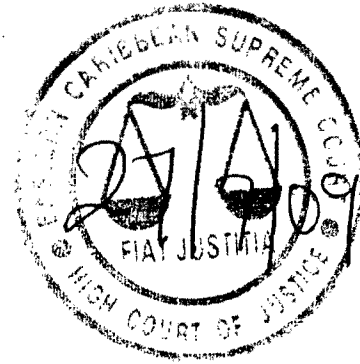


THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO. 101 OF 2006



BETWEEN:

Carlson Dwayne McAthur Ferdinand

Petitioner

V

Enid Joycelyn Ferdinand

Respondent

Appearances:

Mr S. Williams for the Petitioner

Ms. P. Knight for the Respondent

2007: 4th May;

21st July

JUDGMENT

- [1] **JOSEPH Monica J.** : The parties were married on 3rd July 1999. A decree absolute was granted on 22nd December 2006. The petitioner is a qualified teacher. After the date of the marriage the respondent was involved in farming, and then joined the Ministry of Agriculture as a data collector. There is one child of the marriage born on 10th August 2000.
- [2] After the marriage the parties resided at the respondent's parents' home at Rose Hall until 2001. The reason for this decision was to effect savings from payment of rent and to facilitate the building of the matrimonial home.

- [3] In 2001 the petitioner's mother transferred to the petitioner 9,698 sq ft of land situate at Rose Hall by deed of gift and in that year construction on the matrimonial home began.
- [4] A mortgage in the sum of \$100,000.00 was obtained from the National Commercial Bank with both parties signing the mortgage document.
- [5] On 21st April 2008 notice of application for ancillary relief was filed on behalf of the petitioner followed by affidavits by the parties.
- [6] The petitioner seeks a property adjustment order and reasonable access to the child of the family. The respondent seeks beneficial interest in the property and maintenance of \$500.00 for the child of the family.

WRITTEN SUBMISSIONS: 18TH May 2009 and 27th May 2009

- [7] ISSUES submitted by Counsel for the respondent:

Whether the deed of gift in the sole name of the petitioner illustrates that there was never a common intention for the property to be jointly owned.

Whether a resulting and/or constructive trust arose in favour of the respondent to the extent of her monetary and other contributions.

What is the respondent's beneficial interest in the property at Rose Hall?

What is the effect of the joint account in law?

- [8] Counsel for the petitioner submitted that based on all the evidence the petitioner should be awarded a 60% interest and the respondent 40% interest in the matrimonial property. Can I infer from the conduct of the parties what their beneficial interests in the property should be?

- [9] I can infer what their beneficial interest in the property should be by looking at how they conducted their affairs and from all the circumstances of the case, before the deterioration of their relationship. The petitioner testified:

“Both of us began construction with intent to move into together as a family.....We pooled our resources as a family. We worked as a unit. Money that serviced the loan came from a joint account. Salaries were paid into that account.”

- [10] From the time the respondent commenced employment with the Ministry of Agriculture her salary was paid into that joint account until September 2008. I find that the Petitioner’s mother made a gift of land although in the petitioners name, to the family unit.
- [11] I find that The respondent’s brothers McKen Richards’ and Steele Richards’ (deceased) provision of money and materials for, and labour in, the construction of the house, were for the family unit. There was togetherness between the parties, and there was togetherness with the extended family, all of which points to all parties working together for the common good of the family unit.
- [12] I infer from all this that the common intention of husband and wife in the happier days of the marriage was for joint ownership. Further, the respondent acted to her detriment in obtaining the help of her brothers to contribute in the construction of the house. It is unlikely, had she foreseen the deterioration of the marriage, that she would have sought their help in the construction of the matrimonial home. In *Rimmer v Rimmer* (1952) 2 AER 863 at page 868 Denning L.J. said:

“...In *Newgrosh v Newgrosh* some furniture was bought by the husband’s father with his own money for the use of the couple, but the receipt was taken in the wife’s name. Willmer J. held that the furniture belonged to them jointly, and his decision was affirmed by this court. In *Jones v Maynard* a banking account was in the husband’s name but was fed by the moneys of both and treated as a joint account. Vaisey, J. held that, although the husband’s

contributions were much larger than the wife's, it belonged to them both jointly."

- [13] In *Cooke v Head* (1972) 1 W.L.R. 518 Lord Denning MR at page 520 para. F-G said:

"...whenever two parties by their joint efforts acquire property to be used for their joint benefit the courts may impose or impute a constructive or resulting trust. The legal owner is bound to hold the property on trust for them both. ...It applies to husband and wife, to engaged couples and to man and mistress..."

- [14] The Court also considers the factors in section 34 (1) of the Matrimonial Causes Act (Cap 176) and tries to put the parties, so far as it is practicable and having regard to their conduct just to do so, in the financial position they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other. They are:

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.

- [15] At the time of their marriage the respondent was a farmer and housewife. She is now employed at the Ministry of Agriculture and continues to farm. She rears broiler chickens which helped her to maintain the child of the marriage and pay bills. She gave no idea of sums collected or of salary she earned. There is no evidence relative to whether or not she is unlikely to continue in both areas.

- [16] The petitioner teaches at the Rose Hall Government School and earns a net salary of \$2720.00 a month. They manage a joint account at the National Commercial Bank which account was utilized in the construction of the matrimonial home.

- [17] For the foreseeable future the likelihood is that the petitioner and respondent would continue in the jobs they now hold.

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

[18] The parties would have the ordinary living needs. The respondent set out her needs and those of their child: Cooking gas \$36.00. Water \$25.00. Telephone \$160.00. Food/groceries \$400.00. Clothing \$150.00 Personal and medical \$50.00/ Lunch money for child \$28.00 medical (child) \$40.00 a total sum of \$889.00.

[19] The mortgage taken to construct the matrimonial home was serviced from a joint account into which account both parties had their salaries deposited.. The respondent admitted that her financial contribution to the mortgage was small, but I look at all the evidence and the contributions made by the parties. It is difficult to quantify. In *Stonich v Stonich* BVI Civil Appeal 7/2002 Saunders J.A. (as he then was) when commenting on contributions made by a wife looking after the family held to be important, said:

“The Court should not pay too much regard to a contribution merely because it is easily quantifiable in hard currency and too little to a contribution that is less measurable but equally important to the family structure”.

The age of each party to the marriage and the duration of the marriage.

[20] At the date of marriage (as shown on their marriage certificate), the petitioner was twenty six and the respondent was twenty seven years. They are now respectively thirty six and thirty seven years. In the ordinary course of life the parties have several years ahead. The marriage lasted seven years.

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

[21] It seems that they both enjoyed a reasonable standard of living.

Any physical or mental disability of either of the parties to the marriage. There is no evidence of these in respect of both parties.

The value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party shall lose the chance of acquiring - does not arise in this case.

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.

[22] The family of both parties provided contributions for their relative: petitioner's mother contributed land and the respondent's brothers money, materials and labour. Both parties farmed and produce was sold and brought into the family revenue.

[23] The respondent's evidence was that she bought furnishings for the home so providing for the comfort of members of the family. The petitioner's mother helped with payment for the furnishings. The respondent has removed from the home items that are valued some \$15,000.00. I find that those are owned jointly: the respondent is to pay the petitioner half of the value.

[24] The respondent cared for the family and the child of the marriage and the children of the family and in this manner contributed towards the welfare of the family.

[25] I keep in mind that the petitioner invites the Court to apportion the percentage interest at 60% for the petitioner and 40% for the respondent. I think, having considered all the evidence, that the proportions should be equal proportions.

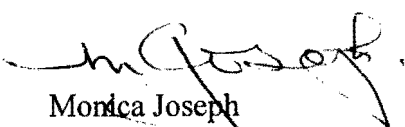
[26] In November 2008 the property was valued at \$274,892.00. The petitioner in his affidavit states that there is a mortgage of over \$87,000.00 I think both parties are equally responsible for payment of the mortgage.

CUSTODY AND MAINTENANCE OF CHILD

[27] I grant custody to the respondent with reasonable access by the petitioner. The petitioner is to pay \$300.00 per month maintenance for the child of the family with effect from 1st August 2009.

ORDERS:

1. The petitioner holds 50 % beneficial interest in the matrimonial property on a constructive trust for the respondent.
2. The parties are to make equal payments for the payment of the outstanding amount on the mortgage on the matrimonial home, sum ascertainable as at the date of judgment.
3. The respondent is to pay the petitioner half of the cost of the items (\$15000.00) that she removed from the house, that is, \$7500.00.
4. Custody of the child of the marriage is given to the respondent with reasonable access to the petitioner.
5. The petitioner is to pay maintenance of \$300.00 a month for the child of the marriage from 1st August 2009.
6. Parties are at liberty to apply.
7. There is no order as to costs.


Monica Joseph
High Court Judge (Acting)
9th July 2009