

THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2019/0080

IN THE MATTER OF THE PETITION OF MICHELLE ERICA CAMPBELL (NEE KING) FOR
DISSOLUTION OF MARRIAGE

BETWEEN

MICHELLE ERICA CAMPBELL (NEE KING)

PETITIONER

AND

CAMERON EUSTACE CAMPBELL

RESPONDENT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Ms. René Baptiste and Mr. Mikhail Charles for the petitioner.

Ms. Kensha Theobalds for the respondent.

2020: Dec. 7
Dec. 17
Dec. 22

REASONS FOR DECISION

BACKGROUND

[1] **Henry, J.:** Mrs. Michelle Campbell and Mr. Cameron Campbell are in the process of finalizing their divorce. They were married in 2012¹. Mrs. Campbell petitioned² the court for a divorce, as a

¹ July 1st.

² By petition filed on 4th September 2019.

consequence of which a decree nisi was granted on 10th February 2020. One month later, Mrs. Campbell filed an originating summons³ pursuant to the **Domestic Violence and Matrimonial Proceedings Act**⁴ ('the Act'). She has alleged that Mr. Cameron has abused her physically. She sought restraining orders to prohibit Mr. Campbell from assaulting her or the minor child of the family; an order that he permits her to enter and remain in the matrimonial home at Mc Kies Hill; and an order excluding Mr. Campbell from the matrimonial home. She also asked that a power of arrest be attached to the referenced orders. The minor child is now 14 years old.

- [2] Mr. Campbell resisted the application. The court delivered its decision on Thursday December 17th, 2020 dismissing the originating summons. The written decision could not be made available to the parties at that time, because the file containing it had been corrupted by a virus and was not retrieved. An oral decision was made and the parties were informed that the written reasons would be provided to them the week commencing December 21st, 2020. They are set out below.

ISSUE

- [3] The issues are:

- 1) Whether Michelle Campbell has established that Cameron Campbell has abused, intimidated or committed acts of violence or threatened to commit acts of violence against her or the minor child Camran or shouted at the minor child?
- 2) To what relief if any, is Michelle Campbell entitled?

LAW AND ANALYSIS

Issue 1 – Has Michelle Campbell established that Cameron Campbell abused, intimidated or committed acts of violence or threatened to commit acts of violence against her or the minor child Camran or shouted at the minor child?

- [4] Mrs. Campbell's assertions are largely set out in her affidavit². She also gave oral testimony and was cross-examined. Mrs. Campbell stated that before filing the petition, she had applied to the Family Court without notice to Mr. Campbell, for a protection order which was granted on 5th February 2020. She testified that she was advised by counsel that if she knows that she needs to be protected from physical abuse and abuse from Mr. Campbell, she needs to apply to the High Court for such

³ Filed on 12th March 2020.

⁴ Cap. 227 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

orders.

- [5] Mrs. Campbell asserted that she is afraid of Mr. Campbell and afraid that at any time he could return to St. Vincent and may seek to act out his revenge against her and do her physical harm for filing for divorce. She stated that Mr. Campbell owns a licensed firearm. She acknowledged under cross-examination that he had surrendered it to the police some time ago. She did not know when. She alleged that she is the party 'who was principally the target of his physical, verbal and psychological abuse. She stated 'on more than one occasion our son has witnessed the respondent hitting me. Our son had to push his way between us in an attempt to save me from more blows already.' Mrs. Campbell added that she therefore believes that it is her best interest and safety to be secured and protected by an order of court to protect her and her son from further abuse, intimidation, threats of violence and acts of violence at the hand of the respondent.
- [6] Mrs. Campbell did not provide further details of the alleged assault on her by Mr. Campbell. She did not indicate when it happened or under what circumstances. She testified that Mr. Campbell had never assaulted the minor child. However, she claimed that she is fearful that Mr. Campbell would harm him. In the next breath, Mrs. Campbell testified that she would not deny Mr. Campbell access to the child. I find it difficult to reconcile Mrs. Campbell's expressed fear that Mr. Campbell would harm the minor child, with her willingness to agree to access. It does not escape the court's attention that there is no history of alleged assault of the child by his father.
- [7] Mrs. Campbell submitted that the court should take account of the existence of the protection order made by the Family Court. She submitted further that the Family Court would have made the order to prevent violence or threats of violence to her and/or a child of the family. The court observes that the protection order was not exhibited; there is no evidence before this court regarding the basis on which the protection order was made and further it was made *ex parte*. There appears to have been no *inter partes* hearing before the Family Court after the initial order was made. Mrs. Campbell's assertions before the President of the Family Court were therefore not tested by cross-examination then or now. It appears that Mr. Campbell was not afforded the opportunity to challenge that order at a subsequent hearing. I consider those to be relevant considerations.
- [8] Mrs. Campbell accepted that the application process under the Act is not expected to be a rubber stamp and that an applicant must meet the required statutory test. She submitted that there are no

statutory conditions to be satisfied for a non-molestation injunction to be granted. She contended that she has nonetheless sought to ground her application with actual evidence, to establish that she has been the subject of molestation and various forms of abuse. She argued that the court should therefore grant the injunctive relief for which she has prayed to protect her and the minor child.

