

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2020/0004

BETWEEN

JAMES AUGUSTUS WILLIAMS

PETITIONER

and

SELMA ADINA WILLIAMS

RESPONDENT

Appearances:

Ms. Dannielle France holding papers for Mr. Richard Williams for the petitioner.

Mr. Duane Daniel with him Ms. Chanté Francis for the respondent

2022:Jun. 21 & 30

DECISION

BACKGROUND

[1] **Henry, J.:** When marriages end it is inevitable in most cases that the ex-spouses turn their attention among other things to division of the assets acquired by them during the course of the marriage. Mrs. Selma Williams and Mr. James Williams are no exception. This is an application¹ by Mrs. Williams for an order for property settlement, lump sum or periodical payments or any other relief that the Court deems fit. Mrs. Williams ('the wife') was married to Mr. James Williams ('the husband') on July 26th, 2009. She left the matrimonial home about 10 years later when tensions arose in their union. Mr. Williams petitioned the court for a divorce in 2020 and a decree nisi was pronounced on

June 9th, 2022.

¹ Filed on 13th November 2020.

[2] In 2019, the wife was granted leave to amend her application for maintenance pending suit to seek Instead, the orders outlined earlier. She seeks a share of the marital home which is registered in her husband's sole name. She testified that Mr. Williams bought 5 trucks one of which was assigned registration number TE420 and was used in Mr. Williams' small trucking business.

[3] Mr. Williams resists the application. He argued that Mrs. Williams is not entitled to a share in the matrimonial home or to any payment from him. He asserted that 4 of the trucks were acquired purely to harvest parts for use in TE420 which is now not functioning. He contended that he contributed significantly to improving a house at Freeland, Mesopotamia in which Mrs. Williams owns a beneficial interest and where she now lives with her adult children. That property is said to be registered by Indenture number 441 of 2009².

[4] Mrs. Williams submitted that she does not legally own the Freeland property and denied that Mr. Williams contributed to its acquisition or improvement. For the reasons outlined in this decision, the court finds that Mrs. Williams is entitled to an interest in TE420 owned by Mr. Williams.

ISSUE

[5] The issues are whether:

1. A property settlement order should be made in favour of Mrs. Selma Williams in respect of properties registered in Mr. James Williams' sole name; and
2. Mr. James Williams should be ordered to make a lump sum or periodical payments to Mrs. Selma Williams.

ANALYSIS

Issue 1 – Should a property settlement order be made in favour of Mrs. Selma Williams or Mr. James Williams?

[6] Mrs. Williams did not expressly indicate under which provision of the Matrimonial Causes Act ('MCA')³ her application is made. This is desirable and necessary to enable the opposing party to know the nature of the case being brought. Be that as it may, the lack of such specifics is not fatal

²See Agreed Statement of Facts filed June 17th, 2022.

³Cap. 239 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

to the application. Section 32(1)(b) of the MCA empowers the court to make an order which has the effect of settling for the benefit of a party to the marriage, property to which the other party is entitled.

[7] In considering such an application the court must have regard to a number of factors listed in section 34 of the MCA including the income, earning capacity, property and other financial resources which each party has or is likely to have in the foreseeable future; the duration of the marriage, the parties' respective past and prospective financial needs, their obligations and responsibilities; the standard of living enjoyed by the family before the breakdown of the marriage; the parties' respective ages, any physical or mental disability of either party and their respective contributions to the family's welfare such as contributions made towards looking after the home and caring for the family; and the value of any benefit which either party stands to lose by virtue of the breakdown of the marriage.

[8] The principles which guide the court in the application of those legislative provisions are well-established. They have been articulated in a number of decisions including **Stonich v Stonich**⁴, **White v White**⁵ and **Miller v Miller**⁶. The paramount consideration is fairness to the parties.

