

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1991

SUIT NO. D. 1 OF 1990

BETWEEN:

ANICIA SAVERY

Petitioner

and

MAURISON SAVERY

Respondent

Mr. H. Deterville for Petitioner
Mr. D. Theodore for Respondent

1991: March 22;
April 29;
May 6 and 15.

J U D G M E N T

MATTHEW J. (In Chambers)

The Petitioner, then aged 23 and the Respondent, then aged 31, got married on July 28, 1984, at the St. Benedict Centre Chapel. There are two children of the family. Sherman Sabrina born January 28, 1981 and Kehsia Tany born October 24, 1985.

In December 1988 the Petitioner was the winner of a prize from Courts (St. Lucia) Ltd. by which she became entitled to an annual sum of \$10,000 up to the year 1993, a motor car, a property at Grand Riviere, a cruise and furniture.

On January 11, 1990, the Petitioner filed a petition for divorce on the ground of the irretrievable break down of the marriage owing to the Respondent's behaviour and on March 21, 1990, a decree nisi for dissolution of the marriage was made in her favour.

On November 21, 1990, the Petitioner gave notice of application for ancillary relief supported by an affidavit which had been filed on July 12, 1990. in the notice the Petitioner applied for orders of custody and access in respect of the children, maintenance for the children, a declaration under Section 41 of the Divorce Act, a property order and costs.

Additionally, in the supporting affidavit the Petitioner asked for an order of partition in respect of the immovable property of the community registered at Number 1052 B401 in the Land Register and that an order of injunction made by Byron J on January 12, 1990, be made perpetual. On December 19, 1990, d'Auvergne J made an interim order in respect of maintenance of the children.

On January 23, 1991, the Respondent filed an affidavit in reply to the Petitioner's affidavit in which he denied that the prize is the separate property of the Respondent and he alleged that the proceeds from the prize are community property. He asked the Court so to declare and then to partition the community property. He also asked that custody of the children be granted to the Petitioner and that he be granted reasonable access to them. He further asked that the interlocutory injunction be discharged.

CUSTODY AND ACCESS

The Parties seem to be ad idem here and so I grant custody of the two girls, Sherma and Kehsia, to the Petitioner and that the Respondent have access to them at all reasonable times.

MAINTENANCE

By the interim order of which I spoke above the Respondent was ordered to pay to the Petitioner the sum of \$120.00 per month per child for the maintenance of the said children and it was declared that the said sum did not make provisions for the education and health care of the said children.

I looked at the affidavits of both parties. Paragraphs 6 and 7 of the Petitioner's affidavit exhibit an impossibility whereby her monthly take home pay was \$1,345.22 and out of that she spent \$1,537.00. She was outdone by the Respondent who, in paragraph 12 of his affidavit said his monthly take home pay was \$1,528.21 and who at paragraph 13 said that his monthly

disbursements amounted to \$2,077.00. Further than that each of the Parties gave *viva voce* evidence of additional expenses. I cannot therefore rely too heavily on what they have deposed to. There must have been gross exaggeration on either side.

In his closing address learned Counsel for the Respondent referred to the interim order and submitted that the Respondent had no objection in principle to contributing towards the health and education of the children but he asked that due to financial constraints the order be not increased.

I also have regard to the evidence of the Petitioner where she stated:

“I think the \$120.00 he is asked to contribute to each child would be such that I can handle it from there.”

The final order that I make in respect of maintenance is that the Respondent do pay the Petitioner the sum of \$125.00 per month per child for the maintenance of the children and that the said payment commences on June 1, 1991.

DECLARATION UNDER SECTION 41 OF DIVORCE ACT

I declare that this Court is satisfied with the arrangements that have been made for the welfare of the children Sherma Sabrina and Kehsia Tanya.

PROPERTY REGISTERED NO. 1052 B401 AND FURNITURE

In paragraph 22 of her affidavit the Petitioner stated:

“In the circumstances I asked this Honourable Court for order –

- (1) That there be a partition of the immovable property of the community to wit: the parcel of land registered in Land Register Number 1052B 401.”

