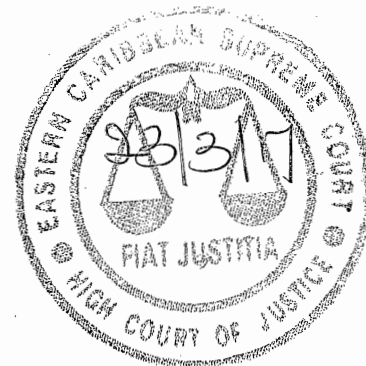


THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE



SVGHMT2015/0058

BETWEEN

EUVORN ADINA BIBBY NÉE FERGUS

PETITIONER

AND

HORACE BERTRAM BIBBY

RESPONDENT

Appearances:

Mr. Ronald Marks and Mrs. Patricia Marks-Minors of counsel for the petitioner.

Mr. Jomo Thomas of counsel for the respondent.

2017: Mar. 23

DECISION

INTRODUCTION

- [1] **Henry, J.:** Mr. Horace Bibby and his ex-wife Mrs. Euvorn Bibby first became romantically involved in 2001. The next year they bought property together at Rillan Hill, Saint Vincent and the Grenadines, which would later become the matrimonial home. They married in 2010 but the marriage was short-lived. They had no children. Their divorce was finalized in 2015¹. Mrs. Bibby lives at the matrimonial home with her new husband and children. Mr. Bibby, his wife and children reside at Kingstown Park.

¹ On 16th December.

- [2] Mr. Bibby has applied for a property adjustment order in respect of the matrimonial home. Mrs. Bibby resisted his application. She contended that Mr. Bibby's contributions were so insignificant that he did not acquire an interest in the property. This court found that Mr. Bibby is not entitled to a legal or beneficial interest in the matrimonial property. His application for a property adjustment order is denied.

ISSUES

- [3] The issues are:-
1. Whether a property adjustment order should be made?
 2. To what share in the matrimonial home are Mr. Bibby and Mrs. Bibby entitled?

ANALYSIS

Issue 1 – Should a property adjustment order be made?

- [4] The matrimonial property is registered by Deed of Conveyance 1407 of 2002. It is a 3 bedroom concrete dwelling comprising 1,186 sq. ft. A valuation conducted in April 2012 ascribed to it a value of \$210,000.00. The Bibbys bought it for \$66,000.00 with funds secured through a loan from the National Commercial Bank (SVG) Limited ('the bank'). Mrs. Bibby described the events which led up to its purchase.
- [5] She returned from a sojourn in Tobago in 2001 and was renting an apartment from a relative. After encountering problems there she decided to move. By then she and Mr. Bibby were a couple so she confided in him about the difficulties she was experiencing and about her plans to move. He suggested that she buy a house and informed her that the government was offering 100% loans to its workers. She was employed with the government. She told him that she did not have enough money for that.
- [6] In any event, she approached a lending institution and was advised that she would need a guarantor as she did not qualify on her own. She alleged that Mr. Bibby became a party to the mortgage only because she needed that security. She alleged that he was added as a party to 'stand security' for her. Mr. Bibby testified that they both went about seeking the house and paying the mortgage. He claimed that he conducted the negotiations regarding the purchase of the house and was involved with all arrangements to conclude the sale and financing.

