IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

HIGH COURT OF JUSTICE (DIVORCE)

SUIT NO.GDAHMT 2008/0011

BETWEEN:

JULIETTE JOY HENRY

Petitioner

and

ROOSEVELDT REUBEN HENRY

Respondent

Appearances:

Mrs. Celia Edwards Q.C, and Mrs. Nicola Byer for the Petitioner
Ms. Claudette Joseph and Mr. Ian Sandy for the Respondent

2013: March 8
2013: July 31.

JUDGMENT

[1] **MOHAMMED, J.:** After obtaining a decree absolute on 9th January 2009 the Petitioner ("the Wife") applied to the court for the following orders:

(a) To convey the former matrimonial home ("the former matrimonial home") situate at Westerhall, St David's to her;

(b) To convey motor vehicle registration number PU 610 ("the BMW ") to her;

(c) Maintenance for the child of the marriage Andrea Henry ("Andrea").

(d) To award her fifty percent of the value of a fishing boat ("the fishing boat") purchased by the Respondent ("the Husband") during the marriage; and

(e) To award her fifty percent cash on deposit at CLICO in the sum of $100,000.00 held in the name of the Husband ("the CLICO money").

[2] The Husband has asked the Court to dismiss the Wife's application and instead to make the following orders:

(a) Award two-third interest in the former matrimonial home to him and one third to the Wife;

(b) Order the Wife to deliver up possession of the BMW.

[3] From the evidence adduced before the Court the matrimonial assets at the time of the breakdown of the marriage were:

(a) The former matrimonial home valued by Joseph John & Associates on 28th November 2012 at EC $815,000.00.

(b) Another lot of land at Old Westerhall, St David's ("the Westerhall land") valued by Joseph John & Associates on 28th November 2012 at EC $136,700.00.

(c) Land at Hope, St Andrew's ("the Hope land") valued by Joseph John & Associates on 28th November 2012 at EC $191,600.00.

(d) The BMW which was not valued.

(e) The fishing boat which was not valued.

(f) The CLICO money.

[4] At the time of the hearing of the instant application the Wife's request for maintenance of Andrea was no longer pursued.

[5] It was not in dispute that all the matrimonial assets are in the Husband's name. The Husband admitted in his affidavits that the Wife is entitled to a 50% share in the Hope land and in the closing submission Counsel for the Husband has stated that the Husband admits that the Wife is also entitled to 50% share in the Westerhall land.

[6] The simple issue to be addressed is how are the matrimonial assets to be divided between the parties. I have not been convinced that either party made such a stellar contribution to the marriage to justify any award more than an equal division of the assets. While the Wife has requested that she is entitled to one half share of the total matrimonial assets, she has requested that she be awarded the matrimonial home and the BMW and that her one half interest in the Westerhall land, the Hope land, the fishing boat and the CLICO funds be set off against the Husband's interest.

[7] I do not agree with the Wife since in my view while on paper it may be fair, for practical purposes it would not, since it is clear that the most valuable and prized assets of the marriage are the former matrimonial home and the BMW.

[8] In the interest of fairness I order that the wife is entitled to a 50% share in the matrimonial home, the Westerhall land, the Hope land, the BMW and the CLICO money. Each party is to bear his/ her costs.

What are the applicable principles of law?

[9] In determining the division of matrimonial property between the husband and wife after a marriage, the Court is guided by the factors set out under Section 25 of the Matrimonial Causes Act 1973 namely:

(a) The income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future.

(b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

(c) The standard of living enjoyed by the family before the breakdown of the marriage.

(d) The age of each party to the marriage and the duration of the marriage.

(e) Any physical or mental disability of either of the parties to the marriage.

(f) The contributions made by each of the parties to the welfare of the family including any contribution made by looking after their home or caring for the family.

(g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.

(h) In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

[10] To achieve a fair outcome for the parties the Court must consider all the circumstances of the case **(Miller v Miller)**[1]. The starting point for the exercise of the Court's discretion is each party is entitled to an equal share of the assets of the marriage unless there is a good reason to the contrary. In **Miller** the Court was of the view that for all practical purposes a husband and wife are equal partners in marriage and therefore when this partnership ends, each is entitled to an equal share of the assets of the partnership unless there is good reason to the contrary. In **Charman v Charman**[2] the English Court of Appeal described a special or stellar contribution by one of the parties during the marriage as a good ground justifying departure from equality in exceptional circumstances. Such contribution can be financial or non-financial.

