

Feb 7, 2005

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

3 MATRIMONIAL CAUSES REGISTRY

4 CAUSE NO. # D11 OF 2003

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7 BETWEEN: RANDY CURTIS MELLANEO PETITIONER

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10 AND: HIDE LOURDES MELLANEO RESPONDENT

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Appearances: Ms. G. Eileen Nervik of Nervik & Company for the Petitioner
Ms. Keva Reid of McKinney Reid & Company for the Respondent

14 Before: Hon. Justice Sanderson

15 Heard: December 7, 2004



18 JUDGMENT

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21 This is an application for the final determination of ancillary matters. On December 7, 2004 I
22 gave Oral Reasons and decided all outstanding matters except the division of one asset, namely a
23 piece of vacant land. Mrs. Mellaneo claims a 50% interest in the land and Mr. Mellaneo claims a
24 100% interest.

25 The parties were married on December 5, 1998. In approximately January 2003 the parties
26 separated, then reconciled and finally separated in November 2003. There is one child of the
27 marriage, Amber Shania Mellaneo, born on May 16, 1999. Mrs. Mellaneo is 29 years old and
28 Mr. Mellaneo is 27 years old.

29 During the marriage Mr. Mellaneo was employed by the Caribbean Utilities Company and earned
30 approximately CI \$3,500 per month. He has accumulated pension benefits at CUC over the years

1 he worked there. I was not told what the value of those benefits were except that they exceeded
2 the value of Mrs. Mellaneo's pension benefits because she worked for a shorter period of time
3 and earned less.

4 Mr. Mellaneo has another daughter, Genet Mellaneo born prior to the marriage, on September
5 30, 1995. She presently lives in the United States with her mother and Mr. Mellaneo pays US
6 \$325 per month for her school fees and CI \$50 per month towards her maintenance, for a total of
7 approximately CI \$323 per month.

8 Mrs. Mellaneo deposed, that during the marriage she earned an average of \$1,400 per month.
9 She has the day to day care and control of their daughter although on December 7, 2004 I made
10 an interim Order that day to day care and control be awarded to the father until such time as Mrs.
11 Mellaneo could find more suitable housing accommodation. The parties have joint custody. She
12 is currently employed and earns approximately \$1,800 per month. Mrs. Mellaneo has two other
13 children who are living with her mother in Honduras. She supports those children in the amount
14 of \$300 per month.

15 During the marriage the family lived with Mr. Mellaneo's mother, with the exception of part of
16 the period of the attempted reconciliation. Since the final separation Mr. Mellaneo continues to
17 live with his mother and Mrs. Mellaneo and her daughter have an apartment shared with others.

18 The parties have agreed to a division of certain property as follows:

- 19 1. Mr. Mellaneo will keep the equity in a time share property in Florida which equity was
20 approximately \$3,000 in March 2003.

1 2. Mr. and Mrs. Mellaneo will each keep their respective pension benefits even though Mr.
2 Mellaneo's will be larger in amount.

3
4 The only other matter left for determination is the deposition of a vacant piece of land. It was
5 purchased by Mr. Mellaneo in 1999 (one year after the marriage) from Mr. Mellaneo's brother
6 for CI \$27,000. He borrowed the money from Barclay's Bank to purchase the property and he
7 paid the mortgage from his monthly salary. Mr. Mellaneo deposes the balance owing on the
8 mortgage was approximately \$8,700 in March 2003. I was told by his counsel, Ms. Nervik that
9 the current balance owing on the mortgage is approximately \$3,000. The agreed value of the
10 property as of March 2003 is \$36,000. The equity in the property at the time of the separation in
11 January 2003 would therefore have been approximately \$25,000 and somewhat greater than that
12 in November 2003 when the reconciliation failed.

13 Mrs. Mellaneo deposed in her affidavit at paragraph 5:

14 "It is true that I did not directly contribute to the payments; however I was regularly
15 employed during the marriage and I earned on the average of \$1,400 per month. I used
16 the earnings to buy groceries and to pay for babysitting for our daughter as well as assist
17 with other bills relating to the household and the child of the marriage."

18 Mr. Mellaneo deposed in his response affidavit at paragraph 7:

19 "The respondent made no payments towards the property. The respondent used her
20 money to buy clothes, cosmetics and household items to send to Honduras."

