confirmed her income and expenses through a spreadsheet that she created.
- [28] One of Mr. Edwards' other attempts at a business venture was a business named Pwodwi Nou based on the earlier concept but on a reduced scale, but he was awaiting the outcome of these proceedings to be able to further this venture.
- [29] Mr. Edwards does not agree that any deductions should be made from any lump sum which may be due to him particularly not from his equity in the Au Tabor Property as this will just seal his fate and reduce him to a permanent state of poverty with no prospect of recovery.
- [30] Mr. Edwards says that during the period post his loss of employment he attempted to have discussions with Mrs. Edwards as she was in a stronger position financially. His suggestions to her to sell one of her properties to pay off the mortgage with the understanding that she would get the amount paid on the mortgage as equity in the property were objected to. He was prepared to document this, but Mrs. Edwards did not want to agree to the suggestion as she was of the view that Mr. Edwards would not pursue any income generation.
- [31] Mrs. Edwards in her affidavit filed on 15th June 2021 gives a picture of Mr. Edwards' stewardship of money. She says when they got married, they had a joint account at 1st National Bank (then Royal Bank of Canada) for the purpose of building their home from which Mr. Edwards constantly requested monies to

do other things until it was all depleted and her mother had to provide funds to purchase the land. When she got her inheritance, Mrs. Edwards says Mr. Edwards had her to co-sign a loan of \$10,000.00 for him which he failed to service even though he was employed at SLDB at the time and earned a monthly salary of \$8,000.00. Then there was Mr. Edwards' request for money from her inheritance to pursue a Master's programme with Monroe College she is yet to see a certificate evidencing completion.

Standard of living enjoyed by the family before the breakdown of the marriage;

- [32] It is clear that the parties enjoyed a decent standard of living up to 2012 which is when Mr. Edwards would have lost his job.

Age of each party to the marriage and the duration of the marriage;

- [33] The parties had a relatively long marriage which lasted for seventeen years up to the time of the Decree Nisi. None of them provided their date of birth in their evidence. The medical report from Mrs. Edwards' doctor⁶ puts her at 47 years old at the date of trial, her date of birth being stated as 29th December 1974. Mr. Edwards would have been fifty-four taking his year of birth as can be gleaned from his national identification card.⁷

Any physical or mental disability of either of the parties to the marriage;

- [34] Mrs. Edwards suffers with rheumatoid arthritis for over twenty years which has affected her knee, shoulder and finger joints and has had to undergo therapy weekly to help with raising her left arm. She also experiences a swollen ankle joint on her left leg which makes it difficult to walk at times. Sometimes she has to get assistance to get dressed. Thus, Mrs. Edwards says she incurs high medical expenses without the benefit of any assistance from Mr. Edwards. Her medical condition is confirmed by a letter dated 11th June 2021 from her medical practitioner.

- [35] Mr. Edwards appears not to have any known illness or disability.

⁶ P 42 of TB.

⁷ P. 116 of TB.

Contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

[36] According to Mrs. Edwards, Mr. Edwards has not provided anything for the household and refused to do so.

[37] Mr. Edwards denies this and says when they got married, Mrs. Edwards joined him in a fully furnished apartment without having to bring anything. He also speaks to the fact that their life together was one of sharing and mutually enjoying all assets, liabilities, income, expenses and gifts. He also says that when he worked, he did contribute.

Pension

[38] Mr. Edwards had said in his evidence that Mrs. Edwards will be entitled to her pension on her retirement. However, Mrs. Edwards confirms that she will not get a gratuity or pension as she falls under the National Insurance Corporation (NIC) programme. Her salary slip confirms that NIC deductions are made from her monthly salary. She may be entitled to a pension from NIC, but no evidence was led as to what that would amount to. Mr. Edwards says that he however cannot look forward to any retirement income.

