

11-4-06

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN**

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4 **CAUSE NO. D50/2004**

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7 **BETWEEN: DONALD LOUISE FRAZIER**
8 **Petitioner**

9
10 **AND: LILLIAN CLAUDETTE FRAZIER**
11 **Respondent**

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14 **Appearances: Ms. Zena Merren of Appleby Spurling Hunter for the Petitioner**
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16 **Mr. William Jones of Ogier for the Respondent**
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18 **Ms. Sherri Bodden-Cowan of Bodden & Bodden for the**
19 **Joinder to Suit - Denise Winsome Frazier**

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22 **Before: Hon. Justice Henderson**

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25 **Heard: April 11, 2006**



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28 **JUDGMENT**

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30 I have conducted a hearing to apportion the matrimonial assets prior to dissolution of the marriage.

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32 The parties began a relationship in 1995 and married in 2000. Mr. Frazier had already been
33 married and separated from his first wife early in 1996. He divorced his first wife later that year.

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35 The parties lived in the house which Mr. Frazier had from his first marriage until that was sold in
36 May 1998. That house was replaced with the present matrimonial home, which has been the focus
37 of this hearing.



1 Six issues have been presented to me for resolution. I will deal with the first four, which are
2 relatively minor, first.

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4 The Scott Schedule shows that item two consists of some \$500 worth of phone and CUC bills.
5 These were incurred from March to June 2005 at a time when a tenant, who had been in the house,
6 had left and the house was being repaired prior to sale. I think these bills must be regarded as an
7 expense of the sale and therefore deducted from the sale proceeds prior to division of the assets. It
8 follows that they are, in effect, being divided between the parties in the percentage portions which I
9 will specify in due course.

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11 Item four is a deposit received by Mr. Frazier from a Mr. Brumbaugh in the amount of \$5,000.
12 There is no real contest that Mr. Frazier must be solely responsible for repaying Mr. Brumbaugh, as
13 I now find. However, I am prepared to recognise the sum of \$900, which was derived from the
14 Brumbaugh payment and applied towards the mortgage on the matrimonial home. I will permit
15 that \$900 sum to be deducted from the sale proceeds.

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17 Item five specifies four bills, the first three of which Mr. Frazier accepts responsibility for. The
18 fourth appears to be subsumed in a larger amount, which is listed on the schedule as item six. I
19 turn to that now.

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21 Item six is a water bill for a one-month period in the amount of some \$3,200. Evidently some
22 problem caused the water lines to leak, to expend water constantly and to increase the resulting
23 water bill astronomically. Mr. Frazier was in occupation of the house until August 26th. The

1 amount I have referred to was said to be owing as at August 31st, 2004. No one knows when or
2 how this difficulty occurred. In these circumstances, I think it must be Mr. Frazier, the person who
3 was last in occupation of the home, who bears responsibility for the payment. That amount must be
4 deducted from his share.

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6 The first issue of substance concerns a debt said to be owing to Mr. Frazier's first wife, Denise
7 Frazier. She applied to this court and received an order permitting her to join in this lawsuit. I am
8 inclined to agree with Ms. Bodden that that represents at least a tacit admission by the court that
9 there is jurisdiction to make orders in favour of third parties in a matrimonial cause. In addition, I
10 have considered some submissions provided to me by Ms. Bodden at my request this afternoon and
11 note in particular her submission, well based on authority, that the provisions of the Cayman
12 Islands Matrimonial Causes Law are somewhat broader than those found in England. I, therefore,
13 will approach this issue, albeit with some trepidation, on the footing that I do have jurisdiction in
14 appropriate circumstances to make an order in favour of a third party in a matrimonial lawsuit.

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16 In 1996, Denise Frazier and Donald Frazier agreed in writing that Denise would convey to Donald
17 her interest in the then matrimonial home for the sum of \$30,000. Payment was not made
18 immediately. As the agreement indicates, payment was to be made at some later date when Mr.
19 Donald Frazier was able to make it.

20
21 In 1998, title to the home was registered in the name of Mr. Frazier and the consideration for that
22 transfer was said to be natural love and affection. I think the state of the register must be

1 conclusive as against third parties. In this context, I regard Claudette Frazier as a third party. She
2 cannot be made responsible for any portion of the debt owing to Denise Frazier.

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4 However, the agreement between Denise and Donald Frazier is in writing and appears to be
5 enforceable. No argument has been presented to the contrary. In these relatively unusual
6 circumstances, I am prepared to make an order in favour of Ms. Bodden's client. I will order that
7 the sum of \$30,000 be paid to Denise Frazier from the share of the matrimonial assets I am about to
8 allocate to Donald Frazier.

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10 That brings me to the final issue, which is apportionment. The starting point, of course, is a 50/50
11 division. In many cases, perhaps even in most cases, the appropriate order will be an equal division
12 of assets.

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14 The primary reason for departing from the equal division has to do with the respective
15 contributions of the parties coming into the marriage. Those cases where an unequal division has
16 been found to be appropriate usually are based upon situations where one party contributed
17 significantly more at the outset.

18
19 In the present case, Mrs. Frazier contributed some \$23,000 towards the cost of building the present
20 matrimonial home. Those monies came from the sale of land belonging to her. In addition, she
21 contributed some part of the sum of \$17,500, which was a personal injury settlement. There is
22 dispute about whether she contributed all of that, but it is accepted that a significant portion of it
23 was contributed in some way to what I will call the cost of the marriage.

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Set against that are the contributions of Mr. Frazier. He contributed towards the living expenses of the couple the sum of some \$37,000, representing the sale proceeds of his previous matrimonial home. He also contributed a gift of \$30,000 provided by his parents, which was used in part to build the home. Moreover, Mr. Frazier brought into the marriage the land upon which the home was built.

I accept the more conservative of the four appraisals done on this home and value that piece of land at \$40,000.

Significant sums were contributed to the joint savings account of the parties and the lion's share of that has been contributed by Mr. Frazier.

Overall, it is clear that there is a significant disparity between his contributions and hers. This is not a purely mathematical exercise. One needs to do equity in a broad sense between the parties.

I am satisfied from all of the circumstances that it would be appropriate, as Mr. Frazier urges, to depart from the 50/50 rule. I consider it fair and appropriate that his greater contribution and his obligation to pay Denise Frazier \$30,000 should be recognised by an award of 60 percent of the

1 family assets. I, therefore, order that Mr. Frazier is to receive 60 percent and Mrs. Frazier 40
2 percent of the family assets.

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4 I leave it to counsel to work out the precise terms of the order.

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6 Dated this 11th day of April, 2006

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Henderson, J.

10 Henderson, J.

11 Judge of the Grand Court

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