

19/8/08

IN THE GRAND COURT OF THE CAYMAN ISLANDS
MATRIMONIAL CAUSES REGISTRY

CAUSE NO: D122 of 2007

BETWEEN:

SHERVIN IRA WOOD

PETITIONER

AND

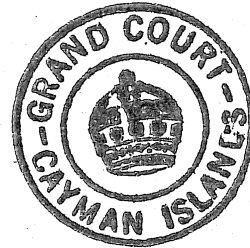
GRACE MARGARET WOOD

RESPONDENT

Appearances: Ms. Ailsa Williamson of Stuarts Walker Hersant for the
Petitioner
Mr. James Kennedy of Samson & McGrath for the
Respondent

Before: Hon. Justice Levers

Heard: July 14th and 16th 2008



JUDGMENT

This is an application for custody, maintenance, care and control and division of the matrimonial assets

The Respondent, Grace Margaret Wood, wants sole custody of the children, including care and control.

BACKGROUND

The parties in this case were married on 23 December 1986 and the Respondent is 48 years old, the Petitioner 56. The parties have two children of the union, now aged 16 and 12. The marriage is therefore a long one; it had lasted 20 years at the date of

separation. The Respondent is originally from Jamaica and the Petitioner Caymanian. However, since the date of the marriage, the evidence reveals that the Respondent has either lived in Cayman or in Florida and, therefore, Jamaica is not truly her home. She has educated herself over and above the tertiary level by doing a degree in Florida in the United States of America and her children have been attending school in the United States of America. They have now had to return to the Cayman Islands because their visas have run out, as has the Petitioner's. Presently, the Respondent is in good health, as are the children. The Petitioner, however, is not well. He has to have major surgery in the very near future and could become a quadriplegic, according to the medical reports submitted to this Court. Indeed, when he appeared before this Court, it was evident that his hand was bent inwards and he had no control over that arm.

THE HEARING

At the hearing, which lasted some two days approximately, both the Respondent and the Petitioner gave evidence and were cross-examined strenuously. The Petitioner also called his ex-wife, Mrs. Meyerhof, and Mr. Ezzard Miller in support of his application. Several affidavits have been filed, including one from Craig Wood, but he was not called to give evidence so his Affidavit stands as such.

CUSTODY

On the question of custody, the Respondent did not strenuously pursue the question of sole custody. Apart from the Affidavit evidence, there is nothing that was said or any

evidence that was led in this Court to support her application for sole custody. The Court is not persuaded to give sole custody to the Respondent and the Order that will be made in this Court is one of joint custody, with care and control to the mother/Respondent. The Court was, therefore left to determine the question of maintenance for the two children and the Respondent and the final division of the matrimonial assets.

MATRIMONIAL ASSETS

There is no dispute as to several of the matrimonial assets. I believe the dispute really revolves around the business, its deposits and the land it is built on. It is convenient at this stage to list the properties that are not the subject of dispute.

- (1) No. 4, Bergman Lane, Block 27C, Parcel 10

This was purchased in August 1990 from the Respondent's family. The Respondent claims that she received this land in exchange for her share of some land in Jamaica inherited by her. The Petitioner on the other hand claims that her family was paid in full in the sum of somewhere between CI\$12,000 and CI\$15,000 for the land and that this money came from the business. Whichever version I accept, matters not, because it is clear that this land went into the melting-pot of the assets in the marriage and was acquired after the marriage and I would hold that this was a matrimonial asset.

(2) 12 Bergman Lane, Block 27C, Parcel 472

This was purchased by Ezzard Miller on behalf of the business in 1991. The purchase price was paid by the business over a period of time. The land was transferred into the Respondent's name in approximately 2000. The Petitioner claims that he has personally spent his own time and energy constructing the property at 12 Bergman Lane, Block 27C, Parcel 472. Once again, this matters not. It is, I believe, agreed by the parties and, even if it were not, I would hold that it is a matrimonial asset.

