

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 42 OF 2002

BETWEEN:

OLIN DENNIE

Petitioner

V

PHYLLIS DENNIE

Respondent

Appearances:

Mrs. K. Bacchus-Browne for Petitioner

Mr. S.E. Commissiong for Respondent

16th March 2007

DECISION

- [1] **COTTLE, M:** The parties were married in 1980. The Respondent says that the relationship began much earlier, while she was a teenager. The first child of the union was born in 1977. She is described as autistic and resides with the mother of the petitioner in the United States where her special needs are better provided for. The other two children are adults. Both are now pursuing higher education.
- [2] In 2002 the Petitioner filed for divorce and the Respondent consented to the grant of a decree. The Respondent now applies for ancillary relief. She seeks maintenance for herself and property adjustment orders. The Petitioner is an attorney at law. He practices in Saint Vincent and the Grenadines and has done so for many years. The Respondent is a registered nurse.

- [3] The Petitioner swore an affidavit of means. He puts his monthly earnings at \$18,000.00. He has monthly expenses of \$17,322.91. The Respondent earns \$2,202.72 per month. She swears that after deductions she takes home \$761.35 per month.

The Real Property

- [4] In his affidavit of means the Petitioner discloses that during the course of the marriage, three properties have been acquired. These are parcels at New Montrose, Stoney Ground and Prospect all with buildings thereon.
- [5] **New Montrose:** This was bought in 1983. The Petitioner swears that he purchased the property from his own funds. A loan was taken from the Royal Bank of Canada to finance construction. This loan was later refinanced at the St. Vincent Building and Loan to permit the construction of an apartment downstairs the property. In 1992 another apartment building was constructed on the New Montrose property. All of the attendant expenses, the Petitioner says, he alone bore.
- [6] **Stoney Ground:** The Stoney Ground property was purchased by a company wholly owned and controlled by the Petitioner in 1998. It was bought from the Respondent! This had been the family home of the Respondent's parents and upon their death the Respondent, as personal representative, sold this property to the Petitioner. The Petitioner says he then expended further sums to renovate this property. There are now some suggestions that the circumstances surrounding the sale of this property – at an alleged undervalue – should be investigated. I do not consider such an exercise to be involved in the determination of the issues which concern the court on this application for ancillary relief. I thus make no findings in this regard.

- [7] The third property, the Prospect lands, was bought by the Petitioner in 1993. He has subdivided and sold a portion of the land. On the remaining parcel he has constructed a house. The Respondent values the three properties at \$655,000, \$247,000 and \$1 million respectively. There is a total mortgage indebtedness on these three properties of \$864,222.90 leaving equity now wholly owned by the Petitioner of over \$1 million.

Matrimonial Causes Act.

- [8] Section 34 of the Matrimonial Causes Act enjoins the court to have regard to all of the circumstances in deciding what ancillary relief is to be granted consequent upon the dissolution of a marriage. I will now note some of the factors to which I have paid regard while emphasizing that I also have had regard to all of the surrounding circumstances.
- [9] The Petitioner is now 56. He is self-employed. His income is substantially greater than that of the Respondent but is entirely dependent on his continued good health to be able to continue working. The Respondent is 52. She will retire from the public service in 3 years, whereupon she will receive a gratuity of just over a year's salary plus monthly pension.
- [10] At present, the Petitioner resides in the palatial Prospect property. The Respondent lives in the refurbished Stoney Ground house valued at less than one quarter of the value of the Prospect house. The Petitioner has not been paying the mortgage for the Stoney Ground property and it has now been offered for sale by the financial institution which holds the mortgage.
- [11] The Petitioner has been meeting the educational expenses of the two younger children. He proposes to continue doing so. He estimates that between 2003 – 2005 he paid educational expenses of over \$250,000. He expects to expend at least \$125,000 to permit his daughter Amirh to complete her studies.

- [12] The Respondent's affidavit of response was replete with allegations of infidelity on the part of the Petitioner. I pause to indicate that I have not considered the behaviour of the parties as a factor in my decision. The Petition was presented on the basis that the parties lived apart and the Respondent consented that the marriage had broken down irretrievably. There were then no allegations of gross behaviour. I discount these allegations now for the purposes of the ancillary relief proceedings.
- [13] I have been greatly assisted by the research and the distillation of the legal learning by both Counsel. The quest of the court is to arrive at fairness for both parties. Ideally, after the dissolution both parties should be left, inasmuch as it is possible, in the position they would have enjoyed had the marriage endured and each had honestly discharged their obligations to the other.
- [14] This is a marriage that lasted over two decades. Substantial assets have been acquired. The parties would thus have enjoyed a standard of living commensurate with the level of acquired assets.
- [15] During the cross-examination of the parties it emerged that the Petitioner, through his wholly owned company is also the owner of property in Bequia. I have been provided with no valuation for the Bequia lands. The Petitioner's position is that these lands were acquired after the parties were experiencing marital difficulties. While the union had not yet formally been dissolved the marriage was at an end for all practical purposes. The Respondent contends that this property forms part of the matrimonial assets and as such must be taken into account. I am of the view that it is correct to consider the Bequia lands as part of the assets owned by the husband Petitioner when deciding how best to arrive at a fair distribution of the matrimonial assets in this case.

- [16] As noted earlier, the equity available in the combined real estate (excluding the Bequia lands) is about \$1 million. This property was acquired over the duration of a substantial marriage. The Respondent began with the proposition that the Court should award her one half of the assets. The Petitioner argues that his earnings provided for most if not all of the purchase monies for these properties. It is equally clear that the contributions of a faithful wife over more than two decades ought not to be trivialized. There are still substantial encumbrances on the properties which will have to be serviced by the Petitioner. I must consider, inter alia, the respective earning capacity of each party after the dissolution of marriage.
- [17] When I bear in mind all of the factors which the Act requires me to consider I conclude that the fairest order to provide a clean break that can be made will be as follows. The Petitioner will transfer to the Respondent the Stoney Ground property. The Petitioner will continue to pay the mortgage payments in this property until the debt is liquidated whereupon the property will be reconveyed to the Respondent. I note the Petitioner's indication that he will continue to bear the educational expenses of the children as these expenses arise.
- [18] I also order that the Petitioner pay to the Respondent a lump sum of \$80,000.00 in full satisfaction of all matters of ancillary relief.
- [19] I arrive at this position on the basis of accepting that the available pool of matrimonial assets is at present approximately one million dollars. I wish to award the Respondent approximately one-third of this amount. The value of the Stoney Ground property plus the lump sum achieves this. For the avoidance of doubt I indicate that I would have awarded a lump sum of only \$60,000 but I have increased this figure to take account of the Bequia lands as best I can. The Petitioner will pay the costs of these proceedings in the sum of \$10,000.

A handwritten signature in black ink, appearing to read "Brian S. Cottle", written over a horizontal dotted line.

Brian S. Cottle
MASTER