[9] The Court is required to identify the matrimonial assets and determine whether the facts justify an adjustment of the legal and beneficial interests to effect a just and equitable outcome. In the Grenadian case of **McIntyre v McIntyre**, Her Ladyship Justice of Appeal Blenman distilled from **Miller** and **White** the kernel of how matrimonial properties are categorized. She stated:

'In **White** and **Miller**, the House of Lords made a distinction in the source of property that constitutes the assets of a couple upon an application for ancillary relief. Two sources of assets are recognised: (1) property acquired during the marriage otherwise than by inheritance or gift (commonly referred to as the 'matrimonial property') and (2) other property. [See *Miller v Miller* [2006] UKHL 24 at para. 22.]... In **Miller**, Baroness Hale of Richmond stated at paragraph 146 as follows:

⁴BVI Civil Appeal No. 17 of 2003, delivered on September 29th, 2003.

⁵[2001] 1 All ER 1.

⁶[2006] UKHL 24.

“Section 25(2)(f) of the 1973 Act does not refer to the contributions which each has made to the parties’ accumulated wealth, but to the contributions they have made (and will continue to make) to the welfare of the family. Each should be seen as doing their best in their own sphere. Only if there is such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares.”⁷

[10] In evaluating the respective contributions of the parties to the family’s welfare, the Court is not permitted to ascribe a greater value to those made by a spouse who is the sole or principal breadwinner over those of the spouse who is a homemaker. By the same token, an unemployed spouse with primary responsibility for taking care of the home, who owns matching assets of comparable value to that of the spouse, would not accrue a greater benefit from the marital assets on a breakdown of the marriage merely because the former is unemployed. The exercise undertaken by the court when making determinations about settlement of property is guided by the overarching principle of fairness. Those principles are applied to the facts of this case.

[11] After their marriage in 2009, the Williamses cohabited at La Croix in a house legally owned by the husband and registered by Deed of Conveyance No. 1943 of 1989. It was the subject of a mortgage for the sum of \$45,000.00 which Mr. Williams serviced throughout the marriage from his earnings as a farmer. He completed the repayments just 2 months before the hearing and the mortgage was discharged soon after. The house is a 2-storey building comprising 3 bedrooms, the lower level of which contains a bath and kitchen. During the marriage, he paid all utilities and other household bills for the entire family. The wife accepted that he was the financial provider for all children in the household without exception.

[12] Before moving to Mr. Williams’ home, Mrs. Williams lived with her children at Freeland, Mesopotamia in a two-bedroom house she constructed from her own resources before the marriage, with limited assistance from her children’s father. She explained and it is not disputed that the house was constructed on land given to her and her then partner by her children’s grandfather.

⁷GDAHMTAP2013/0024 at para. 38.

Between 2014 and 2016, renovations were carried out at that house including the addition of 2 bedrooms and a bathroom.

[13] The union produced no children. However, the wife had 7 children from a previous relationship, one of whom has passed away. After the celebration of the marriage, Mrs. Williams, four of her children and her grandchild moved with her into her husband's house where his 3 children ages respectively 12, 9 and 5 also resided. A nephew of the wife also frequented the home and stayed there from time to time. The blended family unit functioned harmoniously for a season. The wife performed the usual role of homemaker, cooking cleaning, ironing, taking care of the home, her children and Mr. William's children while the husband farmed 2 parcels of land that he had leased for agricultural purposes. One of the parcels was located in La Croix otherwise known as Evesham and the other in Ratho Mill. Mr. Williams allocated a part of the land to his wife so that she could farm, harvest and sell the produce. She retained the proceeds for groceries and other miscellaneous expenses at her sole discretion.

[14] From all accounts their blended household worked well for a few years until the husband caused the wife's children to leave the matrimonial home. The wife accused him of driving her biological children away. The husband did not deny this. I presume that the children were either able to take care of themselves having attained the age of majority by then or perhaps Mrs. Williams had made satisfactory arrangements for their care.

[15] Nevertheless, the wife remained at the matrimonial home in Freeland until a disagreement between them resulted in her leaving. She insists that this took place in 2019. The husband was equally adamant that she left in 2018. Up to that time, the couple earned their living from farming. The husband grew a variety of crops including potatoes and ginger. Mrs. Williams cultivated sweet potatoes, peppers, corn and okra which she sold each week at the vegetable market in Kingstown. The husband sold his produce on a wholesale basis to companies and large enterprises. He also ran a small trucking business on a seasonal and limited basis.

