

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

**ST. CHRISTOPHER & NEVIS
NEVIS CIRCUIT**

CLAIM NO. NEVHMT2017/0035

BETWEEN:

JOYAH HENDRICKSON

Petitioner/Applicant

and

ANDREW HENDRICKSON

Respondent

Before:

The Hon. Mde. Justice Lorraine Williams

High Court Judge

Appearances:

Ms Midge Morton for Petitioner/Applicant

Mr John Cato for the Respondent

2018: October, 24th
2019: November, 29th

JUDGMENT

[1] **WILLIAMS, J.:** The Petitioner/Applicant Joyah Hendrickson has filed an application before this Court for the following orders:

- (1) That the Respondent be ordered to secure or pay such lump sum or periodic sums as the Court thinks reasonable for the support of the Petitioner/Applicant.
- (2) That the Petitioner/Applicant be granted such interest or corresponding value to her in the former matrimonial home located at Ramsbury Site, Charlestown, Nevis as the Court thinks she is entitled.
- (3) That the Petitioner/Applicant be granted such interest and or the value of such interest in the chattel house used or to be used as a shop and currently situated on the Respondent's property at Ramsbury Site, Charlestown, Nevis.
- (4) That the Respondent be condemned to pay the costs of these proceedings.

[2] The grounds of the Application are as follows:

Spousal support

- (1) That the Applicant/Petitioner requires reasonable spousal support in accordance with Section 15 of the Divorce Act Cap 12.03. Section 15(1) allows the Court to grant a permanent order as to spousal support. Alternatively Section 15(2) thereof allows the Court to consider making an Interim order requiring one spouse to secure and/or pay such lump sum or periodic sums as the Court thinks reasonable for the support of the other spouse, pending the determination of the Application under subsection(1).
- (2) That the Respondent has failed to provide adequate spousal support for the maintenance and upkeep of the Applicant/Petitioner, to which she claims entitlement and as a consequence of his conduct, the Applicant/Petitioner was forced to seek alternative residence, in rental accommodations at Cole Hill, St John's parish, Nevis.

[3] The Parties were married on the 26th January, 2014 and cohabited inter alia at Ramsbury Site, Charlestown, Nevis and Cole Hill, St John's Parish, Nevis during the course of their marriage. The Petitioner/Applicant performed all wifely duties

for the Respondent during the course of the cohabitation.

- [4] Following the breakdown of the marriage the Petitioner/Applicant suffered severe economic disadvantages, with limited advantages, the latter being enjoyed most by the Respondent to the Petitioner's/Applicant's detriment.
- [5] Moreover the Petitioner/Applicant suffered economic hardship upon the breakdown of the marriage, and continues to do so up to the present.
- [6] The Petitioner/Applicant has also filed an Affidavit in support dated 3rd May, 2018 in which she details the history and breakdown of the marriage and requests the Court to order
 - (1) The Respondent to pay her a lump sum or periodic sums as the Court deems reasonable for her support.
 - (2) To grant her 25% interest or corresponding value in the former matrimonial home at Ramsbury Site, Charlestown, Nevis.
 - (3) To grant her such interest or the value of such interest in the shop situated on the Respondent's property at Ramsbury Site, Charlestown, Nevis.
 - (4) To order the Respondent to pay the costs of these proceedings.
- [7] The Respondent, Andrew Hendrickson filed an Affidavit in response dated the 31st July, 2018 in which he details the history and breakdown of the marriage and requests the Court to dismiss the Petitioner's/Applicant's application for Ancillary relief with costs.

The Issues

- [8] The issues for determination are:
 - (1) Whether the Respondent should be ordered to pay spousal support to the Applicant/Petitioner.
 - (2) Whether the Applicant/Petitioner is entitled to an interest in the former

matrimonial home and the value of that interest.

- (3) Whether the Applicant/Petitioner should be granted an entitlement of interest in the chattel house used as a shop, currently situated at the Respondent's property in Ramsbury, Nevis.

Spousal support

- [9] The Petitioner/Applicant in her supporting Affidavit listed her monthly expenses for the rental of an apartment at Cole Hill, St John's Parish, Nevis. The rent for the apartment is listed at:

- (1) EC\$900.00 per month
- (2) Electricity bill – EC\$175.00 per month
- (3) Water bill – EC\$50.00 per month
- (4) Student loan from St. Kitts/Nevis Development Bank – EC\$700.00 per month
- (5) Vehicle loan from FND Credit Union – EC\$1,000.00 per month
- (6) Gas for vehicle – EC\$100.00 per month
- (7) Grocery bill – EC\$300.00 per month

- [10] The Petitioner/Applicant has not produced any documents to substantiate the expenses above.