Other property and relief sought

[39] In his affidavit in response⁸ which he filed on his own, Mr. Edwards agrees that the Au Tabor Property is community property and seeks that the following property be also deemed community property:

- (i) household furniture at the Au Tabor residence including stove, fridge, chairs and tables, kitchen cupboards, computer equipment, television, beds, garden and other tools, kitchen equipment, pots and pans;
- (ii) Daihatsu Bego Vehicle registration number PJ9961 registered in the name of Mrs. Edwards;
- (iii) Nissan Almera Sedan registration number PG1758 registered in the name of Mr. Edwards;
- (iv) Tree crops planted on the Au Tabor Property;

⁸ Filed 6th June 2019 at p. 19 of Trial Bundle (TB).

- (v) House and land registered as Block and Parcel No. 0240C 156 situate at Mole Street, Anse La Raye;
- (vi) Block and Parcel No. 1453B 1252-Beausejour, Gros Islet, in the name of Mrs. Edwards-a gift from her mother;
- (vii) Block and Parcel No. 1455B 1218-Beausejour, Gros Islet in the name of Mrs. Edwards-purchased from her sister;
- (viii) Land at La Riviere Mitan, Gros Islet -gift from Mrs. Edwards' mother and which Mrs. Edwards secretly sold

[40] In his affidavit in response filed with the benefit of Counsel,⁹ Mr. Edwards says Mrs. Edwards failed to provide full and frank disclosure of all of her assets and she owns several properties of significant value. He exhibits the land registers for the parcels identified in his previous affidavit of 2019, being Block and Parcel 0240C 156-“parcel 156 Anse La Raye Property”; 1455B 1218-“parcel 1218 Gros Islet Property”; 0637B 14-“parcel 14 Anse La Raye Property”; 1453B 1262-parcel 1262 Gros Islet Property.

[41] Mrs. Edwards only provides information about these properties after Mr. Edwards draws attention to them. Mr. Edwards also says Mrs. Edwards has sold some lands at Riviere Mitan in Gros Islet and again this was only spoken about after it was raised.

[42] Mrs. Edwards says the rent which she receives from her mother's house which she donated to her (which is parcel 156 Anse La Raye Property) is used to take care of her mother who currently resides with her. Her mother's care cost \$2,000.00 monthly. In addition, Mrs. Edwards says she had to sell all the lands at Riviere Mitan (the 1262 Gros Islet property) in order to maintain herself and the children since she receives no other income and her salary was insufficient to pay all the bills and maintain the children and herself. That land was sold for just a little over \$75,000.00. She says her only other source of income is through the rental of the house which was donated to her and the support of family and friends. This has been her life for almost ten (10) years.

⁹ Filed 17th May 2021.

- [43] Mrs. Edwards says the property with the house which Mr. Edwards mentioned at paragraph 20 of his 17th May 2021 affidavit is more suited for business and not residential as it is located in the middle of the Anse La Raye village and she does not see how she could raise the children in there. Whatever income is derived from this property is used to take care of her mother as said before.
- [44] In his 17th May 2021 affidavit, Mr. Edwards now seeks the following relief: (a) living expenses of \$3,140.00 for three years, marital home equity of \$95,000.00, home appliances and furniture of \$30,000.00; (b) that upon payments of these sums and Royal Bank of Canada (now 1st National Bank (St. Lucia) Limited) releasing him from any obligation in relation to the outstanding hypothecary obligation, he shall transfer his share in the Au Tabor Property to Mrs. Edwards; (c) that he vacate the matrimonial home within six (6) months of receipt of the sums which he claims.

Discussion and Analysis

- [45] Having reviewed all of the evidence in the matter and having regard to all the factors as outlined in section 25 of the **Divorce Act** and taking into account the learning in **Lesfloris v Lesfloris**, I make the following findings and observations.
- [46] I found Mr. Edwards to be open and forthright with his responses. I also found Mrs. Edwards to be forthright but as we will see later, she failed in her duty to disclose the full extent of her assets which is important to enable the Court to come to a fair and reasonable outcome.
- [47] Mrs. Edwards' assessment of Mr. Edwards in cross-examination reflects her impression of Mr. Edwards when she met him. She agreed that he was self-sufficient when she met him. She also said he was very resourceful, intelligent and appeared ambitious. Something clearly went wrong as her assessment of him now seems to be that he is not ambitious and is content to just rely on her.
- [48] It must always be remembered that the concept of community property does not depend on contributions made, so it is immaterial that one party may have contributed more to the acquisition of a property. The fact is once the property

is acquired during the course of the marriage it is community property. In this regard, the parties do not dispute that the Au Tabor Property is community property.