[11] Before I address the guidelines set out in section 25 I will deal with the Truck, the BMW and the fishing boat.

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[1] 2006 UKHL 24

[2] [2007]EWCA Civ 503, {2007] All ER (D) 425

The BMW

[12] The BMW was brought to Grenada by the Husband as part of a duty free concession to returning Grenadian nationals. It has been the subject of much litigation between the parties during the course of these ancillary proceedings. It is not in dispute that the Wife has had the benefit of using the car since 30th May 2008. The Wife admitted under cross-examination that the BMW was purchased using the Husband's 401K and retirement savings. However, although the Husband alleged that he has transferred the car to his sister, he has failed to provide any evidence to support this contention. I therefore find that the BMW forms part of the matrimonial assets since it was purchased with the intention for the common use of the parties to the marriage when they returned to Grenada. In the absence of any evidence by the Husband that he had transferred the ownership of the BMW to his sister, I find that he is still the owner of the BMW.

[13] If it is subsequently discovered that the Husband had indeed transferred the BMW to his sister, the Court having made a finding that it formed part of the matrimonial assets, is empowered to set aside such transaction if it is so required.

The Truck

[14] Neither party requested the apportionment of the interest in a truck registration number TV375 ("the truck") in their respective applications. However, during the course of these proceedings the Wife alleged that it was purchased by the Husband using their joint funds and it was brought to Grenada using the Husband sister's boyfriend's name of Littan Pascal to order to obtain the duty free concession of Littan Pascal.

[15] The Husband vigorously denied this allegation. He exhibited evidence of Littan Pascal's ownership of the truck to his affidavit filed 29th January 2013 namely, the used vehicle agreement and bill of sale in the name of Littan Pascal, the retail

Certificate of Sale No.00238091 showing Littan Pascal as the owner, the customs declaration form in the name of Littan Pascal in respect of the shipping of the truck, receipt No. 97327 for Customs service charge and environment levy for the truck in the name of Littan Pascal, motor vehicle registration, inspection and license in respect of the truck in the name of Littan Pascal and the Grenada Ports Authority Receipt No. 223948 in respect of tailgating for the truck in the name of Littan Pascal.

[16] In light of the Husband's evidence, I find that the truck was not owned by him and did not form part of the matrimonial assets.

The fishing boat

[17] It was common ground that the fishing boat was purchased out of the proceeds of the second house they owned in Brooklyn, USA. When it was purchased it cost EC $5,000.00. However, the Respondent admitted that it sank. At the hearing of this application it was not a matrimonial asset which can be made available to be valued. While I find that it formed part of the matrimonial assets since it was not a significant part of the total matrimonial assets and it is no longer available to be valued in these circumstances it will be an exercise in futility to consider it in determining the division of the matrimonial assets in these proceedings.

The Income, earning capacity, property and other resources which each of the parties to the marriage has, or is likely to have in the foreseeable future

[18] The Husband is presently self- employed as a farmer. He alleged that his income is small and that he barely gets by on what he earns. He stated that a spinal injury which eventually caused him to retire from Verizon continues to hamper his work as a farmer. Under cross-examination, the Wife conceded that the Husband had problems with his lower back. However, the Husband failed to provide any evidence of his average income and expenses per month. The Wife was trained as

Dental Assistant but there was no evidence that the wife is currently employed or that she is unable to work due to any injury. There was no evidence of the parties receiving any pension from their former employers from overseas or of any potential income which each party may receive in the future. I therefore find that both parties still have the potential to earn income, however, the Husband is disadvantaged due to his lower back injury and that there is no potential of any future income.

Age of each party to the marriage and duration of the marriage.

[19] The parties were married at the tender age of 21 and 22 respectively. They were married in January 1981 and they obtained the decree nisi in November 2008 and the decree absolute in early 2009. At best they were married for approximately 27 years, which is a long marriage. At the time of the hearing of the instant application the parties are in their early 50s.

The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.

[20] Both parties need a place to live in the future. The Wife currently resides at the former matrimonial home for which there is no mortgage. The Husband left the matrimonial home in 2008 and again there was no evidence of where he lives, and if he pays a rent or a mortgage.