(3) Seafront land on Patrick's Island, Block 24C, Parcel 14

This, too, has no mortgage on it, and is agreed that it is a matrimonial asset.

(4) Undeveloped land on the Canal Front in Spotts, Block 24E, Parcel 341

This property was sold to the Petitioner at a very good price because he was a friend of Mr. Jim Bodden. It was sold to him for \$48,000 and it is now worth C\$445,000 with no mortgage on the property. This too by consent is deemed to be a matrimonial asset.

(5) Two apartments in Spotts, Block 25B, Parcel 240

The mortgage has been paid by the Petitioner since separation and these two apartments were built during the marriage. In fact the parties lived in one for

some period of time during the marriage. It is solely in the Respondent's name, but I do not believe that it is contested that it is a matrimonial property. Various contributions were made in the sum of \$8,000, for example, for the land that was bought before the marriage, but I hold that this is in the melting-pot of the marriage and, therefore, it is a matrimonial asset.

(6) Waterfront 3-bedroomed Property in Florida

There is an outstanding mortgage on this which the Respondent was meant to pay but did not pay. This house is furnished and a value of US\$15,000 has been placed on the furniture. The Petitioner claims that this was purchased in joint names, but CI\$100,000 was put from his inheritance from his mother into this property. I hold, however, that it is in joint names and there is no special reason being put forward wherein I should hold that it belongs to one person more than the other.

Cars

The parties did not address me on the cars nor on the boat. There is a Honda Odyssey, a Volvo, a Mitsubishi and a Bayliner boat. These, too, in my view, are matrimonial assets. We are therefore left with the business.

The Business

This business was commenced prior to marriage by the Petitioner. A Mr. Ezzard Miller, the Petitioner and another were joint partners in this venture. It was initially called "Deals" and the Petitioner purchased the land. He built a small building on the premises and commenced business. The Respondent claims that when she got married in 1986 she commenced working at the Business as a sales clerk. The Petitioner submits that this does not give her a right to the business, as she was paid for the work. There has been produced cheques in various sums of around about the same amount, stating that the Respondent was paid by cheque as a salary. She does not contest that the cheques show that, but what she contests is that it was indeed a salary. She says that various amounts were paid to her and, for convenience, it was put in as a salary. The business initially was not doing very well but subsequently blossomed and was indeed the fountain for all the subsequent purchases, which are substantial, made by the parties during the course of the marriage. The question I have to ask myself is: the business having been commenced prior to the marriage, and the marriage being a long one, does the Respondent have a claim to 50 per cent of this business, or even a lesser share? The business funded the Respondent's education, it funded various purchases from which the Respondent will benefit and it funded the Respondent's lifestyle and the children's lifestyle subsequent to separation.

The Parties

The husband, as I said previously, is not well. He could become a quadriplegic. The only income he will have, if the properties are valued and sold, is the capital assets

from the property and any income from the business. There is no doubt and it is not contested that his illness is serious and that he does not have a particularly active, lucrative lifestyle to look forward to. The wife, on the other hand, is young. She is vibrant (as evidenced by her presence in Court and the evidence she gave on oath). She is capable of working and finding a job, either in the Cayman Islands or in Jamaica, and she is able to look after herself. However, that is not to say that she is not entitled to a 50 per cent share of the matrimonial assets to which she clearly contributed during her marriage, either by work or by her contribution as a mother and housewife. The husband comes, in this case, in a special category. The Court is reluctant to call his a special contribution, but the Court must look at the needs of the parties and, of course, paramount in those needs are the needs of the children. I got the impression that the wife was not particularly anxious to allow the husband access to the children. This is not a healthy situation and she should be encouraged to appreciate that the father has, in fact, looked after the children. Although she alleges that he was not a good husband, he did look after the children.

It is perhaps convenient at this stage to say that, in this case, the desserts of the parties have not been such that it should influence the Court one way or the other. The Court's decision is complicated by the following facts:

- (1) The Petitioner is a sick man and could become quadriplegic, therefore requiring considerable care and attention at home.
- (2) There is an alleged agreement between the Petitioner and the first wife which I accept as true because I find the first wife a credible and surprisingly impartial

witness. She says that she contributed to the business in the early days when they were still married and that the Petitioner defaulted in the maintenance that was due to her after separation and divorce and she agreed to waive that and take fewer properties on condition that the Petitioner would give the business to her eldest son. I find her believable, but whether the Petitioner had any intention whatsoever of giving the business to the son is not easily resolvable. What I do find is that the Respondent in this case did not know of this agreement as she says. I find her credible in that respect. I believe it was in the Petitioner's mind, if at all, and that he did not communicate this to anyone. The son did not, in fact, finish his university studies. He came back and continued with assisting the father in his business. Indeed, it would appear that he is the only child that is close to his father at this time.

The Respondent has to find a home to live in and sufficient money to purchase that home. Having heard that she is capable of working and maintaining her own upkeep, I have to now consider whether, if all the properties that I hold as matrimonial assets are valued and sold, whether they would be sufficient for the Respondent to purchase a home and commence life. At present, the children are in Cayman and not aware of what the school fees will be, nor am I aware of what requirements will be needed, and where they will live. Things are presently fluid and any order I make for the maintenance of the children can be reviewed subject to where they eventually settle down. At present, the Petitioner pays a substantial amount of money for the maintenance of the wife and the two children. I do not believe, however, that that sum will be required if the wife was working in the Cayman Islands. In those circumstances, I must bear in mind that the welfare of the children is of paramount

importance. I must also bear in mind that the wife will need to settle down somewhere once she knows the extent of her award and I must also bear in mind that the Petitioner is unwell, and will be unable to work certainly for the next six to 12 months and that the business will not be run by him but by his son who is clearly less experienced.

Conclusion

In all the circumstances of this matter, I make the following order:

1. Joint custody of the children.
2. Care and control to the mother/Respondent.
3. Liberal access to the father; I have presently ordered on an interim basis access on Friday at 4pm to 6pm and on Saturday at 10am to 6pm. The children are to be dropped off at the store and picked up at the store every weekend. There have been no complaints to date on this access arrangement but, should the parties need to vary it, there is always liberty to apply.
4. I have looked at the requirements of the children and I would order that the Petitioner pay CI\$2,000 for each of the children per month which would include any school fees and any miscellaneous expenses such as traveling whether they live in Jamaica, Cayman or the United States of America.

5. The children not to be taken out of the jurisdiction without the consent of either party or leave of the Court.

6. There will be no spousal support for the wife.

7. I hold that the matrimonial properties are as follows: 4 Bergman Lane Block 27C Parcel 10, Canal Front Lane which is a residence under construction, 12 Bergman Lane, Block 27C Parcel 472, seafront land on Patrick's Island, Block 24C, parcel 14 and developed land on the canal front in Spotts, Block 24E, parcel 341, two apartments in Spotts, Block 25D, parcel 240, waterfront three bedroom property in Florida, the three cars, the Honda, the Volvo, the Mitsubishi and the Bayliner boat. These are to be valued and sold with the proceeds to be distributed equally. However, if the parties can agree which they want to keep and which they want to sell that should be a matter of agreement between the parties.

Finally I hold the business is not a matrimonial asset. I bear in mind that this is a twenty year old marriage but I do not believe that the respondent contributed in any way to upliftment enhancement of the business. I also believe that the husband commenced this business and continued it for several years on his own with his own ideas. I accept Mr. Ezzard Miller's evidence.

Any agreement between the ex-wife and the husband cannot be part of an estoppel as it is a private agreement. Based on the facts and applying the law I hold that it is not a

matrimonial asset. It is an asset that will bring income to the petitioner in the future to support his family and I do not believe that this needs to be touched to meet the requirements and the needs of the wife.

I therefore do not hold that this is a matrimonial asset that is the business, any monies in the name of the business and the land and premises of the business.

The question of Costs is Reserved for further argument or written submissions by counsel.

Dated this 19th day of August, 2008



Levers, J.
Judge of the Grand Court

