

3.3.05
Cul.



1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS
3 CAUSE NO: D103 OF 2001

4 BETWEEN:

5 ANDREW ANTHONY KIDD
6 Petitioner

7 AND:

8 MELROSE KIDD
9 Respondent

10 APPEARANCES:

11 Counsel for Petitioner: Ms. E. Nervik of Nervik &
12 Co.
13 Counsel for Respondent: Ms. K. Reid of McKinney
14 Reid & Co.
15

16 Heard: February 16 & 17, 2005
17

18

JUDGMENT



19 Levers J,
20

21

22 The Petitioner, Andrew Anthony Kidd has summonsed
23 this Court for the formal determination of

1 ancillary matters and asks for the following
2 relief:

3

- 4 1. An order as to the custody, care and control
5 of child of the marriage, namely Yannick Akaim
6 Kidd born on the 29th November 1997;
- 7 2. An order as to the maintenance of the said
8 child of the marriage;
- 9 3. An order as to costs; and
- 10 4. Such further and/or other relief that this
11 Honourable Court deems fit and proper.

12

13 The Respondent has also filed a Summons asking for
14 the following relief:

15

- 16 1. Custody of the child Yannick Akaim Kidd;
- 17 2. Reasonable maintenance for the child of the
18 marriage;
- 19 3. That there be no order as to access to the
20 child in favour of the Petitioner until and
21 unless a report is submitted to the Honourable
22 Court by a medical Social Worker, Psychologist
23 or like professional employed by the Cayman
24 Islands Government stating that it is safe and
25 in the best welfare of the child that he be
26 granted access;

1 4. That there be a property adjustment order
2 and/or lump sum payment to the Respondent;

3 5. Further and other relief; and

4 6. Costs.
5

6 Before the commencement of the hearing of this
7 matter, with the Court's guidance and assistance,
8 the parties came to a Consent Order as to the
9 custody of the child. The following Order was
10 made:
11

12 1. Joint custody be given to the Petitioner and
13 the Respondent;

14 2. The Respondent to have access to the child
15 every other weekend, half school holiday,
16 every other Christmas

17 3. Access on Father's day to the Petitioner and
18 the Petitioner's birthday to the Petitioner;

19 4. The Respondent to have access to the child on
20 Mother's day and her birthday;

21 5. Care and control to the Respondent;

22 6. The Petitioner to pay maintenance at \$75.00
23 per week for the maintenance of the child plus
24 half school fees and half medical, half dental
25 and optical fees not covered by the insurance.

1 The maintenance of \$75.00 per week to commence
2 on the 1st March 2005 and to be paid into the
3 Court's office.

4 7. The child not to be taken out of the
5 jurisdiction without the permission of either
6 party or the leave of the Court for more than
7 5 days; and

8 8. The parents are to inform each other as to the
9 whereabouts of the child when abroad even for
10 a short time.

11

12 That now leaves me with the question of the
13 matrimonial asset. It should be noted that the
14 Petitioner did not ask for relief relating to the
15 assets because his position is that the assets
16 having been brought into the marriage and not
17 being in the name of the parties jointly, the
18 Respondent is not entitled to any relief. In
19 short that there are no matrimonial assets.

20

21 The Respondent's position is that although the
22 bulk of the assets were brought into the marriage,
23 the improvements thereto were contributed to by
24 her and therefore, she is entitled to a percentage

1 of the improved value of the assets (ie. the
2 matrimonial home).