[16] The wife averred that her weekly income was a modest \$200.00-\$400.00 which she used to purchase food supplies for the entire family. She asserted that the husband's earnings approximated \$4000.00 per week from the sale of farm produce supplemented by income from trucking. She explained further that he raised cattle for one Ms. Burke in an arrangement whereby

he would receive half of the profits from their yearly sales and/or obtain an entire cow or bull in alternate years depending on the breeding cycle. Mr. Williams acknowledged that in the past and approximately every two years, Ms. Burke has shared equally with him the profits from the sale of her cattle. He explained that she usually sold one and would give him approximately \$1000.00.

[17] Mr. Williams denied earning \$4000.00 per week. He claimed that he earns about \$500.00 from the potatoes he grows and another \$400.00 from the yams. He explained that the land he leased in Evesham was acquired by and is now being used by the government as a playing field. He has lost the lease on that property. In respect of the other parcel of land at Ratho Mill he stated that the owner was no longer leasing it and he was in the process of harvesting his last crop of sweet potatoes and yam. He explained that he has no savings at any financial institution and further that his reduced income is being subsidized by his nephew and son who assist him with buying food and paying bills. He accepted that he currently owns one cattle.

[18] Mr. Williams owned a total of 5 trucks. It came out in the evidence that 4 of those trucks were purchased for about \$1000.00 and specifically to obtain parts to service the one used in his business. Mrs. Williams acknowledged that those 4 trucks are not and have never been road worthy. Mr. Williams stated that TE420 is no longer functioning as the engine is defective. He has therefore surrendered the licence plates to the police.

[19] For her part, Mrs. Williams asserted that she has not worked since she left the matrimonial home. She explained that soon after she left the home, Mr. Williams assigned the lot of land she was farming to another woman. She averred that she did not return to work there because she did not want to get caught up in any conflict with the other woman. She maintained that this state of affairs has deprived her of her husband and her source of income, that she is impecunious and has difficulty securing a job. She admitted that she has not tried to obtain any employment since leaving the marital home. Before her marriage she used to traffic goods between Saint Vincent and Grenada, do domestic work and work in factories. She accepted that she has no disability which prevents her from working.

[20] Mr. and Mrs. Williams are respectively 58 and 57 years old. Their working years are mostly in the past although they each still have some productive years left, good health prevailing and all circumstances being even. Their earning capacity is likely to have similar outlooks. In the case of

the husband, he may be able to turn part of his property into a farm on a smaller scale and should be able to sell any produce cultivated to take care of his reasonable needs. Mrs. Williams may choose to proactively seek gainful employment as a domestic worker or utilize a part of the land on which she lives to cultivate crops for sale in similar manner. Neither has a reserve of wealth or assets from which to draw in the approaching retirement years or with which to assist the other.

[21] The wife appears not to have much appetite for work. The husband is not likely to be able to continue with extensive farming for himself, beyond 10 to 15 years, optimistically speaking. Neither of them produced any evidence of contributions made on their behalf to the Social Security Fund. I make no finding that either will reap retirement benefits from that source. I find however, that Mrs. Williams earns a regular income from taking care of her grandchild, the offspring of her daughter who is employed by the military in England. She is therefore self-sufficient to some extent, whereas the husband is almost on the bread line but for the generosity of his son and nephew.

[22] Mr. Williams attested that around 2014 Mrs. Williams asked for his assistance to make additions to the Freeland house, because it was small and did not contain a bathroom. He stated that he acceded to her request and contributed financially to the construction. The wife denies this. Under cross-examination she stated for the very first time that the additions were funded by her daughter and the daughter's boyfriend.

[23] Their contradictory account on this point necessitates further scrutiny. Before filing this application Mrs. Williams had obtained an *ex parte* order from the Family Court requiring the husband to make a weekly payment of \$600.00 to her as spousal support. He maintained that he had not been served with notice of hearing in respect of that case. In any event, Mrs. Williams filed no fewer than 4 affidavits in support of her present application for ancillary relief. She also filed⁸ one in response to the husband's application for the appointment of an expert to carry out a property valuation of the house she now occupies at Freeland. She strenuously resisted the application and did not disclose to the court at that time that she was the primary contributor to the initial construction of that property.

