THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHMT2016/0019

BETWEEN:

KRYSTAL VERNE ST. OMER nee FRANCOIS

Petitioner/Applicant

and

LUCAS GAEL ST. OMER

Respondent

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:

Mr. Callistus Vern Gill for the Petitioner/Applicant
Mrs. Lydia Faisal for the Respondent

2021: June 16;
July 29;(written submissions)
August 5; (written submissions)
2022: October 10.

JUDGMENT

[1] **CENAC-PHULGENCE J**: The petitioner/applicant, Mrs. Krystal Verne St. Omer nee Francois ("Mrs. St. Omer") and the respondent, Mr. Lucas Gael St. Omer ("Mr. St. Omer") were married on 28th January 2012. After just about four (4) years of marriage Mrs. St. Omer filed a petition for divorce on 28th June 2016 having obtained leave of the court, five (5) years having not passed from the date of the marriage. Mrs. St. Omer alleged that the marriage had broken down irretrievably as a result of Mr. St. Omer's unreasonable behaviour and that she could no longer be expected to live with him. Mr. St. Omer filed an answer to the petition but withdrew same and the matter proceeded uncontested.

[2] On 3rd April 2017, a decree nisi was granted and ancillary relief matters were adjourned to Chambers upon application by either party. The decree nisi was made absolute on 8th May 2019.

[3] On 10th July 2017, Mrs. St. Omer filed an application for ancillary relief supported by affidavit. The application did not indicate what section of the **Divorce Act**[1] ("the Act") it was made pursuant to.

[4] Mrs. St. Omer's application for ancillary relief sought relief in relation to (a) custody, access and maintenance of the two children of the family, namely, Tehya Grace-Ann St. Omer born on 13th January 2009 (now 13 years) and Michael Lucas Vernon St. Omer born on 27th March 2012 (now 10 years) and (b) property of the marriage.

[5] The issues of ancillary relief relating to the children of the family, Tehya and Michael were settled by a consent order arrived at after the parties were referred to a social worker and the Court had the benefit of a social enquiry report. That consent order is dated 25th March 2019. The main and salient aspects of that order are as follows:

(a) Mr. and Mrs. St. Omer have joint custody of the children and shall make all major decisions regarding the children jointly;
(b) Mr. St. Omer has physical custody of the children from after school on Monday afternoons to Friday mornings;
(c) Mrs. St. Omer has physical custody of the children from Fridays after school to Monday mornings and she is to take them to school;
(d) Whilst the children are with Mrs. St. Omer, she will bear the financial responsibility for the fees for the babysitter/nanny;
(e) Whilst the children are with Mr. St. Omer, his adult niece will assist with the babysitting;
(f) Medical and educational expenses are to be borne equally by Mr. and Mrs. St. Omer.

[6] The Order sets out details for communication by the other parent with the children whilst in Mr. or Mrs. St. Omer's custody during the stipulated times and makes provision for arrangements for holidays and special occasions.

[1] Cap. 4,03 of the Revised Laws of Saint Lucia.

[7] The issues relating to the children having been settled, the part of the application for ancillary relief in relation to the property was the subject of several adjournments to facilitate discussions and mediation between the parties. After several failed attempts and another round of mediation given Mr. St. Omer's change of lawyer, directions were given and the application in relation to the property was tried on 16th June 2021. This decision concerns this remaining aspect of Mrs. St. Omer's application.

[8] As relates to the property, Mrs. St. Omer seeks the following relief:

(a) the matrimonial property recorded in the Land Registry as Block 1249B 842 together with the building ("the matrimonial property") thereon be sold and the proceeds be divided equally between the parties after the payment of all sums due to Bank of Saint Lucia Limited;

(b) that motor vehicle registration number PK4757 be sold and the proceeds of the sale be used to liquidate the debts to the Police Credit Union and Sagicor;

(c) that the shares in the Police Credit Union be divided equally between the parties

(d) that there be no order as to costs.