[49] The property is however subject to a mortgage. The evidence shows that during the marriage when Mr. Edwards was employed he did contribute to the mortgage payments. It is therefore not a case where he did not pay even when he had the means. For whatever reason, Mr. Edwards seems not to be able to land himself a job and this accounts for his lack of contribution. In his affidavit in response filed on 17th May 2021, Mr. Edwards says unemployment and dire financial constraints were not due to indolence or recalcitrance but to circumstances which have hindered his ability to obtaining employment even self-employment. He seems to have tried several things, according to his evidence, including subscribing to online job seekers WhatsApp group. He got interviews in Dominica and St. Vincent and that did not yield any positive results.

[50] Counsel for Mrs. Edwards, Mrs. Veronica Barnard (“Mrs. Barnard”) suggested to Mr. Edwards in cross-examination that he could have tried to do security guard work to which Mr. Edwards replied ‘no’. She suggested that this was because he thought it was below him and he said ‘I do not believe I will be able to function there’.

[51] It is very easy to say you can get a job, cut grass, clean offices, do security, etcetera, but that is sometimes easier said than done for some people, especially men who may feel that they are total failures not being able to land a job in fields that they are qualified for. I accept the quandary that Mr. Edwards finds himself in because where he was qualified, he lacked experience and where he had experience, he lacked qualifications. His age is also a factor to be considered as it would be very hard to land a job at that age in a field that one is not qualified for or lacks the requisite experience. It could certainly appear that Mr. Edwards did not make enough effort, but I am satisfied that he made attempts to get jobs but was unsuccessful. His attempts at self-employment do not seem to have borne much fruit either. As Mr. Edwards says in his affidavit, the evidence provided by Mrs. Edwards shows his commitment when he was

working toward paying the mortgage and this does certainly show that he is not one to shirk his responsibilities. I do however note that Mr. Edwards seems to take on many projects but does not follow through to the end.

[52] Mrs. Edwards is in stable employment as a Civil Servant and her salary is fixed. As seen from her evidence, she also earns rental income from one of her properties. On her retirement she will be entitled to a pension from National Insurance. On the other hand, Mr. Edwards, because of the nature of his past employment has no benefits such as pension in his future except if he meets the qualifiers to get the NIC pension and as far as the evidence revealed he has no other asset apart from the Au Tabor Property.

[53] However, the Court notes and acknowledges that the burden of the full mortgage payments has fallen on Mrs. Edwards from about 2012 with some contribution from Mr. Edwards in 2019. Mrs. Edwards' hesitance to lend financial support to Mr. Edwards' many ventures is understandable as it did not seem that any of them were bearing any tangible fruit. Mrs. Edwards' hesitation also stemmed from the fact that Mr. Edwards engaged in a lifestyle of partying and drinking every weekend and he did not believe in saving.

[54] Whilst the Court cannot interfere with the community half share to which each spouse is entitled, **Lesfloris** makes it clear that the Court can make a transfer of property order under section 24 of the **Divorce Act** with respect to community property, because orders under section 24 are made upon or after the granting of a decree of divorce, which decree not only dissolves the marriage but also dissolves the community, thus terminating the community ownership of property by the parties. This then leaves it open to the Court to order the transfer by one party to the other of the whole or part of any property which was community property prior to the dissolution of the marriage.

[55] The Court in **Spooner v Spooner**¹⁰ reminded of the obligation of parties in ancillary proceedings to come to the Court with their cards face up and the consequence of not doing so. The Court said:

“[35] It is significant to point out that in proceedings of this nature the Jaw requires both husband and wife to give full and frank disclosure to the Court whether by affidavit of facts, by affidavit of documents or by evidence on oath. Any shortcomings from this standard can and normally will result in the Court drawing inferences adverse to that party.