[9] The Act empowers the High Court to attach a power of arrest to an injunction restraining a spouse from using violence against the other spouse or a child of the marriage; or to make an order excluding the other spouse from the matrimonial home or any part of it.⁵ The Act provides that one spouse may apply to the court for an order excluding the other spouse from the matrimonial home.⁶ The court is empowered on such application to make such order as appears just and reasonable. This includes orders excluding one spouse from occupying a part of the matrimonial home or requiring that one repairs and/or maintains the home.⁷

[10] The Act does not identify any triggers to the grant of such orders. It follows that the usual common law principles and any other relevant statutory provisions apply.⁸ Mrs. Campbell did not specify in her originating summons, the grounds or bases for her application. This can be gleaned from the type of relief she seeks and from her evidence. Mrs. Campbell has grounded her application in allegations that Mr. Campbell has hit her repeatedly. She also implied that he abused, intimidated, and threatened her and the minor child with acts of violence. She has offered no evidence of intimidation or threats of violence towards her or the minor child and she has provided no evidence of assault towards the minor child.

[11] The learned authors of **Halsbury's Laws of England** define 'assault' as follows:

'Assault is an intentional and overt act causing another to apprehend the infliction of immediate and unlawful force.'

They added: -

'The threat of violence exhibiting an intention to assault will give rise to liability only if there is also a present ability (or perhaps a perceived ability) to carry the threat into execution.'

⁵ Sections 3 and 4(4) of the Act.

⁶ Section 4(1) of the Act.

⁷ Section 4 (2) of the Act.

⁸ Cap. 239 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

An assault may be committed by words or gestures alone, provided they cause an apprehension of immediate and unlawful force.’⁹

[12] In order for Mrs. Campbell to establish that Mr. Campbell assaulted her, she must prove on a balance of probabilities that he hit her or took such other action towards her, without lawful justification for doing so. She must also prove that the conduct caused her to apprehend or actually resulted in her being the recipient of immediate and unlawful force. Her testimony established that Mr. Campbell hit her at some point either before or during their marriage. I accept that he hit her. Was he justified in doing so? I am unable to determine this because the evidence lacked details as to the circumstances of the referenced encounters. Mrs. Campbell has failed to establish that this happened. She has proffered no evidence of psychological or emotional abuse at his hands.

[13] She placed reliance on the findings made by the Family Court. She has presented to the court vague statements of one or more attacks ‘being witnessed’ by their son. She made no credible or substantive averments about any threats or other conduct by Mr. Campbell towards her which would qualify as abuse.

[14] Mrs. Campbell’s reliance on the order made by the Family Court does not assist her. This court is not in a position to assess what findings were made by the President of the Family Court and what order was made as they are not before this court. In this regard, the parties’ attention is directed to rule 71 of the UK Matrimonial Cases Rules 1977¹⁰. It stipulates that in respect of ancillary relief applications made to the High Court for maintenance of a child while there is still in force an order in the Magistrate’s Court, a copy of the order must be filed. That approach is commended in matters such as this although strictly speaking it is not an ancillary proceeding as defined in the Rules. There is no other way by which the court would be aware of the contents of the order made by the lower court.

[15] I therefore find that she has failed to establish that Mr. Campbell has assaulted, molested or unlawfully interfered with her; or abused her physically, emotionally or psychologically. In the absence of actual or substantive evidence of previous assault on the minor child, I make no finding that Mr. Campbell has assaulted, shouted at, or otherwise unlawfully interfered with the minor child

⁹ Vol. 95 (2015) Lexis Nexis Edition, para. 528.

¹⁰ UK Statutory Instrument 1977/344.

Camran. In the absence of specifics, I make no finding that Mr. Campbell verbally, psychologically or physically abused, or threatened Mrs. Campbell or the minor child Camran.

Issue 2 – To what relief if any, is Michelle Campbell entitled?

Injunctive relief

[16] In view of the findings that there is no proof of assault either of Mrs. Campbell or the minor child, it would not be just or reasonable to grant an order restraining Mr. Campbell his servants or agents from:

- a) assaulting, molesting or otherwise interfering with Mrs. Campbell; or
- b) shouting at, assaulting, or otherwise interfering with the minor child Kamran.

