

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHM 2012/0117
BETWEEN



ESTALYN RACHAEL PIERRE NEE STAPLETON
(a.k.a. RACHAEL MCKENZIE)
of Lowmans Windward

PETITIONER

AND

WAYNE MAXIAN PIERRE
of Barrouallie

RESPONDENT

Appearances:

Ms. Paula David of Counsel for the Petitioner.
Ms. Patina Knights of Counsel for the Respondent.

2017: Feb. 13
Mar. 1

DECISION

INTRODUCTION

[1] **Henry, J.:** Mr. Wayne Pierre is a fisherman. He married Estalyn Stapleton, in 2000¹. They were divorced in 2014². The marriage produced two children, one of whom is a minor - Dwayne. This case

¹ 15th November, 2000.

involves an application³ by Mrs. Pierre for division of the matrimonial property including a residence. She claims a half interest in the matrimonial home, has applied for an order for its sale, property settlement, periodical payments and lump sum payment for her benefit. She also seeks a financial provision or transfer of property order on Dwayne's behalf.

- [2] At trial, Mrs. Pierre submitted that she was no longer interested in pursuing her claims for property settlement or periodical payments. She requested that an order be made for division of the furniture and certain kitchen appliances and cookware. She indicated further that she was also seeking an order that Mr. Pierre be required to pay one half of Dwayne's medical and educational expenses. Mr. Pierre acknowledged that Mrs. Pierre acquired an interest in the matrimonial home, but he contended that it was no more than one third.

ISSUES

- [3] The issues are:-

1. Whether Mr. Pierre should be directed to pay half of Dwayne's medical and educational expenses?
2. Which of the assets are matrimonial properties?
3. To what share of each matrimonial asset is Mr. Pierre and Mrs. Pierre entitled?

ANALYSIS

Issue 1 Should Mr. Pierre be directed to pay half of Dwayne's medical and educational expenses?

- [4] On 20th February 2014, the court made an order directing that Mrs. Pierre shall have the custody, care and control of Dwayne with reasonable access to Mr. Pierre. Mr. Pierre was ordered to pay monthly contributions of \$250.00 towards Dwayne's maintenance. Neither party sought a variation of that order. Mrs. Pierre testified that Dwayne was born on 6th April, 2004. He is therefore twelve years old. He is attending secondary school.
- [5] Mrs. Pierre deposed that Mr. Pierre makes the maintenance payments late and she that she needs

² By decree absolute dated 12th March.

³ Filed on 10th October 2014.

assistance to take care of Dwayne's education and medical expenses. She explained that she has received help from friends, relatives and her pastor to cover related expenses for Dwayne such as school uniforms, books, other school supplies and medicals. Mr. Pierre said that he pays maintenance for Dwayne and is unable to save any monies because of his several financial obligations.

[6] Mr. and Mrs. Pierre submitted correctly that the court is required to have regard to the provisions of sections 31, 32, 33 and 34 of the Matrimonial Causes Act⁴ ('the Act') which establish 'the rules and guidelines for the distribution of assets between former parties to a marriage. In this regard, they posited that the court must consider the income, earning capacity, property and other financial resources of the parties, the financial needs, obligations and responsibilities of the parties, the standard of living enjoyed by the family before the breakdown of the marriage, the age of each party, the duration of the marriage, any physical or mental disability of either party, the contribution of each party to the family's welfare including any contribution made by looking after the home or caring for the family and the value of any benefit which either party will lose as a result of the dissolution of the marriage.

[7] They submitted further that the court must take these 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. These submissions capture the essence of the referenced sections of the Act and outline some relevant considerations which guide the court in making orders regarding the care, custody and control of minor children on breakdown of a marriage. It is important to note however that the court's foremost consideration is always the child's welfare.⁵

[8] It cannot be gainsaid that Dwayne's welfare would be safeguarded without adequate arrangements being made to secure his educational and medical needs. In this regard, his parents share responsibility for those expenses to the extent that they are financially able. Mr. Pierre has neither disputed his obligation towards Dwayne, nor that Dwayne's requires the facilities as described by Mrs. Pierre. He has advanced no reasons why he should not be ordered to share those expenses equally.

