

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVP2012/0040

BETWEEN:

TECKLA EDWARDS

Appellant

and

DR. ALVIN G. EDWARDS

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE
The Hon. Mde. Louise Esther Blenman
The Hon. Mde. Gertel Thom

Chief Justice
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Dane Hamilton, QC, with him, Mr. D. Raimon Hamilton for the Appellant
Ms. E. Ann Henry, QC, with her, Ms. C. Debra Burnette for the Respondent

2014: November 26;
2015: November 23.

Matrimonial home – Property registered solely in name of husband – Whether wife entitled to share of beneficial interest in property – Common intention – Conduct of parties – Whether parties had common intention to share beneficial interest in matrimonial home – Proportions in which parties intended to share beneficial interest if there was common intention – s. 19 of Married Women’s Property Act, Laws of Antigua and Barbuda – Whether learned judge erred in his assessment of evidence – Whether learned judge erred in application of legal principles

The appellant and respondent got involved in an intimate relationship in February 1987 and in 1989, they began living together in a house owned by the respondent, which was subject to a mortgage (“the Hodges Bay house”). Both the appellant and respondent were employed at this time but the mortgage payments were made solely by the respondent. The couple was married in September 1990 and by August 1994 had three children. Both in 1995 and 1998, the Hodges Bay house was damaged due to the passage of hurricanes. Prior to the commencement of the parties’ relationship, the respondent had acquired a parcel of land at Donovan’s in St. John’s which he subsequently exchanged with the

Government for a parcel of land at Mercer's Creek. This land was registered solely in the name of the respondent and in January 2001 – he obtained a mortgage to construct a house on the property. These mortgage payments were also paid solely by the respondent.

The couple's relationship was not harmonious throughout and in June 2001, the respondent wrote to the appellant accusing her of being unfaithful and informing her that he had decided to separate from her. Notwithstanding this, the couple, along with their three children, moved into the house at Mercer's Creek when it was completed in 2002, and resided there as a family.

In October 2011, the appellant instituted these proceedings under the Married Women's Property Act,¹ seeking, inter alia, a declaration that the property at Mercer's Creek is held by the respondent on trust for both of them as beneficial tenants in common in equal shares. The learned trial judge dismissed her claim, stating that she was not entitled to a share in the house and land although she must be compensated for the appreciation in the value of the property resulting from her contributions to its amenities. During the couple's time at the Mercer's Creek property, the appellant had made a number of contributions to the family expenses, which included taking care of the household expenses, contributing \$6,000.00 to the cost of repairs to the Hodges Bay house after it had been damaged in 1998, taking a loan of \$55,000.00 to assist with the purchase of furniture and appliances for the home, and paying \$10,000.00 to have kitchen fixtures installed.

The appellant appealed to this Court on various grounds. Two main issues arose from the grounds of appeal: (1) whether the learned judge erred in his assessment of the evidence in finding that there was no common intention that the appellant should have a beneficial interest in the Mercer's Creek property; and (2) whether the learned judge erred in his application of the legal principles in coming to a determination on the matter.

Held: allowing the appeal, setting aside the decision of the learned judge, declaring that the respondent holds a 25% of the beneficial interest in the Mercer's Creek property on trust for the appellant, and further ordering that the respondent shall pay the appellant's costs of this appeal assessed in the sum of \$20,000.00, that:

1. An appellate court should be very reluctant to interfere with a trial judge's findings of primary fact, particularly when they depend on the trial judge's assessment of the witnesses, whom he or she would have had the advantage of seeing and hearing. If, however, the conclusion reached by the trial judge was one which: (i) there was no evidence to support; (ii) was based on a misunderstanding of the evidence; or (iii) no reasonable judge could have reached, then an appellate tribunal will interfere with it. In the present case, the evidence clearly did not support the findings made by the learned trial judge. Accordingly, it is a proper case for the appellate court to intervene.

¹ Cap. 267, Revised Laws of Antigua and Barbuda 1992.