Accordingly, Michelle Campbell's application for an order restraining Cameron Campbell, his servants or agents from so doing is dismissed.

Occupation order

[17] Mrs. Campbell testified that she lives at Mc Kies Hill in the matrimonial home which comprises two stories. She explained that the couple's son and she occupy the upper floor which contains 3 bedrooms. She stated that the ground floor is rented out, as is the other residential building on the grounds of the property. She indicated that she does not know who collects the rent for those properties.

[18] Mrs. Campbell admitted that she has not been forcefully or peacefully excluded from occupying the matrimonial home. She also accepted that she has the keys to that residence. It is common ground that the family including Mr. Campbell have used this premises as the marital home and that Mr. Campbell stays there when he visits from the United States. Mrs. Campbell stated that to her knowledge he has not been back to the State of Saint Vincent and the Grenadines since before November 2019. She testified that she does not know if Mr. Campbell owns other property in Saint Vincent and the Grenadines.

[19] I am satisfied that Mrs. Campbell is already in unmolested occupation of the matrimonial home and that she and the minor child have free access to it. The court takes judicial notice that the parties have been engaged in settlement discussions in respect of an ancillary relief application¹¹ related to custody, maintenance, care and control and access to the minor child. They have

¹¹ Filed on February 17th, 2020.

represented that they have agreed the terms and are finalizing the draft order for presentation to the court for approval.

[20] Likewise, the parties have indicated that they have agreed the terms of a draft consent order relating to a separate application¹² made by Mrs. Campbell. In it, she was seeking an order restraining Mr. Campbell from disposing of the matrimonial home at Mc Kies Hill or otherwise dealing with it by mortgage, sale, pledge or other encumbrances or taking action to dissipate its value; or otherwise transferring ownership or title to anyone to avoid, prevent or reduce financial relief or property settlement.

[21] The parties presented the first draft of that order to the court on December 17th, 2020 for consideration. They have undertaken to finalize and re-submit it for the court's approval in the New Year. In light of this conciliatory approach to the ancillary relief applications which have already filed, it is hoped that the parties will similarly be able to amicably resolve the property issues. The court notes *en passant* that although the parties were directed to file ancillary relief applications on or before 17th February 2020, none was made by either party with respect of division of matrimonial assets, property adjustment or otherwise.

[22] I consider it unnecessary to make an order to permit Mrs. Campbell to occupy a property to which she has free access and in respect of which she has advanced no evidence that she is liable to be excluded from by Mr. Campbell. Mrs. Campbell's application for an occupation order is therefore dismissed.

Exclusion order

[23] Mrs. Campbell appears to rely on her allegations of abuse against Mr. Campbell to ground her application for an exclusion order. The court's finding that there is no evidence of such abuse erodes the foundation of this part of her case. She argued that the test in respect of the ouster jurisdiction appears to be laid out in section 4(2) of the Act. This is so. That provision provides:

‘the court may make such order as it thinks just and reasonable having regard to the conduct of the spouses in relation to each other and otherwise, to their respective needs and financial resources, to the needs of the children and to all the circumstances of the case.’

¹² Filed on November 13th, 2019.

- [24] Mrs. Campbell submitted that the subject property at Mc Kies Hill is the matrimonial home. She argued that while Mr. Campbell has had access to the home, he should be restrained from entering it for such period as the court may order. She reasoned that the mere fact that there is a child, the welfare of any child is an important, although not the paramount consideration. She cited the case of **Richards v Richards**¹³. Mrs. Campbell submitted that Mr. Campbell's behaviour is the bite factor. She argued that he has been recognized by a Vincentian judicial authority as being culpable as to actual or threatened violence against her. Mrs. Campbell submitted further that Mr. Campbell resides out of the jurisdiction and is therefore a visitor to the home on occasion.
- [25] Mrs. Campbell argued that case law provides useful examples of the court's exercise of discretion in respect of statutory injunctions. She cited **Davis v Johnson**¹⁴, **Richards v Richards**¹³, **Summers v Summers**¹⁵, **Wiseman v Simpson**¹⁶, **Blackstock v Blackstock**¹⁷, **Shirla King née James v Fitzroy King**¹⁸ and **Ronelle West v John West**¹⁹.
- [26] Mr. Campbell argued that section 4(1) of the Act is instructive. He pointed out that the subsection provides:
- 'Where each of two spouses is entitled, by virtue of a legal estate vested in them jointly, to occupy a dwelling house in which they have, or at any time have had, a matrimonial home, either of them may apply to the Court, with respect to the exercise during the subsistence of the marriage of the right to occupy the dwelling-house for an order prohibiting, suspending or restricting its exercise by the other or requiring the other to permit its exercise by the applicant'.
- He submitted that this provision requires that both parties own a joint legal interest in the dwelling house in respect of which the exclusion order is being sought.