⁴ Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁵ Section 12(1) of the Law of Minors Act Cap. 232 of the Revised Laws of Saint Vincent and the Grenadines, 2009; J v. C [1970] A.C. 66.

[9] As described below, Mrs. Pierre and Mr. Pierre's living conditions, income and financial obligations appear to be evenly matched. Accordingly, it seems just that Mr. Pierre be directed to pay to Mrs. Pierre 50% of the expenses associated with Dwayne's future medical and educational needs. Mrs. Pierre is required to present Mr. Pierre with copies of all invoices or receipts in respect of such expenses, as the basis for computing his contributions.

Issue 2 Which of the assets are matrimonial properties?

[10] Mr. and Mrs. Pierre built their home at Keartons and moved into it in 1996. Title to the land was transferred in Mr. Pierre's sole name by Crown Grant dated 12th May, 2016.⁶ Mrs. Pierre paid \$904.00 of the \$1432.50 purchase price. Mr. Pierre explained that he was unable to pay it in full because things were slow at that time. The house is made of concrete. It is a modest two bedroom unpainted house which was valued⁷ at \$45,000.00 in 2008.

[11] The house is furnished with basic furniture including a living room chair set, refrigerator, stove, DVD player, space saver, mahogany bed, bunk bed, appliances and cookware such as a microwave, toaster, electric kettle, cake mixer, coffee maker, blender, deep fryer and gas bottle. Mrs. Pierre maintained that those items were jointly acquired from their earnings and that she bought the DVD player while she was employed in Canada. Mr. Pierre insisted that he purchased the chair set, stove and a refrigerator on hire purchase in his name and paid for them from his earnings as a fisherman. He admitted that Mrs. Pierre bought the DVD player. He implied that Mrs. Pierre is not entitled to any part of those items. I disagree with him for reasons provided later.

[12] Based on the foregoing, I accept that the matrimonial assets comprise the matrimonial home, a living room chair set, refrigerator, stove, DVD player, space saver, mahogany bed, bunk bed, a microwave, toaster, electric kettle, cake mixer, coffee maker, blender, deep fryer and gas bottle. These items must be apportioned between the parties in light of the guiding principles as to distribution referenced previously and discussed subsequently.

Issue 3 • What share of each matrimonial asset is Mr. Pierre and Mrs. Pierre entitled?

⁶ Registered on 24th May, 2016.

⁷ By licensed land surveyor Franklyn Browne on January 12, 2008.

Age, income, earning capacity and other financial resources of the

- [13] Mr. Pierre is 50 years old and is a fisherman. He earns approximately \$800.00 to \$1000.00 per month. Mrs. Pierre is 40 years old and gained employment as an assistant cook in September 2016. From 2007 or 2008 she worked part time as a housekeeper on the island of Mustique, for two weeks each month, earning \$60.00 per day. She indicated that she gave up that position and returned to the mainland Saint Vincent to provide guidance and supervision for Dwayne. She said that she was unemployed for a sometime before securing her current job.
- [14] Neither Mr. nor Mrs. Pierre is suffering from any physical or mental impairment. Their formal education ended in primary school. They are reasonably expected to be employed in the fishing and service industries respectively for another 20 years or so. Apart from their employment related income they have no other source of revenue. Mrs. Pierre indicated that she has contributed to the National Insurance Scheme and the Mustique pension fund. She may be entitled to receive retirement benefits from one or the other in due course. There was no conclusive proof of either.

Financial needs obligations and responsibilities of the parties

- [15] Mrs. Pierre did not indicate how much she now earns, what her recurrent living expenses entail or what are her living arrangements. Mr. Pierre lives at the matrimonial home with his new partner and her family. Mrs. Pierre explained that she and Mr. Pierre had migrated to Canada in 2001 leaving their children in her mother's care. When her mother passed away in 2004, Mr. Pierre returned to Saint Vincent and the Grenadines to care for the children while she remained in Canada. From there, she worked and helped to finance the family's needs.
- [16] He returned home in 2007 and discovered that Mr. Pierre had moved his partner into the matrimonial home. They never resumed their previous living arrangements. Mr. Pierre said that Mrs. Pierre cut off all communication from him between 2004 and 2007 and filed for refugee status in Canada, claiming that he had brutalized her. He explained that as a result he moved on with his life.
- [17] Mr. Pierre indicated that he pays all expenses for his household, his boat, his car and fishing supplies. He stated that he lives from month to month and has no savings. Like Mrs. Pierre he did not itemize