1 Mrs. Nervik on behalf of Mr. Mellaneo argued that Mr. Mellaneo should be allowed to keep the
2 property, in part for these reasons:

- 3 (a) Mrs. Mellaneo made no direct contribution towards its purchase and did nothing
4 to her detriment in acquiring the property;
- 5 (b) the property was never lived in as a home;
- 6 (c) because the marriage was short, the parties are young and this was not a big
7 money case, the principals in *White v. White* [2001] All ER 1 H.L., *Barrett v.*
8 *Barrett* [2001] CILR 56, and *Uzzell v. Uzzell* [2001] CILR, (note 12) were not
9 applicable.

10 In *Uzzell v. Uzzell* (supra) I set out some principles that I felt should be considered by the Court
11 within the broad language and discretion conferred by Section 19 of the *Matrimonial Clauses*
12 *Law*. At pages 7-10 of those Reasons I stated:

13 “the summary is not intended to be exhaustive or to confine the Court in subsequent
14 cases.

15 The principles are:

- 16 1. The primary objective is an award that is fair to both parties. What is fair
17 will depend on the particular circumstances of each case;
- 18 2. The length of the marriage;
- 19 3. The age of the parties;
- 20 4. the income and earning power of the parties;
- 21 5. The amount of matrimonial and non-matrimonial property available to the
22 parties;

- 1 6. The needs and obligations of the parties, but recognizing that an award
2 need not necessarily be limited to a party's needs, when there is
3 matrimonial property that exceeds both parties needs;
- 4 7. The liquidity of the parties, including one parties ability to pay any lump
5 sum award without seriously impairing his or her ability to continue to
6 generate sufficient income;
- 7 8. The desserts of the parties including the contribution that the parties have
8 made to the accumulation of the matrimonial as well as non-matrimonial
9 property. In considering what the relative contribution of each party is, the
10 Court should;
- 11 (i) examine the effort made by each party;
- 12 (ii) examine the results achieved from the respective parties efforts;
- 13 (iii) examine the nature of the contribution, for example, was it 60
14 hours per week for 20 years or was it a brilliant idea that has
15 created the wealth overnight;
- 16 (iv) not discriminate against one spouse on the basis that he or she did
17 not work outside the home but rather stayed at home to care for the
18 family and attend to family matters. This choice would have given
19 the other spouse, the opportunity to freely pursue his or her
20 professional or business interests which would ultimately benefit
21 the family; conversely, if both spouses have chosen to work outside
22 the home then it is proper to measure their respective contributions
23 according to the evidence of what those contributions were. In
24 some cases this may result in a spouse, who chooses to work or
25 pursue their own career in receiving a smaller award than they
26 would have, if they stayed at home and attended to the family. But
27 I do not think that is necessarily an unfair result. If a couple
28 decides that one spouse would work outside the home, and the
29 other will take care of the family and the family affairs, that is a
30 joint enterprise with both parties contributing differently but
31 equally to the accumulation of the family property. In those cases a
32 fair award may be a 50% division of the matrimonial property. On
33 the other hand, if both spouses work outside the home, for
34 example, assume both spouses are professionals, physicians,
35 accountants or lawyers, and one earns \$100,000 per year and the
36 other earns \$200,000 per year, then in those circumstances both
37 parties have had the opportunity to pursue their own careers. Both
38 parties would have contributed to the accumulation of the
39 matrimonial property, which likely would be much more
40 substantial than if just one party had worked outside the home. In

1 dividing the property it is right to consider the respective
2 contributions the parties had actually made toward its accumulation
3 and it is one of the factors that could fairly justify a division that is
4 not equal.

5 9. The desserts of the parties, including the conduct of the parties, if that conduct is
6 such that it would in the opinion of the Court be inequitable to disregard it.

7 10. Liquidity, or the ability of one party to make a lump sum payment without putting
8 the income generating asset at risk.

9 11. Before any final ruling is made, the Judge, as stated by Lord Nichols;

10 "Would always be well advised to check his tentative views
11 against the yardstick of equality of division and as a general rule
12 equality should be departed from only if there is good reason to
13 do so."

14
15 The first principle stated, namely: "The primary object is an award that is fair to both parties.
16 What is fair will depend on the particular circumstances of each case"; is in my view the most
17 important consideration.

18 The other principles stated should be considered by the Court in reaching an award that is fair to
19 both parties. Of course there may be other principles that arise in subsequent cases that also
20 ought to be considered by the Court. It was agreed by both parties that the Court has a broad
21 discretion in these cases.

