

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2020/0013

BETWEEN

IDELIA RALPH

PETITIONER

AND

BERTRAM RALPH

RESPONDENT

Appearances:

Mr. Art Williams for the petitioner.

The respondent unrepresented.

2023:Oct. 23
Nov.16

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** This is an omnibus undefended application¹ by Mrs. Idelia Ralph ('the wife') for orders granting her sole custody of the two children of the family; maintenance for the said children, periodical and lump sum payments for the benefit of the wife and children; property settlement order and financial provision or transfer of property order for the benefit of the minor children. Bertram Ralph ('the husband'), absented himself from the hearing and made no representation in relation to the application.

[2] The wife supplied affidavit and oral testimony attesting largely to her means and expenses. She did

¹ Filed on 26th October 2022.

not provide any information from which the court could arrive at any conclusion as to the husband's ability to pay maintenance in respect of the children of the family. Significantly, she attested that the husband is unemployed due to his ill health that has confined him to his bed. She assumes this is attributable to serious nerve damage. Before he took ill, the husband was self-employed and did electrical wiring. No evidence was led as to whether he receives any disability payments from the National Insurance Services ('NIS') or under an insurance plan or other income.

[3] The sole matrimonial asset is a home which is mortgaged to a financial institution in Saint Vincent and the Grenadines. The mortgage is serviced by the wife. She is employed as a civil servant and for much of the marriage has shouldered the majority of the family's financial responsibilities.

[4] The paucity of evidence regarding the husband's circumstances makes it difficult and virtually impossible to conduct a meaningful analysis of his affairs or about the family as a unit. However, justice requires that a valiant attempt be made to resolve the outstanding issues to bring closure to this unhappy affair.

[5] I have found that the best interests of the children would be served by awarding joint custody to the father and mother, care and control to the mother with liberal access to the father. No order is made for maintenance or financial provision for the children or the wife. A property settlement order is made in the wife's favour.

ISSUES

[6] The issue is what orders should be made as to the a) custody, care, control and maintenance of and access to the minor children of the family; b) financial provision in respect of the wife; and/or c) property settlement.

Arrangements for the minor children of the family

[7] The Court may make an order regarding arrangements for the minor children of the family, on the breakdown of a marriage. It is trite law that in exercising such power, the court's paramount

concern is the children's best interest. The **Matrimonial Causes Act ('the Act')**² empowers the Court to make orders for the custody, maintenance, care and control of such a child.

[8] In considering such an application the court must have regard to the child's physical and mental capacity, financial needs, income, earning capacity, property and other financial resources, the standard of living enjoyed by the family before the breakdown of the marriage and the manner in which the parents expect the child to be educated or trained as well as what exists currently.³ I shall bring these principles to bear in the instant case.

[9] The couple's union produced two sons, Adafa born on 26th December 2007 and Qianu born on 5th December 2011. They are respectively 16 and 12 years old. They are both fully dependent on their mother with whom they live. She covers their living expenses and except where subventions are awarded to them through educational scholarships or book loan schemes their mother pays for all other educational requirements inclusive of uniforms, books and transportation.

[10] The mother led no evidence as to either child's earning capacity, income, physical or mental capacity or lack thereof, or of any property or other financial resources owned by them. I infer from the mother's testimony that she is experiencing challenges meeting the children's reasonable needs. In this regard, she averred that she was unable to afford to complete needed renovations while providing the necessities for daily living.

[11] In November 2022 when the mother filed her affidavit of means, the second child was attending Primary School. No mention was made of the educational institution being attended by the firstborn.

Mrs. Ralph's submissions

[12] Mrs. Ralph submitted that the court should draw adverse inferences from Mr. Ralph's failure to file affidavits of means and participate in the trial. She cited **M v M and Others**⁴ and **TC Coombs & Co**

²Cap. 239 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009, section 31(1)(d) and (31)(2).

³Section 34(2) of the Act.

⁴ [2014] 1 FLR 439

(A Firm) v IRC⁵.