[9] In his initial response to the application[2], Mr. St. Omer sought the following relief: (a) an order that the property and motor vehicle be sold and the sums of $38,878.99 and $32,000.00 be deducted from Mrs. St. Omer's share of the proceeds and credited to BOSL and Police Credit Union respectively; (b) thereafter, each party would be liable for one half of the balances due after payment and (c) that Mrs. St. Omer pay the costs of the application.

[10] It will be noted that as the matter progressed and each party filed subsequent affidavits, the relief sought changed.

[11] In his supplementary affidavit filed on 9th July 2020, Mr. St. Omer now asks that he be allowed to keep the matrimonial property as it continued to be home to him and the children. He also requests that Mrs. St. Omer be made to pay off the balance of the loans at the Police Credit Union.

[2] Affidavit of LGS filed 11th August 2017.

[12] When Mr. St. Omer filed his further supplementary affidavit on 26th February 2021 after he had retained a new attorney, he again sought an order that the matrimonial property be granted to him as his sole property on condition that he would be solely responsible for the payment of the mortgage debt. He now asked to be reimbursed his 50% of the shares held at the Police Credit Union on the basis that he only signed for one loan in the amount of $20,090.00 which has been paid off.

The Applicable Law

[13] Ancillary relief is determined by reference being had to both the **Civil Code**[3] ("the Code") and the **Divorce Act** and the procedure by reference to the **Divorce Rules 1976**. It involves an assessment of the property of the petitioner and respondent to determine the nature of the property and its ownership. In Saint Lucia, the starting point in determining ownership is the Code.[4] The Code sets up what is deemed to be separate property and property of the community (community property) in a marriage.

[14] Article 1190 of the Code provides that community of property is established by the mere fact of the parties' marriage in the absence of any stipulations to the contrary.

[15] By virtue of article 1228 of the Code, the community is dissolved by divorce, judicial separation, separation of property (which applies not to a single item of property but to the property of the community as a whole) and the absence (in the context of articles 75 and 76) of one of the spouses.

[16] As stated by Michel JA in **Jonathan David Lesfloris v Glenda Dale Lesfloris**[5] at paragraph 38:

> "…The property of married persons is either community property, in which each holds a moiety (which is a right exactly equal to the right of the other) or is the separate property of one of the parties…."

It is undisputed that the property being dealt with in this ancillary relief application is community property.

[3] Cap. 4.01 of the Revised Laws of Saint Lucia.
[4] Cap.4.03 of the Revised Laws of Saint Lucia.
[5] SLUHCVAP2015/0018 delivered 13th December 2019, unreported.

[17] As indicated above the application for ancillary relief does not state which section of the **Divorce Act** it was made pursuant to. This makes disposition of the matter much more complicated at times. In **Lesfloris**, Michel JA addressed this very point emphasizing the importance of stating the relevant section in the application for ancillary relief. He said:

> "[18] …The application does not state, however, the specific provisions of the Divorce Act and/or Divorce Rules under which the application was made, which is usually important to the determination of the orders which a court can make pursuant to an application, but which, in proceedings under the Divorce Act, is even more important, because there are different requirements to be met for the making and granting of applications under different sections of the Act.
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> [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.

[18] The tenor of the application for ancillary relief suggests that it is not made pursuant to section 45 of the **Divorce Act,** therefore I will consider section 24. 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 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.

[19] Section 25 of the Act sets out the factors which the Court is duty bound to have regard to when deciding whether to exercise the powers granted under sections 22 and 24 in relation to a party to the marriage. These include: (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;(c) the standard of living enjoyed by the family before the breakdown of the marriage; (d) the age of each party to the marriage and the duration of the marriage; (e) any physical or mental disability of either of the parties to the marriage; (f) 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; (g) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

[20] In looking at these factors, the Court must ultimately exercise its powers so as to place the parties so far as is practicable and just to do so, taking into consideration their conduct, 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.

Issues

[21] The issue in this matter relates solely to property which is community property. Neither Mr. nor Mrs. St. Omer have suggested otherwise. The property in question comprises:

(a) matrimonial property recorded in the Land Registry as Block 1249B 842 together with the matrimonial home erected thereon;

(b) motor vehicle registration number PK4757;

(c) shares in the Police Credit Union in the joint names of Mr. and Mrs. St. Omer.

Evidence and Analysis

[22] Mr. and Mrs. St. Omer were married for just a little over four (4) years but that does not make the issues any less complicated between them given the obvious acrimony between them and the time which has elapsed since the filing of the application.

[23] Before delving into the analysis, I must comment on the state of the evidence presented by both parties in this matter. In **Maria Tohme v Michel Tohme**,[6] the Court had reason make the following comment with which I totally align myself:

> "The seemingly widespread practice by solicitors in St. Lucia of filing affidavits in support of or in opposition to an application for ancillary relief, usually involving issues of maintenance and property settlement without any or very few supporting documentation or exhibits is to be deplored. It is the duty of solicitors in applications of this nature, to ensure that the fullest picture regarding each party's financial position as it relates to or affects those issues is disclosed in the affidavits and well supported by pertinent documentation, …"

Consideration of relevant factors

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

Income and earning capacity

[24] At the time of the filing of her affidavit in support of the application for ancillary relief filed in July 2017, Mrs. St. Omer was a Brand Manager earning $6,050.00 before deductions.[7] She provided no supporting evidence of this. However, by June 2021 when the matter came on for hearing, Mrs. St. Omer informed in cross-examination that she was unemployed and was last employed at Unicomer but had to leave because of ill health. Her last pay would have been in May 2021. Asked whether her illness rendered her unemployable, she responded yes as her doctor has asked her to stay away from stressful situations. None of these assertions is supported by any medical evidence. It is also quite curious that when Mrs. St. Omer filed her last affidavit on 11th June 2021, she never sought to update the Court on her employment situation or even pending departure from her job.

[25] Mr. St. Omer is a Customs Officer employed with the Government of Saint Lucia and earns a monthly salary before deductions of $2,181.97 with an unguaranteed overtime of $2,000.00 which amounts to $4,181.97 at times.[8] Like Mrs. St. Omer, Mr. St. Omer provided no supporting documentation.

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[6] SLUHMT1996/0043.
[7] Affidavit of Mrs. St. Omer (KVS) filed10th July 2017.
[8] Affidavit of Mr. St. Omer (LGS) filed 11th August 2017.

Matrimonial Home

[26] The matrimonial home is located at Balata, Castries on land registered at the Land Registry as Block and Parcel 1249B 842 in the name of both parties. At the date of the hearing, Mr. St. Omer occupies the home with the two minor children of the family. The property is the subject of a mortgage in favour of Bank of Saint Lucia Limited ("BOSL") and at the date of the application had an outstanding balance of $387,518.55. Mrs. St. Omer's evidence is they first took a loan of $108,000.00 to purchase the land but they were not married yet and the house was built sometime after.

[27] According to Mr. St. Omer's evidence, the mortgage is being solely paid by him in the sum of $1,500 monthly since Mrs. St. Omer stopped her payments in 2016, a matter which she confirmed in cross-examination. The mortgage was divided in two amounts because at the time it was taken Mrs. St. Omer worked at BOSL and was able to secure a lower interest rate for the amount which was allocated to her grade.

[28] At the date of Mr. St. Omer's affidavit in August 2017, the balances were $166,771.89 and $220,746.66 with the larger amount accumulating interest of $18,193.34 because Mrs. St. Omer stopped paying from March 2016. Prior to Mrs. St. Omer stopping her monthly payments, Mr. St. Omer says he paid $1,500.00 and she paid $1,221.19, a total monthly installment of $2,721.19. Mrs. St. Omer said in cross-examination that she could not recall what she or Mr. St. Omer paid monthly towards the mortgage. However, in her affidavit filed in support of the application, she said that she contributed to the mortgage up to June 2016 in the sum of $1,500.00 when she left the house to seek accommodation elsewhere.[9] However, she agreed in cross-examination that she stopped paying the BOSL loan since 2015 which is inconsistent with her previous statement that she paid the mortgage up to June 2016. Mr. St. Omer's evidence is that she stopped paying in March 2016 after she left the home in February 2016. What is clear is that Mrs. St. Omer stopped paying her contribution to the mortgage about 2016 and since then Mr. St. Omer has continued to pay the mortgage albeit not the full monthly payment.

