

ANGUILLA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(DIVORCE)

CLAIM NO. AXAHCV2007/0036

BETWEEN:

GINA MARICE HODGE

Petitioner

AND

STEVE LIONELL HODGE

Respondent

Appearances:

Mr. Collin Meade instructed by Astaphan's Chambers for the Petitioner

Ms. Keesha Webster instructed by KCW et al for the Respondent

2009: July 6, August 28

JUDGMENT

[1] **SMALL DAVIS, J (Ag):** Decree Nisi of divorce was granted on the Respondent's Cross Petition on 28 November 2007. The Decree Nisi was made absolute on 25th April 2008. The Petitioner filed a Notice of Intention to proceed with an application for ancillary relief on 5 March 2009. In her petition, the Petitioner had prayed that ancillary matters be adjourned to chambers.

[2] The Petitioner seeks ancillary relief in relation to the former matrimonial home and for maintenance of the child of the marriage. The Respondent agrees to continue monthly payments of EC\$1,000 for the maintenance of Ayinde Diallo

Hodge until he reaches the age of 18 years. The only matter for the court's determination on the Petitioner's application is the interest claimed in the matrimonial home.

- [3] The Petitioner seeks a declaration that she is entitled to a 50% share or such other share in the home and an order that the share declared to be due to her be held in trust for Ayinde Hodge until he attains the age of 18 years or in the alternative, if the Respondent fails to agree to her interest being held in trust for Ayinde, that he shall pay her the value of such share as determined by the Court. The Petitioner also seeks her costs of the application.

The History

- [4] The Petitioner and Respondent were married in December 1999. The Petitioner left the matrimonial home in December 2006 and the marriage was thereby brought to an end. In April 1996 the Respondent had purchased 0.25 acre of land in West End registered at West Central Registration Section Block 2801B Parcel 110. In 1998, with the assistance of financing from Anguilla Development Board, the Respondent began construction of a house on the land. He was resident in that house at the time when the parties got married. Upon marriage, the Petitioner moved into the house which was substantially finished.
- [5] It is the Petitioner's evidence that the parties agreed that the Respondent would keep the land, house and mortgage in his name "*since I was not keen on having any partnership*". She also stated that the agreement was that she would be responsible for purchasing food and other sundries and paying the telephone bills and the Respondent was responsible for the mortgage, water, electricity and cable bills. The Petitioner conceded that the Respondent would make sporadic contributions to the groceries, when asked.
- [6] After nine months of married life, the Petitioner went to the United Kingdom to pursue graduate studies. At the end of the year's studies, the Petitioner returned to Anguilla in September/October 2001. She did not resume work at that time because she was awaiting placement by the Government of Anguilla and also

because she was awaiting the birth of their child. Ayinde was born in January 2002.

[7] The Petitioner returned to paid employment with the Government of Anguilla in June 2002. While the Petitioner was away studying and until she returned to work in June 2002 the Respondent alone bore all the financial responsibilities.

[8] In August 2002 the Respondent took up an offer to study in England which he had previously deferred to await the birth of their child. The Respondent remained in England for a period of three years during which he completed Bachelor's and Master's degrees. From September 2002 until at least July 2005 when the Respondent returned to Anguilla, the Petitioner bore the family's financial responsibilities. The Petitioner has produced evidence that she paid the mortgage installments of EC\$1,587 monthly between January 2003 and December 2006. The Respondent admits that the Petitioner bore all the financial responsibilities whilst he was away studying but stated that before he left for study, he gave the Petitioner access to his bank accounts so that if she needed money she could make withdrawals. He also maintained that upon his return he assumed the responsibility for the electricity and cable bills and that he gave the Petitioner money towards groceries and the mortgage, which the Petitioner said she would continue to contribute towards, given his student loan liability.

[9] The Respondent said that it was never discussed or contemplated that she would have any interest in the matrimonial home. Specifically in relation to the Petitioner's payment of the mortgage, he said that it was never agreed that those payments would entitle her to any interest in the matrimonial home. The Petitioner admits that she and the Respondent never discussed joint ownership of the home¹.