When she gave evidence immediately after she indicated that she would handle the situation if the Respondent gave her \$120.00 maintenance for each child, she said: *“I think he can have the land at Corinth. I do not know if he has any other land”*. The Petitioner seemed therefore to be abandoning her claim to the land at Corinth. I think her Counsel expressed the same sentiments in his closing address. I therefore declare that the land registered in Land Register Number 1052B 401 be the sole property of the Respondent.

Although the evidence revealed that the Parties bought jointly certain items of furniture neither of them asked in their affidavits for any division of such items of furniture. Indeed it seems that each

of them retained certain items of furniture although the Respondent appears to have retained most of them. The Respondent asked for a partition of the community property but I gather he was referring to the proceeds of the prize from Courts. He did not specifically asked to partition items of furniture. In any case he seems to have got more than his half share. To their credit the Parties have not asked this Court to share pots and pans.

THE COURTS' PRIZE

As learned Counsel for the Respondent submitted in his closing address, it is as regards the property that the biggest problems arise. I go a bit further and say that it is in respect of the Courts prize that the problems arise. The Petitioner has stated that the prize consisted of:

- (a) a car valued at \$65,000;
- (b) a house and land valued at \$120,000;
- (c) a cruise valued at \$8,000;
- (d) furniture valued at \$7,000;
- (e) an annual sum of \$10,000 in cash payable in December for five years.

Learned Counsel for the Respondent has referred to Article 1193 of the Civil Code and has submitted that Petitioner must rely on Article 1192 and to do so she has to rebut the presumption contained in Article 1193.

Learned Counsel for the Petitioner has, in addition to Articles 1192 and 1193, drawn my attention to Articles 1194 and 1195. He submitted that since the Parties who were civil servants got their salary paid into different accounts of the same bank they each had separate property in their accounts. He drew attention particularly to paragraphs (b) and (e) of Article 1192(2).

Counsel also drew attention to the Petitioner's deed for the prize of the house and land located at Grande Riviere which speaks of the "donor" and "donee" and in this regard pointed to paragraph (c) of Article 1192(2).

I also have regard to the matters to which the Court is to have regard in deciding what orders to make in respect of transfer and settlement of property as contained in Sections 25 and 45 of the Divorce Act.

In his final address learned Counsel for the Respondent asked me to pay attention to the demeanour of the Respondent who gave his evidence in a forthright manner except when it came to dates. He asked me to ignore the beatings with the bedroom slipper which he says was irrelevant. I assure Counsel that the "chastisement" on the buttocks will not influence my decision. I do not think the demeanour of the Parties will have much influence although it is my view that the Petitioner's evidence was more forthright. The Respondent was so hesitant in some of his answers and his delay in answering questions on cross-examination was very noticeable.

Learned Counsel for the Petitioner has suggested that the Respondent has admitted to telling lies in these proceedings. I wish to refer to five sets of circumstances.

- (1) When the Respondent filed his affidavit on January 23, 1991, sworn to on the same day he stated that one of his monthly disbursement was \$100 payable to his dependant grandmother. The Petitioner in her evidence given on March 22, 1991, stated that on January 23, 1991 the Respondent had no grandmother for she had died the previous year.

The Respondent, when he gave evidence in chief on March 22, 1991, stated:

"When I signed the affidavit my grandmother was already dead. It did not come to my attention that she was already dead when I signed it."

This is a grandmother who died at Vieux Fort, Saint Lucia, where the Respondent was stationed and who was dependent up him.

When the Respondent was cross-examined on May 6, 1991, he stated:

"My grandmother died on January 6, 1991. I cannot recall saying I know my grandmother had died when I signed the affidavit on January 23, 1991."

The Respondent may not have recalled saying that but he did in fact say it. He went on further to say under cross-examination:

"I did not know my grandmother had died when I signed the affidavit. She died in Saint Lucia in Vieux-Fort."

How incredible he does not know when his dependent grandmother died! The above also indicates that the Respondent's memory cannot be relied upon.

- (2) In the Petitioner's affidavit filed on January 11, 1990, in support of an application for injunction the Petitioner stated at paragraph 4 the following:

"On the 23rd day of September 1989 the Respondent came to my workplace at Victoria Hospital and wrongfully accused me of going to Vigie with some unnamed man and there he slapped me."

In his affidavit in reply filed on February 2, 1990 the Respondent at paragraph 6 stated:

"I admit the matters alleged in paragraph 4 but state that I now regret my action but I was driven to react in this way after personally seeing the Petitioner in a parked car at 9.30 p.m. on 23rd September 1989 in an isolated area with another man."

The Respondent seems to be admitting at least that he slapped the Petitioner at Victoria Hospital.

Under cross-examination however, the Respondent stated:

"I am saying the admission I made in paragraph 6 of my affidavit is not true".

The Respondent is on oath saying that part of his sworn affidavit is untrue. It makes me wonder what else is untrue.

- (3) Upon cross-examination the Respondent stated:

"I do not go to doctor very often. I go about twice a year. I am entitled to have my medication paid for by the Government. It is true when I say I spend \$100 a month for medicine."

He tried to explain in his re-examination. He stated:

"Sometimes when I buy medicine at the pharmacy I have to spend my money and also at St. Jude's hospital which is not a Government institution. This is my explanation of the \$100 a month I spend for medication."

How incredible! If the Respondent visits the doctor about twice a year does he get a prescription for six months supply of medication? And if he is entitled to free medication why does he prefer to get it from the pharmacy or at St. Jude's hospital? His explanation leaves much to be desired.

- (4) The Respondent stated upon cross-examination that from 1984 he had been giving his wife \$850 to \$900 every month.

His gross salary was then about \$1,500 and his nett salary was then \$1,200 to \$1,300. His salary was then \$1,200 to \$1,300. His salary at the end of 1989 was about \$1,700 gross. I presume the nett would have been \$1,400 to \$1,500. But he still gave his wife \$850.00 to \$900.00 every month. A deed of sale in respect of the land at Corinth was executed on December 18, 1987 and the Respondent stated that a mortgage was taken soon after whereby he paid a mortgage instalment of "more than \$592.00 a month." Upon further cross-examination he stated:

"I was giving my wife \$850 to \$900 a month before the mortgage. I said I gave my wife \$850 - \$900 a month from 1984 - 1989 when she left. Although I had the additional amount of more than \$592.00 a month to pay I continued to give my wife \$850.00 - \$900.00 a month."

Now if the Respondent's salary was at the time at most \$1,500 nett and he had to pay \$850.00 to his wife and \$592 mortgage I am left to wonder how he met his other commitments like the \$240.00 a month maintenance for his illegitimate children.

- (5) When the Respondent gave evidence in chief on March 22, 1991, he stated:

"She is in possession of the car from the time of receiving it up to the present time."

The evidence revealed that the Petitioner got the car in December 1988 so I presume the Respondent was saying that Petitioner was in possession of the car from December 1988 to March 22, 1991. Yet there is on file an order of Bryon J. dated January 12, 1990 stating in paragraph 2 that:

"It is hereby ordered that the Bailiff of the High Court of Justice be and is hereby authorized to immediately recover possession of motor car registration number 3045 and deliver same to Petitioner."

Indeed when he was cross-examined the Respondent stated:

"I did say from the time of purchase my wife is in possession of the car up to the present day. The injunction ordering me to give up the car was made on January 12, 1990."

I have recounted these five sets of circumstances to indicated that the performance of the Respondent was not a creditable one and I am being asked to believe the testimony of the Respondent unsupported by any other witness.

