



1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: D133 OF 2007

8-06-09
5/6/09

2
3
4
5 BETWEEN:

6
7 DELBERT ASTRONAUT SMITH

8
9 Petitioner/Cross Respondent

10 AND:

11
12 KAREN MAXINE SMITH

13 Respondent/Cross Petitioner

14
15
16 **Coram:** The Hon. Mr. Justice Foster

17
18 **Appearances:** Mr. James Kennedy of Samson & McGrath for the Petitioner/Cross
19 Respondent (Ms. Smith)
20 Mrs. Sheridan Brooks of Brooks & Brooks for the
21 Respondent/Cross Petitioner (Mrs. Smith)

22
23 **Heard:** 28th October 2008

24
25
26
27 REASONS FOR RULING AND ORDER

28
29
30 1. On 28th October 2008 I heard the application for final ancillary relief in the
31 divorce proceedings between the Petitioner/Cross Respondent, who I shall refer to
32 as Mr. Smith and the Respondent/Cross Petitioner, who I shall refer to Mrs.
33 Smith.

34
35 2. There are two children of the marriage, namely a girl, K-Ann Shennelle Smith,
36 who was 16 years old at the time of the hearing but in full time education and a
37 boy, Daniel Delbert Smith, who was 5 years old. The parties were agreed that

1 they should have joint custody of the minor child of the marriage, Daniel, and that
2 Mrs. Smith should have day to day care and control of Daniel. It was also agreed
3 that Mr. Smith should have liberal access to Daniel as agreed between the parties.
4 The dispute between the parties related to the matter of child maintenance,
5 spousal maintenance and the division of matrimonial assets.

- 6
7 3. After the hearing I adjourned until later that afternoon and then gave the
8 following ruling:

9
10 *"In this matter the parties are agreed that they should have joint custody of the*
11 *only minor child of the marriage, Daniel Delbert Smith, and that Mrs. Smith*
12 *should have day to day care and control of him. It is also agreed that Mr. Smith*
13 *should have liberal access to Daniel, as agreed between the parties. I therefore*
14 *make orders accordingly.*

15
16 *The dispute between the parties relates to the division of matrimonial assets,*
17 *spousal maintenance and child maintenance. The older child of the marriage, K-*
18 *Ann, is now 16 but she is in full time education.*

19
20 *The parties do not disagree over what the matrimonial assets are or their*
21 *approximate value. They accept the principle of a 50/50 split. The principal*
22 *assets are the former matrimonial home at 59 Frenchman Drive, Breakers and*
23 *the house at Passage Fort, St. Catherine, Jamaica. There are also 4 motor*
24 *vehicles and 3 money market accounts, 2 of which are in Jamaican dollars and 1*
25 *of which is in United States dollars. In addition there is a credit card liability*
26 *with Scotia Bank of CI\$5,802 but it is disputed by Mrs. Smith that this is truly a*
27 *matrimonial liability; she contends that it is Mr. Smith's own sole liability.*

28
29 *As far as the former matrimonial home is concerned, it has a gross value, agreed*
30 *by the parties, of CI\$200,000. It is, however, subject to a mortgage and the value*
31 *of the remaining equity is agreed at approximately CI\$99,000. The house is*
32 *occupied by Mrs. Smith and the 2 children. The monthly cost of the mortgage is*
33 *approximately CI\$1,400. Pursuant to an order of the Summary Court made in*
34 *2006, Mr. Smith was making the monthly mortgage payments in full until that*
35 *order was effectively varied by an order of this Court on 19th November 2007,*
36 *since when Mr. Smith has been paying one half of the monthly mortgage*
37 *payments. The title to the house is in joint names of the parties. The contents of*

1 the house and certain building blocks and other items on the site have an agreed
2 value of about C\$10,000.

3
4 The house in Jamaica has a value agreed by the parties equivalent to C\$58,603.
5 It is unencumbered and belongs jointly to the parties. However, there are two
6 complications with the Jamaica house. Firstly, although the parties purchased
7 the property from Mrs. Smith's uncle the title has never been transferred out of
8 her uncle's name. If and when the title to the house were to be transferred into
9 the name of one or other or both of Mr. and Mrs. Smith there would not only be
10 transfer costs but also outstanding arrears of property tax to pay off in an
11 unknown amount. The second complication is that the property is currently
12 occupied rent free by Mr. Smith's adult nephew and niece.