3

4 **Background**

5

6 The parties lived together for approximately four
7 years before getting married in 1997. There is
8 one child of the union born in 1997, namely
9 Yannick Akaim Kidd. After marriage, they
10 commenced living in the matrimonial home which at
11 the time was a two bedroom, two bathroom house.
12 During the marriage both parties seemed to have
13 worked, the Petitioner more consistently and
14 regularly than the Respondent. The Respondent
15 according to her passport and on her own admission
16 traveled frequently either to Miami or to Jamaica.
17 Her trips to Miami were for commercial purposes
18 where she purchased clothes for sale in Cayman.
19 Her trips to Jamaica were to look for her

1 dependant mother and her child. However, when she
2 was in the Island it would appear she worked in
3 various positions as a cashier and a clerk. She
4 alleges that she made direct and indirect
5 contributions to the improvement of the
6 matrimonial home. The marriage was an unhappy
7 one during its latter stages and in 2001, 30th
8 July, the Petitioner filed for the dissolution of
9 the marriage. It would appear that subsequently,
10 the parties attempted reconciliation, but were
11 unsuccessful and in December 2002, the Respondent
12 left the matrimonial home.

13

14 On the 5th June 2003, the Petition for divorce was
15 proceeded with and proved and the ancillary
16 matters were adjourned to chambers. The only
17 asset was the matrimonial home to which the
18 Respondent makes a claim.

19

1 A brief chronology of the ownership of this
2 property is relevant and useful for purposes of
3 this application.

4

5 25th April 1990 The property was transferred
6 from Petitioner's sister to
7 the Petitioner.

8

9 4th July 1990 The property was transferred
10 from the Petitioner's name to
11 joint names of the Petitioner
12 and his first wife.

13

14 Early part of 2000 - The property was transferred
15 from the joint names of the
16 Petitioner and the first wife
17 into the sole name of the
18 Petitioner by a court order.

19

20 6th July 2000 The property was transferred
21 from the sole name of the
22 Petitioner to the joint names
23 of the Petitioner and his
24 sister.

25

26 It is not disputed that the main house as I will
27 call it, was brought into the marriage by the
28 Petitioner. It is important to note that the

1 property had been transferred originally from
2 the Petitioner's sister to the Petitioner.

3

4 The issue in question is the Respondent's claim
5 to the improved value that was undertaken during
6 the course of the marriage. The Petitioner
7 borrowed monies from the bank to finance the
8 improvements. The first draw down was on the 1st
9 December 2000 in the sum of \$25,673. The second
10 draw down was on the 25th July 2001 in the sum of
11 \$25,820.00 and the third draw down was on 10th
12 September 2002 in the sum of \$5000.00 and the
13 fourth draw down was on the 19th September 2003
14 in the sum of \$7500.00. The total borrowed was
15 \$63,993.00. The parties agree that neither the
16 property nor the loan was in the name of the
17 Respondent. Indeed, the Petitioner alleges that
18 the 6th July 2001, transfer was undertaken

1 because the Petitioner asked his sister to
2 guarantee the loans.

3

4 The Petitioner's Case

5

6 The Petitioner's position is that the Respondent
7 does not have a claim to any part of this
8 property. That the property is owned with the
9 right of survivorship to his sister. That the
10 Respondent made no financial contribution
11 whatsoever to the improvement that is the two
12 apartments built onto the main house and that
13 she has not acted to her detriment but instead,
14 she got a benefit. He states that she lived
15 there rent-free and that there is no presumption
16 of a gift. He submits therefore there that is
17 no issue of intent and nothing that has been
18 said by the Respondent gives her a beneficial
19 interest. The Petitioner further says that what

1 ever money the Respondent made was used to
2 purchase land in her name in Jamaica in the sum
3 of \$10,000CI approximately and was sent to
4 support her mother and son in Jamaica and
5 another child in the United States of America.

6
7 The Petitioner admits that his conduct was not
8 appropriate during the marriage and states that
9 he did abuse the Respondent on more than one
10 occasion. However, he says that the Respondent
11 exaggerated the question of abuse and he invites
12 this court to look at one of the charges that
13 was laid against him. That is the charge of
14 "intent to insult the modesty of woman, namely
15 Melrose Kidd called her, a bitch". Very often
16 insulting words are used in homes where there is
17 acrimony between husband and wife. The Court
18 therefore has to look at the nature of the
19 charges laid to assess the conduct of the

1 parties. If this Court holds that the
2 Respondent has a claim to the property then the
3 conduct of the Petitioner would become relevant
4 and will have to be examined.