In re B (A Child) (Care Proceedings: Threshold Criteria) [2013] 1 WLR 1911 applied; **Central Bank of Ecuador and Others v Conticorp SA and Others** [2015] UKPC 11 applied.

2. Where property is registered in the name of only one of the parties in a cohabiting couple, there is no presumption of joint beneficial ownership. In determining what share each party is entitled to, the court must consider the whole course of dealings between them in relation to the property and determine what is fair. In doing so it must be noted that financial contribution is only one of the relevant factors.

Oxley v Hiscock [2005] Fam 211 applied; **Jones v Kernott** [2011] UKSC 53 applied.

3. The evidence in this case shows that the conduct of the parties, from the time they began living together at the Hodges Bay house and also after their move to the house at Mercer's Creek, was one of cooperation between the two in meeting the expenses of their family. Although the appellant was not involved in any way in the acquisition of the land at Mercer's Creek and the construction of the house was financed mainly by a mortgage paid by the respondent, both the appellant and respondent used their resources for the construction and development of the property and the maintenance of the family. Their course of conduct shows that there was a common intention that they should both share the beneficial interest in the property.

JUDGMENT

- [1] **THOM JA:** This appeal arises out of a dispute over the ownership of a matrimonial property which is registered only in the name of the husband. The learned judge found that the property was owned solely by the husband.

BACKGROUND

- [2] Mrs. Edwards and Dr. Edwards began an intimate relationship in February 1987 and on 7th August 1988 a child was born to them. In 1989 they began living together in a house owned by Dr. Edwards, which was subject to a mortgage ("the Hodges Bay house"). At this time Mrs. Edwards was employed by LIAT as a customer service representative, while Dr. Edwards was a self-employed ophthalmologist. They were married in September 1990. Their second child was born on 27th April 1991 and their third child on 18th August 1994.

- [3] In 1995 and 1998 the Hodges Bay house was damaged by the passage of hurricanes. The repairs of the damage suffered in 1995 were financed by the insurers, while the repairs as a result of the 1998 damage were self-financed.
- [4] Prior to their intimate relationship, Dr. Edwards had acquired a parcel of land at Donovans in St. John's. This land was exchanged with the Government for a parcel of land at Mercer's Creek. It is registered solely in Dr. Edwards' name.
- [5] In January 2001, Dr. Edwards obtained a loan to construct a house on the Mercer's Creek land. From this point onward, I shall refer to the land and house together, as "the Mercer's Creek property".
- [6] The relationship between Mrs. Edwards and Dr. Edwards has not been harmonious throughout. In June 2001, Dr. Edwards wrote to Mrs. Edwards by email accusing her of being unfaithful and informing her that he had decided to separate from her. Notwithstanding this, on completion of the house in 2002, Mrs. Edwards, Dr. Edwards and their three children moved into the house at Mercer's Creek and resided there as their family home.
- [7] On 7th October 2011, Mrs. Edwards instituted these proceedings under the **Married Women's Property Act**² ("the Act") in which she sought, among other things, a declaration that the Mercer's Creek property is held by Dr. Edwards on trust for both of them as beneficial tenants in common in equal shares.
- [8] The learned judge dismissed her claim but stated at paragraph 38 of the judgment as follows:
- "The Defendant conceded that the Claimant did purchase several items of furniture and appliances and decorations for the house, that she did purchase the Jacuzzi and miscellaneous other things for the house, but that this did not entitle her to a share in the house and land. The Claimant must, however, be compensated for the appreciation in the value of the property resulting from her contributions to its amenities. This however

² Cap. 267, Revised Laws of Antigua and Barbuda 1992.

ought to be the subject of agreement between the Claimant and the Defendant as to quantum, and need only be determined by the court if the parties have tried and failed to resolve it by their own efforts.”

[9] Mrs. Edwards appealed the decision on several grounds. Two issues arise from the grounds of appeal. Firstly, whether the learned judge erred in his assessment of the evidence in finding there was no common intention that Mrs. Edwards should have a beneficial interest in the Mercer’s Creek property. Secondly, whether the learned judge erred in his application of the legal principles.

[10] There is no dispute as to the legal principles applicable in this appeal. The provisions of section 19 of the Act were considered by the Privy Council in **Lynn Anne Abbott v Dane Norman Lawrence Abbott**,³ a case emanating from this jurisdiction (Antigua and Barbuda). Ms. Henry, QC placed much emphasis on the following passage at paragraph 2 of the judgment:

“Unlike some other Caribbean countries, Antigua and Barbuda have [sic] no equivalent of the wide powers of property adjustment enjoyed by divorce courts in the United Kingdom. Property disputes have therefore to be resolved according to the ordinary law. Nevertheless, the inferences to be drawn from the conduct of husband and wife may be different from those to be drawn from the conduct of parties to more commercial transactions. The modern law has been developed in four decisions of the House of Lords, *Pettitt v Pettitt* [1970] AC 777, *Gissing v Gissing* [1971] AC 886, *Lloyd’s Bank plc v Rosset* [1991] 1 AC 107, and most recently *Stack v Dowden* [2007] UKHL 17, [2007] 2 WLR 831, largely approving an important decision of the Court of Appeal in *Oxley v Hiscock* [2005] Fam 211.”

[11] Ms. Henry, QC contends that in view of the above passage, section 19 of the Act being in the same terms as section 17 of the UK Act, the court was required to determine the matter within the constraints identified by Lord Morris of Borth-y-Gest in **Pettitt v Pettitt**.⁴

“[W]hen an application is made under section 17 there is no power in the court to make a contract for the parties which they have not themselves made. Nor is there power to decide what the court thinks that the parties

³ [2007] UKPC 53.

⁴ [1970] AC 777.

would have agreed had they discussed the possible breakdown or ending of their relationship. Nor is there power to decide on some general principle of what seems fair and reasonable how property rights are to be re-allocated. In my view, these powers are not given by section 17.”⁵

- [12] In **Abbott v Abbott** the Privy Council reviewed the development of the law. Baroness Hale of Richmond, in delivering the judgment of the court, having stated that the constructive trust is the more appropriate tool for determining beneficial ownership of matrimonial property, emphasised the need for the court to take a holistic approach in determining the parties common intention. She referred to her earlier statement in **Stack v Dowden**⁶ where she stated the principle as follows:

“The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties’ shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.”⁷

- [13] There are two issues for the Court to determine, firstly, whether the parties had a common intention that they would share the beneficial interest in the property, and secondly, if they had a common intention, in what proportion did they intend they would share the beneficial interest.
- [14] In dismissing Mrs. Edwards’ claim, the learned judge found that there was no shared common intention by the parties that they would share the beneficial interest in the Mercer’s Creek property.
- [15] The learned judge based his findings on the following evidence of Dr. Edwards, who he found to be a credible witness: (i) the land at Mercer’s Creek was acquired solely by Dr. Edwards; (ii) he obtained the mortgage and made the mortgage payments; (iii) he also contributed \$200,000.00 to complete the construction of the house; (iv) the life insurance that was used as additional security for the mortgage was in his name only and he alone paid the premiums.

⁵ At p. 804.

⁶ [2007] UKHL 17.

⁷ *Stack v Dowden* [2007] UKHL 17 at para. 60.

- [16] The learned judge did not believe the evidence of Mrs. Edwards that she and Dr. Edwards had agreed that she would meet the household expenses of the family and Dr. Edwards would meet the expenses relating to the mortgage and utility payments.
- [17] The complaint of the appellant relates to the judge's findings of fact, his evaluation of those facts and the inferences drawn from them.
- [18] It is a well settled principle of law that an appellate court would be very reluctant to interfere with a judge's findings of primary fact, particularly when they depend on the judge's assessment of the witnesses which he had the advantage of seeing and hearing. An appellate court would interfere where it is satisfied that the learned judge was plainly wrong.
- [19] In **In re B (A Child) (Care Proceedings: Threshold Criteria)**,⁸ Lord Neuberger of Abbotsbury PSC stated the principle as follows at paragraph 53:
- “Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached; that an appellate tribunal will interfere with it.”
- [20] More recently, in **Central Bank of Ecuador and Others v Conticorp SA and Others**,⁹ Lord Mance stated at paragraph 5:
- “[A]ny appeal court must be extremely cautious about upsetting a conclusion of primary fact. Very careful consideration must be given to the weight to be attached to the judge's findings and position, and in particular the extent to which, he or she had, as the trial judge, an advantage over any appellate court. The greater that advantage, the more reluctant the appellate court should be to interfere. Some conclusions of fact are, however, not conclusions of primary fact, but involve an assessment of a number of different factors which have to be weighed against each other. This is sometimes called an evaluation of the facts and is often a matter of degree upon which different judges can

⁸ [2013] 1 WLR 1911.

⁹ [2015] UKPC 11.

legitimately differ: see *Assicurazioni Generali SpA v Arab Insurance Group* (Practice Note) [2003] 1 WLR 577, paras 15-17, per Clarke LJ, cited with approval in *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23, [2007] 1 WLR 1325, para 46.”

[21] The learned judge’s disbelief of Mrs. Edwards’ evidence was based on two factors, Dr. Edwards’ denial of it and also what the learned judge considered to be inconsistencies and the implausibility of her evidence.

[22] The learned judge, at paragraph 34 of the judgment, identified the following as inconsistencies:

- “1. The Claimant alleged that she and her husband agreed that she would take care of the household expenses, including the purchase of groceries and the payment of the gardener and the household helper, while he would make the mortgage payments on the house, yet she averred in her affidavit that ‘although the Defendant lives in the house and partakes of any food stock, he did not provide a dollar towards its acquisition until the year 2009 when I wrote to him complaining about my inability to take care of paying for the groceries and the gardener all by myself.’
2. The Claimant alleged that she did not complain or demand the return of the money deducted from her fixed deposit account at Bank of Antigua because of her husband’s non-payment of his loan with the bank, yet there is before the Court a letter dated 21st October 2005 which she wrote to him demanding repayment of the money (with interest) by 15th December 2005 and indicating that a copy of the letter will be sent to her lawyer.
3. The Claimant alleged that it was decided that her husband would sell the house at Hodges Bay and use the net proceeds of sale to put towards a mortgage for the new house at Mercer’s Creek, yet the house at Hodges Bay was not sold until three years after the mortgage had been taken for the house at Mercer’s Creek and two years after the house was completed.
4. The Claimant alleged that it was agreed between her and her husband that the house at Mercer’s Creek would be their joint property as husband and wife, yet she conceded that by June 2001, before construction of the house had commenced, the marital relationship between them had broken down.”

[23] Mr. Hamilton, QC contends that the inconsistencies referred to by the judge are not inconsistencies. Queen's Counsel argues that in relation to the household expenses, the evidence of the appellant related to a period of approximately 19 years. Further, the learned judge failed to make a distinction between 1990 and 2009. In relation to the sale of the Hodges Bay house, he submits that the question for the trial judge was how did the sale of the Hodges Bay house affect any possible contribution and interest in the property by the appellant, given their domestic arrangement over the period of the relationship? In relation to the agreement of joint ownership, he argues that the learned judge misconstrued the evidence of Mrs. Edwards as it relates to the marital relationship.

[24] Ms. Henry, QC, in response, submits that the learned judge made a thorough assessment of the evidence pointing out the inconsistencies and implausibility of Mrs. Edwards' evidence. She argues further that this Court should therefore not substitute its own evaluation of the evidence since the learned judge did not misdirect himself and draw erroneous inferences from the facts bearing in mind the judge's discretion under section 19 of the Act is not an unfettered discretion. She relied on the passage in **Pettitt v Pettitt** quoted at paragraph 11 above.