[56] Mrs. Edwards failed in her obligation to provide full and frank disclosure of the assets which she owns/owned which is one of the factors to be taken into account. I also note that the proceeds of sale were deposited in a CIBC FirstCaribbean account in her own name. However, Mrs. Edwards has provided evidence of how she spent the proceeds of sale of the property and it would appear that some of it went into paying debts owed. She also ensured that she put \$30,000.00 into her retirement savings account.¹¹

[56] In cross-examination of Mrs. Edwards though, it was revealed that she had also sold two other properties for \$74,000.00 and for \$63,000.00 but she said she was unable to remember the dates of the sales. This is very important because one of the factors to be considered is the property, financial resources now and in the future. Mrs. Edwards' lack of frankness about these two properties even when she had an opportunity to give this information after Mr. Edwards raised the fact that she had sold land in one of his affidavits is something that the Court notes. It would appear that Mrs. Edwards chose to only disclose one sale when there were actually three. It is not just joint assets or property which must be factored in. It is each party's complete position-financial and otherwise.

[57] It must be remembered that the basis of orders made in ancillary relief proceedings is not to seek to punish the petitioner or the respondent. The purpose of the proceedings is to arrive at a position which is fair, reasonable and just in all the circumstances of the case.

¹⁰ SLUHMT2000/0127 at paragraph 35.

¹¹ Pp76-94 of TB.

- [58] In a supplemental affidavit filed on 20th December 2021, Mrs. Edwards changes the relief she seeks slightly by seeking a transfer of Mr. Edwards half share to her and relieving him of any financial responsibility to provide for the children and the mortgage in the future. This slight change is based on the fact that Mr. Edwards had not made the maintenance payments as ordered by the Court.¹²
- [59] Mr. Edwards in response says he cannot agree to this as this divorce has brought him hardship as he viewed his marriage as a lifetime commitment and he made no financial arrangements outside of the marriage. He says he would be reduced to poverty if the Court were to make such an order. His reliance on his wife after he lost his job in 2012 was reasonable as this was the only way for him to get any income. Mr. Edwards claims that for the past eight years he has lived a penniless life with few intermittent job stints but nothing sufficiently adequate to meet his financial and household obligations.
- [60] Mr. Edwards' position is that whilst he has not contributed monetarily which is a source of grief for him, he has provided support as a father by (a) contributing fruits and ground provisions from his personal backyard farming whenever he is able to, contributing to the purchase of gas and cutting grass around the house and with the dishes at times; (b) his physical presence in the house which provides security and (c) support to their son which has led to improvement in his respect for his mother and better treatment of his sister. The latter was a cause of concern in the proceedings relating to the children.
- [61] In submissions, Counsel for the petitioner, Mrs. Barnard submits that the relief sought in Mrs. Edwards' affidavit of 20th December 2021 is reasonable and will ensure that the children's needs are reasonably met without the perpetual need to resort to the Court for an order which in any event the evidence shows Mr. Edwards has not complied with. Mrs. Ernest, Counsel for the respondent submits that the Court has already made an order in relation to the responsibilities and obligations as regards the children of the family. I am of the view that the matters relating to the children have been settled by an Order of the Court. The parties to that Order are at liberty to apply to vary the Order and

¹² Order dated 28th July 2020.

this would have been the appropriate application to be made if the petitioner felt that the Order was not adequate to deal with the children's welfare. The Court cannot simply change the Order and use the respondent's non-compliance with the Order to grant the relief sought by the petitioner. It is also the case that no evidence was led by Mrs. Edwards as to the arrears owed by Mr. Edwards even at the date of the affidavit of 20th December 2021.

[62] Whilst Mr. Edwards has not been making any payments to the mortgage or contributing financially to the household, it is not due a lack of a desire to, but because of the wall that he has faced from 2012 of not being able to land himself a job opportunity that is sustainable. It may be that Mr. Edwards has to think of retooling to see whether he can get work.

[63] Unlike Mr. Edwards, Mrs. Edwards has a stable job with a fixed salary. She has (i) retirement funds at Bank of Saint Lucia (RRIA),¹³ (ii) a retirement account at Financial Investment and Consultancy Service, (iii) property assets-parcel 1218 Gros Islet Property in her sole name, one-half share in the Au Tabor Property, and one-eighth share in parcel 14 Anse La Raye property, (iv) sold three parcels of land and has not accounted for two of the sums received from those sales, (v) access to three credit cards with credit limits of \$60,100.00, \$18,700.00 and \$12,400.00, (vi) rental income from parcel 156-Anse La Raye Property in her sole name which she says is used to care for her mother but she provided no evidence of how much this care costs, (vii) small savings at Teacher's Credit Union and Jannou Credit Union, (viii) annual earnings of \$500.00-\$600.00 for marking examination scripts.