22 I have considered all of the authorities cited by Ms. Nervik. All but three pre-date *White (supra)*,
23 *Barrett (supra)* and *Uzzell (supra)*. None of the decisions subsequent to the three cases
24 mentioned above, change the reasoning or conclusions reached in those decisions.

25 Ms. Nervik relied on three decisions that were post *White (supra)*. In *Connolly v. Connolly* 2003
26 (CILR Note 13) the parties were married for six years during which time the wife cared for the

1 child, and made no direct contribution to any family asset. She was much younger than the
2 husband and capable of working. The husband had acquired the matrimonial home and other
3 properties many years before the marriage.

4 In the present case, Mrs. Mellaneo not only worked to contribute to the family with income, she
5 was also the primary caregiver. The property in the present case was also acquired during the
6 marriage and although it was paid for by the husband out of his salary, it came out of money that
7 would have been available to the family.

8 In *Walton v. Walton* Cause D135 of 2002 Madam Justice Downs (Acting Judge) found that the
9 wife made some direct monetary contributions to the home and significant indirect contributions.
10 She awarded the wife an amount equal to 40% of the increase in equity of the home during the
11 eight year marriage.

12 In *Duty v. Duty* (2002 CILR Note 5) Smellie, CJ found that the wife had owned several
13 properties prior to the marriage, most of which were sold during the marriage to fund the
14 purchase of land and for the construction of the matrimonial home or other building projects
15 undertaken by the husband's company.

16 The wife had suffered from a back injury which had been exacerbated by violent assaults by the
17 husband toward the end of the marriage, resulting in her inability to work. At the end of the
18 marriage the matrimonial home was the only remaining valuable capital asset. The Chief Justice
19 concluded that equality was not the appropriate starting point for the division of matrimonial
20 assets where one party had contributed almost all of the available matrimonial assets and was at
21 risk of being unable to meet his or her own needs. He distinguished *White v. White* on that basis.

1 He further concluded that the husband had at most a 10% share in the home, indirectly, through
2 his contribution of the land for a neighbouring building project but he had by his conduct
3 deprived the wife (who had limited alternative sources of income, of the opportunity to work and
4 support herself). He concluded therefore that the wife should be awarded the home entirely.

5 In the present case, both parties are capable of, and are working. They are both young. The
6 property was acquired and equity accrued during the course of the marriage. Although the
7 mortgage payments came from the husband they were thereby taken from the family pool of cash
8 available.

9 Mrs. Mellaneo contributed indirectly to its purchase by earning an average of \$1,400 per month,
10 a sum of which was used at least in part to support the family, allowing Mr. Mellaneo to acquire
11 the property. Mrs. Mellaneo also contributed by being a primary caregiver to their child.

12 Although the parties agree that each would keep their own pension benefits and Mr. Mellaneo
13 would keep the time share property, I am nevertheless entitled to consider those facts in
14 determining what is ultimately fair. I can see no reason why the general principle that equality
15 should be departed from only if there is good reason (*White (supra)*, *Barrett (supra)* and *Uzzell*
16 (*supra*)) should not apply in this case. The length of marriage and the amount involved are two
17 of the factors that may be considered in determining what is fair. In some cases they may be
18 significant and in other cases not significant at all.

19 In this case the property was acquired by direct contribution from Mr. Mellaneo and indirect
20 contribution from Mrs. Mellaneo. In financial terms alone I am satisfied that he contributed
21 significantly more than Mrs. Mellaneo did. His average income was more than double hers.

1 Also her income was at least in part gained from selling numbers which is an illegal activity. She
2 was the primary caregiver but the parties lived with Mr. Mellaneo's mother who no doubt
3 assisted from time to time as did Mr. Mellaneo. The marriage was relatively short and the parties
4 have not devoted their lifetime to the accumulation of family assets. Both parties are young,
5 employed and able to make a fresh start. I have also considered all of the other factors previously
6 enumerated. Considering the above factors I think there is a good reason to depart from equality.
7 I have concluded that Mrs. Mellaneo should be awarded a lump sum equal to 35% of the equity
8 of the property at the time of separation. I calculate the lump sum to be \$8,750 (.35 x \$25,000).

9 Accordingly Mr. Mellaneo is ordered to pay a lump sum amount of \$8,750 within six months. If
10 he fails to do so, Mrs. Mellaneo may apply to have the property sold or transferred to her or for
11 further directions.

12 Costs may be spoken to if not agreed.

13 Dated this 7th day of February, 2005

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16 Sanderson, J.
17 Judge of the Grand Court