[25] In relation to the first inconsistency referred to by the learned judge, it is necessary to put the evidence in context. Mrs. Edwards, in paragraph 14 of her affidavit, deposed as follows:

“That the Defendant is responsible for discharging the monthly mortgage instalments, I am responsible for the upkeep of the home which include [sic], paying for the services of a gardener and household helper, providing for groceries. I have to pay for internet and cable services. I provide the children with clothing apparel, shoes and uniform [sic], this continued until the two eldest left for college in the United States. At present, although the Defendant lives in the house and partakes of any food stock, he did not provide a dollar towards its acquisition until the year 2009 when I wrote to him complaining about my inability to take care of paying for the groceries and the gardener all by myself.”

[26] When her evidence is read in context there is no inconsistency. Mrs. Edwards stated what her responsibility was in the upkeep of the family and then she

emphasised that she performed her responsibility up until 2009 when she complained of her inability to do so. This was in keeping with her evidence at paragraph 15 of her affidavit that she retired from working at LIAT in 2002. By 2009 she had been retired for approximately 7 years.

[27] In relation to the second inconsistency identified by the judge, the transcript does not show that the letter referred to by the judge was ever put to Mrs. Edwards at the trial. Dr. Edwards testified under cross-examination that he traded in a vehicle he had and the value of the vehicle, which was \$14,000.00, was credited to the cost of a new vehicle for Mrs. Edwards, in this way she was repaid the sums deducted from her fixed deposit. This evidence was not included in his affidavit, nor was it put to Mrs. Edwards at the trial.

[28] In relation to the third inconsistency identified by the learned judge, in my opinion there is no inconsistency between a decision to sell a house to assist with the mortgage and the fact that the house was sold 3 years after the house was completed. The sale at a later date does not show that there was no decision to sell the house and pay the proceeds towards the mortgage. While Dr. Edwards testified that the house was not sold until 2004, there is no evidence as to how the proceeds were used.

[29] In relation to the fourth inconsistency identified by the learned judge, the learned judge incorrectly stated Mrs. Edwards' testimony to be: 'the marital relationship between them had broken down'. Rather, Mrs. Edwards' testimony was that 'the marital relationship ... had broken down, but it was not over'.¹⁰ The learned judge himself sought clarification from the witness on what she meant by the statement. The transcript reads:

"THE COURT: Just a minute, Counsel. There was a statement made by the -- there was a statement made by the witness under cross-examination that I thought cried out for clarification, and if -- if you are not going to ask it I will --

¹⁰ See Record of Appeal Vol. 3, p. 51, lines 14-22.

DANE HAMILTON, QC: Yes.

THE COURT: -- because I thought it required clarification, about the marriage breaking down but not being over. I honestly had no idea what that meant and --

DANE HAMILTON, QC: And about the marriage breaking down and --

THE COURT: But not being over.

DANE HAMILTON, QC: Yes, yes, yes, yes. I -- well --

THE COURT: I thought it's something that has to be clarified --

DANE HAMILTON, QC: Yes, yes.

THE COURT: -- because I -- I don't understand it and I say if you don't ask it I will.

DANE HAMILTON, QC: Yes. Yes, yes, yes. Because I -- I myself don't understand it.

BY DANE HAMILTON, QC:

Q. Your marriage broke down, I don't know what you mean by broke down but not being over. Could you explain to --

A. Because she asked the question.

Q. -- His Lordship what you mean. Forget about the question she asked and concentrate on the -- the concept of a marriage breaking down but not being over.

A. What I'm saying is that we had quite a few problems, very many issues. My husband never removed himself --

THE COURT: Just a minute. I need to write. What I mean when I say -- when I said that the marriage broke down but was not over -- and that's what you are answering, what you meant when you said that the marriage broke down but was not over.

THE WITNESS: But was not over. We had many problems.

BY DANE HAMILTON, QC:

Q. Take your time answer with clarity, please.

A. But we decided we were gonna continue in the relationship and we continued in the relationship in spite of and until --

Q. In spite of what?

A. In spite of the problems.

Q. Yes. And until what?

A. And until around 2006 there weren't many problems.

THE COURT: Okay. That's what you meant by that statement.

THE WITNESS: That is what I meant."¹¹

[30] The above evidence shows that Mrs. Edwards acknowledged that there were problems in the marriage but the marriage had not ended by June 2001. More so there is no inconsistency with her evidence that she and Dr. Edwards agreed that the house at Mercer's Creek would be their joint property and her acknowledgment

¹¹ See Record of Appeal Vol. 3, p. 69, line 14 -- p. 71, line 16.

that by June 2001 the marital relationship had many problems. The loan for the construction of the Mercer's Creek house was granted in January 2001.

[31] I turn now to what the learned judge considered to be the implausibility of Mrs. Edwards' evidence.

[32] The learned judge outlined the following as the reasons why he considered Mrs. Edwards' evidence to be implausible:

- (1) Mrs. Edwards was able to finance the construction of the kitchen, bathroom units, exterior walls, fences, walkways, patios, planters and other amenities to the house while also purchasing the bathroom fixtures, new furniture, appliances, all of the children's clothing and other household supplies, pay the wages of the gardener and the household helper, purchase a vehicle and maintain fixed deposit accounts, all on an income of between \$3,200.00 and \$3,700.00 per month.
- (2) Dr. Edwards would not have written to Mrs. Edwards in the terms he did in the letter of 14th June 2001 (where he stated she was unfaithful, and he was involved in another relationship) and thereafter taken out a mortgage loan of almost \$1 million and put an additional \$200,000.00 to construct a dwelling house on land owned by him for the property to be joint property of himself and Mrs. Edwards.

[33] Mr. Hamilton, QC contends that the learned judge did not properly assess the evidence. The appellant ceased working at LIAT in 2002. There is an abundance of evidence that she had loans from which purchases were made, such as the car, furniture, fittings, she also had a fixed deposit. In relation to the June 2001 email, Mr. Hamilton, QC acknowledged that the marriage had problems but submits that Mrs. Edwards and Dr. Edwards continued to live together. When the conduct of the parties is looked at after 2001, it was not only reconciliation but a process of sharing and cooperation in all matters relating to the household.

[34] A careful consideration of the evidence shows that the learned judge did not take into account that apart from Mrs. Edwards working at LIAT, she also operated a clothing store. This evidence was admitted by Dr. Edwards. Dr. Edwards also admitted that Mrs. Edwards had a fixed deposit prior to her retirement from LIAT. He acknowledged this fixed deposit was used as a security for a loan for him to purchase a vehicle. Further, he admitted that he defaulted on the loan and \$11,000.00 was withdrawn from the fixed deposit. Dr. Edwards also admitted that Mrs. Edwards paid Mr. Winston Phoenix who did work on the kitchen fixtures a sum of \$10,000.00. He admitted he had no money to make the payment. It was not disputed that Mrs. Edwards took a loan of \$55,000.00 to purchase the furniture and appliances. The loan documents and receipts for the purchases were exhibited at the trial. Mr. Wayne Hunte testified that Ms. Edwards paid him to construct cupboards in the utility room, closets, the walk-in closet in the master bedroom and the railing around the patio. Mr. Hunte was not cross-examined. Also, Dr. Edwards did not deny that Mrs. Edwards bought groceries and paid the household helper, his testimony was that he contributed to the payment of the household helper and bought groceries, at one period he gave Mrs. Edwards \$300.00 per week for groceries. Further, there was no dispute that Mrs. Edwards bought a car in 2000 which was used for the benefit of the family. Also, Mrs. Edwards' testimony that she had contributed \$6,000.00 towards the repairs of the Hodges Bay house after it was damaged by a hurricane in 1998 was not contradicted. Dr. Edwards' testimony was that she may have assisted.

[35] The evidence shows that while Mrs. Edwards did not earn as much as Dr. Edwards, she was not a woman of straw.

[36] While there is a general reluctance of an appellate court to interfere with the findings of fact of a learned judge, where the evidence clearly does not support the findings made by the learned judge, or the learned judge did not make full use of the advantage afforded him in analysing and assessing the evidence it behoves an appellate court to intervene. This is such a case.

Common Intention

[37] Mr. Hamilton, QC relied on the following to show that there was a common intention to share the beneficial interest in the Mercer's Creek property:

- (a) Mrs. Edwards held the discussions with the architect about the layout of the house.
- (b) Mrs. Edwards paid and supervised Mr. Wayne Hunte, who built the cupboards in the utility room, the clothes closets, including the walk-in closet in the master bedroom and the patio railings at a cost of \$7,494.00.
- (c) Mrs. Edwards took a loan for \$55,000.00 in July 2002 to purchase furniture for the house.
- (d) Dr. Edwards' admission that Mrs. Edwards assisted in the repairs of the Hodges Bay house which was damaged as a result of the passing of a hurricane in 1998.
- (e) Mrs. Edwards paid Mr. Winston Phoenix, who installed the kitchen fittings.
- (f) The loan for the purchase of a vehicle for the family in 2000 from which the family benefitted.
- (g) Use of Mrs. Edwards' fixed deposit to secure the loan for the car for Dr. Edwards.
- (h) There was no evidence from Dr. Edwards which contradicted Mrs. Edwards' evidence that she met the household expenses.

[38] Ms. Henry, QC in response submits that unlike the case of **Abbott v Abbott**, the appellant has failed to present credible evidence upon which the court could rely. She argues that there is no evidence of pooling together of resources for the acquisition of the land nor the construction of the house. There was also no evidence of discussions regarding ownership of the property other than the bare

assertion of the appellant. Moreover, the parties were experiencing marital difficulties over a period of time including the period of construction of the house.

- [39] Ms. Henry, QC argues further that the purchase of furniture and appliances does not create a beneficial interest in the property in her favour. The expenditure incurred by the appellant in or about the Mercer's Creek property cannot support a claim for a beneficial interest in the property. Ms. Henry, QC relied on the following passage from the judgment of Lord Reid in **Pettitt v Pettitt**:

"In whatever way the general question as to improvements is decided I think that the claim in the present case must fail for two reasons. These improvements are nearly all of an ephemeral character. Redecoration will only last for a few years and it would be unreasonable that a spouse should obtain a permanent interest in the house in return for making improvements of this character. And secondly I agree with the view of Lord Denning M.R. expressed in *Button v. Button* [1968] 1 W.L.R. 457, 461. He said with regard to the husband 'he should not be entitled to a share in the house simply by doing the "do-it-yourself" jobs which husbands often do': and with regard to the wife (at p. 462):

'The wife does not get a share in the house simply because she cleans the walls or works in the garden or helps her husband with the painting and decorating. Those are the sort of things which a wife does for the benefit of the family without altering the title to, or interests in, the property.'"¹²

- [40] Ms. Henry, QC also relied on the following passage in **Cupid v Thomas**:¹³

"I am unable to impute a common intention on the part of the parties that the plaintiff was to have a beneficial interest in the property. Indeed, at most there may have been unilateral intention of the plaintiff, although it seemed to me to be no more than a *quasi*-moral view of the plaintiff that, since she shared part of her life with the defendant, now that the parting had come and they were to go their separate ways, she should be compensated by being given, what she called, 'part of what we worked for'. She has not, in my view, proved by cogent evidence, that there was an implied common intention that she should have an interest in the house."¹⁴

¹² At p. 796.

¹³ (1985) 36 WIR 182.

¹⁴ At p. 197.