[64] Rheumatoid arthritis can be debilitating at times and that is acknowledged. Mrs. Edwards has demonstrated a very positive attitude and has been able to navigate this condition to her credit. Her doctor says she has shown herself to be very resilient in managing her flares and generally her rheumatoid arthritis has been well controlled except for the recent pain and swelling in her left ankle.

[65] Mrs. Edwards is certainly more financially stable than Mr. Edwards. She has resources far more than Mr. Edwards. She has asked for an order that Mr.

¹³ See p 84 and 87 of TB.

Edwards transfer his share of the Au Tabor Property to her given that he has not been able to pay the maintenance ordered. As I have said earlier, this is not a situation where Mr. Edwards has the means and is just not contributing to the mortgage payments and children's maintenance. If that were the case, such an order could be totally justified.

[66] I find that it would be totally unfair to simply order a transfer of Mr. Edwards' half share without at least acknowledging his share of the equity in the Au Tabor Property. It must be remembered that community property is not based on contribution.

[67] Counsel for Mrs. Edwards suggests in submissions that if the Court is minded to find that Mrs. Edwards should pay any money to Mr. Edwards, that he be made to reimburse her for all payments made towards the mortgage loan since 2012 or at least from the date of filing of the petition in 2018.

[68] Such an order for reimbursement of sums paid by Mrs. Edwards towards the mortgage is not relief contemplated by section 24 of the **Divorce Act**. As I have intimated earlier, this cannot be a reasonable position to take given that the lack of payments towards the mortgage on Mrs. Edwards' part was not deliberate and was really brought about by his unemployment for many years. In the years when he was employed, he did contribute except in 2019 when he worked at Saint Lucia Marketing Board for a period of twelve months. In cross-examination, when asked why he did not contribute at that time, Mr. Edwards said he could not, he had to clear his debts.

[69] I note Counsel Mrs. Ernest's submission that such an order would set a precedent that a spouse who is unable to contribute to expenses of the marriage or household due to unemployment or otherwise is to be charged on a divorce for such expenses against any award which the Court is likely to make. I totally agree with this submission. This is a very common submission but if parties choose to deal with their finances in a particular way or one party is not in a position to contribute to the mortgage and one party pays the mortgage, they cannot be entitled to any more than a half share or to claim reimbursement of

half of the payments as this is not in keeping with the concept of community property.

[69] I therefore find that Mr. Edwards is entitled to a half share of the equity in the Au Tabor Property as at the date of trial – March 2021. There are two valuations exhibited in this matter. The first is dated 2018 and was exhibited by Mr. Edwards with a market value of \$460,207.00 at the time of the commencement of the proceedings in 2018.¹⁴ The second is dated May 2021 and was exhibited by Mrs. Edwards with a value of \$401,914.00. Mr. Edwards did agree in cross-examination that the house needed some repairs although he labelled everything except the leaks identified as repairs in the 2021 valuation report as cosmetic but said these 'plagued' the house. Given the repairs needed to the house, it is understood that the value of the house would decrease over three years, I accept the 2021 valuation done by the same valuation surveyor, David Emmanuel and the market value to be \$401,914.00. I note that although Mrs. Edwards in her first affidavit¹⁵ states an amount as the balance of the loan, none of the parties put any documentary evidence of the balance of the loan with Royal Bank of Canada (now 1st National Bank) as at the date of the trial. That is critical to ascertaining the equity in the Au Tabor Property.

[70] In cross-examination, Mrs. Edwards sought to raise certain conduct of Mr. Edwards, but this was not raised on her affidavit evidence. Mr. Edwards denied all of these allegations but was forthright in admitting that he had hit Mrs. Edwards when she had abused him. Whilst hitting of any kind, solicited or unsolicited is unacceptable, I do not find that there is conduct which is gross and obvious and repugnant to one's sense of justice which ought to be taken into account as a determining factor in the Court's assessment.¹⁶

[71] Mr. Edwards in his first affidavit in response sought an order declaring that the property in Mrs. Edwards' sole name be deemed community property. These properties are not community property as they were acquired by Mrs. Edwards

¹⁴ At p 15 of TB.