- [7] That deed of mortgage was not produced at trial. In June 2002, the Marshalls obtained a further loan from the bank for \$34,000.00 to cover educational expenses for Mrs. Bibby daughter. Two additional loans for \$35,000.00 and \$75,000.00 respectively were taken out in 2004 and 2010 respectively. A copy of the third further charge² reciting the history and substance of those mortgage facilities was produced into evidence, along with the Deed of Conveyance. Mrs. Bibby's assertions that Mr. Bibby was merely a guarantor to the mortgage are not borne out by the documentary evidence. The further charge expressly describes them as the mortgagors. I therefore reject that averment by Mrs. Bibby.
- [8] Mrs. Bibby said that they agreed that the mortgage repayments for the purchase of the house would be made by them in equal amounts. Mr. Bibby acknowledged that their agreement was for a collaborative approach towards discharging the debt. He said that the mortgage was repaid from their salaries which were deposited into a joint account.
- [9] Mr. Bibby, Mrs. Bibby and her four children ages 3, 6, 9 and 17 moved into the home. Mrs. Bibby testified that they did so with the intention to live together as a family unit but this changed at some point. She could not say when the change took place. She testified that repays the mortgage installments monthly and has done so since its inception with very little help from Mr. Bibby. She alleged that only 8 payments of \$535.00 each were taken from Mr. Bibby's account between 2002 and June 2003 and that comprised his total contribution towards the purchase of the property.
- [10] Mr. Bibby conceded that Mrs. Bibby has been the sole financier of the mortgage since he left the matrimonial home. He also acknowledged that he made only those 8 payments towards the mortgage and accepted that his contributions stopped in 2004. He worded his response quite curiously. He said:
- 'It can be true that I only made 8 payments of \$535.00 each towards the mortgage; and it can be true from the Treasury Department that I stopped putting money towards the mortgage in 2004.'
- [11] He explained that he had a health issue which required him to travel abroad and he was subsequently dismissed from his employment. Surely by now Mr. Bibby would have been in a position to ascertain the exact status of his contributions and had a duty to make such inquiry. He provided no documentary evidence to show that he made any further contributions towards the mortgage. Mrs. Bibby did not

² Third Deed of Further Charge No. 4280 of 2010.

provide any such particulars either. Without that type of information, I am forced to rely on Mr. Bibby's admission that his contributions were limited to those payments.

- [12] He exhibited a copy of a recent statement of the history of the loan account³. It does not disclose the source of funds deposited into it. Mr. Bibby testified that he had gone to the bank to make inquiry about the outstanding balance and was told that it was in the region of \$111,000.00. This demonstrates that he appreciated the significance of supplying the court with documentary proof to support his application. His failure to do so is instructive.
- [13] Mrs. Bibby alleged that in 2012, she received a telephone call from the bank followed by a letter, as a result of which she had a conversation with Mr. Bibby informing him that the bank wished to contact him because he had been withdrawing money from his salary before deductions were made towards the loan. She said her attempts to discuss the matter with him were unsuccessful and the following day when she spoke to him again he told her that it is his money and when he wants it he can have it. She claimed that he left the house that day and did not return. Mr. Bibby did not deny that those conversations and encounters took place. I accept that they did.
- [14] He testified that currently no money is applied from the joint account towards the mortgage. He said that it has been 3 or 4 years since such a deduction was made. He produced no documentary proof of this. Mrs. Bibby testified that the loan was transferred to a new account from which it is now being serviced. Based on Mr. Bibby's admission that he contributed no more than the 8 payments, I find that those were his only direct contributions to the loan.
- [15] Mr. Bibby testified that he had made inquiries at the bank about the balance owing and discovered that approximately \$41,000.00 is outstanding as at February 2017 on the principal mortgage and around \$111,000.00 for the educational loans. Mrs. Bibby did not refute this. I therefore accept that this is the current state of play with respect to the debt.
- [16] The parties were at variance in describing their marriage. Mrs. Bibby insisted that they had only a visiting relationship whereby he would spend only 3 to 4 nights a week at home, and the rest of his time at Kingstown Park. She said that he was not around much. She testified that around the Carnival

³ Dated 3/01/2017.

season in 2011, he left home for a period of time, returned in 2012, stayed during February and March, after which he left for good. She claimed further that he did not have a good relationship with her children and that he usually came home after they had gone to bed. She later conceded that Mr. Bibby had a good relationship with her daughter Akeisha who was the beneficiary of the educational loans charged on the house.

- [17] Mr. Bibby stated that he had a good relationship with the children and viewed them as his own. He said he considered that an educational loan for one of them to be part of the family's overall debt. He insisted that he and Mrs. Bibby enjoyed a normal relationship with the expected and usual ups and downs. He said that after buying the house, they lived together continuously until he finally left in 2014. He denied having a visiting arrangement. He submitted that Mrs. Bibby was seeking to mislead the court by stating that they had a visiting relationship.
- [18] He alleged that he left home because of Mrs. Bibby's unfaithfulness. He accused her of bringing another man to live there. Mrs. Bibby did not deny this. I accept that this happened. Mr. Bibby did not provide the details as to how Mrs. Bibby managed to displace him as a permanent occupant of the home by installing another partner. I find it difficult to conceive how that could be achieved within the context of a normal marriage.
- [19] It strikes me that there is some truth in each party's allegations and that pulling those pieces together would reveal what happened. Their decision to buy the house together and get married, evinced an intention to cement their union into a permanent and lasting relationship within the context of a marriage with its attendant expectations, benefits and obligations. Most married couples in this part of the world and elsewhere to the best of my knowledge generally live under the same roof, unless they live and work in different countries or states or other geographically distant locations. It would take some significant shift or change in the dynamics of the relationship for the parties to occupy separate residences as the norm. Mr. Bibby's testimony that their cohabitation was continuous, is accepted up to a point.
- [20] Even before they married they occupied the matrimonial home as a family unit. To my mind, something must have happened to disrupt that pattern. Mrs. Bibby testified that when Mr. Bibby left in 2011, he had gone to work and just did not return home. She said when she questioned him he told her that he