[10] The Respondent asserts that the Petitioner does not have any interest in the matrimonial home and states that he is willing to reimburse her for the payments

¹ See paragraph 12 of the Petitioner's Affidavit in Reply filed 20 May 2009. This seems to be also tacitly accepted by paragraph 20.

that she made over the years, which by his calculation amounts to EC\$72,178.50. The Respondent also opposes the Petitioner's prayer that such interest in the matrimonial property as the court deems the Petitioner is entitled to should be held in trust for Ayinde. The Respondent feels that he should be able to leave any property that he owns to all his children, even providing for those as yet unborn.

The Law

- [11] The Petitioner's Notice of Intention to Proceed with an Application for Ancillary Relief does not state the section of the *Matrimonial Proceedings and Property Act* ("MPPA") under which the application for ancillary relief is being made, however from the nature of the relief sought, it is clearly made under sections 23 and 25.
- [12] Sections 23 and 25 enable various types of financial provision to be made on or after a decree nisi for the benefit of a party to the marriage or a child of the family. Section 23 deals with financial provisions for a party to the marriage and the court is empowered to order that payment be made periodically or in a lump sum. Section 25 confers powers whereby the court may order various types of disposition of property.
- [13] Section 28 of the Matrimonial Proceedings and Property Act provides:
- "If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply for an order under section 23 or 25 against the person to whom he or she was married immediately before the grant of that decree unless the remarriage is with that person and that marriage is also dissolved or annulled or a decree of judicial separation is made on a petition presented by either party to that marriage."*

[14] The unchallenged evidence is that the Petitioner has remarried². There is no evidence before the court as to the date of the Petitioner's remarriage. The scheme of section 28 is to prevent a party who has remarried from obtaining financial benefit from a former spouse, at least by way of matrimonial proceedings. It would appear that the Petitioner is barred from obtaining any ancillary relief in her favour by way of a property adjustment order as permitted by section 25. Section 24 which deals with financial provision for the child of the family is not affected by section 28.

[15] I have considered whether the Petitioner made an application for ancillary relief in her petition which would have been before the date of her remarriage. Section 33 of the MPPA is under the rubric "Commencement of proceedings for financial provisions orders etc." Section 33(1) provides:

"Where a petition for divorce, nullity of marriage or judicial separation has been presented, then subject to subsection (2), proceedings under section 22, 23, 24 or 25 may be begun subject to and in accordance with rules of court at any time after the presentation of the petition...."

[16] Section 33(2) provides:

"Rules of court may provide, in such cases as may be prescribed by the rules –

(a) That application for ancillary relief shall be made in the petition or answer; and

(b) That applications for ancillary relief that are not so made, or are not made until after the expiration of such period following the presentation of the petition or filing of the answer as may be so prescribed, shall be made only with the leave of the court."

[17] No rules of court have been made under the MPPA. It follows therefore that an application for ancillary relief may only be made after the presentation of the petition. A perusal of the petition reveals that no application for ancillary relief

² See paragraph 24 Respondent's Affidavit filed on 11 May 2009.

was made therein. The single line “That ancillary matters be adjourned to Chambers” cannot be construed as an application. At best they are an indication of an intention to seek some form of ancillary relief³. The subject application was therefore made on 4 March 2009.

[18] As stated by Lord Ormrod in **Fielding v Fielding**⁴ : *“it is very important indeed that both parties should initiate, before they remarry, proceedings for a property adjustment order. Otherwise whichever of them remarries will be deprived of the benefit of the property adjustment order powers of the court. That is the effect of s 28(3) of the 1973 Act. So that it is of the greatest importance that the provisions relating to the starting of proceedings for ancillary relief should be observed carefully by both husbands and wives in these cases if serious injustice is not sometimes to be caused.”*

[19] The clear words of section 28 preclude the making of an application after remarriage and by extension, the making of any order in favour of a re-married spouse. The Petitioner’s application for ancillary relief by way of a declaration of an interest in the matrimonial home or adjustment of the property interest must therefore be dismissed.

Contribution to the property

[20] The asset in question was premarital property brought into the marriage by the Respondent. I believe that at least initially there was no contemplation of the Petitioner having an equal or any defined interest in it and each was content to operate their lives independent of each other at least in this regard. It was however the home that they shared as a family, particularly when little Ayinde was added to the equation. This was an ambitious young couple, each of whom supported the other’s pursuit of higher education to promote their respective career paths.