- [13] She submitted further that the court should make an order directing Mr. Ralph to pay maintenance for the children of the family, a property adjustment order to transfer his share and interest in the matrimonial home for the benefit of the children. She argued that this would be in the children's best interest.

DISCUSSION

- [14] I deduce from the mother's account that the family is barely managing to hold its head above water economically. She and the sons every expense is met from her income derived from her job in the public service. It is supplemented by the modest profit she realizes from selling hair products and detoxes.
- [15] It is doubtful that the husband has the means to contribute financially to the children's maintenance and no evidence was led either way. I therefore make no order for him to do so. However, I would encourage him to assist as much as is practicable to ensure that his sons benefit from his influence in their lives. This can only redound to their mutual advantage.
- [16] His failure to participate in the court's proceedings suggests that he is not inclined to be subjected to the court's jurisdiction. He said as much in correspondence that he penned and forwarded by email for the court's attention, before the trial.
- [17] Other than stating that he departed the matrimonial home in 2017, the wife did not say where the husband lives and under what terms. Similarly, she did not describe the matrimonial home. However, the court takes note that it housed the family during happier times and it is the residence now occupied by the wife and children.
- [18] The wife made no accusations that the husband is an unfit father and no evidence was presented to suggest that his presence or influence in the children's lives would be detrimental to them. I am of

⁵[1991] 2 AC 283.

the view that they are entitled to have a relationship with their father. In keeping with practice in family law the children should be required to spend quality time with him as much as their circumstances allow. I have formed the opinion therefore that the children's best interest is served by awarding joint custody to Mr. and Mrs. Ralph, primary care and control to the wife with weekly access to the father at times to be agreed mutually between the parties. I turn next to the matter of property settlement.

Property settlement

[19] The principles applicable to the determination of an application for ancillary relief for settlement of matrimonial assets have been articulated in numerous cases. Notably, within the jurisdiction of the Eastern Caribbean Supreme Court, the decision in **Stonich v Stonich**⁶ is one of the leading authorities. Further afield, **Miller v Miller**, **McFarlane v McFarlane**⁷ and **White v White**⁸ have rehearsed the applicable principles. It is now settled law that the court's primary concern is seeking to achieve fairness between the parties. In this regard, the court must take into account their means, their expressed or implied intentions regarding the property and their conduct throughout the marriage.

[20] The Court is required by law to have regard to all of the circumstances such as the parties' respective incomes, obligations, responsibilities, financial needs, earning capacities, property, other financial resources and their ages. Further, the Court will consider any physical or mental incapacity of either or both of them. Additionally, their respective contributions to the family's welfare, the duration of the marriage and the standard of living enjoyed by the family before the marriage broke down are all relevant considerations.

[21] Mrs. Ralph mentioned only one matrimonial asset - the matrimonial home located at Orange Grove, St. George. It is registered by Deed of Conveyance 3035 of 2010. It reflects that Mr. and Mrs.

⁶British Virgin Islands Civil Appeal No. 17 of 2002.

⁷ [2006] ALL ER (D) 343; [2006] UKHL 24.

⁸ [2001] UKHL 54.

Ralph purchased it in 2010 for \$66,372.00 and is described in the Schedule as comprising 12,062 square feet.

[22] The couple jointly secured the mortgage in 2010 to build their home. They refinanced it in 2012 to construct the upstairs section. Five years later, the husband vacated the property. Mrs. Ralph did not say how much her husband contributed to the family's upkeep before he left the matrimonial home. She has been making the monthly mortgage payment of \$1851.00, however due to the numerous other demands on her finances, she is currently able to pay only \$950.00 each month.

[23] Her net monthly income from her public service job is \$2246.55 and from her entrepreneurial endeavours she makes roughly \$300.00 each month. Her total outgoings is approximately \$2359.00

monthly, leaving a meager surplus of \$187.55.