- [11] The Petitioner/Applicant states further that she contributed to the marriage by making substantial financial contributions towards the purchasing of materials to upgrade the existing structure to the partially concrete structure that currently exists. The Petitioner/Applicant also states that she washed, cooked and cleaned for the Respondent.

- [12] In relation to the loan at FND Credit Union, the Petitioner/Applicant states that it was the Respondent who encouraged her to take out a loan for EC\$11,000.00 to assist him in acquiring a chattel structure to be used as a shop at the former

matrimonial home¹.

The Petitioner/Applicant further states that she repaid the loan in full without assistance from the Respondent by December 2017².

[13] The Petitioner/Applicant also states that the Respondent and she received an estimate for the work to be done on the shop, to complete the shop³, and in anticipation of commencing operations at the shop, she purchased a pizza oven warmer, and a pastry warmer valued at US\$269.00; and US\$34.00; which the Respondent has in his possession.

[14] The Petitioner/Applicant further states that she never had use of the said shop which is situated on the Respondent's property at Ramsbury, Nevis. The Respondent offered to give her EC\$20,000.00 which he claimed was the value of her share in the shop, which she has rejected.

[15] The Petitioner/Applicant claims that the Respondent earns a salary of EC\$5,500.00 and also receives a vehicle allowance, and Health Insurance, and he is the owner of three trucks.

[16] However on the 17th September, 2015, the Petitioner/Applicant states that the Respondent and herself obtained a loan of EC\$32,000.00 with interest at the rate of 15% to assist with the purchase of a vehicle.

The Petitioner/Applicant states that the Respondent has full access to a brand new vehicle belonging to his employers; while she purchased a 2008 Chrysler Pacifica in their joint names.

¹ See: Exhibit J.H 4

² See: Exhibit J.H 5

³ See: Exhibit J.H 7

The Respondent's Submissions

- [17] The Respondent Andrew Hendrickson in his affidavit evidence stated that the Petitioner/Applicant left the home he had provided for her in September 2014 and unknown to him, she took a lease for an apartment in Cole Hill, St John's Parish, Nevis, where she still resides.
- [18] The Respondent states further that during the marriage, the Petitioner/Applicant earned EC\$5,000.00 per month including commissions and Travel Allowance, while he earned EC\$3,000.00 per month as a Trainee Financial Officer with Sagicor.
- [19] The Respondent also states that their finances were organized in a collaborative manner since both of them had obligations to maintain their children from previous relationships.
- [20] The Respondent admits that their marriage was short, and that the Petitioner/Applicant brought no financial assets into the marriage. Further he was the one who went to the company FINCO to borrow EC\$10,000.00 so that the Petitioner/Applicant could go to Barbados with her children to get United States Visas.
- [21] The Respondent claims that he only recently begun a new job as the Manager of Solid Waste Management Corporation in Nevis. He is provided with a car by the company and has allowed the Petitioner/Applicant to use the car both in St. Kitts and Nevis.
- The Respondent also states that he has had to borrow money to meet his debts, and to try to supplement his Trucking business which is non-existent due to a breakdown in the vehicles.

- [22] The Respondent is adamant that he does not have any obligation to the Petitioner/Applicant, in terms of spousal support, or any division of property that he acquired before he met the Petitioner/Applicant.

The Law

- [23] Section 15(1) of the Divorce Act Cap 12.03 of the Laws of St. Christopher & Nevis allows the Court to grant a permanent order as to spousal support. Alternately Section 15(2) allows the Court to consider making an interim order requiring one spouse to secure and or pay such lump sum or periodic sums as the Court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection(1).
- [24] In deciding whether to make an order for spousal support, the Court has to consider the condition, means, needs and other circumstances of each spouse including:
- (1) the length of time the spouses cohabited
 - (2) the functions performed by the spouse during the cohabitation, and
 - (3) any order, agreement or arrangement relating to support of the spouse
- [25] Additionally, the Court has to recognize any Economic advantages or disadvantages to the spouses arising from the marriage or its breakdown; apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses; relieve any Economic hardship of the spouses arising from the breakdown of the marriage and in so far as practicable, promote the self sufficiency of each spouse within a reasonable amount of time.

Length of time of Cohabitation

- [26] In the case at Bar, the Parties were married on the 26th January, 2014 and granted a Divorce on the 19th March, 2018, the total number of years of cohabitation is four.

The short duration of the marriage is of no great significance in this case. The case of **Cumbers vs Cumbers**⁴ is authority for the view that the short duration of marriage does not necessarily debar a wife from benefitting from a lump sum order if she has played a part in the marriage which deserved compensation.

In the case under reference, the marriage was very short, the Parties having separated about eighteen months after their marriage. The husband had acquired a house on Mortgage shortly before the marriage, and was paying the installments on it during the marriage. The wife had one child, and the Court found that she helped the family, by going out to work.

After the breakup of the marriage, the husband sold the house for a net sum of \$1,600.00 and the Court of Appeal ordered that the wife be awarded \$500.00 despite the short duration of the marriage, because of her contribution to the welfare of the family.

- [27] According to the authors of **Rayden and Jackson on Divorce and Family Matters** at paragraph 16.62 **14th Edition**

“There is no scale which shows whether a marriage is to be regarded as short or medium, or long.”

Where it is alleged that the duration of the marriage is particularly relevant, it is usually asserted as an argument to reduce the amount to be awarded because the marriage is of short duration. It is open to an applicant for Ancillary relief to counter the argument that provision should be restricted due to the brevity of the marriage, by asserting that the breakdown of the marriage was brought about by the behavior of the Respondent to the application.

⁴ [1975] 1 A11ER

- [28] The case of **Cykie Addelle Williams-Peters vs Bryan Ernest Peters**⁵ ANUHMT2015/0105 is also instructive on this matter, and reflects the well settled Law that the fact that the marriage as in the case at Bar was for four years is of no real significance and should not be used against the Petitioner in an application for spousal support.

Functions performed during cohabitation

- [29] The Petitioner/Applicant stated in her Affidavit at Paragraph 17:

“ Whilst at the former matrimonial home and even up to November 2017, when our relationship came to an end, I contributed to the marriage as a wife by making substantial financial contributions towards the purchasing of materials, upgrade the then existing structure to the partially concrete structure that currently exists.

My contributions ensured that the building was advanced from foundation to beam height; I washed and cooked and cleaned for the Respondent, and did all other wifely duties and make a home for him.”

- [30] In the case of **White vs White**⁶ per Lord Nicholls, he stated in relation to contributions made by spouses:

“In seeking to achieve a fair outcome there is no place for discrimination between husband and wife, and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children.

Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day; frequently both parents work; sometimes it is the wife who is the money earner, and the husband runs the home and cares for the children during the day.

⁵ ANUHMT2015/0105

⁶ [2001] 1AC 596

But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering the Parties contributions.”

[31] In applying this authority to the case at Bar, it is my respectful opinion that the Petitioner's/Applicant's contributions should be considered equal for the most part to the Respondent's contributions and that she should not be disadvantaged when considering her contributions during cohabitation.

I find great difficulty in accepting the affidavit evidence of the Respondent as representing the true position of the Parties in this case.

[32] Apart from a computer generated statement of Monthly Income and Expenditure of the Respondent, the Respondent has not provided documentary evidence to support his assertions contained in the Affidavit in response.

[33] With regard to the beneficial interest in the property, I am mindful that the practical reality of the parties' contributions does not automatically result in a division of the beneficial interest along purely financial lines. The Court must consider that there would be discrepancies in Income between the parties, and that this would affect the amount and type of contribution that they make in the context of the Matrimonial Property.

[34] I do not accept the Respondent's evidence that he was the major contributor to the maintenance and upkeep of the home and that his wife the Petitioner/Applicant brought no financial assets into the marriage; and that he was the one who paid all the debts of the household.

[35] This Court adopts the principles applied in **Gissing vs Gissing**⁷ when seeking to ascertain the extent of a spouse's contribution where there is no evidence of an express agreement as to how that share is to be quantified.

"In such a case, the Court must first do its best to discover from the conduct of the spouses whatever any inference can reasonably be drawn, as to the probable common understanding about the amount of the share of the contributing spouse, on which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently."

[36] Neither of the Parties has suggested that there was any understanding, agreement or formulation at the time of acquisition or during the course of the construction of the matrimonial home.

[37] The Court further noted in the said case that *"It is only if no such inference can be drawn that the court is driven to apply as a rule, and not as an inference of fact, the maxim "Equality is Equity", and to hold that the beneficial interest belongs to the spouses "in equal shares"."*

[38] The Court also stated in defining those principles

"I think the high sound brocard "Equality is Equity" has been misused there will be of course, cases where a half share is a reasonable estimation, but there will be many others where a fair estimate might be a tenth, or a quarter, or sometimes even more than half".