When the Respondent gave evidence in chief he stated that in November 1988 he gave his wife \$900.00 which he withdrew form his account for the purpose of paying the bills and other miscellaneous goods and on that day they had a discussion concerning Courts' quarter million dollar draw and he was the one who persuaded her and insisted that they participate in the draw. Then he told his wife to go to Courts to purchase the freezer on behalf of the family and he went to work. He stated that after the purchase he sat down with his wife and they filled out the questionnaire and the tickets. He stated that he was the one who took the tickets and put them in the large box at Courts on two separate days. The Respondent certainly seems to have had a premonition that they were going to win the prize.

As I listened to the Respondent I thought a description of a certain Senator who was said to be almost tailor-made for Titus Oates who instigated the judicial murders of William Ireland, Thomas Pickering and John Grove. The description reads:

"There has never been the slightest reason to suppose that he took what he said seriously or that he believed any of the nonsense he spread.... He was the leader of a fanatical movement..... but he was no kind of fanatic himself..... But he was surely the champion liar. He lied with wild abandon; he lied without evident fear; he lied in his teeth and in the teeth of the truth; he lied vividly and with a bold imagination.... But I know nothing to suggest that he ever lied except with calculation".

I reject the Respondent's evidence in this regard. I do not believe the Respondent knew one thing about the Petitioner's purchase of the freezer and that is the reason why he went on the fishing expedition to Courts on January 31, 1990 as stated by Simona Francis.

The Respondent's contention that the proceeds of the prize are community property is premised on the fact that he gave his wife \$850.00 to \$900.00 every month from the time they got married in 1984 until 1989. In November 1988 he gave no extra to take care of the freezer but he maintains the freezer was bought from community funds. His attitude in this respect is seen when, in respect of the mortgage of the Grand Riviere property, he maintains he contributed to the mortgage. He concedes that the mortgage has always been met by a standing order against the salary of the

Petitioner but he makes a contribution to the mortgage because he gives the Petitioner \$850.00 to \$900.00 a month. As learned Counsel for the Petitioner aptly puts it: "That amount of \$850.00 to \$900.00 a month will take him to heaven; everything bought remains community property as long as he gives her \$850.00 to \$900.00 a month."

I reject any notion that Respondent made any contribution to the mortgage of the Grand Riviere Property. I do not believe the Respondent gave his wife \$850.00 to \$900.00 a month but in any event I accept the evidence of the Petitioner that the deposit for the freezer came from her separate funds in her bank account. I further find as a fact that the Petitioner paid all the instalments for the freezer from her separate funds. I reject any notion that Respondent paid any instalment in respect of the freezer. He did not even pay when the freezer was in his sole use and that is why it had to be taken from him by Courts.

I go further and accept the submission by learned Counsel for the Petitioner that even if the deposit for the freezer and the instalments were paid from community funds all that would be the property of the community would be the freezer. I agree that the prize was a reward for the Petitioner's luck.

I also hold that the proceeds of the prize were donations within Article 1192 (2) (c) of the Civil Code and the deed in respect of the Grand Riviere property makes that clear.

I have no hesitation in declaring that the proceeds form COURTS (ST. LUCIA) LTD. is the separate property of the Petitioner.

INJUNCTION

The Respondent has in the past inflicted serious injury to the Petitioner and has issued very serious threats against life. Her affidavit filed on January 11, 1990 recounts incidents which took place on September 23, 1989; September 24, 1989; September 29, 1989; and December 29, 1989. On the last date she was forced to leave the home for the night. She saw Dr. Kenneth Louisy on December 30, 1989 and he diagnosed:

"- haematoma to the right eye;

- scratches under right eye; right side base of neck to the dorsal region of the right hand;
- laceration to the lateral aspect of right thigh approximately 4 cms long.”

The Respondent has been granted access to the children and this necessitates the Parties coming into some contact with each other. For this reason I would not lift the interim injunction but would order that the Respondent by himself, his agents or servants, or however otherwise be restrained from assaulting, beating or threatening the Petitioner.

COSTS

Each Party is to meet his or her costs of the proceedings.

A.N.J. MATTHEW
Puisne Judge.