13
14 The parties did not significantly disagree about the division of the 4 motor
15 vehicles between them or their value, but they did disagree about the former
16 matrimonial home and the house in Jamaica. Mr. Smith proposed that Mrs. Smith
17 should get the former matrimonial home and contents and that he should get the
18 house in Jamaica. Mrs. Smith submitted that she could not afford to pay the
19 mortgage on the former matrimonial home herself and that she would not qualify
20 for refinancing on her own. Although she did not submit any evidence of that, it
21 does seem quite likely in light of her net income of approximately C\$2,800 per
22 month. Her proposal was that she should get the Jamaica house which she would
23 rent out and thereby derive an income from that and that the former matrimonial
24 home should be sold so that with her share of the equity on sale of the former
25 matrimonial home and income from the Jamaica house, she would be able to
26 afford to rent suitable accommodation for herself and the children. She proposed
27 that Mr. Smith should continue to pay one half of the monthly mortgage payments
28 in respect of the former matrimonial home until it is sold. One half of the monthly
29 mortgage payments at the current rate would amount to C\$700 per month.

30
31 In my view, it would be desirable that the children continue to live in the former
32 matrimonial home if that is possible and I have considered requiring Mr. Smith to
33 continue to pay one half of the mortgage payments indefinitely. However there
34 are clearly risks in that and any event in the circumstances here it seems
35 desirable that there should be as much of a clean break as possible.

36
37 Regrettably therefore, in the absence of agreement between the parties, I can see
38 no real alternative to the sale of the former matrimonial house. I do not think that
39 Mrs. Smith's proposal in relation to the house in Jamaica is really realistic or fair
40 if she is to get one half of the former matrimonial home as well and accordingly,
41 consistent with the desirability of a clean break and a 50/50 split, I order that the
42 property in Jamaica should be sold also. In each case the net proceeds of sale of
43 the properties and their contents should be divided equally between the parties. I
44 also do not accept that the credit card debt is a matrimonial liability and I
45 therefore do not take it into account. I am satisfied that Mr. Smith incurred that
46 liability himself, it is in his name, and he must be responsible for it.

1 *As far as the motor vehicles are concerned, I direct that Mrs. Smith shall keep the*
2 *Honda, already in her possession valued at \$5,000 and Mr. Smith shall keep the*
3 *Silverado truck valued at \$2,000 net. He shall also keep the Toyota Hiace van*
4 *which is in Jamaica and valued at approximately \$3,516. Mr. Smith has already*
5 *given away the Nissan car, valued at \$1,000 so he must give credit for that and*
6 *pay Mrs. Smith \$500 in respect of her one half share of that matrimonial asset.*
7 *Mr. Smith must also pay Mrs. Smith \$516 to reflect the total difference in value of*
8 *the two vehicles he will be keeping and the value of the one vehicle which Mrs.*
9 *Smith will be keeping.*

10
11 *Lastly, as far as the money market accounts are concerned, in my view, they fall*
12 *to be divided equally between the parties, with the amount already withdrawn by*
13 *Mr. Smith to pay arrears of maintenance previously ordered by the Court to be*
14 *taken into account. As I understand it, that means that the total amount of these*
15 *accounts would be notionally assessed at \$2,665 of which one half, namely*
16 *\$1,332.75 is due to Mrs. Smith in respect of the accounts. Accordingly, in light of*
17 *to what I have already ordered about cash payments, Mr. Smith must pay Mrs.*
18 *Smith a total lump sum in settlement of C\$2,348.5. I direct that this should be*
19 *paid in 2 installments of \$1,174.38 each, the first to be paid on or before*
20 *Wednesday 12th November 2008 and the second on or before Wednesday 10th*
21 *December 2008.*

22
23 *As far as maintenance is concerned, I direct that until the former matrimonial*
24 *home is sold, as I have directed above, Mr. Smith must continue to pay one half of*
25 *the monthly mortgage payment together with one half of the insurance on the*
26 *house. He shall in addition pay one half of the health insurance and any excess*
27 *medical expenses in respect of the two children as well as their educational*
28 *expenses until they reach the age of sixteen or, if, as is the case with K-Ann, they*
29 *are in full time education until such full time education finishes or until they reach*
30 *the age of twenty-one, whichever is sooner. Mr. Smith shall also pay maintenance*
31 *in respect of the 2 children, K-Ann and Daniel, in the total sum of \$700 per*
32 *month, payable through the Court Funds Office. As I have already said,*
33 *maintenance shall continue to be payable until the children reach the age of*
34 *sixteen or, if in full time education, until that finishes or they reach the age of*
35 *twenty-one, whichever is sooner.*