[21] I accept that the Wife has had the benefit of remaining in the matrimonial home for the past two years to the exclusion of the Husband. However, the Husband failed to place any evidence before the Court to demonstrate what it cost him in finding alternative accommodation. In my view the onus was on the Husband to provide this evidence if he wants the Court to give him credit for finding alternative accommodation. Without such evidence this Court is not minded to do so since it would be speculative.

The contributions made by each of the parties to the welfare of the family including any contribution made by looking after their home or caring for the family.

Financial contributions

[22] It was not in dispute that when both parties left Grenada in their early twenties to live in the USA they had no assets and no savings. Both parties worked during the marriage. The Husband worked as a waiter at the Hilton Hotel, in construction, at the US Postal Services then at Verizon Telephone Company[3]. At Verizon the Husband had the benefit of a 401K[4]. The Wife worked at Duane Read, Mc Donalds, as a Nurse's Aide and then 18 years as a Dental Assistant[5]. Both parties acknowledged that the Husband always earned more income than the Wife[6] .

[23] While living in the USA they purchased two homes. Firstly, a house at Midwood ("the Midwood house") and after they sold it they purchased a house at Brooklyn ("the Brooklyn house"). The Wife agreed that the Husband paid the mortgage for the Midwood house and Brooklyn house and that she paid the other bills in the house such as food, clothing, utilities and insurance for the car[7].

[24] The areas of disagreement on the parties' financial contribution centred on each parties contribution to the purchase of the Midwood house, the Brooklyn house and the matrimonial home in Grenada and whether there was a pooling of resources. The Wife contended that they pooled their income during their marriage. They had a joint account at Chase Manhattan Bank where their tax return cheques were deposited. The Husband had his own account at a Credit Union at his job and she had an account at Washington Mutual which she used to cash cheques[8]. She claimed that they also had a joint credit card which she used

[3] Paragraph 5 of the Husband's affidavit filed 8th May 2009
[4] Paragraph 9 of the Wife's affidavit filed 5th February, 2009
[5] Paragraph 3 of the Wife's affidavit filed 29th May 2009
[6] Paragraph 4 of the Wife's affidavit filed 29th May 2009
[7] Paragraph 17 of Wife's affidavit filed 5th February, 2009
[8] Paragraphs 5 and 6 of Wife's affidavit filed 29th May, 2009

to purchase materials used in renovations for the Midwood house and Brooklyn house. The Wife says she used money she saved during a period of estrangement from the husband to pay the deposit ($8,000) on the Midwood house. When the Husband moved out of the former matrimonial home in 2008 the Wife paid all the bills and there was no evidence of any mortgage on this house.

[25] The Wife also contended that when the Husband returned to Grenada to construct the former matrimonial home he had $350,000.00 US of which $50,000.00 came from his 401K[9] and from the proceeds of the Brooklyn house[10]. She said from this sum the Husband purchased the land at Hope[11], land to build the former matrimonial home, constructed the former matrimonial home, purchased a BMW car, the fishing boat and the truck.

[26] The Husband contended that they did not pool their resources during the marriage and that he shouldered most of the financial responsibilities since he earned more than the Wife. He admitted that the Wife obtained court orders for maintenance of the children but he insisted that he always maintained his children[12]. The Husband says that he found the Midwood house and he used his 401K to pay the closing costs on the Midwood house. The Husband insisted that the net proceeds after the sale of the Brooklyn house was $249,646.46 and he agreed with the Wife that he received $100,000.00. He insisted that he used this sum to complete the extension on the matrimonial home in Grenada which included fencing and paving of the entire yard. He also purchased household items in the sum of EC$12,550.00 and the fishing boat which costs EC$5,000.00[13] . The Husband denied the Wife purchased the bathtubs for the said house.

[27] The Husband also stated that the Midwood house was sold for US$300,000.00 and not US$400,000.00 as alleged by the Wife. He agreed with the Wife that

[9] Paragraph 25 of Wife's affidavit filed 5th February, 2009
[10] Paragraph 34 of Wife's affidavit filed 5th February, 2009
[11] Paragraph 28 of Wife's affidavit filed 5th February, 2009
[12] Paragraph 8 of the Husband's affidavit of 8th May 2009
[13] Paragraph 31 of the Husband's affidavit filed 8th May 2009

$100,000.00 was used as the deposit for the Brooklyn house. However, he stated that $50,000.00 was spent on renovating the Brooklyn house, $18,000.00 on closing costs and $4,000.00 on new appliances[14]. He returned to Grenada with the remaining $128,000.00 together with $50,000.00 from his pension which he cashed in[15]. He denied he purchased the land upon which the former matrimonial home was built and instead insists it was a gift from his brother Dunstan[16]. On this note, in the absence of any evidence to prove otherwise I accept the conveyance at its face value and find that the Husband did not pay his brother EC$60,000.00, as the Wife alleged.