those expenses. He did not describe the boat or car or provide a value for either. I am therefore unable to make a proper assessment of the reasonable needs of either party. Likewise, I have no way of properly comparing Mrs. Pierre's present living circumstances to Mr. Pierre's.

Duration of marriage contribution to the family's welfare and standard of living

[18] The Pierres were married for just over 13 years. I accept however that the marriage had broken down since 2004, roughly 4 years after the nuptials. It was a very short union. The Pierres' testimony described a typical working class family facing the usual joys, sacrifices and difficulties making a livelihood for their family. They enjoyed the basic necessities and had few extras. This was evidenced by their decision to leave their children behind and travel to Canada in the 90s, in an attempt to secure a better life for the family through their collective efforts. It was also manifested in their collaboration in physically building their house with assistance from friends and neighbours. In this regard, both Mr. and Mrs. Pierre testified that they built the concrete blocks themselves. However, they each took credit for the major contributions to its acquisition.

[19] Mr. Pierre was the main bread winner when they embarked on the project. He plied his fishing trade, sometimes with assistance from Mrs. Pierre who accompanied him to sea. She insisted that she went fishing with him on a full time basis for an entire year. Mr. Pierre disputed this and maintained that Mrs. Pierre went fishing with him only occasionally. He accepted that she was a hard worker who took good care of the house and the children.

[20] Mrs. Pierre claimed that they acquired the land for building through her industry since she was the one who enquired about its availability from one Alban Mason. Mr. Pierre countered that Mr. Mason was his friend and he made the initial contact and secured the land for building. It was not clear what role Mr. Mason played in assisting the Pierres to conclude the agreement for purchase of the land from the Crown. However, in or about 1995, they bought cement with monies saved from Mr. Pierre's earnings. They built the cement blocks which were utilized in the construction and completed the construction largely through self-effort with assistance from friends. Mrs. Pierre cooked meals for the volunteer workmen.

(21) Mr. Pierre was adamant that Mrs. Pierre's assistance was limited to cooking and building concrete blocks. Mrs. Pierre was equally insistent that she passed tools and building materials for the workmen. The couple and their family eventually moved into the house in 1996. I am inclined to believe Mrs. Pierre who gave her evidence in a matter-of-fact and forthright manner. Mr. Pierre was not forthcoming. He was an evasive witness. Even if Mrs. Pierre did not participate in the more labour intensive part of the construction due to her obvious limitations as a woman, I accept that she made substantial contributions by cooking for the volunteers, paying most of the purchase price for the land, building blocks and generally being a supportive wife to Mr. Pierre, and a committed mother to the children.

[22] It is self-evident that Mr. and Mrs. Pierre collaborated on all important family endeavours including building a home for their family and earning a living. By arranging their affairs in the manner described, it is clear to me that they approached their family's affairs as a single unit intent on supporting each other for their mutual benefit and the advancement of the family's goals. In this regard, they both shouldered responsibility for household duties including care of the children, depending on what was convenient at the material time and they both played an active role in earning income to take care of the unit's expenses. I am satisfied that they both made substantial direct and indirect contributions to acquisition of the land and construction of the house.

(23) Mrs. Pierre submitted that they have both made contributions towards the material well-being of the family and that she took the lead as caregiver for the children. She contended that there is no benefit to either party has lost or will lose as a result of the dissolution of the marriage. She contended that Mr. Pierre has had the use of the matrimonial home and contents exclusively since 2007. She argued that even if the court were to accept Mr. Pierre's version of how the matrimonial home was acquired there is nothing in them which would make a difference in how the assets are to be distributed.