was finished with her. Based on rumours, she accused him of having another woman and he responded 'whoever told you that I have a woman, tell them to find a man for you and I'll keep the woman.' She testified that he was staying at Kingstown Park at a church and Mr. Bibby indicated as much.

[21] On February 10th, 2012 Mr. Bibby contacted her by phone and told her he had been arrested. She arranged bail for him and he came home to the family and finally left 2 months later. Mr. Bibby admitted that Mrs. Bibby paid the bail from the proceeds of a loan she obtained from the bank. He was adamant that he did not leave home them. He did not offer any motive why Mrs. Bibby would concoct the rest of that story. I fail to see any myself. It is noteworthy that she did not deny Mr. Bibby's allegations of adultery. She therefore accepted that she had brought another man into the house.

[22] Mr. Bibby did not appear to be the timid, weak willed type of character who would allow a stranger to displace him from his own home. He did not particularize how this came about. It does not make sense that Mrs. Bibby would out of the blue insert a lover into a normal loving marital residence if the husband is a constant occupant. This could only have happened in his absence for an extended period.

[23] Mrs. Bibby's account of the timing and surrounding circumstances of Mr. Bibby's departure is credible and makes sense. I believe her on this score. While I accept that they intended to live as a single unit, it seems to me that towards the end of their relationship, Mr. Bibby was not a constant occupant at the home. Mrs. Bibby took the opportunity to move on with her life.

[24] Mr. and Mrs. Bibby supplied little evidence about their way of life, their health, finances and other pertinent matters. Neither indicated whether they suffer from any physical or mental disabilities. They appeared to be relatively healthy for their ages. The court did not discern any impediment in either. I infer that they are reasonably healthy as can be expected of persons of that age and stage in life. In the absence of information from them, I was unable to glean what standard of living they enjoyed before the breakdown of the marriage.

- [25] Mr. Bibby is 62⁴ years old and has retired. He was previously employed as senior male attendant at the Milton Cato hospital and was so employed in 2002. He was dismissed in 2003. He explained that he was diagnosed with a serious illness, travelled abroad for medical attention and lost his job around that time. He subsequently secured employment with the Ministry of Housing between 2003 and 2010. He receives a monthly retirement benefit of \$600.00 from the National Insurance Scheme ('NIS'), in two equal fortnightly payments. His other source of income is a monthly pension of \$933.00. His monthly expenses total \$897.00 and include small amounts for food, utilities and two loans.
- [26] Mrs. Bibby is a nursing assistant. She did not say how much she earns from her job or whether she has other income. She did not itemize her other recurrent expenses. Neither party produced documentary evidence of their bills or proof of payment. I take judicial notice that as a public officer, Mrs. Bibby is expected to retire at the statutory or contractual ages prescribed for public servants in her profession and category. She is now 59⁴ years old. I infer that like her ex-husband she would then be entitled to receive retirement benefits from the NIS and a pension as do all public officers⁵. For all intents and purposes they would be on even financial footing.
- [27] Mr. Bibby may seek employment although he has retired. he seems destined to survive on the NIS payments he currently receives or any increased sum allowed in the future. He did not indicate what were his intentions regarding future employment.
- [28] Mrs. Bibby testified that Mr. Bibby lives in a two story residence which he told her he had built to house his wife and children. She alleged that he had once owned another house which was repossessed and sold by the lending institution. Mr. Bibby did not deny those assertions frontally. However, he averred that he had no other property. No documentary evidence of Mr. Bibby's interest in any other property was produced. I find that he has none. I am satisfied however that his present and future housing needs appear to be adequately provided for within the bounds of a very new marital relationship.