⁸On 22nd March 2021.

[24] Curiously, it was only during cross-examination that she for the very first time disclosed that she built that two-bedroom house on the Freeland property. The court cannot ignore that she has thereby accrued a beneficial interest in that property. It must be factored into the court's consideration of the present application. In fact, the husband has invited the court to do just that. Moreover, the court takes a dim view of the wife's belated disclosure of this information on the actual date of the trial when she must have appreciated that it was relevant to the court's determination of the earlier application by Mr. Williams for an order to have the Freeland property valued. This was at a time when she was living there and could have granted access for such purposes. In such circumstances, The Court is entitled to and does draw adverse inferences from this lack of candour on her part.

[25] As to the date on which Mrs. Williams left the matrimonial home, I prefer her recollection since it is corroborated in material respects by the publication on Mr. William's part of a Notice in the newspaper in 2019 that he was no longer responsible for her. Thereafter, the Williamses discontinued all previous marital arrangements. Mrs. Williams claimed that Mr. Williams prevented her from continuing to farm the land at Ratho Mill and allocated it to a new lover. He refuted this. I believe her.

[26] Mrs. Williams maintained that Mr. Williams can afford to provide monthly spousal support of \$600.00 to her. Mr. Williams insisted that he can no longer sustain his farming and earnings at the levels he once did because of the loss of both leases. He asserted that his weekly income is \$80.00 (at \$40.00 per day) which he earns from doing piecemeal farming with other farmers in his area. He stated that Mrs. Williams takes care of her grandchildren for a fee and is better off than he is financially. I find his account credible and accept that this is so.

[27] The wife submitted that the three principles which guide the Court in distribution of matrimonial property are 'need, compensation and sharing' referable to the factors stipulated by the Act. She cited **McIntyre v McIntyre** the Court of Appeal explained, echoing the Court in **John Charman v Beverly Charman**⁹: -

⁹ [2007] EWCA Civ 503.

'The principle of need requires consideration of the financial needs, obligations and responsibilities of the parties ... of the standard of living enjoyed by the family before the breakdown of the marriage and ... physical or mental disability...

The principle of compensation relates to prospective financial disadvantage which upon divorce some parties face as a result of decisions they took for the benefit of the family during

the marriage ...

The enquiry required by the principle of sharing is ... dictated by reference to the contributions of each party to the welfare of the family...'10

[28] Relying on **Gissing v Gissing**¹¹, Mrs. Williams submitted that the Court is expected to consider the conduct of the parties to the marriage to see if it can discern by inference or otherwise the probable common understanding about their respective shareholdings in matrimonial assets. She submitted further that the Court is entitled to draw adverse inferences from the failure of a party to make full and frank disclosure to the court to assist it in making a determination as to fair sharing of the matrimonial properties. She cited in support **Balcombe v Balcombe**¹² and **Crowther v Crowther**¹³.

[29] Mrs. Williams argued that the matrimonial property is large enough to subdivide and further that Mr. Williams has the means to support himself for the foreseeable future. She maintained that she is not a woman of means and owns no property. She contended that for this reason, her needs far exceed the husband's and she is unemployed. She argued that she will need to be provided for as she is not of the ideal age to secure a mortgage and is not likely to have the security to obtain a loan or have the means to repay.

¹⁰ At paragraphs 49 and 50.

¹¹ [1971] AC 886.

¹² SVGHMT2014/0146.

¹³ [2021] EWFC 88.