[9] Affidavit of KVS filed 10th July 2017.

[29] In cross-examination, Mrs. St. Omer disagreed that the loan was separated in two despite the BOSL letter dated 2nd July 2020 and re-issued on 7th May 2021 to reflect that Mrs. St. Omer was also an account holder. Mrs. St. Omer was the one who exhibited the re-issued letter. The letter dated 7th May 2021 shows two loan account numbers with original loan amounts of $234,011.00 and $182,563.00 respectively. The statement supports Mr. St. Omer's evidence that he pays $1,500.00 monthly as the amounts last paid to the two loans were $432.75 and $1,067.25 respectively, a total of $1,500.00.

[30] Mr. St. Omer stated in his supplementary affidavit filed on 9th July 2020 that the matrimonial property is valued at $480,000.00 as at 2017 but he does not exhibit any valuation.

[31] The BOSL loan balances as per the letter dated 7th May 2021 amount to $424,511.41. Mrs. St. Omer produced a valuation of the matrimonial property dated 29th October 2016 which showed a market value of $483,000.00 and a forced sale value of $390,000.00. From these figures one can easily see that there is little to no equity in the matrimonial property.

Motor Vehicle PK4757

[32] Mrs. St. Omer in her application says Mr. St. Omer has had exclusive use of the vehicle and has prevented her from having the vehicle even when she has the children. From the evidence, it appears that the parties had a previous vehicle, a red Subaru Forrester which had an accident and according to Mr. St. Omer he repaired. Mrs. St. Omer's evidence in cross-examination was that she was not aware that the car had an accident whilst in her custody but admitted that there was an accident after which that car was replaced and not repaired. Whichever it is, this Subaru Forrester motor vehicle was financed with funds obtained from a loan from the Royal Saint Lucia Police & Allied Service Co-operative Credit Union Limited ("Police Credit Union"). In fact, the letter from the Police Credit Union dated 1st July 2020[10] speaks to an amount of $30,000.00 taken on 10th September 2012 to purchase building materials but both Mr. and Mrs. St. Omer admit that that amount was used to purchase a vehicle instead.

[10] Page 21 of Amended Trial Bundle.

[33] After the accident, the insurance company paid the value of the vehicle and instead of paying the Police Credit Union; they bought another the silver Subaru Forrester which is the current vehicle in Mr. St. Omer's possession. This is the vehicle which Mr. St. Omer says he repaired after it was in an accident whilst being driven by Mrs. St. Omer. According to the vehicle transport enquiry from the Department of Transport dated 21st June 2021, the silver Subaru Forrester is a 2006 model and is registered in the names of both Mr. and Mrs. St. Omer.

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future

[34] According to the order relating to the children of the family, both parties are responsible to provide for the children's welfare when they are with them as per the arrangement agreed to. They were both ordered to contribute equally to the children's medical and educational expenses. Mrs. St. Omer has to pay for the services of a babysitter when the children are with her.

[35] I note that Mr. St. Omer has the children for five days of the week and therefore it can be expected that he would have to bear a greater portion of expenses to provide for their daily needs.

[36] Mrs. St. Omer in cross-examination admitted that she is not making any payments to the Police Credit Union Loans. She is aware that Mr. St. Omer continues to pay both the BOSL and Police Credit Union loans, but she was not aware that the car loan was outstanding. Perhaps because there was no car loan, but simply loan monies re-purposed to purchase a car.

[37] In her affidavit in support of the application, Mrs. St. Omer sets out her monthly expenses as follows:

Courts	$1000.00
Flow	$350.00
FCIB Credit Card	$200.00
Life Ins	$450.00
Health Ins	$100.00
Pension	$200.00
Electricity	$100.00
Grocery Shopping	$1,000.00

Preschool	$120.00
TOTAL	**$3,520.00**

[38] Mr. St. Omer presents his monthly expenses as follows:

BOSL	$1,500.00
Police Credit Union	$700.00
RBTT (Sagicor)	$362.00
Sagicor Life	$574.87
NIS	$250.00
BOSL (RRIA)	$120.00
CSA Insurance	$250.73
CSA dues	$25.00
Customs Welfare Fund	$20.00
Flow	$255.00
Electricity	$105.00
Wasco	$35.00
Protector Security System	$50.00
Preschool Fees	$120.00 (every other month)
Miscellaneous expenses (Groceries, recreational Supplies)	$1,000.00
TOTAL	**$5,367.00**

[39] Again, I must point out that neither Mrs. St. Omer nor Mr. St. Omer provided any documentary or supporting evidence to support the expenses. It is evident that some of these expenses may have been different by the date of the hearing, but no updated information was provided.

[40] Mr. St. Omer's evidence is that he was the only one making payments to Courts for the period February 2016 to September 2016 for household appliances and furniture bought for the matrimonial home, but he produces not one receipt, and I am unable to determine whether in fact such payments were made. He also says that he is only able to meet his monthly obligations because of the assistance of his family.

[41] Mrs. St. Omer says she paid off Courts for the things she took in her name, but I am none the wiser as she has not indicated what she took in her name. She admitted that she caused Courts to repossess a treadmill which she had purchased. She had no knowledge of whether Mr. St. Omer was also paying Courts.

[42] As part of his evidence, Mr. St. Omer produced a letter from the Police Credit Union dated 2nd July 2020 which he says shows a loan of $32,000.00 taken by Mrs. St Omer for 'her' educational expenses. Mr. St. Omer states in his affidavit of 9th July 2020 that he continues to pay $700.00 monthly by way of direct deposit from his salary. He says he has paid off his share of the loans and it is Mrs. St. Omer's educational loan which is outstanding, and she should pay it.

[43] Mrs. St. Omer in her affidavit filed 26th February 2021 in response to Mr. St. Omer's evidence about what he calls 'her educational' loan, says that she took that loan of $32,000.00 which they both used to register with the Australian Institute of Business through NRDF. She says they both started their BSc in Business Administration at the same time and completed at the same time. That loan was being repaid by instalments of $1,000.00.

[44] Mrs. St. Omer's counsel, Mr. Callistus Vern Gill ("Mr. Gill") suggested in cross-examination that the statements produced by Mrs. St. Omer did not show a loan disbursement of $32,000.00 but Mrs. St. Omer gives evidence that she did take a loan in that amount and I find that the statements do show payments of $1,000.00.

[45] Mr. St. Omer was not being truthful when he suggested in his affidavits that the loan of $32,000.00 was Mrs. St. Omer's only and failed to say that he benefitted from those funds as well and I take a very dim view of that. In cross-examination, he agreed to the purpose of the loan and that it had been used for both of their benefits.

[46] The following are the loans he lists as having been taken with the Police Credit Union-

(a) $15,000.00 for the purchase of materials for the home;

(b) $30,000.00-purchase of motor vehicle

(c) $20,090.00-purchase of building materials

[47] The letter from the Police Credit Union confirms the amounts above and provides some other information as relates to the joint account #1297 in the names of Krystal Francois-St. Omer/Lucas St. Omer. It gives details as follows:

Loan in the amount of $15,000.00 granted on 14th May 2012 to purchase building materials signed for by Mrs. St. Omer only;

Loan of $30,000.00 granted on 10th September 2012 to purchase building materials signed for by Mrs. St. Omer only;

Loan of $20,090.00 granted on 30th November 2012 to purchase building materials signed for by Mr. and Mrs. St. Omer;

Loan of $32,000.00 granted on 18th February 2012 for education expenses;

A letter dated 10th June 2014 requesting a consolidation signed by Mrs. St. Omer only.