⁴ Calculated from the data on the marriage certificate.

⁵ Those employed on contractual terms are not entitled to a pension.

[29] Neither party presented evidence of savings or ownership of other properties. Mr. Bibby claims that he will lose the benefit of the matrimonial home as a result of the divorce. Mrs. Bibby will incur no such loss.

[30] In deciding whether to make a property adjustment order in respect of matrimonial property, the court is required to treat each party fairly. The court considers all surrounding circumstances⁶ including:

1. the duration of the marriage;
2. the parties' ages, incomes, earning capacities, properties and other financial resources, needs, obligations and responsibilities; their contributions to the family's welfare;
3. whether either party suffers from any physical or mental disabilities;
4. the standard of living enjoyed by the family before the dissolution of the marriage; and
5. the value of any benefit which either party will lose as a result of the breakdown of the marriage.

[31] In making its decision, the court must take the listed factors into account with a view to placing each party, so far as reasonably practicable and just, in the position he or she would have been had the marriage not broken down and each party had properly discharged his or her financial obligation towards the other. In addition, the court must give effect to the legal principles which govern the apportionment of matrimonial property as articulated in legislation and given effect to in decided cases.

[32] It is established law that persons identified as joint owners in a deed of conveyance, are entitled to share the legal and beneficial interests in the property as joint tenants unless a contrary intention is proven.⁷ However, the court must decide not only what are the former spouses' beneficial interests, but also whether they intended those interests to be different from their legal interests and if so, how and to what extent.⁸

⁶ Matrimonial Causes Act Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009, ('the Act') sections 32 and 34.

⁷ *Snack v Dowden* [2007] UKHL 17 at para. 58.

⁸ *Ibid.*

- [33] Further, the Registration of Documents Act⁹ provides that the contents of a deed regarding the rights, interests and title outlined in it will be given effect in law and in equity. It follows that Mr. Bibby and Mrs. Bibby are each entitled to share the beneficial interest in the subject property to the extent of their respective rights and interests as established by the evidence.
- [34] Mrs. Bibby submitted that Mr. Bibby was less than candid and accordingly an adverse inference should be drawn. She contended that his contributions towards acquisition of the property were so small and insignificant and were insufficient for him to acquire an interest. She cited the case of **Althia John Victory and Ray John Victory**¹⁰ and **Joan Pamela Cox-Biam v Samuel Sylvaneous Biam**¹¹ in support.
- [35] Mr. Bibby countered that the **Cox-Biam case**¹¹ can be distinguished from the one at bar because in it the wife alone bought the disputed property. I agree with him that the facts of that case disclosed that the wife bought the subject property in her sole name before the marriage. In the circumstances, the court found that she owned it outright. That decision does not assist Mrs. Bibby.
- [36] Mr. Bibby submitted that the principles enunciated in **Stonich v Stonich**¹² and applied in **Rohan Williams v La Toya Williams**¹³ are applicable in the case at bar. Specifically, he urged that the court is required to consider the parties' whole course of conduct. He contended that his efforts to negotiate the purchase of the matrimonial home, attending bank with Mrs. Bibby, and their intention to function as family unit are relevant considerations. He maintained that he has no property other than the matrimonial home. He erroneously appeared to have interpreted whole course of conduct to be limited to behavior at the time of purchase.

⁹ Cap. 132 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

¹⁰ SVGHMT2000/316.

¹¹ SVGHMT2011/0120.

¹² BVIHCVAP2002/0017.

¹³ SVGHMT2012/0004.

[37] Relying on **Stonich v Stonich**¹², Mr. Bibby argued that contributions to the welfare of family and common intention are criteria which are assessed to determine the interests which former spouses have acquired in matrimonial properties. He cited **Althia John Victory v Ray John Victory**¹⁰ and quoted the following from the judgment:

'Unless the conduct of one of the parties is so gross or repugnant to one's sense of justice, it should not be taken into account, further the end result of the court's decision should be one that is equal and fair in the circumstances. The court is invited to order that 'the property be shared between the parties thereby enabling him to receive a lump sum payment to allow him to move on with his life.'