¹⁵ Filed 14th May 2019.

¹⁶ See *Wilmoth Daniel v Violian Daniel*, St Vincent and the Grenadines Civil Suit No 607 of 1999, (delivered 26th September 2001, unreported) at para 24.

as gifts from her mother and in one case, a sale from her sister. Mr. Edwards made no application for an interest in Mrs. Edwards' separate property and there can be no order in that regard.

[72] Mr. Edwards also sought a sum for living expenses but that is an unreasonable request given his inability to pay towards the maintenance of the children of the family with Mrs. Edwards having to shoulder this single-handedly. He has also asked for half of the value of house furniture and appliances. I make two comments on this. No evidence of what these furniture items and appliances are and their values were provided by Mr. Edwards which makes it impossible for the Court to even consider this relief. The more important observation is that Mr. Edwards has to realise that his children will continue to reside in the Au Tabor Property with their mother and to ask her to pay him for furniture and appliances is far from reasonable.

[73] As it relates to Daihatsu Bego Vehicle registration number PJ9961 registered in the name of Mrs. Edwards and the Nissan Almera Sedan registration number PG1758 registered in the name of Mr. Edwards which Mr. Edwards referred to in his affidavit filed on 6th June 2019, I note that no evidence was presented by either party as to acquisition and evidence of ownership of the vehicles. However, Mrs. Edwards did not present any evidence to the contrary. The Court therefore will simply order that the respective vehicles remain the sole property of the party in whose name they are registered.

[74] I conclude with this very apt passage from **White v White**¹⁷ which sums up divorce proceedings:

“... divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms, the answer is obvious. Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as is possible in all the circumstances. But everyone's life is different. Features which are important when assessing fairness differ in each case. And, sometimes, different minds can reach different

¹⁷ [2000] 3 WLR 1571 at para 1.

conclusions on what fairness requires. Then fairness, like beauty, lies in the eye of the beholder.”

I add to this that in circumstances where the parties to a marriage own only one property, it is difficult to achieve equality as invariably one party will have to move out of the matrimonial home and start anew with whatever monetary share they may receive. Unfortunate as it may be, it is the reality.

[75] In light of the foregoing discussion, I make the following orders:

1. The only community property existing between the petitioner and the respondent is the property registered as Block and Parcel 0241 253 situate at Au Tabor, Anse La Raye together with the building thereon (“the Au Tabor Property”).
2. The petitioner shall obtain a statement from 1st National Bank Saint Lucia Limited of the balance in relation to mortgage currently secured by the Au Tabor Property as at 17th March 2022 within 30 thirty days of today’s date.
3. The petitioner shall pay to the respondent half of the equity in the Au Tabor Property. The equity shall be calculated as follows: the value of the property as at the date of trial being \$401,914 less the balance of the mortgage as at 17th March 2021.
4. The petitioner shall continue to service the hypothecary obligation in favour of 1st National Bank Saint Lucia Limited (formerly Royal Bank of Canada) solely subject to the approval of the said financial institution.
5. Upon the petitioner paying the sum which is equivalent to half of the equity in the Au Tabor Property to the respondent, and upon the respondent being released from any obligation in relation to the hypothecary obligation by 1st National Bank Saint Lucia Limited, the respondent shall transfer his interest in the Au Tabor Property to the petitioner and the petitioner shall be the sole owner thereof.
6. The respondent shall vacate the Au Tabor Property within two (2) months from receipt of the payment of the half share of the equity in the said Property.
7. There are no clear winners in proceedings of this nature and I therefore order that each party bear their own costs.

[76] I wish to sincerely apologise to Counsel and the parties in particular for the delay in the delivery of this judgment which was due to circumstances beyond my control. Any inconvenience caused to the parties as a result is regretted.

Kimberly Cenac-Phulgence
High Court Judge



By The Court

Registrar