- [30] She submitted that in contrast, her husband has his home paid in full and will need only to maintain his recurring food and utility necessities. She submitted further that they enjoyed no more than subsistence living from farming.
- [31] Mrs. Williams submitted further that she took care of all 8 children of the family without assistance from her husband. She contended that she engaged in income generation for the family's benefit. She highlighted that the fact that the matrimonial home is now free and clear 'grounds in part an indirect contribution by her to securing' the asset. She argued that **White v White** is authority for the proposition that where property is acquired prior to a marriage, the court must take into account the nature and value of the property and the circumstances under which it was acquired and little weight should be given to the fact that it was acquired prior to the marriage.
- [32] Placing reliance on **Questelles v Questelles**¹⁴ Mrs. Williams argued that she and her husband treated the home as matrimonial property. She urged the court to find that her needs cannot be met without recourse to division of the La Croix matrimonial home. She submitted that the court should therefore award her a share of 40% of its value taking into account the adverse inference which should be ascribed to Mr. Williams for his overall non-disclosure about material aspects of the case including whether he has savings at a financial institution.
- [33] Mrs. Williams contended that the Freeland property belongs to a third party and the court should take into account that she never lived there with Mr. Williams as a family. She argued that Mr. Williams has produced no documentary evidence or other witness to lend credence to his assertion that he made contributions to the additions to that property.
- [34] Mr. Williams contended that for some 17 years before meeting Mrs. Williams, he owned the land on which the marital house sits and that she played no role in acquiring it or securing and servicing the mortgage. He argued that the property was not the financial product of the parties' common intention. He contended that her contributions to the home were *de minimis* at best and did not create a beneficial interest in it. Citing **Batcheler v Batcheler**¹⁵ he argued that pre-marital assets cannot be ring-fenced and made the subject of a property adjustment order. He reasoned that

¹⁴ SVGHMT2020/0088.

¹⁵ GDAHMT2017/0137.

there is no physical impediment which prevents Mrs. Williams from working, that she clearly owns a proprietary interest in the Freeland property and can pursue her claim to it by applying for a declaration of possessory title.

[35] He submitted that they have both failed to supply the court with evidence of their respective financial needs, obligations and responsibilities. Further, he argued that Mrs. Williams has not provided evidence as to the extent that her standard of living has been affected by the breakdown in the marriage other than to state that she had earned between \$200 and \$400.00 per week during the

course of the marriage.

Analysis

[36] Resolution of the issues in this case depends largely on which of the parties is more credible. They simply did not provide adequate particulars of their needs, obligations and in the case of Mrs. Williams specifics about her assets. There is little common ground between them on material elements of this case.

[37] Mrs. Williams was guarded regarding parts of her testimony and pivoted when it suited her. She came across as a very calculating individual. I was not impressed with her efforts at being truthful. Mr. Williams on the other hand was matter of fact while giving his account and did not hesitate with his responses even when his answers were less than beneficial to his case. Having observed them as they relayed their different accounts, I find Mr. Williams to be more credible. Overall, taking everything into account including their respective demeanours and logic and reason, I accept his account above hers where they differ unless otherwise stated.

[38] Significantly, neither the husband nor the wife provided evidence of their finances, obligations or responsibilities or reasonable needs. Belatedly, the wife disclosed bank accounts one day before the trial. The Court observes that this information would have been available to her long before the notice of hearing was issued for the trial. It begs the question why this was not disclosed previously and why this information was left out of her several affidavits. In similar fashion, the husband did not disclose among other things, that he had completed the mortgage payments on the matrimonial

house. This lack of candour does not augur well for either party, particularly in the absence of explanations for such obvious breach of duty. The court must take it into account.

[39] I am satisfied on a balance of probabilities that during the marriage the parties had a symbiotic relationship whereby the husband did the bulk of the work outside of the house and earned the lion's share of income in excess of \$1000.00 per week; but that the wife also brought in modest earnings of up to \$400.00 each week. I am likewise satisfied that the husband paid all the household bills, the mortgage on the house and all other outgoings (except for groceries) for all members of the family including the wife's 4 children, grandson and his 3 children from his earnings. I accept that by virtue of their common intention, the wife was primarily responsible for purchasing groceries while the husband's income was applied towards all of the other necessities and large projects.

[40] I accept the husband's testimony that he contributed financially and substantially towards the addition of the two-bedrooms and bathroom on the Freeland house in which the wife now lives with her children. No figures have been presented to the court as to the value of that property. I am satisfied from the evidence and find on a balance of probabilities that the house accommodates the wife and at least 2 children and 1 grandchild. I also find that the wife owns a significant beneficial interest in that property by virtue of her contributions to the construction of the first phase and her husband's assistance with the additions during their marriage. That property represents partly of her expenditure, partly her husband's (on her behalf) as well as one or more third parties. The beneficial interest owned by the wife constitutes matrimonial property or benefits derived directly from the marriage. In similar fashion, the greater part of the matrimonial home comprises matrimonial property which may be the subject of a property settlement order.