[38] Central to the determination of whether a property adjustment order should be made, is consideration of what the parties intended. In the **Snack v Dowden case**⁷ Baroness Hale outlined a non-exhaustive series of indicators which shed light on those intentions. One obvious consideration would be the financial contributions made by each party to acquiring the property. Others identified by Baroness Hale are:

'... advice or discussions at the time of the transfer ... reasons why the home was acquired in their joint names; ... the purpose for which the home was acquired; the nature of the parties' relationship; whether they had children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses ... the parties' individual characters and personalities may also be a factor.'¹⁴

She noted too that 'there may also be reason to conclude that, whatever the parties' intentions at the outset, these have ... changed.'

[39] The details in the case at bar are so sparse that much of that type of data is lacking. Apart from a smattering of brief exchanges described by Mrs. Bibby, neither party chronicled any advice or discussions which took place when they bought the house or since. She articulated why they bought the house in their joint names – simply because she needed the 'security' to obtain the loan. Mrs. Bibby initiated the purchase because of difficulties she was experiencing with her landlady. Her children were

¹⁴ At para. 69.

all minors and they lived there with her up to the present. If Mr. Bibby had children at that time, they lived elsewhere.

[40] Although they had good intentions to share the responsibility for the mortgage, they were not realized. Mrs. Bibby for the most part, singlehandedly serviced the mortgage. There is no evidence that they shared their daily expenses. In fact, Mrs. Bibby's unchallenged testimony is that she took care of all bills. In all the circumstances, Mr. Bibby's influence in the family was not impactful. There is no basis on which I can find that he made any indirect contributions towards the purchase of the matrimonial home. I agree with Mrs. Bibby that his cash contribution of \$4280.00 is so insignificant that it cannot be invoked to confer any beneficial interest to him.

[41] The Act empowers the court to make a property adjustment order.¹⁵ 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 remain as close as possible as during the marriage.¹⁶

[42] The Deed of Conveyance reflects that Mr. and Mrs. Bibby own the interests right and title to the matrimonial home subject to repayment of the balance owed to the bank. Inferentially, registration of the property in their joint names was intended to represent their direct or indirect contributions towards the mortgage. However, having regard to their conduct, particularly Mr. Bibby's they arranged conducted their affairs as if it was owned solely by Mrs. Bibby. In view of the those matters as detailed earlier including the value of the loan and the size of Mr. Bibby's limited and insignificant assistance in financing it, it would not be fair to award him any share in the property. His application for a property adjustment order is accordingly dismissed.

¹⁵ Section 32 of the Act.

¹⁶ Section 34 of the Act.

Issue 2 – To what share in the matrimonial home is Mr. Bibby and Mrs. Bibby entitled?

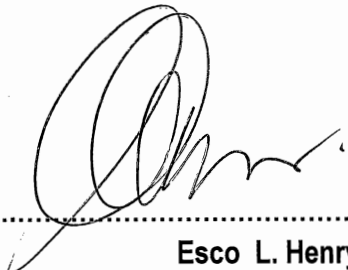
[43] Mr. Bibby claims that he is entitled to roughly \$50,000.00 in the equity. He submitted that he is honest and did not mislead the court. He submitted that the valuation is old and does not reflect the property's true value. Mr. Bibby contended that although Mrs. Bibby is seeking repayment of the loan she does not want to take responsibility for the educational loan. He submitted that he was seeking his fair share of equity in the matrimonial home based on his contributions.

[44] Having found that he is not entitled to an adjustment order, for the reasons outlined earlier I find also that he is not entitled to a share in the matrimonial property. It is accordingly declared that Mrs. Euvorn Bibby is entitled to 100% legal and beneficial interest in the matrimonial home at Rillan Hill registered by Deed of Conveyance 1407 of 2002. The registrar of deeds is directed to cancel the deed at the appropriate time by removing Horace Bibby's name as joint owner.

ORDER

[45] It is declared and ordered:

1. Mr. Horace Bibby's application for a property adjustment order is dismissed.
2. Mrs. Euvorn Bibby is entitled to 100% legal and beneficial interest in the matrimonial home a Rillan Hill registered by Deed of Conveyance 1407 of 2002. The Registrar of Deeds is directed to cancel at the appropriate time the Deed of Conveyance 1407 of 2002 by deleting Horace Bibby's name as owner.
3. Mr. Horace Bibby shall pay agreed costs of \$750.00 to Mrs. Euvorn Bibby.



Esco L. Henry
HIGH COURT JUDGE