

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHMT 2002/0142

BETWEEN:

ALBERTHA DANIEL

Petitioner

AND

WILFRED DANIEL

Respondent

Appearances:

Mrs. Kim St. Rose for the Claimant
Mr. Andie George for the Defendant

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2005: March 17
April 8
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JUDGMENT

Introduction

1. SHANKS J: The parties were married on 5 May 1998 when he was 26 and she was 24. They had been together for three years before that. They have five children together:

Surjak (20), Mekaj (17), Lovitz (15), Allel (12) and Taphna (10). Allel has medical problems and is incontinent. The wife petitioned for a divorce in November 2002 and a decree nisi was granted in July 2003.

2. In July 2003, the wife also applied for ancillary relief. She sought custody of the children, a division of property and maintenance for herself and the children. In her affidavit in support she stated she wanted \$2,000 per month and medical and educational expenses for the children and \$500 per month for herself. She has never been very specific as to what she seeks by way of property, maintaining that she will need full disclosure of the husband's assets.
3. In June 2003 there had been a fire which burnt down the marital home. The husband took the three younger children to a new house and the wife and Mekaj had to live with her parents. On 25 March 2004 Edwards J ordered that the parties should have joint custody of the four minor children but that the wife should have care and control, and that they should live with her. She also ordered the husband on an interim basis to pay \$250 per month for Mekaj, Lovitz and Taphna and \$350 per month for Allel, to supply Allel with pampers and to make arrangements for the provision of education and medical care. Since then all four children have been living with the wife in a one bedroom house which she rents for \$300 per month. The husband lives in rented accommodation for which he pays \$600 per month with an older son from another relationship.
4. The main factual issue at the hearing was the extent of the husband's property and resources. Mrs. St. Rose cross examined the husband on his affidavits sworn on 26

September 2003 and 30 October 2003. The parties were agreed that it would be preferable for there to be a “clean break” and for the wife to receive a lump sum award rather than monthly maintenance. The size of that lump sum is the main issue I will have to determine.

The husband's property and resources

5. The wife maintains that the husband is a wealthy man and that he has told her in the past that he is worth about \$4 million. He denies ever saying this and maintains that he is effectively worth nothing.
6. Before the marriage the husband was an agricultural officer employed by the Government. During the marriage he carried on that job, and at the same time he built up a very successful agricultural business through a company he owns called Eden Enterprises Ltd., which deals in chickens and pigs. I accept his evidence that the company hit hard times in the early 2000's, and that the company's liabilities (in particular a debt of \$1.74 million to Barclays) exceed its assets. Since 2003 he has been attempting to keep the company going by dealing with a company called Tropical Agri Products Inc. His evidence about the arrangements with Tropical was highly confusing and unsatisfactory and he accepted that paragraph 33 of his affidavit of 30 October 2003 was not at all accurate but again I accept the main thrust of the evidence to the effect that he is currently receiving a salary of \$4,500 per month from Tropical for operating the farm on behalf of Tropical and that payments are made from Tropical to Eden or on Eden's behalf which are keeping Eden's creditors at bay for the moment. I also accept that all the company's land is fully

mortgaged and that a partially built house worth about \$100,000 at the farm which had been intended as the family home is covered by such a mortgage.

7. The actual family home was on the site of an old house on land owned by the husband's grandmother. There was a dispute as to whether the husband had effectively built a new house or whether he merely "shifted, re-organized and modernized" the old house. I do not think much turns on this. There is no doubt that the husband insured the house in his own name and that after it burnt down the insurance company paid him a total of \$296,000 in 2004. This represented \$93,000 for contents, \$9,000 for alternative accommodation and the balance for the building. The husband still has \$53,000 which he regards as the wife's share of the contents but he paid away a total of \$195,000 (which represents the value of the building) to family members. \$75,000 went to a cousin Simeon Auguste, who had lent him the same amount two years before, and \$120,000 to Peter Daniel on behalf of the grandmother's heirs. There was some evidence of the loan by Auguste but there was no documentary evidence to show how the sum of \$120,000 had been arrived at or precisely why the husband felt obliged to pay it over and, given that the ancillary relief application had already been made, it was ill advised to say the least to make these payments without involving the wife in some way.
8. My conclusion is that, although the husband is not worth anything like \$4 million, he probably has access to several \$100,000s if he needs it. I base this conclusion on the following considerations:

- (1) he undoubtedly holds \$53,000 from the insurance money;

- (2) he has made an open offer of a lump sum payment of \$75,000;
- (3) he has made a alternative offer of purchasing a house from the wife's sister for her. He told me that the purchase price and repair costs for this would amount to \$140,000, though he would pay the money over a period;
- (4) he paid \$120,000 to family members without any clear basis for doing so: no doubt there are favours he can recall;
- (5) he is an intelligent man with business acumen who has persuaded the owners of Tropical to invest in the business he started

The maintenance for the children

- 9. The husband wishes to continue with the current arrangements put in place by Edward J on 25 March 2004. He prefers to make arrangements in relation to education and health rather than pay a monthly sum for all maintenance because, he says, he wants to know that the money is going to the children and he does not trust the wife to spend the money properly. The wife wants to receive cash so that she can manage affairs for the children herself and not constantly depend on the husband.
- 10. Although I did not see the wife give evidence, I think it must be implicit in the decision of Edwards J that she should have day- to- day care and control of the children that Edwards J found that she must be a normal parent who is capable of managing the children's affairs and spending money responsibly. I therefore accede to her wish.
- 11. Having regard to the children's needs and his salary of \$4,500 per month I am going to order that the husband pay \$1,000 per month for Allel and \$500 per month for the other

three children until they reach 18. This is designed to include all expenses though it does not of course preclude the husband paying more, in particular for Mekaj's university education. I assess Allel at \$500 more than the others on the basis that Edwards J gave him \$100 more on an interim basis and the husband told me he spent \$400 a month on pampers.

The lump sum: the Section 25 factors.

12. In assessing an appropriate lump sum I must have regard to the factors set out in Section 25(1) of the Divorce Act 1973.

(a) Income, earning capacity, property and other resources

The husband makes \$4,500 per month. He is a capable businessman and no doubt has considerable earning capacity. My findings as to his property and resources are above. The wife has no job. She has no special skills or education. It was not suggested she had any property or other resources. In due course she ought to be able to find some kind of full time work, however.

(b) Financial needs, obligation and responsibilities

The husband must pay \$2,500 per month for his children and support himself. I accept that his other personal expenses are broadly as set out at paragraph 3 of Mr. George's skeleton argument with the exclusion of items 3 and 4 and a large question mark over the credit card liability which did not feature in the evidence. The wife will have to cover her personal living expenses. There is no indication that she has other day- to- day obligations save the children. She certainly needs a larger house while the children are living with her. Both parties have signed guarantees for the debts of Eden. The husband was very

clear in evidence that as far as he was concerned he was fully responsible under these guarantees and that the wife was not responsible at all. The husband is optimistic that he will be able to avoid having to pay on the guarantees and I am prepared to share his optimism.

(c) Standard of living

As Mr. George says in his skeleton argument at paragraph 8 the parties “had a reasonably good standard of living until the business turned for the worse”.

(d) Age of parties and duration of marriage

The husband is 43. The wife is 41. The marriage lasted 15 years.

(e) Disability

There was no evidence of any disability.

(f) Contributions of parties

The husband was the breadwinner and built up a business and a house: unfortunately the business has not prospered and the house has burnt down. The wife suggested that she played a substantial role in the building up the business. I accept the husband’s evidence that her role was minimal and that she was only made Managing Director as a cover while he was a civil servant. However, she made a substantial contribution overall by looking after the house and the children.

(g) Lost benefits

There was no evidence of any lost benefits.

Conclusion

13. Having regard to these factors and the circumstances as a whole and the broad justice of the case, my conclusion is that the husband should make a substantial lump sum payment to the wife by way of a clean break. The right sum in my view is \$150,000 payable over a year in three tranches on 1 May 2005, 1 November 2005 and 1 May 2006. Based on my findings at paragraph 8 above I believe he will be able to afford this sum and it will enable the wife to have a chance to make a new start in improved accommodation.

Result

14. I will order as follows:

- (1) The Respondent is to pay to the Petitioner the sum of \$500 for each of Mekaj, Lovitz and Taphna and \$1,000 for Allel each month starting on 1 May 2005 and continuing until they reach 18 or further order.
- (2) The Respondent is to pay a lump sum of \$150,000 to the Petitioner in three tranches of \$50,000 payable on 1 May 2005, 1 November 2005 and 1 May 2006.
- (3) Paragraphs 4 and 6 of the Order of Edwards J of 25 March 2005 are discharged.
- (4) S.41 declaration in respect of Mekaj, Lovitz, Allel and Taphna.

Murray Shanks
High Court Judge (Acting)