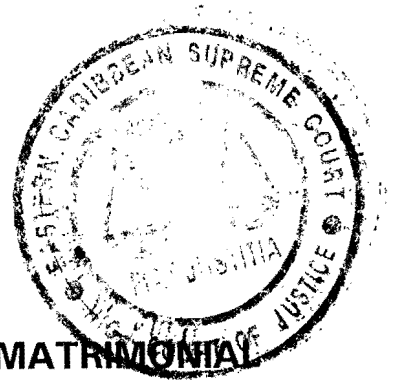


IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO: 193 OF 1998



IN THE MATTER OF THE DOMESTIC VIOLENCE AND MATRIMONIAL
PROCEEDINGS ACT CHAPTER 5 OF 1984

AND

IN THE MATTER OF AN APPLICATION BY SHERLA KING NEE JAMES
BETWEEN:

SHERLA KING Nee JAMES

PLAINTIFF

AND

FITZROY KING

DEFENDANT

Margaret Hughes Ferrari for the plaintiff

Ronald Jack for the defendant

[10, 11, 13th November, 1998]

[14, 17, December, 1998]

[21, December, 1998]

DECISION

BAPTISTE J.

This is an application on the part of the defendant to set aside a restraining order granted ex-parte on the 15th of May, 1998 wherein it was ordered that:

- (1) The defendant himself, his servants, agents or otherwise be restrained and enjoined and an injunction is hereby granted restraining and enjoining him from assaulting, threatening or in any other way using violence against the plaintiff and the children of the family.
- (2) The defendant be excluded from entering upon or occupying the home in which the plaintiff and the said

children reside at Cane Hall aforesaid until further order. The defendant is to vacate the said home not later than 29th day of May, 1998".

The application is supported by the affidavit of the defendant sworn to and filed on the 20th of October, 1998. The application is being opposed by the plaintiff. Several affidavits were filed in this matter. When the matter came up for hearing, the court heard evidence from both parties as well as their witnesses.

The jurisdiction of the Court to make an ouster injunction is governed by the Domestic Violence and Matrimonial Proceedings Act Cap. 165 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990. Section 4 (2) of the Act provides that the Court may make such order as it thinks just and reasonable having regard to the conduct of the spouses in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any children and to all the circumstances of the case. The House of Lords in ***Richards v. Richards [1984] AC174*** in considering the grounds upon which an ouster injunction should be granted decided that none of these factors, not even the needs of the children is paramount; the weight to be given to each depends on all the facts of the case.

The parties were married on the 1st of September, 1973. The problems between them go back some years, for as long ago as 1977 there was physical violence between them. More problems developed concerning their son Aba who in 1990, at age 16, was evicted from the matrimonial home by the defendant much to the displeasure of the plaintiff. The defendant alleged that Aba had threatened to strike him with a stone. The construction of a house by Aba further poisoned the atmosphere as the defendant concluded that the plaintiff used the money he had sent her when he was in Trinidad, to build a house for Aba and herself. The plaintiff admitted to having backed a loan for Aba, using a Deed of Gift her father gave her as security.

The relationship between the parties does not appear to have been a very pleasant one. The plaintiff stated that the defendant constantly abused and harassed her. He is a very violent person and

has threatened to kill her on several occasions. She pointed out that the defendant was not physically violent to her, meaning that the last episode of physical violence by him occurred about four and a half years ago. The plaintiff testified that the defendant went into her wardrobe and destroyed all her clothing. According to the plaintiff on July 19, 1997 she moved out of the house. The defendant had given her seven days to leave but he violently rushed her out before the seven days. He had threatened to throw gramoxone in her womb and torture her. She returned on the 7th of November, 1997, stayed for one night and one day and had to leave because he threatened to kill her. She returned on the 29th of November after seeking help from the Salvation Army and the Family Court. Conditions did not improve. The defendant came into the bedroom in the middle of the night telling her he will cut her throat and she must get out the house.

The plaintiff impressed me as a witness of truth and I accept her evidence. The defendant on the other hand did not always come across as a truthful witness.

The defendant denied ever using physical violence on the plaintiff or threatening to kill or harassing her. He admitted to tearing her clothes in frustration. He also denied telling Luenda Johnson that he will kill the plaintiff.

Luenda Johnson is a family friend of the litigants who gave evidence on behalf of the plaintiff. She deposed to the defendant having a conversation with her in October, 1998 wherein he was complaining about the situation with the plaintiff. According to Luenda, the defendant said that "he used to send all his money from Trinidad. Sherla took it and build house." He said regardless of what it takes, he will kill Sherla.

There is no reason for the Court to doubt the truthfulness of Luenda's evidence. I consider her a witness of truth and I accept her evidence. That evidence of threatening to kill also supports the evidence of the plaintiff.

To my mind the defendant embarked on a course of conduct designed to persecute, terrorise and sap the will of the plaintiff. I find

as a fact that the defendant on several occasions threatened to kill the plaintiff, ordered her out of the matrimonial house, on another occasion tore her clothes in her wardrobe, engaged in acts of psychological violence towards her, and as recently as October of this year told Luenda Johnson that regardless of what it takes he will kill the plaintiff.

I now consider the respective needs and financial resources of the parties. I consider their housing needs to be the most critical. The plaintiff continues to reside at the matrimonial home. The home has three bedrooms. The defendant is staying at his brother's house at Diamond, 16 miles from Kingstown. The plaintiff stated that the defendant has a property at Argyle which has everything. The defendant testified that the condition in the house at Diamond is not too bad. It is however inconvenient for him. It is costly to travel. His brother needs some privacy. His mother lives in the house too.

With respect to the financial resources of the parties, I consider that the plaintiff is a qualified assistant teacher with a monthly salary of \$1886.00. The defendant is employed at the Public Works Department and earns a monthly salary of \$2,200.00 plus a travelling allowance of \$700.00 monthly.

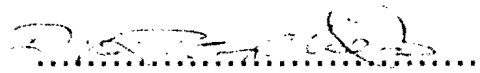
The plaintiff testified that she has the full burden of maintaining herself and the children. The defendant stated that since he left the matrimonial home, he is not maintaining his little daughter.

In my opinion, the defendant is in a better financial position than the plaintiff. I do not consider it necessary, reasonable or just to disturb the present housing regime.

With respect to the children, there are two minor children, one aged five and the other eleven. The eleven year old boy Junior, spends time with the defendant on weekends. Junior has to do his common entrance examination. The plaintiff, a qualified assistant teacher has to help him. To my mind a quiet atmosphere at home would be beneficial to him. The plaintiff deposed that Junior usually complains about headaches and recently she had to take him to Dr Garraway. The five year old girl always talks of cutting off neck. Similarly, an absence of turmoil at the home would be also beneficial to the little girl. The

needs of the children would be better served by the continuation of the injunction.

Paying regard to the conduct of the defendant and the needs of the children, the intolerable situation and the danger in the house if the Order were not made and all the circumstances of the case, it is ordered that the Restraining Order granted on the 15th of May, 1998 is to remain in force until further order. Accordingly, the defendant's application to set aside the Order is dismissed with costs.



Davidson Kelvin Baptiste
HIGH COURT JUDGE (Ag.)