

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHMT2008/0024

BETWEEN:

MARIE ANTOINETTE MEDAR

Claimant

and

MICHAEL MEDAR

Defendant

Appearances:

Ms Petra Nelson for the Claimant

Mr. Dexter Theodore for the Defendant

2012 : March 8;

2014 : July 28.

JUDGMENT

- [1] **Belle J.:** By way of background: The parties met in or around 1979. They dated for about six years and married in 1985. The Petitioner moved into the Respondent's home at Corinth after the marriage.
- [2] In 1990 the Respondent purchased the Rodney Bay property with funds borrowed from Medar & Co. The Petitioner made her contribution to the matrimonial home as a housewife and homemaker. But there were some breaks when she was assigned to work overseas in New York and London.
- [3] The Respondent for his part had been a bachelor for some time and was capable of cooking, washing and doing certain household chores on his own. The parties did hire a helper who came to the home to assist with household chores twice per week.
- [4] The parties kept their financial, and business affairs and property dealings separate. But they shared in the upbringing and support given to the children of the family.

[5] The Petitioner obtained a Decree Nisi on 2nd October, 2008 after the relationship became strained and irreconcilable differences arose in the marriage.

[6] On February 12th, 2009 the Petitioner filed a Notice of Application for the following orders (among others) by way of ancillary relief:

1. That the Respondent to transfer a half share in and to the parcel of land registered in the land registry of Saint Lucia as Block and Parcel number 1256B 34 to the Petitioner.
2. Alternatively, the Respondent do pay to the Petitioner the equivalent of a half share in the said parcel of land.
3. The Respondent do transfer a half share in and to any other properties which are assets of the family to the Petitioner.
4. Alternatively, the Respondent do pay to the Petitioner the equivalent of a half share in the said properties.
5. The Respondent do make a lump sum payment to the Petitioner in an amount that seems just to this court.
6. The Respondent do make interim maintenance payments to the Petitioner in the sum of 2,500.00 until further order of the Court.
7. That the Respondent do pay maintenance for the child of the family, Stacey Ann Medar, until she shall have completed her studies as the Kingston University, London, England, to include sums for university fees, boarding, lodging, clothing, school books, research material, school supplies, dental and medical expenses and transportation.
8. That the Respondent do pay maintenance to the Petitioner for the child of the family, Mikey Ann Medar, in the sum of \$1,000.00 per month until such child shall attain the age of 18 years.

[7] On 27th October, 2011 as part of the divorce proceedings pursuant to the Petitioner's application for ancillary relief, the court made an order which stated inter alia:

"The Respondent is to continue to pay \$2000.00 each month towards the maintenance of the petitioner and the children of the family.

The Respondent is to pay outstanding arrears towards maintenance of the children of the family and the Respondent's contribution towards the cost of the Expert's Report being the total sum of \$10,750.00 on or before 30th November, 2011.

[8] In deciding whether to exercise its powers under sections 22, 23, and 24 of the Divorce Act it is the duty of the court pursuant to Section 25 to have a regard to all the circumstances of the case, including :

- (a) "The present or likely future income, earning capacity, property and other financial resources of each party;
- (b) The present or likely future financial needs, obligations and responsibilities of each party;
- (c) The standard of living enjoyed by the family before the breakdown of the marriage;
- (d) Age of each party and the duration of the marriage;
- (e) Any physical or mental disabilities of the parties;
- (f) Contributions made by each of the parties to the welfare of the family, including looking after the home or caring for the family;

The court is exhorted to aim to place the parties , so far as is practicable, and having regard to their conduct , just to do so, in the financial position they would have been in if the marriage had not broken down and if each had properly discharged his or her financial obligations and responsibilities to the other."

The Petitioner's Arguments

[9] In relation to the matrimonial home at Block 1256 B Parcel 34 Located at Rodney Bay , Quarter of Gros Islet, the Petitioner's counsel argued that , the property was purchased cash by Deed of Sale executed on 21st November, 1990 and the matrimonial home erected in 1996, some six years later.

[10] Thus the acquisition of the property took place 5 years into the marriage. In the Deed of Sale the Respondent recites that he is a married man but the purchase is with his separate funds and earnings acquired through his sole labour. The Petitioner never joined in the Deed in admission of this assertion. It is submitted by the Petitioner that this property is presumed to be community property and the onus was on the Respondent to prove otherwise. Counsel argues that he has not discharged this burden.

- [11] The Petitioner is entitled to one half share of the value of the matrimonial property argued counsel.
- [12] Counsel insisted that the purpose of the matrimonial home was, from its inception, to provide a home for the parties and their children. The family moved into the house between 1997 and 1998 and lived there until the breakdown of the marriage.
- [13] According to the Petitioner each party contributed according to their means to its construction and furnishings and the parties also travelled to Miami and England to shop for appliances and furniture for the home.
- [14] Counsel asked the court to recognize the work done by the Petitioner or her contribution in taking care of the children of the marriage during the time of the construction of the home and the unrefuted fact that she worked throughout the marriage and all of her earnings were consumed by the home, the family and the children.
- [15] According to counsel for the Petitioner there could be no justification to deny the Petitioner an equal share in the matrimonial home. The Petitioner should be paid fifty percent of the value of the home and land as a lump sum to achieve a clean break.
- [16] Even if the court were to find that the matrimonial home is separate property of the Respondent any suggestions that the court has no jurisdiction to deal with it or that it is immune from being the subject of a property settlement order as separate property of the husband is erroneous or misconceived counsel argued.
- [17] Then Counsel concluded that having regard to the length of the marriage the Petitioner would in any event be entitled to the value of one half of the matrimonial home as a fair settlement.