[28] While I accept that the Husband's direct financial contribution to the acquisition of both the Midwood and the Brooklyn house to be greater than that of the Wife, in my opinion his financial contribution was not significant or outstanding when compared to the Wife's. I agree that while the Husband's income during the marriage was always greater than the Wife's, the latter was able to still contribute financially by paying the utilities, food and clothing which allowed the Husband to pay the mortgage.

[29] There was much debate by both parties whether the moneys they earned during the marriage were pooled together for the benefit of the family or if they were kept separately. In my view, this was a couple who pooled their resources and income together and shared their assets. They filed joint tax returns in the USA, they had a joint bank account, they used a joint credit card to purchase materials for renovating the Brooklyn house[17], and the Wife looked after the distribution of the funds after the sale of both the Midwood property and the Brooklyn property. Their actions all point to the fact that while the financial contributions from both parties were different during the marriage they pooled their resources for the benefit of the

[14] Paragraph 19 and 20 of the Husband's affidavit of 8th May 2009
[15] Paragraph 23 of the Husband's affidavit of 8th May 2009
[16] Paragraph 22 of the Husband's affidavit of 8th May 2009
[17] Paragraphs 19 and 20 of Wife's affidavit of 29th May 2009

parties. Indeed, I was not persuaded that this was not the common intention of both parties.

Non-financial contributions.

[30] It is settled law that the courts have taken into account the non-financial contributions of a spouse who stayed at home and looked after the home and family **(White v White)** [18]. While both parties were employed during the marriage, they both also spent time looking after the home and the family. When the Wife first joined the Husband in Maryland in October 1981, she became pregnant in February 1982 and she stayed at home, she did not work and looked after the children for two years[19]. During the marriage the Wife took care of the children and did the household chores[20]. When the Husband left New York for Grenada to make arrangements for their return, the Wife stayed in New York working, maintaining the family and taking care of the children of the marriage[21]. This evidence of the Wife's non-financial contribution was not disputed by the Husband.

[31] The Husband worked on the homes the parties lived in during the marriage. At the Midwood house, he repaired and renovated the entire house which included the roof, floor, ceiling and bathroom. He also installed granite countertops[22]. At the Brooklyn house the Husband also did extensive renovations. He repaired the roof, he changed the floor to concrete, he finished the entire basement and added 2 bedrooms and a kitchen to the basement[23]. While the Wife has disputed the extent of the work the Husband did on the Brooklyn house since she stated that her brother worked with the Husband on the Brooklyn house and her cousin did the work on the roof [24], she did not deny that the Husband worked on both the Midwood house and Brooklyn house.

[18] 2000 WLR 1571
[19] Paragraph 3 of the Wife's affidavit filed 29th May 2009
[20] Paragraph 4 of the Wife's affidavit filed 29th May 2009
[21] Paragraph 23 of the Wife's affidavit filed 5th February 2009
[22] Paragraph 14 of the Husband's affidavit filed 8th May 2013
[23] Paragraph 19 of the Husband's affidavit filed 8th May 2013
[24] Paragraph 18 of the Wife's affidavit filed 29th May 2009

[32] In my opinion both parties' non-financial contribution during the marriage was significant. Again, I was not persuaded that either party's non-financial contribution in looking after the home, the children or the family stood out more than the other.

Order

[33] The truck does not form part of the matrimonial assets.

[34] No order is made with respect to the fishing boat since it has been destroyed.

[35] The wife is entitled to a 50% share in the matrimonial home, the Westerhall land, the Hope land, the BMW and the CLICO money

[36] In the absence of a valuation of the BMW I order that it is to be valued by a certified valuer within one month from the date of this order

[37] The parties may set off the values or buyout each other in order to achieve a division of the assets as ordered by this court.

[38] Each party to bear his/her costs.

Margaret Y. Mohammed

Margaret Y. Mohammed
High Court Judge