5

6 Respondent's Case

7

8 The Respondent admits that she commenced living
9 with the Petitioner in the matrimonial home when
10 it was a two bedroom, two bathroom unfurnished
11 house. She alleges that he was in arrears with
12 the Royal Bank in the payment of the house
13 mortgage, and that she assisted the Petitioner
14 in clearing the mortgage payments and went as
15 far as attending the bank with him and seeing a
16 loans officer to indicate that there were two of
17 them to assist with the mortgage payments.
18 This, of course, deals with the main house. The
19 house to which she does not lay any claim. The

1 house which was brought into the marriage. The
2 Respondent gives no dates, gives no amounts paid
3 and gives no details as to the payments made by
4 her. She further alleges that she worked during
5 most part of her marriage and that she was only
6 unable to work for several months around the
7 period of September 2001 to February 2002,
8 because the Petitioner abused her to such an
9 extent that her health would not permit her to
10 return to work. She states and I quote:

11

12 ''We added a two bedroom apartment
13 and a one bedroom apartment, I
14 contributed substantially to the
15 building of this extension and to
16 the furnishing of the entire of
17 matrimonial home. I would often
18 buy furniture for the home out of
19 my wages.''

20

21 The substantial contribution to the building of
22 the extension is the only relevant issue for
23 purposes of this application. The Respondent does

1 not give any details whatsoever as to her
2 contribution direct or indirect. She goes on:

3
4 "I would go and request building
5 materials, furniture and labour
6 from friends and church people.
7 I gave the Respondent money on
8 many occasions to assist with the
9 building. I also did some of the
10 labour myself. I did most of the
11 work to see that the addition was
12 completed. The
13 Petitioner/Respondent was hardly
14 around, although he would go to
15 order and pay for the building
16 materials. Any financing would
17 have been done in the
18 Petitioner's name. However, I
19 would assist with those payments
20 in addition to giving the
21 Petitioner/Respondent money to
22 help otherwise. I also had to
23 pay most of the household bills.
24 Many of the payments for the
25 household bills or utilities were
26 deducted from my account at
27 Canadian Imperial Bank of
28 Commerce. I am now shown a
29 printout of my account which
30 reflects many of the payments I
31 made for the household."
32

33 There is no evidence before this Court that the
34 Respondent has been able to provide, to confirm

1 the request for materials, furniture and labour
2 from friends. The evidence is that on one
3 occasion, a friend of the Petitioner's gave them
4 some cement which was put on the driveway and the
5 Respondent and her cousin helped to level the
6 cement on the driveway. The Court reminds itself
7 that the evidence given by the Respondent is that
8 she did most of the work to see that the addition
9 was completed. The lack of details leaves the
10 court in some difficulty as far as this is
11 concerned especially in circumstances where Mr.
12 Franklin Wright was called by the Petitioner who
13 gave evidence that he was the contractor on the
14 job. That he undertook the building of the
15 addition onto Mr. Kidd's house from foundation to
16 the end. He also gave evidence that Mrs. Kidd
17 would be seen around but never discussed anything
18 as far as the building was concerned. That in

1 fact, it was Mr. Kidd that always paid him. To
2 sum up Mrs. Kidd's allegations are that:

3

4 (1) She assisted in the building by
5 borrowing material and furniture from
6 friends, and got the assistance of
7 labour from friends and church people.