The Respondent's Arguments

- [18] Counsel for the Respondent countered the argument with reference to what is called the one third rule, and stated that there were several factors which made that rule inapplicable in the instant case.
- [19] Counsel posited that in the case at bar while it is true that the marriage lasted from 21st June 1985 to August 2006 when the Petitioner left the matrimonial home there are several factors which make the one-third "rule" inapplicable these factors were:

- (a) The petitioner was a career woman who went out to work throughout the marriage and on her own admission, at her retirement earned a substantial monthly income as a top-tier civil servant of \$8,300 (including allowances of \$1000)
- (b) When the Petitioner met the Respondent he had already formed Medar & Company and the Petitioner has never worked in, nor made a contribution to the running of Medar & Co.
- (c) Medar & Co funded the purchase of the Rodney Bay home with no contribution from the Petitioner.
- (d) From shortly after the first child of the family, Stacey-Anne was born the Respondent, on the Petitioner's own admission, did his own washing, ironing, grocery shopping and they virtually lived separate lives.
- (e) On the occasions when the Petitioner was studying and working overseas, or resided with her parents, the Respondent was the one who took care of the home.
- (f) The Petitioner is presently receiving a substantial pension;
- (g) The Petitioner has recently sold the Monier property and pocketed the proceeds
- (h) The Petitioner made no financial contribution to the purchase of the Corinth home which was in any event purchased before the marriage.
- (i) The Respondent has been solely responsible for the university education in England of Stacey-Anne Medar to the tune of over £10,000 annually.
- (j) More likely than not the Respondent will very soon be solely responsible for the university education of Mikey –Ann.
- (k) Although retired the Petitioner is a relatively young woman, as at 55 or 56 years of age with a Masters degree in business administration and although now retired from the public service, because she is an ex-permanent secretary in as prestigious a ministry as that of foreign affairs she will likely find it easy to find work as a consultant for several years into the future.
- (l) On the other hand the Respondent is now 65 years old and in the twilight of his years.
- (m) Counsel submits that those key factors warrant the award to the Petitioner of a sum substantially less than the starting point of one-third advocated in **Wachtel (NB: citation)**
- (n) Counsel submits that for the reasons expressed in paragraph 82 above and the explanation provided by Lord Denning a more equitable fraction would be an award to the Petitioner of one-sixth instead of one-third, of the value of the matrimonial home.

- [20] I must state that I disagree with the Respondent's counsel's assertions which seem to damn a married woman for being a professional as much as she would be damned if she were not a professional or did not work. It is my view that Mrs Medar's standard of living would suffer greatly as a result of the ending of the marriage. Surely the fact that her high achievement placed her in an assignment overseas cannot be used against her , since this would have lowered the expenses of the household at home in Saint Lucia where she would not eat meals, nor use utilities or other amenities of the home during the period of the overseas assignment. Consequently even in her absence the Respondent's contribution would be measurable and cannot be ignored.
- [21] It is also self-evident for example that if members of the family spent time in the United Kingdom and New York during the tenure of the Petitioner in those countries, their stay would have been much more economical because the Petitioner would be able to provide free accommodation for the family. This kind of contribution cannot be ignored.
- [22] However it is also true that in seeking a fair outcome between the parties one has to look at how they handled financial and business matters as a family. The evidence shows that the Respondent kept his business to himself and that the parties handled financial matters separately. The Petitioner was kept in the dark in so far as the Respondent's earnings were concerned and she appeared satisfied with this approach as long as things were going well in the marriage.
- [23] The Petitioner also complained of being left out of parties, and fishing trips. This again indicates an acceptance of separate lives in some departments.
- [24] The evidence also shows that the Respondent's business paid for his and the family's life style with some contribution from the Petitioner. The Respondent borrowed from the business to pay for the Rodney Bay Property and repaid the business with the sale of the Corinth Property. The Corinth Property was paid for solely by the Respondent even before the parties were married. In this way the Respondent established a culture of separate dealings with property and finances and the Petitioner played along by purchasing and selling the Monier property without any reference to the Respondent.
- [25] Based on these circumstances one can conclude that the Petitioner would not be able to maintain her lifestyle without the Respondent's assistance even though she was content to handle her finances separately. Even if she could make a living in the future, this was speculative and could

not on its own meet the expectations of maintaining the standard of living which she enjoyed during the marriage.

[26] On the other hand the Respondent has not made any assertions about the expectations he had for the future even if he had to share the value of the Rodney Bay home with the Petitioner whether at the level of half or one third share. He asserts only that he is 65 years old and in the twilight of his years.