¹³ [1984] AC 174 (House of Lords).

¹⁴ [1979] AC 264 (House of Lords).

¹⁵ [1986] 2 FLR 343 (English Court of Appeal).

¹⁶ [1998] 1 FLR 490 (English Court of Appeal).

¹⁷ [1991] 2 FLR 308 (English Court of Appeal).

¹⁸ SVGHCV1998/173.

¹⁹ SVGHCV2000/490.

- [27] Section 4(4) of the Act recognizes that a spouse who does not have a legal interest in matrimonial property may be entitled to a beneficial interest by virtue of some written law or contract. Section 32 of the Matrimonial Causes Act recognizes such entitlement. In the premises, it is conceivable that Mrs. Campbell may be so entitled. In this regard, the court may if circumstances warrant it, make an exclusion order even though she may not have a legal interest in the property.
- [28] In deciding whether to make an exclusion order, the court is enjoined to take into account all the circumstances of the case, including the conduct of both spouses in relation to each other and otherwise; their respective needs and financial resources and the needs of the children. Apart from Mrs. Campbell's assertions of cruelty towards her by Mr. Campbell, there is a paucity of pertinent details about the parties' behaviour towards each other. I note that Mrs. Campbell and the minor child of the family have occupied the matrimonial home continuously and without interruption from Mr. Campbell. Their accommodation needs are thereby fulfilled. The court accepts that Mr. Campbell lives out of the jurisdiction. There is no evidence that he owns other residential property in this jurisdiction.
- [29] To the credit of both spouses, they have been able to put aside their differences and work on arriving at an amicable agreement regarding the child's needs. The proposed consent agreement by which Mr. Campbell has undertaken not to dispose of the matrimonial home is also commendable. The parties' ability to agree on those matters demonstrates a measure of maturity and practicality which hopefully will enure to the benefit of the family unit notwithstanding the end of the marital union.
- [30] Both spouses and the child need housing. I take into consideration that Mr. Campbell lives abroad and has not been to the State of Saint Vincent and the Grenadines for over a year. It is reasonable to expect that he would need to be housed if he should visit before the other ancillary matters are finalized. I note Mrs. Campbell's testimony that she is not aware that he has other property in the state and further that the other building or unit at the Mc Kies Hill property are occupied by tenants. I remain mindful that the matrimonial home has 3 bedrooms and is capable of affording a private space to each spouse and the child respectively in the event that Mr. Campbell returns to the country in the short to medium term, while the ancillary proceedings are in abeyance.

[31] Mr. Campbell filed an affidavit²⁰. His averments were not tested by cross-examination. I consider it prudent not to place reliance on the contents, in the event that the other ancillary matters have to be resolved at trial. In any event, I am hopeful that Mr. and Mrs. Campbell can with reasonable diligence and with the same regard to equity that they have brought to bear on their son's needs, arrive at a reasonable arrangement for joint occupation of the matrimonial home, pending determination of the property-related ancillary proceedings.

[32] I have reviewed the authorities on which Mrs. Campbell relies and the relevant circumstances as described above. Nothing has been advanced about the parties' respective needs and the need of the minor child which justify the making of an exclusion order. Mrs. Campbell's allegations of abuse have not been made out. I am satisfied that no circumstances exist which warrant the making of an exclusion order against Mr. Campbell. The parties are each entitled to enjoy free and unhindered access to the matrimonial home, subject to agreement between them as to which bedroom each shall occupy. No exclusion order is made.

Costs

[33] It is usual in matrimonial proceedings to order that each party shall bear his or her own costs. There is no reason to depart from that approach. Mr. and Mrs. Campbell shall bear his or her own costs.

ORDER

[34] The order made on December 17th, 2020 is included in this decision for completeness. It was ordered:

1. Michelle Campbell's application for an order restraining Cameron Campbell, his servants or agents from assaulting, molesting or otherwise interfering with her is dismissed.
2. Michelle Campbell's application for an order restraining Cameron Campbell, his servants or agents from shouting at, assaulting, or otherwise interfering with the minor child Kamran is dismissed.

²⁰ On 17th November 2020.

3. Michelle Campbell's application for an order directing Cameron Campbell to permit her to enter and remain at the matrimonial home at Mc Kies Hill is dismissed.
4. Michelle Campbell's application for an order excluding Cameron Campbell from the matrimonial home and restraining him from returning to the matrimonial home at Mc Kies Hill is dismissed.
5. The parties are to enjoy joint access to the matrimonial home at Mc Kies Hill.
6. Each party shall bear his or her own costs.

[35] I am grateful to counsel for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar