

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

**HIGH COURT CIVIL CLAIM NO. 6 OF 2000
(DIVORCE)**

**IN THE MATTER OF THE PETITION OF MARCIA ALVINA DAVIS FOR THE DISSOLUTION OF
MARRIAGE**

BETWEEN:

MARCIA ALVINA DAVIS

Petitioner

V

CARL WINSTON MAXWELL DAVIS

Respondent

Appearances:

Mr. Ronald Marks for the Petitioner

Mr. Sam Commissiong for the Respondent

2004: December 14

2006: July 21

JUDGMENT

- [1] **BRUCE-LYLE, J :-** The Petitioner and the Respondent were married on the 31st day of December 1982. On the 5th day of January 2000 the Petitioner commenced divorce proceedings against the Respondent. The Petitioner was granted a Decree Nisi on the 31st day of March 2000; this was made absolute on the 1st day of July 2000. The decree was granted on the basis that the Respondent had behaved in such a way that the Petitioner could not reasonably be expected to live with the Respondent.
- [2] The Respondent agreed that the marriage had in fact broken down and filed an answer for no other reason than to show that he too had substantial grounds for divorce.

- [3] It is clear from the brief synopsis afforded above that the marriage lasted some 20 years. But from the evidence adduced at the divorce hearing that the parties actually lived under the same roof for 18 of those 20 years. But in actual fact they had been living separate lives under the same roof for some time before the Respondent actually left the matrimonial home claiming intolerance with his wife's conduct. On the 18th April 2000 the Petitioner filed a notice of ancillary proceedings in which she claimed property settlement, a lump sum payment for herself and maintenance for the minor children of the marriage.
- [4] To my mind the principal issues for the Court to determine are as follows:-
- (a) Who should have custody of the minor children of the marriage?
 - (b) What constitutes the assets of the marriage?
 - (c) How are these assets to be distributed amongst the parties?

CUSTODY

- [5] From the evidence at the ancillary hearing, there are two children of the family to whom the issue of custody applies. They are Anthony Kevin born on the 18th August 1987 and a student of the St. Vincent Grammar School and Annah Julia, born on the 11th February 1996 and a student of the Kingstown Preparatory School. These children are presently in the custody of the Petitioner.
- [6] Pursuant to a Court order, a social enquiry report was prepared and is in evidence. There is no evidence to contradict the findings contained in the said report. At the ancillary hearing the Respondent did not call the author of this social enquiry report for the purposes of cross-examination, nor adduce any evidence to refute its findings. The report recommends that the status quo be maintained. The two children to my mind are in no danger. It is admitted that their present living conditions are not perfect, but they are in no danger or uncomfortable. These are minor children and any further disruption of their lives cannot be justified. In any case Anthony Kevin is almost 20 years old, is of age and can

decide where he wants to live. I therefore order that these two children should remain in the custody of the Petitioner, with reasonable access to the Respondent.

[7] So what constitutes the assets of the marriage? The learned Counsel for the Petitioner concedes that the two parcels of land admeasuring 4 acres each located in Clifton, Mesopotamia, the parcel of land with a gas station located in Richland Park, the dwelling house and two parcels of land located at Richland Park present no difficulties, in as much as the Petitioner agrees that they were acquired without any contribution on her part, and therefore she is not legally or otherwise entitled to any share as she did not contribute to their acquisition. – See Yvonne Williams v Kenneth Williams; Civil Appeal No. 5 of 2003 per judgment of Byron C.J.

[8] There was also the issue relating to 2 ½ lots of land situated at Hopewell, Mesopotamia purchased during the marriage. This again the Petitioner concedes to. The evidence before the Court clearly shows that that property was sold by the Saint Vincent Building and Loan Association after both parties failed to repay a mortgage taken in both their names from the said Association. The property was mortgaged to secure monies that were then invested in the gas station. The Petitioner has not disputed that she was in control of the gas station for a period. She failed to make any payments towards the mortgage during the period she was in control of the gas station. Blame was thrown by one party on the other. That is all neither here nor there. The Petitioner being in control of the gas station, for which the mortgage was obtained was under a duty to ensure that repayments towards the mortgage were made. Whether the Respondent was in a financial position to make the repayments whilst the Petitioner was running the gas station would be akin to “wanting to have your cake, and eat it,” proverbially. Suffice it to say she has conceded that she has no claim on the said land on which the gas station sits. I will therefore order that that property remain with the Respondent.

[9] The Petitioner’s counsel has in his written submission stated that the only properties they are interested in, and which to him are subject to distribution as matrimonial assets are the lot of land at Richland Park and the matrimonial home. I agree in so far as that is their

contention. We now have to examine the evidence and the law to determine if the Petitioner is entitled to a share of those remaining properties in issue and if so in what percentage.

LOT OF LAND AT RICHLAND PARK PURCHASED DURING THE MARRIAGE – Subject Matter of Deed of Conveyance No. 3248 of 1997 – Exhibit W.D. 8.

- [10] The Respondent has acknowledged that the Petitioner contributed to the acquisition of the lot of land although her contribution was minimal. In a way, because that property was bought during the marriage it could be said that it was acquired through their joint efforts, since there was some contribution from the Petitioner. I agree with the learning from the case of Rimmer v Rimmer [1952] ALL ER at 863 per Denning C.J.: -

"It seems to me that when the parties by their joint efforts, save money to buy a house which is intended as a continuing provision for them both, the proper presumption is that the beneficial interest belongs to them jointly. The property may be bought in the name of the husband alone or in the name of the wife alone, but, nevertheless, if it is bought with money saved by their efforts and it is impossible fairly to distinguish between the efforts of one and the other, the beneficial interest should be presumed to belong to them both jointly."

- [11] Having considered all the circumstances of this case, including all the factors the Court needs to consider as regards Section 32 and 33 of the Matrimonial Causes Act Cap. 176 as dictated by Section 34 of the same Act, and satisfying myself in accordance with the principle of law enunciated in the case of Rimmer v Rimmer quoted above, I am of the view that it is very clear that the Petitioner did contribute to the acquisition of this property in issue. What then should be her share in this parcel or lot of land which is the subject matter of Deed of Conveyance No. 3248 of 1997 and Exhibited as W.D.8? Counsel for the Petitioner has suggested a 50% share for the Petitioner leaving a 50% share for the Respondent. I agree.

- [12] I will award each party a one half share of this portion of land situate at Richland Park which was bought or purchased in the early stages of the marriage.

MATRIMONIAL HOME:

- [13] It is clear that the matrimonial home was purchased by the Respondent before the marriage for the sum of \$50,000 E.C. There has, during the subsistence of the marriage been considerable renovations done to this matrimonial home. In fact the Respondent himself deposes in his affidavit of means, that the house was renovated three times during the marriage and the house has essentially been rebuilt.
- [14] There is no dispute in my mind that these renovations were financed by the joint efforts of both the Petitioner and the Respondent. During the good times of the marriage both the Petitioner and the Respondent and their children of the marriage resided in this home. Indeed it is accepted that many a happy time was shared in this home by the family. Since 1999 however, the house has been occupied exclusively by the Petitioner and the children of the marriage. The Respondent resides elsewhere.
- [15] It is clear that the mortgage for the renovation of this matrimonial home was secured with the direct assistance of the Petitioner, who paid for the mortgages out of her salary every month by virtue of a standing order. There is no doubt then that the Petitioner has contributed significantly to the construction and value of the Matrimonial home. It is not in dispute that the Petitioner has secured a loan of \$25,000 E.C. from the Government Employees Credit Union in 1992 to renovate the downstairs of the said home. To date this loan is still being serviced exclusively by the Petitioner. All this is evidence of the Petitioner's considerable contribution to the physical improvement of the matrimonial home.
- [16] Besides, during the happy times of the marriage she would have expended considerable contributions to the actual upkeep and maintenance of the home and the children, which has not been disputed by the Respondent. Difficulties in the marriage arose from 1992. Therefore by and large, and for the most part of the marriage, the Petitioner can be said to have contributed significantly to the matrimonial home to the benefit of its occupants, being the Respondent and the children of the marriage. Having regard to the learning in the

cases of Stonich v Stonich Civil Appeal No. 17 of 2002 (BVI) and Yvonne Williams v Kenneth Williams Civil Appeal No. 5 of 2003 and all the circumstances of the case in relation to the matrimonial home as outlined above in this judgment, I would award the Petitioner a 50% share in the matrimonial home.

[17] In the Yvonne Williams v Kenneth Williams case the matrimonial home was built on lands owned by the Petitioner before the marriage; both parties contributing to the building of the house and the Respondent occupying the home to the exclusion of the Petitioner for many years. In that case the Court ordered that the parties were entitled to a 50/50 share in the property as they both contributed significantly to the construction; notwithstanding the fact that the title was solely in the name of the Petitioner.

[18] As for the rather vague requests or claim from the Petitioner off the Respondent for maintenance, and the claim from the Respondent off the Petitioner for a share of her compensations payments after she was reinstated in her employment in 1999 having been interdicted in 1992, this Court will dismiss both claims for the absurdities they present having regard to all the circumstances of this case. I agree with Learned Counsel for the Petitioner that the compensation monies were paid to the Petitioner for lost wages over the period of 1992 to 1999 in the sum of \$149,000 E.C. after the Decree for divorce had been made absolute.

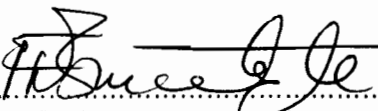
[19] It is my view that if the basis of the Respondent's claim to a share of these monies is because he had paid the sum of \$52,000 E.C.; \$36,000, \$17,000 and \$4,000 into an account at the Kingstown General Hospital after the Petitioner was accused of fraud, he did so as any dutiful and loving husband would do in the circumstances. There were no arrangements for repayments or any evidence of imposing any legal obligation on the part of the Petitioner to repay these sums; until the marriage turned sour leading to the divorce.

[20] My considered view is that the Respondent cannot claim a share in the Petitioner's compensation as part of the matrimonial assets. The payments were acquired after the effective breakdown of the marriage and after the decree absolute was granted. The

Respondent cannot be said to have contributed in any way to the acquisition of this sum. This claim is borne out of nothing but malice. In the same way the Petitioner cannot claim to be entitled to maintenance, applying the "clean break" principle, nor to property the Respondent inherited during the marriage as she had not contributed to the acquisition of same.

ORDER:

- [21] Therefore the Petitioner's claim succeeds only in so far as she is awarded 50% shares in the matrimonial home situate at Richland Park and the land also situate at Richland Park. I order that the said matrimonial home and land be valued by a licensed surveyor or estate valuer and the Respondent is to pay to the Petitioner a 50% share of those values. It is my view that because of the peculiar circumstances of the living arrangements for the children as exists currently, that the Petitioner on receiving her share of the value of the matrimonial home, vacate the said home with her current husband, and I so order. Each party will bear their own costs in this proceeding.


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Justice Frederick V. Bruce-Lyle
HIGH COURT JUDGE