

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHMT2012/0036

BETWEEN:

JULIETH ANESTA ADAMS NEE CODOUGAN
of Clifton, Union Island

PETITIONER

AND

WENDELL ANTHONY ADAMS
of Clifton, Union Island

RESPONDENT

Appearances:

Mr. Cecil A. 'Blazer' Williams for the Petitioner

Mr. Roderick Jones for the Respondent

2020: February 6
February 21

JUDGMENT

Byer, J.:

- [1] One of the most quintessential explanations of life after divorce is that statement contained in the case of **Philomena La Qua v Justin La Qua**¹ where Mohammed, J in quoting from the seminal case of **White v White**² had this to say, *"divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated in the most general terms the answer is obvious. Everyone would accept that the outcome on these matters whether by agreement or court order should be fair. More realistically, the outcome ought to be fair as is possible in all the circumstances. But everyone's life is different. Features which are important when assessing*

¹ GDAHMT2010/0006

² [2001] 1 All ER 1

fairness differs in each case and sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty is in the eye of the beholder”.

- [2] In the case at bar, there were no hugely wealthy individuals vying over boats, cars, university fees, just two people who had come to an end of a long relationship which at the time of the granting of the decree nisi in 2014, had lasted some 28 years and wanted what they considered was due to them.
- [3] By notice of application for ancillary relief filed on the 22nd May 2017, the Petitioner sought the following relief:
 - 1. Periodical payments under Sections 31(1)(a), 31(1)(b) and 31(1)(d) of the Matrimonial Causes Act;
 - 2. Lump sum payments under Section 31(1)(c) of the Matrimonial Causes Act and
 - 3. A property adjustment order to Section 32 of the Matrimonial Causes Act.
- [4] The Petitioner in support of this application filed an affidavit exhibiting several documents to establish her application but failed in essence to provide a detailed and therefore adequate affidavit of means for the court.
- [5] In response the Respondent filed an affidavit on the 9th August 2017 with the barest of assertions and no documentary evidence. In this regard it is necessary for some background to be given.
- [6] When the matter appeared on this court's docket for case management in 2019, this court and new counsel for the Respondent having realized that the affidavit filed since 2017 was less than adequate for the purposes, the Respondent was given leave to file a supplemental affidavit, such affidavit was to be filed by the 6th May 2019.
- [7] On the next court appearance on the 7th June 2019, some two months after that order had been granted, it was clear that the Respondent had still not filed this supplemental affidavit. Thus, upon the oral application of counsel for the Respondent, the court granted an extension of time for the Respondent to file the said affidavit by the close of business of the same day of hearing.
- [8] Despite this order having been made at the behest of counsel for the Respondent, at the hearing on the 5th July 2019, it was evident to the court from its record that the affidavit had in fact been filed some 5 days after the order of the 7th June hearing and the same was as uninformative and unsubstantiated as the affidavit of 2017.
- [9] Upon counsel realizing after the prompting of the court, that this affidavit was again sorely lacking, an application was made, without demurrer from the Petitioner's counsel, for a final attempt to provide a thorough affidavit of means on behalf of the Respondent. The said document was to be

prepared and filed by the 17th July 2019 and the matter was adjourned to the last day of the law year in July 2019.

- [10] On that date having failed to file the appropriate affidavit of means once again, the court felt constrained to issue an “unless order” giving the Respondent until the 2nd September 2019 to file the said document, failing which he would be barred from giving any further evidence. That affidavit was in fact filed on the 4th November 2019 and as such at the hearing for the case management directions on the 17th January 2020, the same was struck from the record.
- [11] Trial therefore was undertaken on the barest of information from the Respondent and the court can only infer that the Respondent had no interest in this matter or in assisting the court in resolving these long overdue issues. Be that as it may, this court is ever mindful that the overarching requirement upon the breakdown of a marriage is to achieve fairness as between the parties³.
- [12] In order to do justice to the application, this court will separate the relief as sought and deal with them individually.

Periodical Payments under Sections 31 (1)(a), 31 (1)(b) and 31 (1)(d) Matrimonial Causes Act⁴

- [13] This prayer dealt with periodical payments for the Petitioner⁵ and any children of the family⁶.
- [14] The court can deal in short order with the application for periodical payments in favour of the Petitioner.
- [15] By Section 34 of the Matrimonial Causes Act of St Vincent and the Grenadines⁷ the court is mandated to take certain factors into account when exercising its discretion in ancillary relief applications. These are well known to the court and to counsel, and I have no intention to rehash them here verbatim⁸. In using these considerations, the test that has emanated is termed the

³ Saunders JA in **Stonich v Stonich** Civ App No 17/2002 BVI

⁴ CAP 239

⁵ Section 31(1)(a) and (b)

⁶ Section 31(1)(d)

⁷ CAP 239

⁸ Matrimonial Causes Act Section 34 states:

1. *It shall be the duty of the Court in deciding whether to exercise its powers under section 31 (1)(a), (b) or (c), 32 or 33 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say-*
 - 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;*

“reasonable requirements” test⁹. That is, that rather than the narrow consideration of need of the party applying for the periodical payments being assessed, there is a need to consider what would be required in all the circumstances by that individual.