8 (2) That she did most of the work to see
9 that the addition was completed and

10 (3) That she assisted with the payments to
11 the Petitioner.
12

13 These are substantial allegations and would
14 justify a claim to the property. However, this
15 court has no details whatsoever from Mrs. Kidd.
16 What the Court is left with is the following:

17

18 1. That documentary evidence has been provided by
19 the Petitioner to show that the improvement
20 was wholly financed by the Bank;

21 2. That there was a contractor who did the work;

22 3. That when the one bedroom apartment was
23 completed sometime in 2001, the Respondent was
24 not in the Island;

1 4. That there is no evidence from the Respondent
2 apart from her allegation that material was
3 given to her from friends or that friends
4 assisted with the labour;

5 5. That when she alleges that she did most of the
6 work to see that the addition was completed,
7 it flies against the sworn uncontested
8 evidence of Mr. Wright.
9

10 Mrs. Reid on behalf of the Respondent in cross-
11 examination put it to Mr. Wright that in fact he
12 came on the property when it was up to the window
13 stages and that it was another man who had
14 undertaken the work up until then. Mr. Wright
15 denied it and I find Mr. Wright a credible
16 witness. There was no cross-examination as to any
17 work done by Mrs. Kidd.

18

19 It is perhaps convenient at this stage to turn to
20 the law. The Matrimonial Causes Law (1997
21 Revision), section 19 sets out the general
22 principles to be followed by the Court in
23 ancillary matters:

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In dealing with all matters arising under this Law, the Court shall have regard first of all to the best interests of any children of a marriage and thereafter to the responsibilities, needs, financial and other resources, actual and potential earning power and the deserts of the parties.

14 Section 22 deals with ancillary matters:

15 At the time of pronouncing a
16 decree under this Law, the Court
17 shall, as appropriate, make
18 orders for-

- 19
- 20 (a) the custody, care and control
- 21 of the children of the
- 22 marriage;
- 23 (b) the disposition of
- 24 matrimonial property,
- 25 including the matrimonial
- 26 home;
- 27 (c) varying any settlement of the
- 28 property of the spouses made
- 29 in consideration of the
- 30 marriage, whether such
- 31 settlement was made before or
- 32 upon the treaty of the said
- 33 marriage;
- 34 (d) varying any other settlement
- 35 of matrimonial property;

- 1 (e) making financial provisions
2 from the property of either
3 spouse for the children of
4 the marriage and for the
5 other spouse;
6 (f) providing for periodic
7 payments to be made by either
8 spouse for the benefit of the
9 children of the marriage and
10 for the other spouse; and
11 (g) costs.
12

13 These relevant sections come into effect if this
14 Court was to hold that the Respondent's
15 contribution was such that she had a claim to the
16 property. Mrs. Reid relied on the case of White v
17 White [2001] 1 ALL ER. That case can be easily
18 distinguished from this one. In the case of
19 White v White it was a long marriage and the main
20 thrust of the Court's judgment was about the
21 powers conferred on the Court in proceedings for
22 ancillary relief and the need of the Court to make
23 a fair financial arrangement in the absence of
24 agreement between the spouses. The evidence in
25 that case was that the wife had worked and made

1 direct and indirect contribution to the welfare of
2 the marriage and the Court held that equity
3 demanded that it was not the wife's requirements
4 alone that were to be taken into account but
5 equality when division of the matrimonial assets
6 were undertaken. In the case of Doak v Doak
7 [2002] CILR 224, Justice Taylor in his judgment at
8 paragraph 22 says this:

9

10 ''It seemed to us to be of
11 particular importance that the
12 appellant worked and devoted her
13 earnings to family needs, rather
14 than acquiring assets of her own,
15 while the respondent built up a
16 valuable practice.''
17

18 He was dealing with the **White** test to be applied.
19 The authorities are clear that if a wife is held
20 to have made a contribution directly or indirectly
21 or if there was a common intention that can be
22 inferred from words or conduct or if equity
23 demanded, that there can be a claim that can be

1 justified by the wife then the Court must ensure
2 that fairness is achieved in the division of the
3 matrimonial assets.

4

5 **Findings**

6

7 The easiest claim in the world to make is that of
8 an indirect contribution. At the same time it
9 perhaps is difficult to prove because persons who
10 are in an enjoyable relationship do not always
11 keep receipts and bills. However, a wife's claim
12 in circumstances where there is no evidence of
13 common intention or a presumption of a gift and
14 where there is documentary evidence of the bank
15 financing the entirement improvement, must be
16 looked at very carefully. The wife in this case,
17 says they were building the extension and they had
18 little means and that she would go and request
19 building material, furniture and labour from

1 friends and church people. This is to be examined
2 against the evidence that the husband has
3 documented that he borrowed money from the bank.
4 She says he gave the Petitioner money on many
5 occasions to assist with the buildings. There is
6 no evidence of that whatsoever. She also says
7 that she did some labour herself and that she did
8 most of the work to see that the addition was
9 completed and that the Petitioner was hardly
10 around. This is against the fact that the
11 Respondent was away for a period of time when the
12 first apartment was completed. There is no
13 documentary evidence that she assisted financially
14 and indeed, there is not one person who comes
15 before this Court to say that she did most of the
16 work to see that the addition was completed. I
17 have the evidence of Mr. Wright whom I found him
18 to be an honest witness. What perhaps is more
19 revealing is that the Respondent was able to save

1 substantial monies during the course of the
2 marriage and that when she left to go to Jamaica
3 she took close to \$10,000CI dollars with her. I
4 bear in mind that the Respondent was not a
5 qualified professional and that whatever she did
6 and however much she supplemented her income
7 without further information to this Court it is
8 difficult to conclude that the Respondent
9 contributed in any meaningful way towards the
10 building. The bank having given the loan, the
11 fact that the Petitioner had to go four times to
12 borrow the money to pay for the extension and Mr.
13 Wright's evidence leaves me in great doubt as to
14 whether the Respondent contributed, if any, or at
15 all to the building of the extension. During the
16 marriage she purchased land in Jamaica in her name
17 alone. I find therefore that the Respondent does
18 not have a claim to any of the property. That the
19 property is owned with the right of survivorship

1 and she made no financial contribution. That she
2 never acted to her detriment and that there is no
3 presumption of a gift. There is no issue of
4 intent. Nothing was said or done to give her a
5 beneficial interest and it cannot be inferred by
6 conduct. I do not find that the Respondent is
7 being honest when she says she contributed in a
8 substantial way.

9

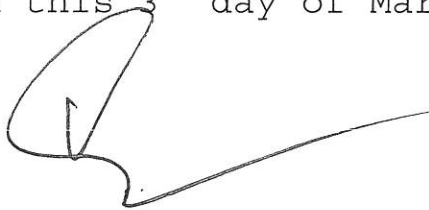
10 The Respondent's Summons dated 7th October 2003,
11 therefore, asking for relief regarding the
12 matrimonial home is dismissed and the following
13 Order is made:

14

- 15 1. Joint custody of Yannick Akaim Kidd born on
16 the 29th November 1997 to Petitioner and
17 Respondent;
- 18 2. Care and control to the Respondent. The
19 Petitioner to pay the sum of \$75.00 per week
20 as maintenance plus half school fees, half
21 medical, dental and optical fees not covered
22 by the insurance of the Respondent;

- 1 3. The maintenance to be paid into the Court
2 Funds Office, commencing on the 1 March 2005;
- 3 4. The access to the Petitioner is every other
4 weekend, half school holidays, every other
5 Christmas, Father's day and father's birthday.
6 The mother is to have the child on Mother's
7 day and mother's birthday if it falls on a
8 weekend or a day when the father is having
9 access;
- 10 5. The child is not to be taken out of the
11 jurisdiction without permission of either
12 party or the leave of the Court for more than
13 5 day;
- 14 6. The parents are to inform each other as to the
15 whereabouts of the child when abroad even for
16 a short time;
- 17 7. The Respondent's claim for property adjustment
18 and/or lump sum payment is dismissed;
- 19 8. The Respondent to receive any furniture or
20 chattels she may have left in the matrimonial
21 home; and
- 22 9. No order as to costs.
23

24 Dated this 3rd day of March, 2005

25 A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a long horizontal stroke extending to the right.

26
27 Judge of the Grand Court