³ **Jenkins v Hargood** [1978] 3 All ER 1001, **Nixon v Fox** [1978] 3 All ER 995

⁴ [1978] 1 All ER 267

- [21] I consider that the Petitioner's contribution to the marriage by way of her bearing the financial burden for the three years while the Respondent was away studying was an important contribution to the marriage, which could have properly been considered by the court on an appropriate application for ancillary relief.
- [22] The Petitioner bore the financial burden for over half the length of the marriage. If the Petitioner had not agreed to pay the mortgage and all the other expenses during that period, the Respondent might well not have been able to go away to study and improve himself and even if he did, he likely would not have been able to keep making the mortgage payments while he was a student.
- [23] The Respondent has stated that it was never his intention not to compensate the Petitioner for the contribution she made to the mortgage payments. He has offered to reimburse the Petitioner the sum of EC\$72,178.50 plus 10% interest.

The Transfer of the Property

- [24] I do not accept the explanation that the Respondent has given for the transfer of the property to his brother in April 2009 for the sum of EC\$1,000.00 in exchange for moneys owed to his brother. The Respondent claimed that he transferred the property to his brother in consideration for what he owed him for the construction of the house and for paying off the mortgage. No supporting evidence was brought to show what was owed to his brother or how much had been paid to the mortgagee. The house was constructed since 1998. The Petitioner's application for ancillary relief was filed on 5 March 2009. The transfer occurred on 1st April 2009.
- [25] From the evidence before the court, the property is valued at US\$325,000 and the mortgage balance was EC\$308,701.50⁵. That means that the Respondent would have had equity in the property in the region of US\$205,000. The idea that he transferred the property to compensate his brother is implausible and the

⁵ See paragraphs 31 and 32 of the Respondent's Affidavit filed on 11 May 2009 and Exhibit "GMH2"

Respondent has done himself a disservice by putting such a preposterous claim before the court. I find it is more probable that the Respondent effected a transfer of the property in a misguided attempt to put it out of the reach of the Petitioner. I have no reservation in setting aside the transaction, however I will stay the execution of this part of the order until the Respondent pays the Petitioner the sum of EC\$72,178.50 plus interest thereon but in any event not longer than 30 days from the date of this order.

Anglec Shares

[26] The matter concerning the shares in Anguilla Electricity Corporation ("Anglec") was not a part of the Petitioner's application for ancillary relief but was raised in the Respondent's affidavit in response. The parties purchased the 200 shares in Anglec, which are registered in their joint names. The parties are agreed that the shares were acquired as an investment for and on behalf of Ayinde. The Respondent says that the agreement was that until Ayinde comes of age, they were entitled to the benefit of the dividends. The Petitioner denies this latter assertion and says that she has been depositing the dividends that she has received into an account for the benefit of Ayinde. She has not asked for any order in relation to these shares. The Respondent asks for an order declaring that the shares are to be divided 50:50 between the parties. There is no contention as it relates to the beneficial ownership of the shares. I direct that the 200 Anglec shares are to be held in the joint names of the Petitioner and the Respondent in trust for Ayinde Diallo Hodge.

[27] In conclusion, the order of the court is as follows:

- (1) The Respondent is to pay the Petitioner the sum of EC\$72,178.50 plus interest thereon at the rate of 9.5% per annum from 1 January 2007 until the date of payment.
- (2) The transfer of Registration Section West Central Block 2810B from Steve Hodge to Lincoln Hodge dated 31 March 2009 and registered 6th April 2009 is hereby set aside.

- (3) Paragraph 2 of the order above is suspended for a period of 30 days to allow the Respondent to pay the sum of EC\$72,178.50 plus interest as set out in paragraph 1 above to the Respondent.
- (4) The shares jointly owned by the Petitioner and the Respondent are declared to be held on trust for Ayinde Diallo Hodge until he attains the age of eighteen (18) years.
- (5) Each party to bear his/her own costs.

Tana'ania Small Davis
High Court Judge (Ag)