[16] However, I accept that this cannot be considered in a vacuum and it must be considered based on some evidential basis before the court.

[17] In this regard, it was indeed wholly unsatisfactory that this court had no evidence from the Respondent and very bald statements from the Petitioner regarding means and expenses.

[18] The Petitioner’s sole income seemed to have been based on monthly remittances from individuals or individual unknown via Money Gram or Western Union. However, having examined the exhibits attached to her affidavit I found that the sums were neither consistent nor of a fixed amount¹⁰ and this court believes that the Petitioner has not divulged all the income that she has at her disposal.

[19] The Respondent on the other hand merely informed the court that he had not worked since 2017 a fact which the Petitioner could not dispute. Rather on cross examination at trial she admitted the following:

“I have never known my husband to be managing any [of the family] business on his own”

“He is not a tradesman of any kind”

“I cannot say that he is currently employed”

“I do not know when was the last time he was employed”

[20] On this evidence alone, the court is of the opinion, that even if the Petitioner had adequately identified her needs or reasonable requirements, which I find as a fact she has not done on her evidence, there is no evidence upon which I can make an order in favour of the Petitioner. The Petitioner has not made out her case and this court is not in a position to grant this relief. This prayer is therefore dismissed.

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. *The contribution 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 to 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,*

And so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.”

⁹Ormond LJ in **O’D v O’D** [1973]3 WLR 308

¹⁰ Exhibit JAA7 to the affidavit of the 18/10/18

- [21] Unfortunately, since the Petitioner seeks to rely on the same evidence to support the application for periodical payments in favour of the minor child, the same considerations are applicable to this claim.
- [22] The Petitioner claimed in her affidavit anon-specific sum of \$200.00 per month which she stated was allocated for the upkeep of the child.
- [23] In the evidence of the Respondent when the question was asked as to his maintenance of the said child, he had this to say:
“... between 2016 and now I was not contributing to the children 100%. I did not contribute regularly.” And then on re-examination in clarification of this point he said *“I would send \$200.00 sometimes. I would send \$300.00”* from the income that he got from the commercial property which he stated in his affidavit of the 12th June 2019 was in the sum of \$400.00.
- [24] On this evidence and the admission of the Respondent as to his recognition of this ongoing obligation to pay maintenance for the child of the family, I am therefore constrained to make an order for periodical payments to be made in favour of the child of the family in the sum of \$250.00 per month to be paid on the first working day of the month into an account to be designated by the Petitioner to the Respondent for that purpose.

Lump Sum Payment under Section 31(1)(c)
Property Adjustment Order under Section 32

- [25] In this court's mind, there cannot be any consideration of a lump sum payment unless the court determines that the Petitioner is in fact entitled to a property adjustment order which quantifies her entitlement to property under consideration.
- [26] As my sister in the case of **Euvorn Bibby v Horace Bibby**¹¹ stated so succinctly:
“41. The Act empowers the court to make a property adjustment order. Among other things, a property adjustment order is used to settle property owned by one party for the other party's benefit, or to extinguish or reduce either party's interest to a settlement. As far as reasonably practicable and just, such an order is aimed at:
1. Achieving a clean break between the former spouses;
2. Placing them in the position they would have been in, had the marriage not broken down and each party had properly discharged his or her financial obligation towards the other; and
3. Ensuring that the parties' financial positions after the marriage remains as close as possible as during the marriage.”

¹¹ SVGHMT2015/0058

- [27] The only property in contention between these parties is a parcel of land that was gifted to the Respondent after the marriage by the Respondent's mother situate in Union Island in the Grenadines.
- [28] It is well accepted, that not all property acquired during a marriage can be automatically considered to be matrimonial property. Indeed *"matrimonial property is generally accepted as referring to assets which a husband and wife jointly acquire during the marriage, as a result of their collective efforts, whether by virtue of their employment within or outside of the house"*¹². While on the other hand, non-matrimonial property consists of assets brought into the marriage by the parties themselves or received through inheritance or gift during the course of the marriage¹³. However, this is not a hard and fast rule and such property may be taken into consideration in order to effect a fair outcome as between the parties¹⁴ and in fact the nature of any such acquisition would *"carry very little weight if any, where the claimant's financial needs cannot be met without recourse to this property"*¹⁵.
- [29] In this court's mind this case is one such instance where this differentiation would not result in fairness as between the parties. This is the only property on which the parties lived before marriage, after marriage and built the matrimonial home. This is the sole property that the Petitioner invested herself and built a life for herself together with the Respondent and raised their five children.
- [30] Thus despite the Respondent's attempt to discredit the extent of the Petitioner's contribution to the construction and maintenance of the house, the role as homemaker and even her contribution to the mortgage payments on a mortgage in his sole name, I do not accept the contention that the Petitioner was an unequal partner in the management of the family and the finances.
- [31] I accept that in fact the Petitioner worked just as hard as the Respondent in achieving what they did during the 28 years of marriage. I accept her version of how events occurred with regard to the payment of their salaries and the payment of the mortgage. I accept that she was pivotal in looking after the children of the family. I accept that after she stopped working in 2008 that she continued to "hustle" with the side businesses to assist the family until unhappy differences resulted in the parties going their separate ways in 2011. Having so accepted these facts, this court is of the opinion that the starting point of equality should not be deviated from in this case and as such I award the Petitioner fifty percent (50%) of the value of the matrimonial home including the property on which it stands.

¹² Per Henry J in **Kader Bramble v St Clair Bramble** SVGHMT2009/0041 quoting from **Miller v Miller** [2006] 1 All ER

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¹³ **Miller v Miller** op Cit para 21-23

¹⁴ **Bramble case**

¹⁵ **White v White** case per Lord Nicholls of Birkenhead

- [32] However I also accept on the evidence of the Petitioner that without recourse to the Respondent, she removed items of furniture from the house, which items were acquired during the marriage and which to some extent were paid for by both parties and for which she still has usage.
- [33] As a consequence, despite not having been given any value of these items I am satisfied that there must be a value ascribed to the same. I therefore reduce the Petitioner's fifty percent (50%) share by five percent (5%) for these furnishings and award her in total a forty-five percent (45%) share of the value of the home.
- [34] I again was given no information that could provide this court with a basis for ordering the payment of a lump sum payment for this value. In fact, the court is satisfied that the Respondent is not in a position to make any such payment and as such I refuse to make an order for a lump sum payment.
- [35] Rather the property is to be valued as of 2014 the cost of said valuation is to be shared equally between the parties, that is, at the time of the decree nisi and the value of forty-five percent (45%) is to be paid to the Petitioner in monthly installments until the said is paid off in full.
- [36] Finally, it was of some concern to the court that although the Petitioner in her sole affidavit made mention of the issue of custody of the minor child that her application made no such claim.
- [37] This was a strange proposition, given that it was evident from submissions made by counsel for the Petitioner that he was well aware of Section 64 of the Matrimonial Causes Act which forbids the making of the decree nisi absolute unless the Court has declared, where there are children under the age of 18, that there are satisfactory arrangements which have been made for that child.
- [38] On the hearing of the decree nisi in 2014, the court specifically ordered that the decree nisi would not be made absolute unless an order was made with regard to the minor children pursuant to Section 64 of the Matrimonial Causes Act¹⁶. To date this has not been done.
- [39] Additionally on the acknowledgment of service filed on behalf of the Respondent in 2012, the Respondent made it clear that he did not wish to be heard on the issue of custody of the minor children (as they were at that time) nor did he wish to be heard on the issue of maintenance or make any application on his own account on the same¹⁷.
- [40] On this basis therefore the court now confirms the proposed arrangements contained in the Statement of Arrangements filed on behalf of the Petitioner on the 11th April 2012. It was clear from the evidence that was led before this court that the sole child who remains a minor, resides with

¹⁶ Order of Combie-Martyr J on 1/4/2014

¹⁷ Acknowledgment of Service filed 2/11/2012

her mother here on mainland St Vincent. From the affidavit evidence of the Respondent and the evidence even on cross examination the Respondent has never sought to disrupt this living arrangement or question the same. I therefore order in terms of the statement of arrangements filed and order that the minor child shall reside with the Petitioner, that custody will be awarded to the Petitioner together with care and control and in the place of reasonable access as proposed therein, I order that the Respondent is to be given liberal access to this minor child. The Petitioner is to ensure that the minor child therefore has unrestricted access to the Respondent.

Order of the Court is therefore as follows:

1. The prayer for periodical payments in favour of the Petitioner is dismissed.
2. The prayer for periodical payments in favour of the minor child is granted and the Respondent is to pay the sum of \$250.00 per month for the maintenance of the said child until she turns 18 or sooner dies or marries.
3. The prayer for a lump sum payment is dismissed.
4. The prayer for a property adjustment order is granted and the Petitioner is entitled to a 45% share of the matrimonial home – land and house in Union Island, the Grenadines and the same is to be paid in accordance with paragraph 35 above.
5. Under the powers of the court to safeguard the welfare of the child of the family and to ensure that Section 64 of the Matrimonial Causes Act is adhered to the court on its own volition and in keeping with the statement of arrangements filed on behalf of the Petitioner, awards the Petitioner custody of the said minor child with care and control to her and with liberal access to the Respondent.
6. Liberty to apply.
7. No order as to costs.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar