

SAINT VINCENT AND THE

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CIVIL SUIT NO. 472 OF 1995

BETWEEN:

LESLIE NOEL

Petitioner

and

BERNICE NOEL

Respondent

Appearances:

S. E. Commissiong for the Petitioner
Andrea Young for the Respondent

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2001: May 30
June 14, 15, 20, 28
July 18, 25, 26
September 26
.....

JUDGMENT

- [1] **WEBSTER, J. (*acting*).** This is an application by the Respondent for an order pursuant to section 32 (1) (b) of the Matrimonial Causes Act, Cap. 176 that the Petitioner's interest in the former matrimonial home at Ashton Valley, Union Island, be transferred to her.

FACTS

- [2] The Petitioner and the Respondent met in 1983. The Petitioner was living in Union Island and the Respondent in St. Vincent. He was an electrician employed by the St. Vincent

Electricity Services ("Vinlec"), and did side jobs. She was a nurse. They became engaged in 1984.

- [3] In September 1984 the Petitioner purchased a piece of land at Ashton Valley from his uncle for \$1,400.00. He paid a deposit of \$500.00 and the balance of \$900.00 in three instalments ending on April 4, 1985. The property was conveyed to him by Deed No. 850 of 1986 on May 14, 1985. During the ensuing period he purchased building materials and stored them on the property with a view to building the matrimonial home.
- [4] The Petitioner and Respondent got married on December 26, 1985. The Respondent continued to live and work in St. Vincent until September 1986 when she moved to Union Island to be with her husband.
- [5] On December 3, 1986 the parties applied to the Caribbean Banking Corporation ("the Bank") for a loan of \$45,000.00 to assist with the construction of the matrimonial home. A loan of \$52,775.10 was approved in April 1987 to cover the construction loan and the repayment of an overdraft facility. The parties were required to assign their salaries to the Bank, and to open joint savings and checking accounts at the Bank. The parties duly opened checking account No. 1051743 and savings account No. 7110885. The salaries of both parties were deposited into the savings account, and the Bank deducted the mortgage payments from the account. I accept the evidence of the Bank's employee, Arlene Wylie, that the Petitioner's salary was not deposited into the savings account after October 1988, and I find that the Petitioner did not make any other deposits into the savings account after October 1988. The account was funded entirely by the Respondent after that date and the mortgage payments continued to be made from the account.
- [6] Unhappy differences developed between the parties and in September 1994 the Respondent left the matrimonial home and moved into rented accommodation in St. Vincent. She opened a new account into which her salary was deposited and stopped paying the mortgage. The Petitioner was obliged to start paying the mortgage, and he has continued to do so since late 1994.

[7] On March 14, 1996 the Petitioner obtained a decree nisi which was made absolute on July 4, 1996. There are no children of the marriage and the only physical asset is the former matrimonial home.

[8] The value of the property was assessed by Stewart Engineering Limited on March 27, 1997 at \$173,480.00 apportioned as to \$150,980.00 for the house and \$22,500.00 for the land. The outstanding balance on the mortgage is \$28,000.00. This leaves an equity in the property of \$145,480.00.

CONTRIBUTIONS TO ACQUISITION OF MATRIMONIAL HOME

[9] The Husband made the following contributions to the acquisition of the matrimonial home:

- (a) he purchased the land for \$1,400.00 without help from the Respondent;
- (b) he purchased building materials and stored them on the property prior to construction;
- (c) he did a substantial amount of the construction himself including the painting, plumbing and electrical works, and assisted the workmen in all other aspects of the construction;
- (d) during the period January 1987 to October 1988 his salary was deposited into the joint savings account from which the monthly mortgage payments were made;
- (e) he paid the mortgage from the time the parties separated in 1994 to the present; and
- (f) he came to the marriage with an income of approximately \$2,560.00 per month and he assisted his wife with the running of the house during the time they were living together.

[10] The Respondent's contributions to the acquisition of the matrimonial home were:

- (a) she paid the monthly mortgage instalments from the joint savings account from April 1987 to October 1994. I have already found that during the period April 1987 to October 1988 the account was funded by both salaries, and by the Respondent's salary after October 1988. A letter from the Bank dated April 10, 1996 confirms that the total amount debited from the account to service the

mortgage was \$42,376.75. This covered the 7½ year period from April 1987 to October 1994. For six of those years the account was funded entirely by the Respondent's salary. I therefore find that the funding for the mortgage payments came almost entirely from the Respondent's money, and I give her credit for up to 90% of the money that was used to pay the mortgage during this period;

- (b) the Respondent came to the marriage with a salary of \$1,100.00 per month and there is nothing in the evidence to suggest that she did not spend her money on the family. I therefore find that she contributed substantially to the running of the house;
- (c) the Respondent assisted with the construction by cooking for the workmen, doing odd jobs on the building site such as moving materials, and transporting materials to and from the site; and
- (d) she also helped with the purchase of building materials but could not give an estimate of the amount that she spent and so I cannot quantify her contribution in this respect.

[11] I do not accept certain aspects of the Respondent's evidence regarding her contribution to the acquisition of the matrimonial home. She deposed in paragraph 6 of her affidavit filed on May 11, 2000 that prior to the marriage she had a savings account at the Bank of Nova Scotia and purported to exhibit a copy of the bank book to her affidavit. However, the book was not exhibited. At the trial she testified that she banked "*sometimes \$800.00 or more*" per month in the account, and that this went on for about six years prior to the marriage. She also testified that the bank book was at home and that she would try to find it. It was never found. This presents a difficulty for the Court. If the Respondent had been saving prior to the marriage, why did she not contribute some or all of her savings to the acquisition of the matrimonial home? She should at least have disclosed it in the application for the mortgage loan in December 1986. No account has been given for these savings. The other way to look at the matter is to say that the failure of the Respondent to produce the book and to account for the savings indicate that she did not have the savings. I prefer the latter view and I find that the Respondent was trying to mislead the

Court into believing that she came to the marriage with substantial assets in the form of her savings.

[12] I also find that the Respondent did not contribute \$750.00, nor any other sum, to the purchase of the land.

[13] In summary I find that the matrimonial home was acquired by the joint efforts of the parties. The Petitioner contributed the land, building materials, labour, and paid the mortgage from April 1987 to October 1988 jointly with the Respondent, and by himself since the separation in late 1994 to the present. The Respondent contributed the mortgage payments for 7½ years and helped with the running of the house during the marriage.

THE LEGISLATION

[14] Applications in Saint Vincent and the Grenadines for financial provision and property adjustment are made under Part III of the Matrimonial Causes Act, Cap. 176 ("the Act"), and it is helpful to set out the relevant sections of Part III.

[15] Part III is headed "*Financial Relief for Parties to Marriage and Children of Family*". Part III starts with section 29 which sets out general provisions relating to the financial provision and property adjustment orders. The relevant portion of the section reads-

"29(1) The financial provision orders for the purposes of this Act are orders for periodical or lump sum provision available (subject to the provisions of this Act) under section 31 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family in connection with proceedings for divorce, nullity of marriage or judicial separation ...that is to say-

- (a) any order for periodical payments in favour of a party to a marriage under section 31(1)(a) or 36 (7) (a) or in favour of a child of the family under section 31 (1) (d), (2) or (4) or 36 (7) (d);
- (b) any order for secured periodical payments in favour of a party to a marriage under section 31 (1) (e), (2) or (4) or 36 (7) (e); and

- (c) any order for lump sum provision in favour of a party to a marriage under section 31(1) (c) or 36(7) or in favour of a child of the family under section 31 (1) (f), (2) or (4) or 36 (7) (f);

and references in this Act to periodical payments orders, secured periodical payments orders, and orders for the payment of a lump sum are references to all or some of the financial provision orders requiring the sort of financial provision in question according as the context of each reference may require.

(2) The property adjustment orders for the purpose of this Act are the orders dealing with the property rights available (subject to the provisions of the Act) under section 32 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say-

- (a) any order under subsection (1)(a) of that section for a transfer of property;
- (b) any order under subsection (1)(b) of that section for a settlement of property;
- and
- (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement"

[16] Applications for financial provision orders are made under section 31(1), the relevant portion of which reads:-

"31(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter, the Court may make any one or more of the following orders, that is to say-

- (a) an order that either party to the marriage shall make to the other such periodical payments, for such term, as may be specified in the order;
- (b) an order that either party to the marriage shall secure to the other, to the satisfaction of the Court, such periodical payments, for such term, as may be specified;
- (c) an order that either party to the marriage shall pay to the other such lump sum or lump sums as may be so specified;"

[17] Finally, applications for property adjustment orders are made under section 32(1) which reads-

“(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the Court may make any one or more of the following orders, that is to say-

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child, such property as may be so specified, being property to which the first mentioned party is entitled, either in possession or reversion;”

[18] The Respondent’s application is made under this section and it is not disputed that the Court has power under the section to grant the relief sought by the Respondent. Learned Counsel for the Respondent submitted that the property should be transferred to the Respondent entirely on the basis of her contributions to the mortgage payments. Learned Counsel for the Petitioner submitted that the Respondent is entitled, at best, to a payment in respect of her interest in the house.

[19] In considering an application under section 32 (1)(a) the Court is required to have regard to the matters set out in section 34(1) which reads-

“It shall be the duty of the Court in deciding whether to exercise its powers under section 31(1)(a), (b) or (c), 32 or 33 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say-

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has, or is likely to have, in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has, or is likely to have, in the foreseeable future;
- (c) the standard of living enjoyed by the family before the breakdown of the marriage;
- (d) the age of each party to the marriage and the duration of the marriage;
- (e) any physical or mental disability of either of the parties to the marriage;
- (f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.”

The factors listed in section 34(1) are not exhaustive and the Court should consider all the circumstances and adopt a flexible approach in dealing with each case. The learned editors of **Halsburys Laws of England** 4th ed. Volume 13 paragraph 1060 put the matter this way-

“In the end, however, the Court must view the situation broadly and see that the financial arrangements it proposes meet the justice of the case; the result may mean that both parties will have to cut down their standard of living, but it may be as much as can be done in the circumstances.”

Guided by these principles I will now apply the facts of this case to the matters listed in section 34(1).

Income and Earning Capacity

[20] When the marriage started in 1985 the Respondent was earning \$1,100.00 per month. She now has a gross salary of \$2,229.00 per month. There is no clear evidence of her monthly expenses. By deduction from her affidavit filed on May 11, 2000 they appear to be about \$2,000.00 including rent of \$500.00. She does not have any other assets.

[21] In 1986 the Petitioner’s salary from Vinlec was \$1,560 per month. He was also earning approximately \$1,000.00 per month from his side business as an electrician. His current salary from Vinlec is \$2,300.00 per month, but there is no evidence of his current earnings from the electrical business. He gave evidence that he grossed as much as \$47,623.35 for the year 1993, and \$80-90,000 for wiring the Union Island Airport in 1991-92. The net profit from the latter project was \$40,000.00. He also owns a car rental and trucking

business. He is a part owner of another house in Union Island which is rented. I find that the Petitioner has a combined monthly income of no less than \$4,000.00, which can be much higher when he has big electrical contracts.

Financial Needs and Standard of Living

- [22] The Petitioner occupies the former matrimonial home and has an income that is significantly higher than that of the Respondent. The Respondent now lives in rented accommodation in St. Vincent. It is clear that the breakdown of the marriage has lowered her standard of living more than his.

Duration of Marriage and Age of Parties

- [23] The marriage lasted 9 years and did not produce children. The Petitioner and Respondent are now 40 and 41 years respectively, and there is no reason to believe, nor evidence to suggest, that they do not have good prospects for remarriage.

Physical and Mental Abilities

- [24] The parties appear to be in good health, although at times the stress of the trial appeared to affect the Respondent.

Contributions to the Welfare of the Family

- [25] For the purposes of this case the contributions by the parties to the welfare of the family include the parties' financial and non-financial contributions to the acquisition of the matrimonial home including their efforts in running the home. I have already dealt extensively with these contributions in paragraphs 9-13 above.

Loss of Benefits

- [26] There is no evidence that either party has lost or will lose any benefits, such as a pension, as a result of the breakdown of the marriage.

TAILPIECE TO SECTION 34(1)

- [27] The matters listed in section 34(1) are followed by what has been described by Lord Nichols of Birkenhead in **White v. White** [2000] 1.All E.R.1 as a “tailpiece”, which requires the Court in exercising its powers under the section to put the parties in the financial position that they would have been in if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other (supra paragraph 19).
- [28] The Tailpiece introduces the element of the parties conduct into the exercise of the Court’s powers under section 34, but it has been decided repeatedly, both in England (**Wachtel v. Wachtel** [1973] All E.R. 829 being a good example), and in St. Vincent (**Richardson v. Richardson** (SVG Civil Suit No. 204 of 1994-unreported)), that unless the conduct of one of the parties is gross and obvious, and repugnant to ones sense of justice, it should not be taken into account. There is nothing in this case that would cause the Court to consider the conduct of the parties as a determining factor.

QUANTIFICATION OF SHARES

- [29] In 1973 the Court of Appeal in England in **Wachtel v. Wachtel** established certain guidelines for the Courts to follow in determining the financial and property disputes that arise between spouses and former spouses under sections 2-5 of the Matrimonial Proceedings and Property Act, 1970 (UK). The equivalent sections of our Act are sections 29 to 33. The Court of Appeal also suggested that a good starting point is to give the wife one-third of the capital assets and the parties joint earnings (“the one-third rule”). At page 840 Lord Denning, M.R. was careful to emphasize that the one-third rule was only a starting point-

“We would emphasize that this proposal is not a rule. It is only a starting point. It will serve in cases where the marriage has lasted for many years and the wife has been in the home bringing up the children. It may not be applicable when the marriage has lasted only a short time or where there are no children and she can go out to work.”

- [30] It is apparent from this passage that the one-third rule would not be appropriate in a case such as the present where the main issue before the Court is a property adjustment order

in respect of the sole asset of the family, and there are no children. This type of case was also covered by the Master of the Roles at page 839 in this way-

“If we were only concerned with the capital assets of the family, and particularly with the matrimonial home, it would be tempting to divide them half and half, as the judge did. That would be fair enough if the wife afterwards went her own way, making no further demands on the husband. It would simply be a division of the assets of the partnership.”

The words in this passage are apposite to the present case. The former matrimonial home was acquired by the joint efforts of the parties with the intention of being used during their lives for their joint benefit. Both parties made substantial contributions in money and labour to the acquisition of the matrimonial home and the welfare of the family. It would be very easy to say that the parties are entitled to the matrimonial home in equal shares, divide the equity in the property in two, and order one party to purchase the interest of the other. But that is not what the Court is required to do under the Act. In making property adjustment orders the Court is required to make financial provisions for the parties which, as far as practicable, will put them in the position they would have been in had the marriage not broken down. The Court is not required to determine their strict property rights. This is clear from a reading of Part III of the Act and the comment of the learned editors of **Halsbury's Laws of England** 4th ed. Volume 48 paragraph 612 that-

“Disputes between spouses now rarely require resolution of their strict property rights under trust law as the court has wide discretionary powers in proceedings for divorce, nullity or judicial separation to distribute property as it sees fit without having to ascertain the shares of the parties in the property”

- [31] This was also the approach adopted by the Court of Appeal in **P v P** [1978] 3 All ER 70. The leading judgment was delivered by Ormrod, J. who referred to the various factors in section 25 of the Matrimonial Causes Act 1973, including the Tailpiece, and then continued at page 75 of the report of the judgment-

“For my part I do not find it particularly helpful to try to ascertain and quantify his (the husband's) so-called interests. It is useful to ascertain these interests in a broad way so that one can see the justice of each side's case, but I would prefer to avoid quantifying or seeking to quantify these rights in terms of figures because the moment one quantifies

them people begin to do arithmetic with the figures, and it is a well known statistical fallacy that if you start with an estimate and you multiply and divide it you multiply and divide the error as well. So that I am not helped particularly by these valuations."

- [32] Following these guidelines I will approach the matter in a very broad way. The marriage has broken down for several years and any order that the Court makes should provide a clean break between the parties. The Respondent has been living in St. Vincent and there is no evidence to suggest that she is able to purchase the Petitioner's interest in the matrimonial home. The Petitioner on the other hand has a good salary and other assets and businesses. He should be able to acquire sufficient funds, by borrowing if necessary, to make a reasonable lump sum payment to the Respondent. The payment should be sufficient to enable her to make a substantial deposit on her own home, and the money that she now pays for rent can be used to service a reasonable mortgage. In this way the Court will be doing the best it can to put the parties, as far as possible, in the financial position they would have been in if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

ORDERS

- [33] I have considered all the factors in section 34, including the contributions of the parties to the acquisition of the matrimonial home and the welfare of the family, and viewing the situation broadly to meet the justice of the case, I think that a reasonable lump sum is \$65,000. I therefore order as follows:

- (a) The Petitioner will pay to the Respondent a lump sum of \$65,000 by the 31st December, 2001. In default of payment in full by the said date the \$65,000 or so much thereof as remains outstanding will carry interest at the rate of 6% per annum from January 1, 2002 until payment in full.
- (b) Upon payment of the said \$65,000 in full the Petitioner will hold the former matrimonial home at Ashton Valley, Union Island, free of all claims by the Respondent.

- (c) Each party will bear his or her own costs.
- (d) The parties have liberty to apply.

Paul Webster
High Court Judge (Ag.)