(24) Mrs. Pierre submitted further that **Stonich v Stonich**⁸ is the leading case on the distribution of assets following the dissolution of a marriage. She argued that fairness is the yardstick which governs distribution, that equality is the basic measure of fairness and should be departed from only 'where there is good reason for doing so'. She contended also that Mr. Pierre has supplied no good reason for departing from division on the basis of equality. Relying on the **Stonich** case, she submitted that 'the

⁸ BVIHCVAP2002/0017.

party to the marriage who cared for the home and the children contributed just as much to the welfare of the family as the income earner and that the Act did not suggest that any particular form of contribution was to be accorded greater significance than others.'

[25] Mr. Pierre made similar submissions quoting from the judgment of Saunders J. A. where he said:

'If the husband's skill initiative, hard work and drive yield handsome financial rewards, it is entirely unfair to regard those rewards as being any greater in value than those of the wife who might have employed equal skill, initiative and dedication at home bringing up the children and keeping a stable household.'⁹

[26] In the decisions in **Cooke v Head**¹⁰, **Abbott v Abbott**¹¹ and **Grant v Edwards**¹² Mr. Pierre contended that this case involves consideration of the principles regarding the creation of a constructive trust. He accurately submitted that neither party provided documentary evidence of their respective contributions to the acquisition of the matrimonial property. He argued that they had no joint accounts and that the monetary contributions to the home were derived exclusively from his earnings as a fisherman while Ms. Pierre took care of the home and the children. He echoed Mrs. Pierre's contentions that equality should be departed from only if there is good reason for doing so. He cited the case of **White v White**¹³ in support.

[27] Mr. Pierre submitted that there are good reasons in the instant case to depart from equality namely:

1. He and Mrs. Pierre were respectively 24 and 34 years old at the time of their marriage and there is a 10 year age difference between them;
2. He was a self-employed fisherman while Mrs. Pierre was unemployed;
3. They had no joint resources like a bank account;
4. There was no common intention to acquire the home;

⁹ Ibid. at para. 30 of *Stonich v Stonich*.

¹⁰ [1972] 1 W. L. R. 518.

¹¹ [2007] UKPC 53.

¹² [1986] 2 All ER 426.

¹³ [200] 1 AC 596.

5. Mrs. Pierre remained in Canada in 2004 and ceased communication with him;
6. Mrs. Pierre has not disclosed whether she acquired savings or other assets during the marriage even though she remained employed on Mustique and might have been employed when she remained in Canada post-2004;
7. He lives month to month; and
8. The marriage lasted for roughly 4 years.

[28] Mr. and Mrs. Pierre distilled the applicable legal principles in their submissions. It is established law that a former spouse is entitled to a share of all matrimonial property, including assets jointly acquired during the marriage. The court is authorized to order for apportionment of such property between the parties based on their respective interests.¹⁴ The **Stonich case** is authority for the proposition that the court's 'ultimate and overriding objective' is fairness. An examination of Mr. and Mrs. Pierre's conduct will shed light on their shared intentions regarding ownership.¹⁵ Those common intentions may be actual, inferred or imputed from their behavior and the surrounding circumstances.¹⁵

[29] The court must take into account all contributions made by each party in looking after the home and caring for the family. It must also have regard to the value of any benefit which either party will lose as a result of the dissolution of the marriage. I cannot discount Mr. Pierre's efforts in taking care of the children and the home while Mrs. Pierre was away in Canada working and sending remittances back home to assist with the family's needs. Similarly, I cannot overlook Mrs. Pierre's dedication to the household while Mr. Pierre went to sea to make a living, or her physical labour during the construction of the matrimonial home. I am mindful that Mr. Pierre and his new family have enjoyed the benefit of the matrimonial home to Mrs. Pierre's exclusion from 2004 to present. Mr. Pierre will lose this benefit as a result of the breakdown of the marriage as did Mrs. Pierre when she returned from Canada.

[30] I do not agree with Mr. Pierre that there are circumstances which warrant a departure from equality in this case. The Pierres conducted themselves at all material times in a co-ordinated and cohesive fashion with common goals of achieving stability and a secure home. Even though Mrs. Pierre appears

¹⁴ See actions 29, 31 and 32 of the Matrimonial Causes Act, Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009 ("the Act").

