

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim Number: **NEVHMT2017/0026**

Between

Anthony David Archibald

Petitioner

and

Eloris Terrilyn Archibald

Respondent

Before: His Lordship Justice Ermin Moise

Appearances:

Mr. Ricaldo Caines of counsel for the Petitioner/Respondent
Mrs. Myrna Walwyn of counsel for the Respondent/Applicant

Both Parties Present

2019: October, 15th
2020: January, 20th

JUDGEMENT

[1] **Moise, J.:** This is an application for ancillary relief. The parties were married on 14th August, 1982. Their divorce was made final on 22nd July, 2018. Before me now is an application for ancillary relief. There are no minor children for which any orders are to be made. The issue between the parties relate to the separation of matrimonial property.

[2] The parties are largely agreed that the matrimonial home which they shared at Hamilton Estate in the Parish of Saint John in Nevis is owned jointly. The evidence is that the land on which the home is built was gifted to the couple by the respondent's mother in 1992. There is some dispute as to whether or not that was the original intention. However, the respondent concedes that the property is owned jointly and there is no need to settle what was a minor difference regarding the intention of the respondent's mother upon transfer.

- [3] The difficulty which the parties face is that this property is heavily encumbered by a mortgage in favour of the Bank of Nova Scotia. This mortgage was initially taken for the construction of the family home from a Credit Union but was later taken over by the Bank. The monthly installments on the repayment of that mortgage were deducted from the petitioner's income whilst the respondent attended to the other expenses of the family.
- [4] However, sometime in 2016, the petitioner retired from his job at the Nevis Electricity Company Limited (NEVLEC). He thereafter defaulted on the loan payments. According to the respondent, by that time they were having difficulties in their marriage. Notwithstanding this, in January of 2017, the respondent managed to convince the petitioner to sign over his social security payments to the bank. These were in the sum of \$2,300.00. The respondent thereafter paid the balance of \$740.00 towards the monthly installment. However, in April, 2017 the petitioner ceased all payments towards the mortgage. My understanding is that he has made no payments since then.
- [5] The petitioner, in his affidavit, stated that the respondent was aware of the change in his financial position when he retired. In fact, he states that as far back as 2015 he informed her that he was due to retire and could no longer meet the financial obligations. He insists that the respondent has allowed their adult son to live on the premises with his own family and that in those circumstances he should contribute to the mortgage payments. He stated that apart from his social security payments of \$2,300.00 monthly and a further \$1,000.00 from his government pension, he has no further income.
- [6] However, it was only during the course of the proceedings that it was disclosed that the petitioner had in fact received a lump sum payment of \$69,549.78 from Sagicor Life Inc. as an optional cash refund of his compulsory contributions to NEVLEC's pension plan. That information was only secured by an order of the court and was not provided voluntarily by the petitioner. Further to that, the respondent asserts that the motor vehicle which was purchased by way of loan facility charged against the property in question was sold by the petitioner without any disclosure of what the purchase price was. He purchased another vehicle whilst the mortgage on the matrimonial home remained in arrears. Currently, the respondent continues to make payments towards the mortgage. However, her income is insufficient to cover the monthly premium. The arrears therefore continues to amount with interest.

- [7] The parties also owned another parcel of land which I understand is unencumbered. It is cultivated with fruit crops. The evidence however does not indicate the extent to which any income is derived from it. It also appears to be under the petitioner's control. The parties have provided no valuation of either of the properties.
- [8] In her oral submissions Counsel for the petitioner refers the court to the **Married Women's Property Act**¹. In particular section 19 of the Act states as follows:

“In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid, in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any Judge; and such Judge may make such order with respect to the property in dispute, and as to the costs of and consequent on the application, as he or she thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he or she shall think fit...”

- [9] Counsel for the petitioner does not dispute the law under which this application is to be considered. The facts of the case are not generally in dispute. The only issue is what orders can be made which best meets the ends of justice, given that the parties are now divorced and wish to go their separate ways. What compounds the issue is that the matrimonial home is encumbered with debt for which the parties are jointly responsible. Although the petitioner initially sought an order transferring the matrimonial home to the respondent, he did so on the premise that he no longer remained responsible for the debt. This desire on his part completely ignores the fact that the loan is in a considerable amount of arrears primarily because of his actions. He later modified his stance and now seeks an order that the property be sold, the debt paid off and the balance of the proceeds be shared between the parties.

- [10] The respondent, on the other hand, wishes to preserve her ownership in the home. The property was gifted to her by her mother over 27 years ago now and there is no doubt that there is some

¹ CAP12.11 of the Laws of St. Christopher and Nevis

sentimental value in it for her. She wishes to seek an opportunity to take over the loan but only requests that the petitioner clears the arrears that he had allowed to build up over the years. The respondent must however observe that the interests of the bank are overriding in these circumstances and any order which the court makes must take this into account.

Conclusions

[11] I am of the view that an opportunity should be given to the respondent to retain ownership of the matrimonial home. This would be the most equitable solution to this matter. However, this must be dependent on her ability to seek the necessary financing from the bank to pay off the debt for which the parties are jointly liable. However I do acknowledge the fact that the respondent has occupied the matrimonial home exclusively for some time now. Whilst I appreciate the challenges now faced with the arrears I am of the view that an order demanding payment of the arrears by the petitioner may not result in a proper resolution to the matter. As it relates to the other property owned jointly by the parties there is little dispute in how this is to be divided. In the circumstances I make the following orders:

- (a) The petitioner is to transfer his 50% share in the matrimonial property to the respondent provided that she is capable of obtaining the necessary financing to take full responsibility of the mortgage debt due and owing on the property;
- (b) The respondent is granted a period of 120 days from 1st February, 2020, within which to obtain the necessary financing. In the event that she is unable to do so, the parties are to jointly instruct a quantity surveyor to ascertain the current value of the matrimonial property. The property is to thereafter be sold and the net proceeds, after the payment of all debts and fees, shared equally between the parties;
- (c) The petitioner is to pay to the respondent her 50% share in the value of the property located at Stoney Grove, in the parish of Saint John, Nevis and owned jointly between them. In the event that the petitioner is unable to do so within a period of 120 days commencing 1st February, 2020, the parties are to jointly instruct a quantity surveyor to ascertain the current value of the

property. The property is to thereafter be sold and the net proceeds shared equally between the parties;

(d) Each party will bare their own costs;

(e) The parties are at liberty to apply for a variation of the terms of this order.

**Ermin Moise
High Court Judge**

By the Court

Registrar