[48] The Police Credit Union letter states the balance owed on the loans as $66,251.03. Mr. St. Omer also produced another letter dated 7th July 2020 which stated that the loan of $20,090.00 for the purchase of building and fencing material signed for by both Mr. and Mrs. St. Omer was paid off on 30th September 2015. However, this does not in any way prove that Mr. St. Omer was the only one making payments towards the loans. In fact, Mrs. St. Omer's evidence is that she was paying $1,000.00 at some point and Mr. St. Omer said that he was paying $700.00.

[49] It also stated that Mr. St. Omer has been the only one making payments towards all the loans granted from 2009 to current. Firstly, there is nothing in any of the Police Credit Union letters relating to loans taken prior to 2012. The parties got married in 2012 and there is no evidence that they did any transactions with the Police Credit Union prior to 2012. In cross-examination, Mrs. St. Omer was adamant that they did not take loans from the Police Credit Union from 2009 although she admitted that she had produced nothing to show that there were no loans before 2009. I note though that the parties first child was born in 2009 so there appears to have been a relationship between Mr. and Mrs. St. Omer from then.

[50] Mrs. St. Omer in her affidavit filed on 11th June 2021 in response to the statement produced by Mr. St. Omer from the Police Credit Union says that the information presented in the document does not reflect an accurate picture of what transpired in relation to the Police Credit Union loans. She does not elaborate, nor does she provide any contrary information or anything to show that she challenged the Police Credit Union about the statement it had given Mr. St. Omer.

[51] In cross-examination, Mrs. St. Omer says she informed the Police Credit Union that she was objecting to the contents of the statement provided by Mr. St. Omer and that her lawyer would have written but she did not produce same.

[52] In her affidavit filed 11th June 2021, Mrs. St. Omer says that Mr. St. Omer only started making payments of $700.00 in March 2014. She says prior to this all payments were made by her but again this is not apparent from the statements provided as it does not state who made which payment. Mrs. St. Omer denies that she ever signed a request for consolidation of the loan as stated in the Police Credit Union statement, but she does say in her affidavit filed on 11th June 2021 that the loans were not separated but they were all put together even if they were signed separately. Again, whilst Mrs. St. Omer disputes what is stated in the Police Credit Union statement, she has provided no evidence to show that this in incorrect.

[53] Mr. St. Omer in his affidavit of 11th August 2017 states that Mrs. St. Omer has never made a payment to the loans taken at the Police Credit Union and he is the only one who has been paying $700.00 monthly. I am unable to accept this evidence based on the statements presented by both parties. Mr. St. Omer produced statements from the Police Credit Union for the period 2014 to 2017 and Mrs. St. Omer for the period 2010 to 2013.

[54] When one examines the 2014 to 2017 statement, it shows that there were payments of $1,000.00 and $700.00 respectively being made. Of course, the statement does not show who made the respective payments, but this certainly checks out with the evidence of Mrs. St. Omer that she made payments of $1,000.00. The last payment of $1,000.00 seemed to have been made in June of 2014 and thereafter, $700.00 has been consistently paid. I therefore cannot accept that the $700.00 payments only started in March 2014. The statement for the period 2010 to 2013 also shows payments of $1,000.00 at times as well as the amounts disbursed. The unfortunate thing is that I do not believe that either party has been very forthright with their evidence.

[55] From the evidence presented, I accept that both Mr. and Mrs. St. Omer made payments to the Police Credit Union loans up to 2014 and that thereafter it was only Mr. St. Omer who has been making payments. I also accept that the shares in the Police Credit Union

are jointly owned by Mr. and Mrs. St. Omer as the statement from the Police Credit Union refers to the account being a joint account and Mrs. St. Omer admitted that she had added Mr. St. Omer's name to the account but could not remember when.

