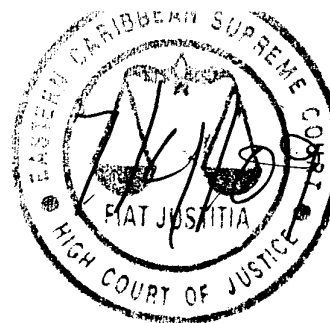




THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 112 OF 2002

BETWEEN:

SYDNEY CLARKE

Petitioner

- v -

JOZETTE CASSON CLARKE nee GLOSTER

Respondent

Appearances:

Mr. Ronald Marks and Ms. Niara Fraser for the Petitioner
Ms. A. Grant for the Respondent

2009: February 23rd
April 7th

DECISION

BACKGROUND

- [1] **Joseph, Monica J (Ag):** Petitioner Sydney Clarke and Respondent Jozette Casson Clarke were married on 30th June 1984 at the Church of God Worldwide Mission at Redemption Sharpes and lived at Sharpes. There are three children of the marriage, the youngest is now 20. The Petitioner filed for a divorce which was finalized on 4th May 2004.
- [2] The sole issue is the proportion of the parties' beneficial interest in the matrimonial assets that comprise 6,447 sq ft. of land with two buildings: a three bedroom matrimonial home valued at \$100,000.00. A second two bedroom house valued at \$55,000.00, a total value of \$193,682.00.

WRITTEN SUBMISSIONS: 10TH MARCH AND 27TH MARCH 2009

- [3] As appears on the marriage certificate, the petitioner was 22 when he married the respondent who was then 20. They are now 47 and 45 years, the marriage having lasted some twenty years.
- [4] The parties have agreed that they both contributed to the matrimonial assets but disagree as to the proportions. The respondent seeks half of the matrimonial assets and the petitioner considers that he should have the greater share in the matrimonial assets.
- [5] The Court is to consider what is fair in all the circumstances. To do so I approach the matter from two directions.
- [6] I consider what their unexpressed common intention was and I consider the factors in the Matrimonial Causes Act (Cap 176) (the Act) that require me inter alia to look at the contributions that the parties have made to the welfare of the family. The contribution factor includes contributions made by a party to looking after the home or caring for the family.
- [7] To determine what their unexpressed common intention was at the time they acquired the matrimonial assets, I look at their conduct and course of dealings during the happier days of the marriage.
- [8] In the early days of the marriage the parties were a family working, sharing and trusting one another. An example: The petitioner was involved in a vehicular accident and received monetary compensation. On receipt of the cheque they went to the bank together. As the petitioner did not have his ID card, the cheque was paid into the respondent's account.
- [9] The parties discussed how to utilize that money: whether they should use it for education of their children or for other business. They were a well functioning family unit operating within roles. Their relationship was further described by the petitioner's evidence:
- "She started working before we occupied the matrimonial house. I used to pay the loans and she take care of children and the home. She will take care of all the

business. I work and bring the money to her. I bring my money to her she take care of the children and pay the bills.

[10] That evidence shows the course of dealings between them and is strong evidence of togetherness and unexpressed common intention of both parties sharing in the family assets, which points to equality in shares.

[11] The parties now differ about the sum received for compensation. The petitioner stated that it was \$20,000 something. The respondent said that it was \$13,000.00: that \$10,000.00 was left in her account and \$3000.00 was kept by the petitioner. That is now not then.

[12] Regarding contribution of taking care of the home and the part it plays in arriving at total contributions Saunders JA in Timothy Stonich v Tamara Stonich BVI Civil Appeal No. 17 of 2002, at para 30, stated:

"The point is that there is no basis in law for Courts to regard always as decisive or of special importance the financial contribution made by a party to the welfare of the family. In the normal course of things any such contribution should be weighed in the same scales as a contribution of a different nature. Spouses may choose to perform different roles in a marriage... As Lord Nicholls states, each in their different spheres contributed equally to the family and, as a general guide, equality in the distribution of matrimonial assets should be departed from only if, and to the extent that, there is good reason for it."

MATRIMONIAL CAUSES ACT (The Act) - APPLICATION

[13] In deciding the extent of the beneficial interest of the parties in the matrimonial assets the Court takes an overview of the case and keeps in mind the factors set out in the Act in addition to the principles in decided cases.

[14] Section 34 of the Act: (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 of 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 contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; (g) in the case of proceedings for divorce or nullity of marriage, the value to either 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 shall lose the chance of acquiring;" (this last does not apply in this case).

- [15] Mr. Marks submitted that the petitioner had the stronger earning power: that because of his long service with P.H. Viera (his place of work) he was able to obtain materials on credit for construction of the matrimonial home from them. I accept that he was able to make arrangements for materials on credit.
- [16] The petitioner was employed with P.H. Viera for eleven years at a salary of \$200.00 a week and earned commission of one per cent on a dollar. When he left that employment he drove a mini van for a time but stress brought that employment to a halt. He became a seaman. Since the divorce he lives in the matrimonial home.
- [17] The respondent worked with Andrew Antrobus as shop assistant for seven to eight years, and was so engaged when they moved into the matrimonial home. She said that her salary was \$200.00 a week (somewhat exaggerated I think).
- [18] I accept her affidavit evidence filed on 8th March 2006 that she worked as a labourer in the construction of the matrimonial home. She assisted in carrying stones from a nearby river and, using a sledge hammer, she broke the stones into sizes for casting of the floor of the matrimonial home. The petitioner admitted that the respondent assisted the workmen when the house was being built, although he mentioned only that she provided them with water and that she cooked for them. I find that the respondent provided some labour in the construction of the matrimonial home.
- [19] In relation to income, earning capacity and other financial resources of the parties to the marriage, when they moved into the matrimonial home it was unfinished and it took sixteen years to be completed.
- [20] The respondent is now self-employed as a seamstress and she cultivates the land. I accept Mr. Marks' submission that, since the divorce, the respondent lives in a house in which she has a beneficial interest and she shares expenses with her fiancé and that the respondent's standard of living has not been lowered.

- [21] For a period of time when they both did not work (one such period was for about a year after his accident) she joined in sou sou to help meet the bills.
- [22] The respondent desired to get into the food business and \$7000.00 from the money for compensation was used towards the cost of a \$40,000.00 van, the balance being a loan. The balance was completely repaid by the respondent after the parties had separated with the help of her fiancé.
- [23] Mr. Marks submitted that the respondent did not make a substantial financial contribution to the welfare of the family as she admitted that the food business was not profitable. She would, he stated, have used whatever she earned from that business to make repayments on the loan taken for the van. I infer that the respondent, being responsible for paying the bills, both salaries would have been utilized to meet some of the loan payments on the van.
- [24] The petitioner stated that he borrowed \$8,000.00 from Barclays Bank to buy the land which is in his name, and repaid that loan without the financial assistance of the respondent. However he described how they operated when he stated that while he paid the bank, she was at home taking care of the kids. That evidence showed the roles played by the parties in contributing to the welfare of the family.
- [25] During the marriage the petitioner took materials on credit from his work place for the matrimonial home. The respondent provided some labour for the matrimonial home. She looked after the three children. Both parties had jobs and pooled their resources as the petitioner handed over his salary to the respondent who managed the household affairs and paid the bills.
- [26] Both parties contributed to the welfare of the family: he providing finances, she providing in kind and some finances.
- [27] They both made substantial contributions towards the matrimonial assets and it is extremely difficult for me to quantify those contributions. I think this is a case where the Court is to apply the maxim of equality is equity.

[28] In Midland Bank PLC v Cooke (1995) 4 AER 562, at p. 574 Waite LJ said:

"That scrutiny will not confine itself to the limited range of acts of direct contribution of the sort that are needed to found a beneficial interest in the first place. It will take into consideration all conduct which throws light on the question what shares were intended. Only if that search proves inconclusive does the Court fall back on the maximum that 'equality is equity.'"

[29] In Rimmer v Rimmer (1952) 2 AER 863 at 867 Sir Raymond Evershed MR had this to say:

"Where the court is satisfied that both the parties have a substantial beneficial interest and it is not fairly possible to assume some more precise calculation of their shares I think that equality necessarily follows".

[30] The petitioner's evidence was that no loan was taken to build the second house and that the acquisition of the house is "between him and the respondent.". This house was intended to provide a source of income by rental.

[31] The equality route is somewhat indirectly supported by the petitioner. More than once the petitioner stated that he did not think the respondent is entitled to half of the matrimonial assets, the reason being her conduct during marriage.

[32] I agree with Ms Grant's submission that the petitioner is so annoyed and disappointed with the respondent's conduct that he seems to be saying to the Court: Although she made substantial contributions, do not order half of the matrimonial assets as her conduct does not merit it. When it was put to him in cross examination whether he was stating that if her conduct had been exemplary she is entitled to half of the assets, he denied it.

CONCLUSION

[33] To ensure fairness I have traveled two routes: (a) unexpressed common intention based on the course of dealings between the parties following the principles in decided cases and (b) contributions made by the parties to the welfare of the family including contribution made under the Act.

[34] Findings in both situations do not collide but move in the same direction – equality. In (a) unexpressed common intention, the Court is faced with the difficulty of quantifying the contributions made by the parties. In (b) similarly, both parties made substantial contributions. With the paucity of evidence on sums of money expended by the parties, the insufficiency of evidence on the individual contributions made that could assist in arriving at proportional interests, the Court has great difficulty in quantifying those proportional contributions, so equality seems to be the answer.

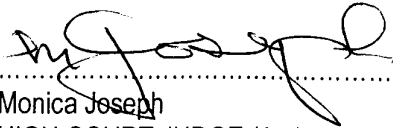
[35] As both parties have made substantial contributions to the acquisition of the matrimonial assets, Court holds that equality is equity. Both parties hold the matrimonial assets in equal shares.

[36] The petitioner lives in the matrimonial home. I think that a valuation of the matrimonial assets should be obtained. The respondent is entitled to half share of the family assets and the Court will order that the petitioner pay the respondent her share of the value of those assets.

ORDER

- [37] (1) The beneficial interests of the matrimonial assets are owned by both parties equally.
- (2) Valuation of the matrimonial assets to be obtained on or before 30th May 2009, costs to be met equally.
- (3) The petitioner to pay the respondent half of the value of the matrimonial assets within twelve months.
- (4) If after twelve months the petitioner has not paid the respondent, the matrimonial assets is to be sold and the respondent paid her share.
- (5) Each party to bear own costs.

(6) Parties are at liberty to apply.



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Monica Joseph
HIGH COURT JUDGE (Ag.)
2nd April 2009