36
37 *I further direct that the house in Jamaica shall be placed on the market as soon as*
38 *possible and in any event within a month. Mr. Smith is to arrange for notice to be*
39 *given to the current occupiers and to instruct them to allow viewing of the*
40 *property by potential purchasers and to vacate the property on any sale. The*
41 *parties are to cooperate as far as possible in order to achieve a sale of both*
42 *matrimonial properties. Sale costs shall be shared equally.*

43
44 *Lastly, in the circumstances I think it fair to make no order for costs. Each party*
45 *shall have liberty to apply insofar as necessary for the further working out of the*
46 *order which I shall make in light of this ruling”.*

1 4. Following this ruling I duly signed an order which I considered properly reflected
2 my ruling.

3
4 5. In reaching my decisions on the matters on dispute between the parties I had
5 regard to sections 19 and 21 of the Matrimonial Causes Law (2005 Revision)
6 (“the Law”) and in particular I endeavoured to have regard, first of all, to the best
7 interests of the children and thereafter to the responsibilities, needs, financial and
8 other resources, actual and potential earning power and the deserts of the parties.

9
10 6. As far as the 2 children were concerned, only one of them, Daniel, was under
11 sixteen but the older child, K-Ann was in full time education and accordingly in
12 my view it was appropriate to direct that maintenance should be paid in respect of
13 her pursuant to the proviso to section 22 of the Law. I also considered that in the
14 particular circumstances of this case, having regard to the factors specified in
15 section 19 of the Law, it was appropriate and reasonable that Mr. Smith should
16 also pay one half of the children’s health insurance, excess medical costs and
17 educational costs.

18
19 7. With regard to spousal maintenance, Mrs. Smith was employed and earning, Mr.
20 Smith had contributed significantly to the matrimonial assets and the evidence
21 was that his income was sporadic and not necessarily any greater than Mrs.
22 Smith’s. I also ordered that Mr. Smith pay significant child maintenance and
23 expenses. In the circumstances I did not consider that spousal maintenance was

1 justified or fair and I therefore made no order for spousal maintenance in my
2 ruling.

3

4 8. As far as the division of the matrimonial assets was concerned, I was satisfied that
5 the credit card debt was not a matrimonial liability. The expenditure concerned
6 was not matrimonial in nature but was for Mr. Smith's personal benefit and in my
7 view it was properly to be considered his personal obligation.

8

9 9. In the circumstances it did seem fair and reasonable to me that the money market
10 accounts should be divided equally between the parties and, as I understood it that
11 was not significantly disputed. However, the sums withdrawn by Mr. Smith to
12 meet his obligation to pay maintenance pursuant to Court order, did not amount,
13 in my opinion, to a matrimonial debt to be taken into account in assessing Mrs.
14 Smith's share and accordingly the amount in the accounts was assessed
15 disregarding the sums he had withdrawn for that purpose.

16

17 10. As far as the 4 motor vehicles were concerned, as I noted in my ruling, the parties
18 did not significantly disagree as to who should receive which vehicle and in
19 respect of the vehicles' values.

20



21 11. In considering the former matrimonial home, it did seem to me that ideally it
22 would have been in the best interests of the 2 children to be able to continue to
23 reside there. However, in light of the parties', and particularly Mrs. Smith's

1 means, and the desirability of a clean break given the history of bitter disputes
2 over financial matters, unfortunately that did not appear to be a practical option.
3 On the other hand, in light of Mr. Smith's contribution to the value of the former
4 matrimonial home, I did consider it fair that the parties should divide the net
5 equity equally between them and the parties themselves proposed a 50/50 split of
6 the matrimonial assets generally. The former matrimonial home was considerably
7 more valuable than the house in Jamaica. In the circumstances, given that she
8 would get half the equity in the former matrimonial home, in my judgment, Mrs.
9 Smith's proposal that the house in Jamaica be awarded solely to her, was not fair
10 or reasonable. I therefore considered that the fairest and most appropriate
11 approach was for the house in Jamaica to be sold as well and the proceeds of sale
12 divided equally between the parties, in the same way as the former matrimonial
13 home.

14
15 12. Having regard to sections 19 and 21 and the proviso to section 22 of the Law, in
16 light of all the circumstances I duly ruled as set out above and made the order of
17 28th October 2008 accordingly.

18
19
20
21
22 Dated 8th June 2009

23
24
25



The Hon. Mr. Justice Angus Foster
Judge of the Grand Court (Acting)