(c) the standard of living enjoyed by the family before the breakdown of the marriage

[56] The parties led no evidence in relation to this matter. However, it is clear to me that these were two young people attempting to start a life together but who evidently struggled. It is apparent that each of them will have to move on alone, but they have incurred significant debt together which cannot be overlooked at all.

(d) the age of each party to the marriage and the duration of the marriage

[57] When the parties got married in 2012, Mrs. St. Omer was 21 years old, and Mr. St. Omer was 28 years old. The marriage did not last long at all but has been no less acrimonious. The parties are now still relatively young, Mrs. St. Omer being 32 years whilst Mr. St. Omer is 38 years.

(e) any physical or mental disability of either of the parties to the marriage

[58] There is no evidence that either party suffers from any disability whether mental or physical.

(f) 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

[59] It is clear from the evidence that both parties contributed to paying the debts for a few years and then that quickly changed after the relationship started to breakdown, Mrs. St. Omer left the matrimonial property and stopped paying her contributions to the debts. From the evidence, it appears that Mr. St. Omer has had more direct care of the children of the family, and it would appear that there was assistance given by family members of both Mr. and Mrs. St. Omer.

(g) in the case of proceedings for divorce or nullity of marriage, the value of either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage that party will lose the chance of acquiring.

[60] There was no evidence presented in this regard.

Factors to be considered

[61] Having reviewed all the evidence in the matter and having regard to all the factors as outlined in section 25 of the **Divorce Act**, I make the following findings and observations.

[62] It must be remembered that the basis of orders made pursuant to section 24 of the **Divorce Act** is not to seek to punish Mr. or Mrs. St. Omer. The purpose of the proceedings is to arrive at a position which is fair, reasonable and just in all the circumstances of the case.

[63] The evidence from both Mr. St. Omer and Mrs. St. Omer sought to point fingers and lay blame at each other's feet which is not the aim of applications for ancillary relief. Based on the evidence I agree with counsel for the respondent, Mrs. Lydia Faisal ("Mrs. Faisal") when she submits that both parties seem to have contributed to the breakdown of the marriage.

[64] It is clear that Mr. and Mrs. St. Omer were heavily supported by family-evidence of financial support from Mrs. St. Omer's mother with babysitting expenses, monies from aunt; father etc. to assist with construction of the matrimonial home. Mrs. St. Omer's evidence was that her family members had assisted them financially when they were building the matrimonial home and she had to repay these monies but produces not one iota of evidence in support. She made a point of saying that Mr. St. Omer's family did not contribute but then admitted that his brother had assisted with the construction which reduced the labour costs. I do not think that this is relevant as the only parties to the marriage were Mr. and Mrs. St. Omer and together they were responsible for providing for themselves and their family.

[65] Mrs. St. Omer's evidence does not show any consideration for the welfare of the children. In her affidavit file on 26th February 2021 at paragraph 14, Mrs. St. Omer states that the monthly rental of the house is $2,500.00 to $3,000.00 and so she is entitled to receive half share of the rental income in the range of $1,250.00 to $1,500.00 for the period that Mr. St. Omer has been in exclusive occupation. The mere fact that she could speak of wanting Mr. St. Omer to pay rent for the years he occupied the house solely, speaks volumes to her commitment to the welfare and security of the children. In essence, Mr. St. Omer is being asked to pay her rent for his and the children's occupation of the home. The fact is Mrs. St. Omer left the matrimonial property and paid not one cent towards the mortgage payments since 2016. Mr. St. Omer has been paying the mortgage single-handedly for almost five years. It cannot be fair for Mrs. St. Omer to now demand that she be paid rent in such circumstances and especially when her children occupy that dwelling as their home.

[66] Mrs. St. Omer wishes to just walk away from this marriage with no responsibility whatsoever, but the harsh reality is that this is not possible and certainly not fair in all the circumstances of this case. Mrs. St. Omer says she had to start from scratch but that is sometimes the harsh reality of divorce. She gives evidence that she rented a house for $1,200.00 at Balata. In the earlier affidavit, she has said she rented a house for $800.00 in the same area. She also says she took a loan of $80,000.00 to renovate her mother's home and paid $2,000.00 monthly. Mrs. St. Omer says her father bought her a Nissan March, so she now has a vehicle.