[39] I have considered all of the Evidence in this matter. The Petitioner/Applicant asserts that she should be awarded 50% of the chattel house acquired through a loan which she paid off although it was acquired in the Parties joint names.

⁷ [1969] 2 ch 85

The Respondent has not provided any documentary evidence to refute the Petitioner's/Applicant's claim relating to the chattel house, and I therefore lean to the conclusion that the significantly greater financial contribution made by the Petitioner/Applicant to the chattel house used as a shop, should be reflected in the respective beneficial interest of the Parties, in the matrimonial property.

[40] The Petitioner/Applicant according to her affidavit evidence took out a loan of EC\$11,000.00 from the FNB Credit Union which she solely repaid in full.

I accept her evidence which remains unchallenged.

In relation to the matrimonial home, the Petitioner/Applicant makes a claim for 25% of the value of the house on the basis of her contributions which include the purchasing of sand, stone and other building materials to the progressing of the property from foundation to beam heights.

Economic Advantages vs Disadvantages

[41] It is the Petitioner's/Applicant's contention that during the marriage, she lived without having to pay any mortgage or rent; the Respondent paid all the Utilities, but they shared the grocery bill.

[42] Since the breakdown of the marriage, the Petitioner/Applicant has to pay rent for the accommodation she now rents at Cole Hill, St John's Parish, Nevis as well as the Utility bills.

On the other hand, the Respondent is provided with Transportation and Allowances in his position as General Manager of the Nevis Solid Waste Management Authority.

[43] **Rayden and Jackson on Divorce and Family Matters** at paragraph 16.65 is instructive on this matter.

"Where there are no children, and the marriage is very short, the general attitude of the Courts has been that where provision is called for, the

person in the weaker financial position (usually the wife) should be given a modest lump sum and or a brief period of periodical payments designed to enable her to adjust herself to the situation and resume her career.”

[44] In applying the Law, I will consider the Applicant's/Petitioner's application favourably and award her 50% of the value of the chattel house and 25% of the value of the Matrimonial Property⁸.

[45] Accordingly, having regard to the needs of the Petitioner/Applicant in respect of the Car loan and the Student loan for her daughter that she has to repay and the obvious lifestyle she enjoyed prior to the breakdown of the marriage and the part she played in the marriage, it is only fair that Mr Hendrickson pays the sum of EC\$1,000.00 per month as spousal support commencing on the 1st January, 2020 and continuing for the next two years.

This sum should compensate the Petitioner/Applicant for being a dutiful wife, and aid in promoting herself sufficiency.

Conclusion

[46] The Court's order is as follows:

- (1) The Respondent Andrew Hendrickson shall pay to the Applicant/Petitioner Joyah Hendrickson the monthly sum of EC\$1,000.00 from the 1st January, 2020 and continuing for the next two years unless the Applicant remarries or sooner dies.
- (2) The Petitioner/Applicant is entitled to a 25% share in the Matrimonial Property. The Respondent is entitled to a 75% share in the Matrimonial Property located at Ramsbury Site, Charlestown, Nevis.
- (3) The Petitioner/Applicant is entitled to a 50% share in the chattel house property used as a shop. The Respondent is entitled to a 50% share in the chattel house property used as a shop.

⁸ See: Stach vs Dowden; Abbott vs Abbott

- (4) The properties shall be valued by a reputable and independent valuator to be agreed upon by the Parties within one month of the date of this order.
- (5) The Petitioner/Applicant shall be at liberty to purchase the Respondent's 75% share in the net value of the Matrimonial Property and the 50% share of the net value of the chattel house used as a shop, taking into account the amount of any outstanding Mortgage within three months of the date of this order. If the Petitioner/Applicant agrees to purchase the Respondent's 75% share in the Matrimonial Property, the Respondent shall be permitted to remain in the said Matrimonial Property until receipt of the value of his 75% share in the net value of the Matrimonial Property.
- (6) If the Petitioner/Applicant is unable to purchase the Respondent's share of the properties within three months, the Respondent shall be at liberty to purchase the Petitioner's/Applicant's share in the Matrimonial Property and the chattel house used as a shop within six months of the date of this order.
- (7) If at the end of this period, neither party is able to purchase the other's share in the value of the properties, both properties shall be sold and the net proceeds divided as outlined above, taking into account any outstanding mortgage.
- (8) Each Party will bear their costs in the matter.
- (9) I apologise for the delay in the delivery of this Judgment.

Lorraine Williams
High Court Judge

By the Court

Registrar