[41] I find that the matrimonial assets available to the court for purposes of property settlement are the matrimonial home, Mrs. Williams' substantial beneficial interest in the Freeland house and land which from all accounts is not subject to any mortgage, and the husband's truck registration number TE420. In determining whether to make a property settlement order the court will examine the value of any benefit which either party will lose as a result of the dissolution of the marriage. It will endeavour to craft a resolution which places each party, so far as reasonably practicable and just, in the position that he or she would have been in had the marriage not broken down and each

party had properly discharged his or her financial obligation towards the other. Above all, the court seeks to fashion an outcome which is fair to both parties.¹⁶

[42] I remind myself that the Court would be very slow to make an order for the sale of matrimonial residential property which is the only residence of a party. I therefore make no order for sale of the referenced properties, recognizing that they are the parties' only accommodation. I take into consideration that both parties are entitled to a beneficial interest in the said properties.

[43] However, in the absence of evidence as to the wife's actual contributions to the home in which she now lives or its value, it would not be possible to quantify their respective shares on any logical basis. In my opinion, it would not be fair to deprive the husband of his sole means of accommodation in his advanced age to secure an income for the wife who chooses to sit at home and make no effort to try to get employment. That is her choice. She is entitled to it but I do not think that the husband should be made to support her especially since she is able-bodied and quite capable of working and they are both approaching the age when people normally retire.

[44] I am of the considered opinion that had the marriage not broken down, both parties would have continued to enjoy the benefits of having separate interests in the Freeland and La Croix properties and would have continued to farm as long as possible to meet their reasonable needs as before. That has not changed and is achievable under present circumstances. I therefore make no property settlement order in respect of the husband's legal interest in the matrimonial home in favour of the wife. I consider it fair and just to make no property settlement order in favour of the husband in respect of the property in which the wife owns a beneficial interest. That leaves the truck registration number TE420.

[45] The husband accepts that the truck has retained some value even though it is not road worthy. I consider it fair, just and equitable that it be sold and the net proceeds divided equally between the husband and wife.

¹⁶Stonich v Stonich, BVIHC VAP2002/0017.

Issue 2 - Should Mr. James Williams be ordered to make a lump sum or periodical payments to Mrs. Selma Williams?

[46] The court may make an order for one party to pay a lump sum or periodical payments for a child of the family or for the benefit of the other party.¹⁷ However, the applicant must establish an appropriate factual and legal basis for so doing. The evidence was sadly lacking at both ends in this regard. Based on the findings of fact above, I am satisfied that the husband has neither the means nor the prospects of satisfying an order for a lump sum or periodical payment to the wife. It would not be fair to make such an order. I therefore make no finding as to the wife's reasonable needs and no order directing Mr. Williams to make a lump sum or periodical payments to her. The wife's application for such an order is refused.

COSTS

[47] The parties have agreed to each bear his and her own costs. It is not usual to award costs in matrimonial proceedings because of the nature of these matters. In the premises each party shall bear his or her own costs.

ORDER

[48] It is accordingly ordered:

1. Selma Williams' application for a property settlement order is granted in part.
2. No order is made granting Mrs. Selma Williams any interest in the property registered by and described in the Schedule to Deed of Conveyance No. 1943 of 1989.
3. No order is made directing Mr. James Williams to make a lump sum or periodical payments to Mrs. Selma Williams.
4. Mr. James Williams shall arrange for the truck registered as TE420 to be valued by a qualified vehicle valuer and he shall on or before September 30th, 2022, pay to Mrs. Selma Williams 50%

¹⁷Ibid. at section 31 of the Act.

of the net value of the said truck, failing which the truck is to be sold by private treaty or public auction and the net proceeds divided equally between the parties. For this aspect of the order, the parties have liberty to apply.

5. Each party shall bear his or her own costs.

[49] I am grateful for the submissions filed by the parties.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar