

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHMT2018/110

**IN THE MATTER OF THE PETITION OF SYLVESTER AUGUSTINE WILLIAMS FOR DISSOLUTION OF
MARRIAGE**

BETWEEN:

SYLVESTER AUGUSTINE WILLIAMS

PETITIONER

AND

SUE-ANN SHERNETTE WILLIAMS (NÉE JOHNSON)

RESPONDENT

Appearances:

Ms. Moureeze Franklyn of counsel for the petitioner/applicant.

Ms. Kensha Theobalds of counsel for the respondent.

2019: Jul. 17

Jul. 22

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** Mr. Sylvester Williams and Mrs. Sue-Ann Williams were married on December 26th 2002. The marriage broke down and Mr. Williams petitioned the court for a divorce. A decree nisi of divorce was granted¹. Mr. Williams has applied² for an order requiring Mrs. Williams to vacate the home that they jointly occupy and for joint custody of their minor child Shani. Mrs. Williams did not oppose the application for joint custody but she has resisted the application for an order that she vacate the home.

¹ On 21st January 2019.

² On 27th February 2019.

- [2] The parties agree that the matrimonial home is constructed on land which is owned by Mr. Williams' mother, Ms. Iona Williams and registered by Deed of Gift No. 2928 of 1988³. Mr. Williams contended that he is entitled to a 70% share in the matrimonial property. He submitted that an appropriate order would be for him to make periodical payments to Mrs. Williams in respect of her interest in it.⁴ Mrs. Williams countered that she made significant contributions towards the construction and improvement of the matrimonial home. She submitted that her interest in it is no less than 50%.⁵
- [3] The parties testified that the Family Court had made an order for Mr. Williams to pay \$270.00 per month for Shani's maintenance. Mr. Williams insisted that his maintenance payments are current. No evidence was provided to support or contradict his assertion. That court order is still in place. Mrs. Williams stated that that she was seeking increased maintenance of \$400.00 per month for Shani. She made no formal application for variation. Mr. Williams contended that there is no need to increase the maintenance amount.
- [4] The parties are granted joint custody of Shani until she attains the age of 18 years. It is declared that Mr. Williams is entitled to a 60% beneficial interest and Mrs. Williams owns 40% of the beneficial interest in the building they have occupied together as the matrimonial home. The legal estate in the land and building is vested in Ms. Iona Williams.

ISSUE

- [5] The issues are:
1. What order should be made for Shani's custody, care, control and maintenance?
 2. To what interest in the matrimonial home are the parties entitled? and
 3. Whether Mrs. Williams should be directed to vacate the matrimonial home?

ANALYSIS

Issue 1 – What order should be made for Shani's custody, care, control and maintenance?

- [6] There is no dispute between the parties regarding Shani's custody, care and control. She lives at

³ Registered on 25th October 1988.

⁴ Supplemental Skeleton Argument on behalf of the Petitioner, filed on 28th June 2019.

⁵ Supplemental Skeleton Argument on behalf of the Respondent, filed on 27th June 2019.

home with both parents. She is 17 years old and currently attends the Saint Vincent and the Grenadines Community College. Mrs. Williams indicated that she is content to retain primary care and control over Shani and share custody with Mr. Williams. I am satisfied that this would serve Shani's best interests. An order to this effect is accordingly made.

- [7] By a protection order of the Family Court made by consent on November 7th 2018, sleeping arrangements were made for the parties and Shani. Mr. Williams was also ordered to pay monthly maintenance for Shani with effect from 30th November 2018. Neither party has presented any evidence which demonstrates that their or Shani's needs and circumstances have changed significantly since the order was made less than a year ago.
- [8] Nothing has been adduced which leads me to conclude that a variation of the order is just in the circumstances. Moreover, there is no formal application before the court for such variation. I make no order to vary the referenced order.

Issue 2 – To what interest in the referenced home are the parties entitled?

- [9] The main bone of contention between the Williamses is what interest Mrs. Williams has acquired in the matrimonial home. Initially, Mr. Williams adopted the posture that Mrs. Williams was not entitled to any share in the matrimonial house because it is owned by his mother. In his skeleton arguments filed on 24th April 2019 he submitted that the family home rests on land belonging to a third party and is therefore not subject to the court's jurisdiction.
- [10] Subsequently, he argued⁶ that the house cannot 'stand in its own right divisible from the land upon which it stands.' He submitted further that the court must have regard to the parties' respective needs and determine their respective shares in the matrimonial home. Mr. Williams has thereby correctly conceded that any contributions made by the respective parties towards construction or improvement of the house create a beneficial interest for such person which the court may ascribe to him or her and apportion based on the applicable rules and what is fair.⁷
- [11] In the case of **Miller v Miller; McFarlane v McFarlane**⁷ Lord Nicholls described aspects of the fairness objective. He opined:

⁶ In his Supplemental Skeleton Arguments filed on 28th June 2019.

⁷ *Miller v Miller; McFarlane v McFarlane* [2006] UKHL 24 at paras. 9 and 11.

[9] ... The search is always for what are the *requirements* of fairness in the particular case.

[11] This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. ... fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs, taking into account a wide range of matters ...'

[12] There is little disagreement between Mr. and Mrs. Williams as to whether the house in which they reside is the matrimonial home. At first, Mr. Williams refuted that this was the case but later accepted that it was. In the case at bar, the parties are agreed that Mrs. Williams moved to live with Mr. Williams at the subject property before they married. Mrs. Williams maintained that this took place in 1993 while Mr. Williams insisted that it was in 1994. What is certain is that she was living there in 1994.

[13] The parties accept that the house was unfinished and that during the course of their relationship they continued to live there and carried out improvements and extensions to the original structure. Mr. Williams did not dispute that Mrs. Williams contributed to those endeavours and obtained a loan in her name to finance aspects of the construction. They have lived at the subject property throughout their relationship and still do. I am satisfied that the property is their matrimonial home and I so find.

[14] In arriving at a fair outcome for Mr. and Mrs. Williams the Court must consider⁸ all relevant surrounding circumstances including the age of each party; their respective needs, obligations, financial resources, earning capacity, physical and mental health, contributions to the family welfare; and the duration of the marriage. The Court must also take account of their conduct relative to the matrimonial property; the standard of living enjoyed during the marriage and the value of any benefit which either party will lose as a result of the divorce.

[15] Achieving fairness requires that the Court endeavours to place each party, so far as reasonably

⁸ In accordance with section 34 of the Matrimonial Causes Act, Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, Revised Edition 2009 ('the Act').

practicable and just, in the position that he or she would have been if the marriage had not broken down and if each party had properly discharged his or her financial obligation towards the other.

- [16] When making its determination about the parties' respective shares the Court will consider many factors. It is now established that the Court must try to ascertain each party's intention at the time the property was acquired and whether those intentions changed. The Court must look at the entire course of conduct of parties to determine their intentions in relation to the acquisition and ownership of property in a marriage.⁹ Each case must be determined on its own facts.
- [17] The Court will also examine the financial contributions made by each party towards the construction and improvement of the property; discussions they had at the time or since then; the purpose for its construction; whether they had children for whom they had to provide a home; how the acquisition was financed; and how they arranged their finances and covered expenses.¹⁰
- [18] The Act stipulates that where a third party owns a beneficial interest in matrimonial property, the Court may not make an order for sale of the property unless the third party is given an opportunity to make representations. Ms. Iona Williams was not presented as a witness or interested party in this matter. Her future intentions regarding the land are unknown. It is therefore not open to the Court to make an order for sale of the subject property since neither party owns the legal interest in it. I now turn to look at the Williams' circumstances and their history of dealing with each other.

Contributions to matrimonial home and family welfare

- [19] Mr. Williams is a tradesman and general handyman. Mrs. Williams is a cashier at a supermarket. They were married for 16 years. Mr. Williams earns \$750.00 per month from his regular job at St. Vincent Jewelry Ltd. He receives a pension of \$217.00 each fortnight. He also does odd jobs on weekends which supplement his income by \$750.00 each month, on average. His total income is approximately \$2,334.00 per month. In his affidavit of means filed on 7th June 2019 he disclosed only the regular salary and the pension. He provided no documentary proof of his averments.
- [20] Importantly, Mr. Williams deposed that he had no other sources of income. It was only during cross-examination that he admitted that he had other regular earnings. This deliberate mis-statement

⁹ Stack v Dowden [2007] 2 ALL ER 929.

¹⁰ At para. 69 of Stack v Dowden.

undermines his credibility. He was also less than frank in other areas of his testimony. Consequently, where there are material discrepancies between his account and Mrs. Williams', her testimony is preferred and accepted.

[21] Mrs. Williams receives a weekly salary of \$229.20. This converts to roughly \$920.00 per month. She testified that she receives monetary and other gifts from her sisters who live abroad. Mrs. Williams indicated that her monthly expenditure totals \$1191.00. This includes transportation costs for Shani and her; food, loan payment, television, cooking gas, lunch and lawn care.¹¹ Mrs. Williams said that she is assisted in meeting her commitments through the gifts she receives from her sisters.

[22] For his part, Mr. Williams testified that his expenses amount to \$312.58, to cover water and electricity bills, property tax, internet and medical.¹² He claimed that he pays \$350.00 each month towards a hire purchase account. He supplied no documentary proof. I therefore do not accept this bald statement. Based on these figures, Mrs. Williams' expenses exceed her income by \$171.00 per month while Mr. Williams has an excess of \$2021.00 after taking care of his bills.

[23] Mr. Williams adduced into evidence a property tax receipt which he proffered as proof that the matrimonial home has a value of \$98,000.00. I take judicial notice that the property tax valuation does not necessarily reflect the market value of property. I do not accept the referenced receipt as being probative of the value that the subject home would fetch on the open market.

[24] Mr. Williams is 62 years old. Mrs. Williams is 44 years of age. They both appeared to be relatively healthy. They made no averments that this was not the case. They displayed no detectable signs of impairment to their mental faculties. In the absence of proof to the contrary, I infer that they are both sound of body and mind. Mr. Williams testified that during the marriage he handed his income to Mrs. Williams. She refuted this. She said she did not know how much Mr. Williams earns because he never told her. She explained that he worked from Monday to Monday. She expressed the belief that he earns a lot.

¹¹ Respectively \$160.00; \$472.00; \$239.00; \$80.00; \$80.00; \$120.00 and \$40.00.

¹² Respectively \$50.00; \$130.00; \$4.91; \$86.00; \$41.67.

- [25] Mr. Williams averred that when Mrs. Williams first came to live at the matrimonial home, the house was unfinished, consisted of 2 bedrooms, a living room and a small 6' x 10' area which was used as a kitchen. It had no toilet. Mrs. Williams described it as a small area which was used as a kitchen. Mr. Williams explained that the kitchen has since been extended to cover an area of 12' x 10'. He indicated that the living room has also been extended from about 20' x 9' to 20' x 10'. A bathroom with an indoor toilet has also been constructed.
- [26] Mr. Williams explained that his mother received building materials from the government which were used to start the construction on the house. He recalled that she received blocks and galvanize in 1987. He claimed that the blocks were stored outside and remained intact from 1987 'through the 2000s'. It is common ground between the parties that his mother has never lived in that house.
- [27] Mrs. Williams testified that she and Mr. Williams started adding to the partly completed house from about August 2004. She indicated that they demolished one of the walls that separated the 2 bedrooms and constructed a bathroom. She testified that she received \$900.00 from her sisters who lived abroad and that she gave her husband \$400.00 of that amount to buy materials to complete the bathroom. She averred that she received 3 loans from the KCCU in 2013, 2014 and 2016¹³ respectively for the total sum of \$15,000.00. She said that the monies were used to carry out improvements and expansion on the matrimonial home. Mr. Williams stated that he is aware of only 1 such loan – the one in 2013.
- [28] Mr. Williams attested that Mrs. Williams was not working outside of the house when the bathroom was constructed in 2002/2003. He denied receiving any money from her to assist with its construction. He later acknowledged that Mrs. Williams bought tiles for the bathroom. He also denied knowledge that her sisters who lived abroad had sent her monies. I believe Mrs. Williams.
- [29] Mr. Williams admitted signing as surety for Mrs. Williams in 2013 to secure a loan of \$5,000.00 from the Kingstown Co-operative Credit Union ('KCCU'). At first, he said that the money received was used for painting, plastering and a 'little finishing up'. He denied that those funds were utilized for the expansion of the kitchen. He insisted that the kitchen and the additional bedroom had already been constructed. Mrs. Williams testified that the loan she received in 2016 was applied for

¹³ Affidavit of means on behalf of the respondent filed on 17th April 2019, paras. 6 – 8.

the construction of a porch, install 2 steel gates, balusters and paint the house.

- [30] Mr. Williams denied that a porch was constructed in 2016. He maintained that the house had a porch when it was done. Under further cross-examination he said that the money from the loan he co-signed in 2013, was used to erect the porch, pay for the steel gates, balusters and buy paint. Mr. Williams finally accepted that the loan Mrs. Williams obtained was used to assist him in building the home. I accept Mrs. Williams' version. Mr. Williams indicated that he was not aware that Mrs. Williams took another loan in 2014 to purchase materials to finish the kitchen and bedroom. I reject this account.
- [31] Mr. Williams averred that 'every fortnight, every week' he gave Mrs. Williams money to repay the loan that he co-signed. He testified that he never stopped giving her money to repay the loan until he applied for the divorce¹⁴. He also said that he could not say when he stopped giving her money to repay the loan because she never said when she stopped paying it. Both statements cannot be true. Mr. Williams added that he knows that the loan is paid off. Mrs. Williams insisted that she repaid the first loan on her own. She also stated that she is still repaying the last two loans to KCCU. I believe her.
- [32] Mrs. Williams stated that she was employed throughout the marriage and has contributed towards the construction and maintenance of the matrimonial home and towards the household expenses. Mrs. Williams described the marriage as one which she expected that they would both work to build. She acknowledged that Mr. Williams provided labour towards all aspects of the construction. She described him as a handyman or 'Jack of every trade' who does carpentry, masonry and had other skills.
- [33] Mrs. Williams explained that the labour for improvements to the house was contributed by Mr. Williams' two brothers, his cousin, his son and her son. She stated that her siblings used to send her school supplies for the children but that this was discontinued when they entered College. She explained that the loans she took were used to purchase materials including steel, blocks, plywood and paint to start the foundation for the kitchen, and create another bedroom. She averred that it would be unreasonable for her to leave empty handed because she has invested in the

¹⁴ The petition was filed on 3rd October 2018.

home heavily and contributed significantly to its construction and improvement. She stated that Mr. Williams curses her daily so she has no problem vacating the matrimonial home.

[34] Mrs. Williams accused Mr. Williams of removing the burners from the stove and hiding them and the television from her and the children of the family. He did not deny this. Mrs. Williams said that as a result she had to buy a television and stove on credit. She indicated that she is still paying for them. She explained further that Mr. Williams destroyed the toilet and threw it outside. She testified that Mr. Williams refused to assist with the purchasing of food items during the marriage. He did not refute this. I therefore find that he did not.

[35] Mrs. Williams submitted that the evidence discloses that the matrimonial home has been improved significantly during the parties' relationship. She contended that it should be valued by an independent valuator. She argued that she should be awarded a 50% share for her financial and non-financial contributions to the home and the family's welfare. Mr. Williams contended that he is entitled to a 70% share. He argued that 'the additions' made by Mrs. Williams 'were not such that the value of the home was significantly affected.'

[36] When deciding what order to make for division of matrimonial property, the court seeks to arrive at a determination which facilitates a clean break between the parties. As far as practicable it also endeavours to make orders which are likely to enable the parties to proceed with their lives in suitable accommodation, to the extent that the facts and applicable law permits.

[37] There is no evidence regarding any bank accounts or savings which either party may have accumulated. It is not likely that Mrs. Williams would have amassed any significant savings. Her financial obligations are rather limiting. On the other hand, Mr. Williams is likely to have a sizable stash if he has been cautious with his expenditure. He is close to 'retirement' and is not likely to receive any further pension than the one he currently receives. Mrs. Williams may look forward to a small pension from the National Insurance Services if she has been making her contributions.

[38] Having regard to the totality of the evidence, I find that Mr. and Mrs. Williams like most married couples, embarked on their union with good intentions. Their combined efforts at improving their living conditions reflect that they took a collaborative approach to expansion of the matrimonial home. They both invested financially and manually in this regard. In the absence of any evidence

to the contrary, I conclude that this demonstrated an intention that they both benefit equally from those efforts. In ideal circumstances, Mrs. Williams would have expected to have a roof over her head indefinitely and up to the end of her life if the marriage had not broken down. The present circumstances are less than ideal.

- [39] I remind myself that she has at least 21 years working, to create a permanent living solution. It is clear that the present arrangements cannot persist for much longer. I cannot ignore that the land on which their home is built, is owned by Ms. Iona Williams; nor that Mr. Williams is the more likely of the two to find favour with the owner or her heirs when the question of acquisition of title to the land arises. I have no hesitation in finding that Mrs. Williams has earned and is entitled to a beneficial interest in the matrimonial home to reflect her input in its acquisition and improvement.
- [40] The picture which emerges is one in which both parties contributed towards the matrimonial home and the family's welfare based on their ability and resources. Mrs. Williams' appeared to have been sacrificial. On the other hand, Mr. Williams' efforts seemed to have been 'typical'. I do not ignore the fact that Mr. Williams already had a house when Mrs. Williams met him. I accept that it was an unfinished building which was habitable. It cannot be denied that the expansions and improvements added significant value to it. A porch, third bedroom and a bathroom were added. There is now an expanded kitchen area and living area.
- [41] Mrs. Williams is not entitled to share in the value of the structure which existed prior to her arrival on the property and contributions to the home. However, fairness dictates that the beneficial interest ascribed to her, reflect her monetary and non-financial contributions. At the same time, Mr. Williams must retain a larger interest in the home in light of his and or his mother's construction of the initial structure.
- [42] The judgment in the case of **White v White**¹⁵ provides guidance on how the Court apportions beneficial interests in such cases. Lord Nicholls of Birkenhead opined that there is no place for discrimination between a husband and wife and the respective roles as homemaker and primary wage earner. He observed that they shared in those activities for the family's benefit. He remarked that sometimes the court will make an equal division of the matrimonial property but at other times

¹⁵ White v White [2001] 1 All ER 1.

depart from equality if there is good reason for doing so.

[43] He cautioned:

‘Before reaching a firm conclusion ..., a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination.’

[44] The Williams’ marriage was neither short nor did it fall into the category of a long one. It is more of a medium range union. I accept that Mr. Williams invested more into the matrimonial home than Mrs. Williams. Significantly, his investment commenced even before their relationship commenced. It is just in those circumstances that he receives a greater share than Mrs. Williams. They have no subsisting mortgage. Mr. Williams has no outstanding debt in connection with its construction. Mrs. Williams is still shouldering the full responsibility for 2 loans obtained to make improvements.

[45] Although Mr. Williams stated that his mother obtained materials from the government, it has emerged that from the very beginning the property has always been occupied by Mr. Williams and later by his family to the exclusion of his mother. I infer that Ms. Iona Williams has long abandoned any residual interest in the building which accrued to her through those materials and that she has gifted the materials to her son and by extension the family. Neither party advanced any contrary position. I make no finding that Ms. Iona Williams retains any beneficial interest in the matrimonial residence (building).

[46] Taking all of the foregoing factors into consideration I am satisfied that this is an appropriate case in which to depart from equality in division of the matrimonial home. I am of the opinion that a fair apportionment is for the beneficial interest in the matrimonial home (building only) to be divided so that Mr. Williams receives 60% while Mrs. Williams is awarded 40%.

[47] Mr. Williams seems well placed financially to pay Mrs. Williams for her share of the property. The parties are therefore directed to obtain a valuation of the matrimonial home (building only) on or before 30th August 2019, from a licensed valuer agreed to by the parties. They are to bear equally the expenses associated with the preparation of the valuation report. Mr. Williams shall pay to Mrs. Williams on or before 31st October 2019, a sum equivalent to 40% of the value of the said

matrimonial home. On receipt of the payment, Mrs. Williams shall within 7 working days, vacate the matrimonial home, and deliver vacant possession to Mr. Williams. Each party shall pay his or her own costs.

ORDER

[48] It is declared and ordered:

1. Mr. Sylvester Williams and Mrs. Sue-Ann Williams are granted joint custody of Shani Williams until she attains the age of 18 years or sooner dies, primary care and control to Mrs. Williams. No maintenance order is made.
2. Mr. Sylvester Williams and Mrs. Sue-Ann Williams own and are each entitled to an unequal beneficial interest respectively of 60 % and 40%, in the matrimonial home¹⁶ erected on the land situated at Gomea in the Parish of Saint George and registered by Deed of Gift No. 2928 of 1988.
3. Mr. Sylvester Williams and Mrs. Sue-Ann Williams shall on or before 30th August 2019 obtain a valuation of the matrimonial home¹⁶ from a licensed valuer agreed to by the parties; the expenses associated with the preparation of the valuation report to be borne equally by the parties.
4. Mr. Sylvester Williams shall on or before 31st October 2019, pay to Mrs. Sue-Ann Williams a sum equivalent to 40% of the value of the said matrimonial home¹⁶.
5. Mrs. Sue-Ann Williams shall within 7 working days of receipt of the payment in paragraph 4 of this order, vacate the matrimonial home, and deliver vacant possession to Mr. Sylvester Williams.
6. Mr. Sylvester Williams and Mrs. Sue-Ann Williams shall bear his or her own costs.

¹⁶ The building only.

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

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar