

ST. VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. SVGHCV0435 / 2001

BETWEEN:

WENDELL J. DIAMOND

Claimant

and

PRINCESS MARGARET DIAMOND

Defendant

Appearances:

Mr. Emery Robertson and Miss Samantha Robertson for the petitioner.
Ms. Paula David for the respondent.

2003: June 26, July 31

IN CHAMBERS

JUDGMENT

ALLEYNE J.

- [1] Wendell and Princess Diamond were married on 12th November 1994. On 11th January 2002 a decree nisi of divorce was pronounced, on the ground that the marriage had broken down irretrievably due to the conduct of the respondent, by reason of which the petitioner could not reasonably be expected to live with her. Differences had arisen as early as 1996.
- [2] Wendell Diamond is a Police Sergeant earning a basic salary of \$2,284.00 per month, and an allowance of \$185.00. A number of deductions are made at source from his salary, to pay a mortgage debt and other loans and commitments, including income tax. His affidavit of means indicates that after these deductions

his take-home pay is .23cents. In cross examination on oath he claimed to live a very frugal life, spending about \$50.00 monthly on groceries, \$300.00 on rent monthly, \$30.00 per week on transport, \$12.00 per month on electric power, \$15.00 on water, and \$15.00 for his cell 'phone monthly. He did not explain how he finances these costs, nor was he challenged by respondent's counsel. I may be excused for assuming that the monthly sum of \$522.62, or at least a substantial portion thereof, paid by way of deduction to NCB is not committed, and is the source of his living expenses, especially as he has deposed in his affidavit that he borrowed money from the Building and Loan Association to pay off National Commercial Bank. He does claim to have a small loan of \$5,000.00 at NCB which he says will be paid off soon.

- [3] Mr. Diamond was the owner of two portions of land at the time of the marriage, which he conveyed by deed to himself and Princess Diamond as tenants in common in anticipation of the marriage, some 4 months prior to the marriage.
- [4] Mr. Diamond claims to have invested heavily in the hairdressing business operated by his wife. In support of this allegation he exhibited to his affidavit a copy of a banker's cheque in favour of Princess Diamond, dated December 18th 1995, from CIBC Caribbean Limited. This seems to belie his affidavit evidence that he borrowed the money from Building and Loan to pay off NCB "and increased my indebtedness by \$15,433.16 which sum I gave to my wife" for setting up the salon.
- [5] Mr. Diamond claims to have assisted his wife in the salon, and that he is entitled to a share in the business, which has grown from one to several establishments. He said it was always the intention of him and his wife that the business would provide for the family, but he has never derived any benefit from it, despite his active participation, washing and drying customers' hair and doing general works, such as painting and decorating. He has applied for an order that he is entitled to a share in the business and the other family assets, including in money in all bank accounts held by his wife.

- [6] For her part, Princess Diamond is seeking an order transferring the matrimonial home to her, subject to the mortgage. She is also seeking maintenance for herself and her child, and "such orders as may be made in respect of the remaining land".
- [7] In her affidavit Mrs. Diamond claims to have sent her husband money from Trinidad, in the sum of \$20,000.00, to purchase the property in deed 2490 of 1994, and for them to have a lavish wedding. As indicated before, however, Mr. Diamond had owned both properties, his deeds in respect of them dating from 1985 and 1988 respectively. I do not believe that evidence. In any event, Mrs. Diamond recanted this evidence in part in a later affidavit. I find that she has not been altogether forthcoming in relation to her finances.
- [8] Mrs. Diamond claims that her child Benjamin, born on 3rd December 1992, admittedly not the biological child of Wendell Diamond, is nevertheless a child of the family. Mr. Diamond disputes this claim. The question of maintenance of this child is in issue.
- [9] I do not doubt that Mr. Diamond has contributed in some small way to occasionally servicing the clients of his wife's hairdressing salon. No doubt he also assisted her in painting or decorating the locations where she operates. I am not satisfied, however, that he contributed financially to the establishment of the salon, or that whatever contributions he may have made to the growth and development of the establishment are of such a nature as to give him a proprietary interest in the business.
- [10] Mrs. Diamond has alleged in her affidavit that throughout the marriage she paid all electricity, water and propane gas, and almost all the groceries, in addition to paying a gardener to tend the yard. She said she bought clothing for herself, her husband and her children. She sometimes paid for parts for his car and even in making child support payments to his children, including buying school books for those children. Yet she says that she does not pay herself a salary, because after expenses there is not usually a surplus. That leaves me to wonder from what

resources she met all the expenses to which she adverted. The financial statements filed are not audited and are based on information provided by Mrs. Diamond. I am not overly impressed by them.

[11] Having considered all the evidence, I am satisfied that the child Benjamin is a child of the family.

[12] It is ordered and declared

- 1) That the petitioner transfer all his share and interest in the matrimonial home, subject to the mortgage thereon, to the respondent.
- 2) That the respondent transfer all her share and interest in that lot, piece or parcel of land situate at Belmont containing 24,401 square feet, conveyed to her by deed No. 2490/94, to the petitioner free and clear of all charges and incumbrances. Should the Saint Vincent Building and Loan Association be unwilling to release the said land from the mortgage which it holds over the said land, it is ordered nevertheless that the respondent shall faithfully meet the mortgage payments under the said mortgage until the mortgage debt has been paid off.
- 3) That the respondent have custody of the said child Benjamin, and that the petitioner pay towards his maintenance the monthly sum of \$100.00 commencing 31st August 2003 until he attains the age of 16.
- 4) That the petitioner has no proprietary interest in the respondent's business venture Hair Talk Unisex Salon.
- 5) That no order is made for maintenance of the respondent or the petitioner.
- 6) That each party will bear his/her own costs.

Brian G.K. Alleyne
High Court Judge