¹⁵ *Abbott v Abbott* [2007] UKPC 53.

o have paid more towards the purchase price for the land and perhaps did not put as much physical labour into its construction and understandably so, I am satisfied that they both made roughly equal contributions to the acquisition of the matrimonial property. There is no basis on which to depart from equality in this case as urged by Mr. Pierre. The age difference, lack of savings, duration of the marriage, lack of communication and present living arrangements have not negated the parties' respective substantial contributions to the matrimonial assets. Both parties deprived the court of pertinent information regarding their financial affairs. While Mr. Pierre correctly accused Mrs. Pierre of omitting mention of savings, he did not indicate the value of his boat or car.

[31] I am satisfied that they pursued the acquisition and construction of the home as a joint enterprise as they appeared to have done with their other daily pursuits. By withholding certain details of their current status, Mr. and Mrs. Pierre have deprived the court of the opportunity to have a full appreciation of all pertinent facts. The court must nevertheless attempt to provide a fair resolution of the issue at hand based on the available evidence

Apportionment of matrimonial assets

[32] The court must endeavour to facilitate a 'clean break' between the parties. In doing so, it remains mindful of its obligation to ensure that each party's financial positions after the marriage should as far as possible remain as it was during the marriage.¹⁶ In view of the findings of fact and applicable legal principles, it seems to me that fairness would best be achieved by making an order for equal division of all matrimonial assets. Accordingly, I hold that Mr. and Mrs. Pierre is each entitled to an equitable 50% interest in the matrimonial home, the furniture, appliances and household items. Mr. Pierre holds the matrimonial assets in trust for Mrs. Pierre and him in equal shares.

ORDER

(33) It is declared and ordered:

- 1 Mr. Wayne Pierre is directed to reimburse Mrs. Estalyn Pierre on a case by case basis, 50% of the expenses associated with Dwayne's future medical and educational needs. Mrs. Pierre is required

¹⁶ s 34 of the Act.

to provide Mr. Pierre with copies of all invoices and/or receipts in respect of such expenses, as the basis for computing his contributions.

Mr. Wayne Pierre holds:

- (a) the referenced living room chair set, refrigerator, stove, DVD player, space saver, mahogany bed, bunk bed, microwave, toaster, electric kettle, cake mixer, coffee maker, blender, deep fryer and gas bottle;
- (b) the beneficial interest in the matrimonial property situated at Keartons and described in Crown Grant 99 of 2016;

in trust for Mrs. Estalyn Pierre and him in equal shares.

Mr. Wayne Pierre shall deliver to Mrs. Estalyn Pierre or her duly authorized agent on or before 24th March, 2017:

- (a) the bunk bed;
 - (b) one space saver;
 - (c) the microwave oven;
 - (d) the blender;
 - (e) the DVD player;
 - (f) the deep fryer; and
 - (g) either the love seat or sofa from the living room chair set;
- as her share of the furniture and cookware items.

Mr. Wayne Pierre and Mrs. Estalyn Pierre each owns and is entitled to $\frac{1}{2}$ share in the beneficial interest or net proceeds of sale of the matrimonial property situated at Keartons and described in Crown Grant 99 of 2016.

Mr. Wayne Pierre is to obtain a valuation of the said property on or before 31st March, 2017 from a licensed valuer to be agreed by the parties.

6. The matrimonial property is to be offered for sale on the open market between 1st April, 2017 and 30th June, 2017 by public auction or private treaty at a price as close as possible to the value ascribed in the said valuation report. Sale of the property is to be attempted as often as necessary until it is sold, right of first refusal reserved to Mr. Wayne Pierre or Mrs. Estalyn Pierre.
7. The registrar of the high court is to effect conveyance, transfer and registration of title.
8. The net proceeds of the sale are to be divided equally between Mr. and Mrs. Pierre after deduction and defrayment of the cost of the valuation report and all expenses related to the sale.
9. Mr. Wayne Pierre and Mrs. Estalyn Pierre shall bear his or her own costs.

(34] I would like to thank counsel for their submissions.



Esco L. Henry
HIGH COURT JUDGE