

SAINT VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

CIVIL CLAIM NO. 67 OF 2003

BETWEEN:

AUSTIN SOLEYN

Claimant

AND

MICHELLE SOLEYN

Defendant

Appearances:

Ms. Roxanne Knights for the Claimant

Ms. Kay Bacchus-Browne for Defendant

2003: June 28

2004: July 22

November 5

JUDGMENT

[1] **BLENMAN, J:** This is an appeal by Mr. Austin Soleyn (Mr. Soleyn) against the decision of the Learned President of the Family Court granting an Occupation Order to Mrs. Michelle Soleyn, (Mrs. Soleyn), through which he was prohibited from remaining at the home situate at Green Hill in Saint Vincent and the Grenadines.

[2] Mr. Soleyn and Mrs. Soleyn are married for eight (8) years. The marital relationship between the parties is very strained. Mrs. Soleyn has a son Afeno Haynes before her marriage, Mr. Soleyn is not his father. All three of them live at Green Hill in Saint Vincent and the Grenadines. The situation between the parties deteriorated and there were frequent acts of violence in the household.

- [3] Mr. Soleyn applied to the Family Court for a Protection Order against his stepson Mr. Afeno Haynes who is a minor. At that time they were all living in the same home.
- [4] During the hearing of the matter, on 3rd February 2003, the Learned President of the Family Court felt that it was necessary for Mrs. Soleyn to apply for an Occupation Order. The President recommended that Mr. Soleyn retained the services of a Lawyer to represent him and adjourned the continuation of matter to 1:30 p.m. On the resumption of the matter at 1:30 p.m. Mr. Soleyn was still unrepresented. However, the matter was one of urgency and the President heard Mrs. Soleyn's application for an Occupation Order against Mr. Soleyn and granted the Order.
- [5] He has filed this appeal, against the grant of the Occupation Order, Pursuant to Section 23 of the Domestic Violence (Summary Proceedings) Act 1995 Laws of Saint Vincent and the Grenadines (Domestic Violence Act).
- [6] His Grounds of Appeal include:
- (a) The Appellant (who is Mr. Soleyn) was not given an opportunity to obtain legal Counsel or to properly prepare a defence to the application for an Occupation Order.
 - (b) The Appellant was not given any sufficient notice as required by Section 15(1) of the Domestic Violence Act.
 - (c) Alternatively, the Learned President should have made an order for the Appellant to occupy a part of the matrimonial home.
- [7] Section 15(1) of the Domestic Violence Act states that before making an Occupation Order the Court should direct that notice be given to any

person who has an interest in the property which would be affected by the order.

[8] This appeal was heard and both Counsel provided me with written submissions. Mr. Soleyn did not file any affidavit in the matter while Mrs. Soleyn provided me with uncontroverted evidence in her affidavit deposed to on 26th February 2003.

[9] I was provided with the Learned President's Memorandum of Reasons together with the Notes of Evidence.

ADEQUATE TIME

[10] Learned Counsel for Mr. Soleyn submits that the Family Court did not give him sufficient time to retain a lawyer. There is no evidence to support learned Counsel for Mr. Soleyn's contention. I am far from persuaded that Counsel can properly state that there were irregularities in the summary procedure without seeking to adduce any evidence in support of this complaint.

[11] The Memorandum of Reasons indicate that on the resumption Mr. Soleyn who was unrepresented did not indicate that he wished to retain the services of a Lawyer. This is in contrast to the sworn evidence of Mrs. Soleyn who stated that on the resumption of the matter the Court enquired of Mr. Soleyn about his lawyer and he advised the court that he had retained Mr. Arthur Williams, Solicitor but that Mr. Williams had advised him to proceed with the matter and they would appeal after. Even if I were to believe either of the two positions, without more, I am still not satisfied that in the circumstances which obtained any injustice was done to Mr. Soleyn by the President hearing the matter in the manner in which she did. These domestic violence applications are of a nature that requires the court to act promptly in order to prevent further harm being done to the complainants. The scheme of the Domestic Violence Act dictates a court to act in a timely manner in order to prevent offences of threatened offences being committed in domestic environments particular where the parties are living in the home as was the case.

[12] I am fortified in my view from a reading of Section 7(3) of the Act which empowers the Court to make an occupation order under subsection (2) only if the Court is satisfied that such an order –

(a) is necessary for the protection of a prescribed person; or

(b) is in the best interest of a child.

I am satisfied that the President of the Family Court was of the opinion based on the clear evidence before her that it was necessary for her to promptly make the order she did. I can find no fault with her making of the order nor with the manner in which the matter was heard.

[13] **NOTICE**

(a) Learned Counsel for Mr. Soleyn complains that he was not given sufficient notice of the hearing of the application for the Occupation Order in breach of Section 15(1) of the Domestic Violence Act.

(b) Counsel for Mrs. Soleyn counters that he was given more than adequate notice.

[14] Section 15 (1) which requires notice to be given to a person having an interest in the property does not arise on the facts of this case. I do not accept that there was a breach of Section 15(1) of the Domestic Violence Act as Counsel suggests. This section is applicable to circumstances where the person has no knowledge of the matter not where he was present in court, as Mr. Soleyn was, and had been afforded an opportunity to retain a lawyer.

OCCUPATION OF THE HOME

[15] Learned Counsel for Mr. Soleyn submits that the President should have ordered that the home be occupied by both parties. Mrs. Soleyn's Counsel disagrees that

it would have been proper to make such an order given the series of violent attacks which Mr. Soleyn had made on Mrs. Soleyn.

[16] Mr. Soleyn testified in the lower court on his own behalf while Mrs. Soleyn gave evidence on her own behalf. It does not appear that Mr. Soleyn cut a good picture since he offered a bare denial. The President obviously did not believe him and rejected his evidence. In addition there was uncontroverted evidence before the court that he had been charged by the police on several occasions for various acts of violence committed against Mrs. Soleyn. She complained in the Family Court about Mr. Soleyn's several serious acts. There is no evidence before me on which I can properly come to the conclusion that the Learned President of the Family Court acted improperly in the circumstances, by hearing the application the Occupation Order, as Counsel for Mr. Soleyn has tried to persuade me.

[17] I firmly believe that sufficient consideration was given by the President to the seriousness of Mr. Soleyn's attack which had resulted in charges being brought by the Police against him. His behaviour in the home clearly warranted immediate action being taken to avert his further commission of crimes.

[18] She states at paragraphs 8 and 9 of her affidavit that after the Occupation Order was granted Mr. Soleyn entered her home during the 21st February 2003 and 25th February 2003. This evidence is a serious cause for concern and no attempt was made by Mr. Soleyn to contradict it. I accept her evidence as true.

[19] It seems to me that Mr. Soleyn has no real basis for complaining against the Occupation Order. I am far from satisfied that Mrs. Soleyn would be safe with Mr. Soleyn, who is extremely violent, occupying the same house, particularly in view of his several acts of violence towards her. There also was evidence before the President, that Mr. Soleyn had raped Mrs. Soleyn and this was not contradicted.

- [20] In the circumstances, I agree with Learned Counsel for Mrs. Soleyn that there is no justification to vary the order made by the President of the Family Court. There was sufficient evidence before the Court on which it could properly have granted the Occupation Order.

CONCLUSION

- [21] I will therefore dismiss the appeal and affirm the Order of the Learned President of the Family Court. I award \$1,500 costs to Mrs. Michelle Soleyn, as agreed by Counsel.
- [22] I commend both Learned Counsel for their industry.

Louise Esther Blenman
High Court Judge