[27] In assessing the legal approach to this matter I have taken into consideration four main issues. Firstly the case law sets the requirement of fairness. Secondly fairness is to be achieved by following the statutory guidelines laid down in section 25 of the Divorce Act (the basis of the arguments above of counsel) when applied to the facts. Thirdly I should as much as possible put the Applicant in the position she would be in had there been no divorce. The Divorce Act does not provide for the "clean break principle." Fourthly there may be cases which do not fall squarely into the automatic half share or one third share paradigm because of the way the parties conducted their financial and professional affairs during the course of the marriage. I am guided in the application of these principles by the following authorities:

Stonich v Stonich Civil Appeal No 17 of 2002 (BVI); White v White House of Lords October , 2000; Wachtel v Wachtel [1973] 1 All ER 829; and J v J [2009] EWHC 2654 (Fam).

Conclusion

The Rodney Bay Property

[28] In my view there are some aspects of the evidence which weigh against awarding a half share of the property at Rodney Bay to the Petitioner. Firstly the fact that the Petitioner sold the Monier property without any reference to the Respondent and based on the Petitioner's own evidence, the individual approach that the Respondent had to his financial, business and recreational affairs lead to the inference that the separation of financial affairs and the individual appropriation of the proceeds of sale of property was accepted in the marriage.

[29] The Petitioner was never an equal partner in the husband's affairs except when it came to raising the children, and looking after their welfare. I do not think that she had any expectation of being an equal partner since she was a professional woman who was quite capable of taking care of her

own affairs. The only obvious frontier of sharing was the welfare of the children with most of the effort in that regard being made by the Petitioner.

[30] However it is my view that the Petitioner did not make any exceptional sacrifice as a homemaker, since she made time to achieve both higher professional qualification for herself and accepted prestigious overseas postings which again contributed more to her own achievement than to the welfare of the family. But it must be acknowledged that every wife who bears children and is involved in their upbringing makes a considerable sacrifice or contribution to the marital enterprise.

[31] In my view the Petitioner's contribution does not qualify her for a half share of the Rodney Bay property. But certainly I think that taking into account her contribution as a wife and a home maker her contribution cannot be less than one third of the value of the matrimonial home. I therefore reject the respondent's proposed apportionment of one sixth share. As a result of her contribution the Petitioner is entitled to one third share even if the land was purchased and developed solely by the Respondent's business and is not deemed to be community property. I therefore hold that the Petitioner is entitled to one third share of the matrimonial home at Rodney Bay.

[32] The evidence does infer in the eyes of the court that after 20 years of marriage where both parties shared a decent income, that the wife made a considerable contribution to making the matrimonial home the sanctuary that it would be for the married couple and their children.

Putting the Petitioner in the position she would be in had the marriage continued.

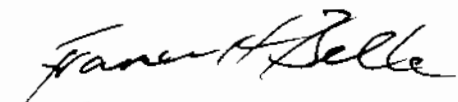
[33] As far as any other contribution and entitlement are concerned, it is clear from the evidence of both parties that the Respondent simply lived off of the proceeds of his business enjoying the lifestyle which the proceeds of the business could provide. He could therefore say "truthfully" that the business did not pay him a salary or dividends in recent years. However, as I stated earlier, in accumulating these proceeds he would have benefited from his wife's contribution to making the matrimonial home a sanctuary for him to retreat to, raise his children and entertain his friends.

[34] The Petitioner has lost the benefit of this sanctuary and would have to invest in another. She would need to raise the capital sum for the purchase of a new home and to replace the many amenities which would make the home comparable to that which she enjoyed at Rodney Bay. I agree that she is still capable of earning an income based on her qualifications and experience but

she is also entitled to a comfortable retirement if she so chooses and which she would have been able to enjoy had the marriage continued. I would therefore award her \$1,000,000.00 as a lump sum payment or alternatively the sum of \$2500.00 per month as maintenance for herself until further order of the court.

The Court's Order therefore is:

- [35] The Respondent is to pay to the Petitioner the sum of \$EC 1,471,666.67 representing the value of her one third share of the matrimonial home (based on the most recent valuation since the earlier one would by now be out of date) in nine months or the matrimonial home be sold and the proceeds divided between the parties on the basis of one third share to the Petitioner and two thirds to the Respondent.
- [36] The Respondent do pay to the Petitioner a lump sum payment of \$1,000,000.00 at the end of August 2014 or by monthly instalments of \$2500.00 commencing from the date of this order.
- [37] If still applicable, the Respondent is to provide monthly maintenance for the child of the family Mikey-Ann in the sum of \$1500.00 commencing on 31st August, 2014. The Respondent is to pay one half of all medical and educational expenses for the Mikey-Ann until she shall completes her higher learning.
- [38] That any arrears on the interim maintenance order made on 24th June, 2010 be paid by the Respondent to the Petitioner forthwith.
- [38] The Respondent shall pay the Petitioner's costs of these proceedings to be assessed if not agreed.


Francis H V Belle
High Court Judge