Discussion

[41] As stated earlier, in determining whether there was a shared common intention that both parties would have a beneficial interest in the property, the whole conduct of the parties must be considered. Each case will turn on its own facts. The evidence shows that Dr. Edwards and Mrs. Edwards lived together from 1989. Dr. Edwards was earning more than Mrs. Edwards. The Mercer's Creek land was acquired solely by Dr. Edwards. They did not have a joint account. Each bore separate expenses relating to the family. Dr. Edwards always made the mortgage payments. He paid the mortgage for the Hodges Bay house where they resided from 1989-2002, and he pays the mortgage for the Mercer's Creek house. Mrs. Edwards met the household expenses such as groceries, household helper, gardener, and the necessities for the three children. Dr. Edwards does not deny that she expended sums in these areas save the gardener, rather, his evidence is that he contributed to these things. In addition Mrs. Edwards supported her husband financially in meeting the family expenses. In 1998 when there was need to repair the Hodges Bay house where they resided, she contributed \$6,000.00. In 2000 she took a loan and purchased a car that was used to facilitate the children's education. She organised rebated tickets for Dr. Edwards' weekly travels to St. Kitts where he had a private practice, thus reducing his overhead expenses. In 2001, when Dr. Edwards needed to purchase a vehicle and was unable to secure the loan, he already having a loan for the Mercer's Creek house, Mrs. Edwards secured the loan using her fixed deposit. During the construction of the Mercer's Creek house when Dr. Edwards did not have the funds to pay Mr. Phoenix, who had installed the kitchen fixtures, Mrs. Edwards paid Mr. Phoenix \$10,000.00. Mrs. Edwards purchased the Jacuzzi, shower and toilet. She took a loan of \$55,000.00 to assist with the purchase of the furniture and appliances for the home. She also employed Mr. Hunte to construct the cupboards for the utility room, the clothes closets including the walk-in closet in the master bedroom, the railing around the patio and paid him for both the material and labour. Dr. Edwards could not recall if she had provided the concrete walkway for the house.

- [42] While Dr. Edwards denied that there was any discussion of joint beneficial interest in the Mercer's Creek property, Dr. Edwards agreed that himself and Mrs. Edwards discussed how she would assist with the house. He also agreed that she did expend money on the property but said it was with his permission. It must also be noted that it was Mrs. Edwards who held the discussions with the architect on the layout of the house.
- [43] The above shows that the conduct of the parties from the time they began living together at the Hodges Bay house to their move to the Mercer's Creek house was one of cooperation between the two in meeting the expenses of their family. Their course of conduct shows that there was a common intention that they should both share the beneficial interest in the property.
- [44] The next question that arises is in what proportion was it intended that they share the beneficial interest.
- [45] The principle emanating from the authorities such as **Oxley v Hiscock**,¹⁵ and **Jones v Kernott**¹⁶ is that where the property is registered in the sole name of one party, there is no presumption of joint beneficial ownership. In determining what share each party is entitled to, the court must consider the whole course of dealing between them in relation to the property and determine what is fair. In doing so it must be noted that financial contribution is only one of the relevant factors.
- [46] The evidence shows that Mrs. Edwards was not involved in any way in the acquisition of the land at Mercer's Creek. The construction of the house was financed mainly by a mortgage which Dr. Edwards pays. Mrs. Edwards' financial contributions are outlined in paragraph 41 above. While they did not have joint accounts, both used their resources for the construction and development of the property and the maintenance of the family. Mrs. Edwards was involved in both

¹⁵ [2005] Fam 211.

¹⁶ [2011] UKSC 53.

the construction of the house and the development of the land. Mrs. Edwards was involved from the inception. As stated earlier it was Mrs. Edwards who held discussions with the architect on the layout of the house. Dr. Edwards acknowledged that when things needed to be done in relation to the property either party would organise but he added that he always paid. However the testimony of Mr. Hunte, who was not cross-examined, shows that this evidence is not accurate. Having regard to the circumstances of this case, in my view Mrs. Edwards is entitled to a 25% beneficial interest in the property.

[47] In conclusion, I would allow the appeal, set aside the decision of the learned judge, and declare that Dr. Edwards holds 25% of the beneficial interest in the Mercer's Creek property on trust for Mrs. Edwards. In the court below, the learned judge made no order as to costs. There was no appeal against this order. The respondent shall pay the appellant's costs of this appeal assessed in the sum of \$20,000.00.

Gertel Thom
Justice of Appeal

I concur.

Dame Janice M. Pereira, DBE
Chief Justice

I concur.

Louise Esther Blenman
Justice of Appeal