

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 99 OF 2003

BETWEEN:

EVELYN JAMES

Petitioner

and

CARLOS JAMES

Respondent

Appearances: Mr. S.E. Commissiong for the Petitioner
Mrs. K. Bacchus-Browne for the Respondent

2005: 10th June

JUDGMENT

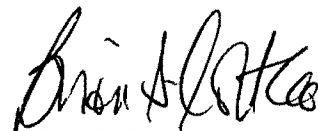
- [1] **COTTLE, MASTER:** The parties were married on 17th July 1976. The union was terminated in 2004. There are 4 children of the union only one of whom is still a minor, she is Andrelle born in 1993.
- [2] The petitioner now seeks ancillary relief. She prays for custody of the minor daughter. She also asks for maintenance pending suit and periodical payments thereafter and a property adjustment order.
- [3] The petitioner is now aged 54. The respondent is 52. They are both senior civil servants. The petitioner retires at the end of 2005. The respondent will attain retirement age in two years. The petitioner earns \$3,703.00 monthly. The respondent earns \$5,489.00. The

real property which falls for consideration for distribution consists of a parcel of land at Villa on which the matrimonial home stands and an adjoining parcel of undeveloped land.

- [4] The petitioner was granted a decree nisi after a contested hearing on the basis of the unreasonable behavior of respondent. Counsel for the petitioner urges the court to consider the behavior of the respondent when deciding on the disposition of the property.
- [5] The matrimonial home is a two-storey structure containing six bedrooms. The lower storey consists of a self contained apartment. It is now valued at \$343,034.00. There is an outstanding mortgage on the house of some \$322,453.35. This is because a student loan was taken to pay for the education of one of the children of the marriage. Having now begun to work that child has assumed responsibility for her portion of the loan leaving the parties to this claim to pay the balance which now stands at \$158,000.00.
- [6] The adjoining parcel of land is also heavily mortgaged.
- [7] The **Matrimonial Causes Act** at section 34 sets out all of the factors which the court must consider when dealing with ancillary relief after the dissolution of a marriage. These are too well known to require repetition here. I consider the circumstances of the instant case to require me to do two things. I must somehow provide for the maintenance of the minor child and I must distribute the matrimonial assets. Happily both sides agree that the parties are entitled to equal shares in the real property. The difficulty lies in the fact that the present equity is minimal. It is insufficient to permit either party to secure accommodation. The only reasonable solution in my view is to order the sale of the property and to have the parties divide the proceeds of sale equally. That sale must be postponed however, until the minor child attains the age of 18. In the meanwhile both parties will continue to meet the mortgage payments equally.
- [8] Again, it is a happy circumstance that the matrimonial home lends itself to easy division into two households. The respondent husband is to occupy the apartment on the lower

storey while the petitioner will reside on the upper floor with the minor daughter. While this is not ideal in terms of providing a clean break, it is the best I can do in the circumstances.

- [9] The petitioner and the respondent are to have joint custody of the minor daughter who will reside with the petitioner while allowing reasonable access to the respondent. The respondent will make maintenance payments for the minor daughter in the amount of \$400.00 monthly until she reaches majority.
- [10] The undeveloped parcel of land adjoining the matrimonial home is to be sold and the proceeds after satisfying the mortgage debt are to be divided equally. This will also have the effect of lessening the monthly mortgage commitments of the parties. I recognize that this is a matrimonial asset which it would have been preferable to keep in other circumstances but it has become a casualty of the reduced means of the family as a whole consequent upon the divorce.
- [11] Having regard to the financial resources and responsibilities of the parties I make no order for maintenance for either party.



Brian S. Cottle
Master