[24] Mrs. Ralph produced a loan print out from the mortgagee. It reflects a sum of \$245,000.00 as the amount borrowed on 28th September 2012. As at 30th August 2021, the outstanding balance on the mortgage was \$179,053.00. No valuation was exhibited and no information supplied as to the equity owned by the Ralphs. I am cognizant the outstanding balance is not reflective of the value of the house on the open market.

[25] It appears from Mrs. Ralph's account that the husband has not contributed to the family's expenses for a considerable period of time. I accept her testimony and find that from 2017 she became the main and ultimately the sole breadwinner. I have no doubt that inflation and the natural upward progression of the family's needs as the children got older have caused a drain on her resources. Her testimony about the maintenance costs at the property are credible and not unexpected in view of normal wear and tear as time progresses.

[26] It is obvious from the evidence that Mrs. Ralph is hanging on economically to a very basic existence and that she and the family are at the lower end of the working class. She is essentially shouldering the financial responsibilities of both parents.

[27] The parties were wed on January 7th 2009 when they were in their prime. He was 26 years of age and she 24 years. They are now 38 and 40 years old respectively. In the normal scheme of things they each would have at least another 25 years of productive life before retirement. Without a diagnosis or prognosis regarding the husband's health challenges, it is impossible to forecast his potential to resume working and by extension contribution to the family's upkeep. Quite likely, this may not materialize. For the foreseeable future the wife will have to continue to shoulder those responsibilities on her own.

[28] The decree nisi was pronounced on 7th June 2021. However, for all intents and purposes the marriage broke down in 2017 when Mr. Ralph left the home. The union was therefore relatively short, subsisting as it did for 8 years. It is commendable that the wife has been able to keep a roof over her head and partially meet the mortgage obligations. Even without empirical evidence as to each party's contributions to the overall expenses during the course of the marriage, it is clear that Mrs. Ralph has borne the lion's share of those obligations for the better part of 6 years. That is roughly two-thirds of the length of the marriage. Any equity in the matrimonial home that might have accrued to the husband by virtue of being part owner would have been outweighed by the wife's past and ongoing expenditure.

[29] Taking into consideration all of the circumstances it seems to me that fairness in this case requires that Mr. Ralph's legal and beneficial right to, interest and title in the matrimonial home be settled on Mrs. Ralph. I am not satisfied that Mr. Ralph has the means from which the court may make any other financial provision order. I therefore make none.

Costs

[30] In matrimonial proceedings it is usual for each party to bear his or her own costs. There is no reason to deviate from that practice in this case.

DISPOSITION

[31] It is accordingly declared and ordered:

1. Idelia Ralph and Bertram Ralph shall share joint custody of the children of the family until they each attain the age of majority, with care and control to Idelia Ralph.

2. Bertram Ralph shall have access to the children of the family for at least one hour each week to be agreed between the parties.
3. Idelia Ralph's application for a property settlement order is granted in the following terms:
 - a) All of Bertram Ralph's legal and beneficial right to, interest and title in the property registered in the joint names of Idelia Ralph and Bertram Ralph by Deed of Conveyance 3035 of 2010 be and is hereby settled absolutely on Idelia Ralph.
 - b) Idelia Ralph shall on or before June 30th 2024 negotiate and finalize with the mortgagee institution of the referenced property, all necessary agreements and pre-conditions to the registration of the said property in her sole name; and shall arrange for the necessary instruments to be drawn up and presented to the Registrar to effect the change.
 - c) On presentation of the necessary instruments by Mrs. Idelia Ralph, the Registrar is directed to execute any conveyances or other necessary deeds to give effect to the property settlement order made in this order.
4. No order is made regarding a) maintenance of the children of the family; b) the payment of periodical or lump sum payments for the benefit of the wife and/or the children of the family; or c) financial provision for the benefit of the wife and/or the children of the family.
5. Liberty to apply.
6. No order is made as to costs.

[32] I wish to express thanks to counsel for his written submissions.

**Esco L. Henry
HIGH COURT JUDGE**

By the Court

Registrar