[67] Mr. Gill, counsel for Mrs. St. Omer in submissions filed on 29th July 2021 makes another proposal which would not have been part of the application being considered by the Court. He now submits that Mrs. St. Omer has no interest in the matrimonial property, the car nor the shares in the Police Credit Union and is prepared to transfer her interest in them to Mr. St. Omer and he ought to take responsibility for the debt associated with the home and the Police Credit Union, the proceeds of which he benefitted from. His submission is that Mrs. St. Omer having had to find her own rent, then take a loan to effect repairs to her mother's home to house herself and the children without any assistance from the Mr. St. Omer, she ought not to be liable for any debt associated with the matrimonial home.

[68] Mrs. Faisal, counsel for Mr. St. Omer in submissions filed on 5th August 2021 also makes proposals or seeks relief which is different from what had been sought in the various affidavits. The proposals are that Mrs. St. Omer pays the arrears of $69,611.25 due at that point to BOSL and that the balance of the BOSL loan be the responsibility of both parties equally with the option to either party to purchase the other's share. In relation to the Police Credit Union debt, the new proposal is that Mrs. St. Omer pay the sum of $47,600.00 towards the loans which is the equivalent of what Mr. St. Omer paid from February 2016; that the shares be then levied against the balance owed; the remaining balance be divided and each party would be personally liable half share each; the silver Subaru be valued and sold and proceeds be split equally between the parties with Mr. St. Omer being at liberty to pay Mrs. St. Omer her half share of the value of the said car in lieu of sale.

[69] Things cannot remain as the parties were when they were married. One party would have to leave the property, or the property be sold but whatever the case, the parties would have to make necessary adjustments and changes to continue their respective lives.

[70] The reality is that both parties will have to step up and contribute to the debts of the marriage whilst trying to move on. Given the parties mindsets and the fact that they were unable to even arrive at an amicable solution to the ancillary relief matters, I would be hesitant to order that they continue to be responsible equally for paying any of the debts as I can foresee frequent trips to Court in the future. The acrimony is not healthy for either of them and any order of that nature will simply contribute to maintaining this atmosphere. I am of the view that the best solution is to allow each party to bear some of the debts but allow them the flexibility to decide how best they can do so.

[71] It is clear that Mr. and Mrs. Omer in the short span of their marriage borrowed a significant amount of money and I would agree with Mrs. St. Omer that the loans taken were for both of their benefits. The BOSL debt is much more than the Police Credit Union debt and Mr. St. Omer will have exclusive use of the matrimonial property and so he will have to attend to that debt. The debts at the Credit Union were all taken to benefit the family and the Court must take that into account.

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

1. The petitioner shall transfer to the respondent her half share in the parcel of land and the house thereon situate at Balata and registered as Block and Parcel 1249B 842 within three (3) months from the date of this judgment. Subject to the approval of the financial institution, Bank of Saint Lucia Limited, the respondent shall thereafter be solely responsible for the payment of the mortgage.
2. The motor vehicle, registration number PK4757, the silver Subaru Forrester shall be valued and sold by the respondent and the proceeds applied to the loans at the Police Credit Union.
3. The respondent shall transfer to the petitioner his half share of the shares held in joint account #00001297001 in the names of Krystal Francois-St. Omer and Lucas St. Omer held at the Royal Saint Lucia Police & Allied Service Co-operative Credit Union Limited within three (3) months of the date of this judgment and thereafter, the petitioner shall be solely responsible for paying the balance of the loans at the Credit Union.
4. Each party shall bear his/her own costs on this application.

[73] I wish to sincerely apologise to counsel and the parties for the delay in the delivery of this judgment which was due to circumstances beyond my control. I regret any inconvenience caused to the parties as a result.

Kimberly Cenac-Phulgence
High Court Judge

By The Court

Dp. Registrar