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IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

10-02-04

CAUSE NO: D112 of 2002

BETWEEN:

TAMMIE THERESA WALTON

Petitioner

AND:

ARTHUR JOEL WALTON

Respondent

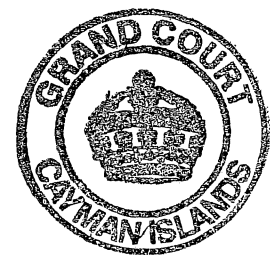
Before: Hon. Madame Justice Priya Levers

Appearances:

Counsel for the Petitioner: Mrs. K. Thompson of Karen Thompson & Co.

Counsel for the Respondent: Mr. W. Helfrecht of Boxalls & Co.

Date of hearing: 21st and 29th January, 2004



JUDGMENT

Levers J.

This is an application by the petitioner, Tammie Theresa Walton for the following orders:

1. An order in respect to matters relating to the custody, maintenance, welfare and upbringing of the three children of the marriage, Paige Janelle Walton, born on the 9th December 1990, Alexander Anderson Walton, born on the 31st March 1992 and Hunter Japheth Walton, born on the 28th October 1996;
2. An order in respect to the disposition of the matrimonial assets;

3. Such further and/or other Orders as this Honourable Court shall deem fit.

Background History

The Petitioner and the Respondent were married on the 14th July 1990. The marriage lasted some twelve years and produced three children, namely Paige Jannell Walton, born on the 9th December 1990, Alexander Anderson Walton, born on the 31st March 1992 and Hunter Japheth Walton, born on the 28th October 1996.

For many reasons the marriage ended on the 18th July 2002. The petitioner Tammie Theresa Walton commenced divorce proceedings, which were pronounced upon on the 8th October 2002. On that date this Court held that the facts and the matters stated therein were found to be proved, but deferred the pronouncement of the decree of dissolution pending the formal determination of the ancillary matters.

On the 21st May 2003, an interim order was made by this Court. Although the substantive summons was adjourned to be re-listed, the following interim orders were made:

- (a). the parties to have joint custody of the three children of the marriage;
- (b). the Petitioner and the Respondent each to have interim, care and control of the three children on alternate weeks at their respective homes until further order;
- (c). interim access by either party to the said children in the weeks when either does not have interim care and control, to be agreed between the parties as necessary;
- (d). the Respondent to pay to the Petitioner in the weeks when the Petitioner has interim care and control of the three children, the sum of \$100 per week per child until further order;
- (e). a social enquiry report to be prepared.

The parties had liberty to apply. Neither party applied to vary the order.

The only application that has come before the Court is ^{du} an order for the final determination of the issues outlined in the summons.

Custody Care and Control

Adjudication of the question of the welfare of the children in any case, is always a complex and taxing decision for a court to make. However, in this particular case, the parents have contributed greatly in assisting the Court by the manner in which they have agreed to deal with the question of custody, care and control of the children.

The Social Enquiry Report which by any standard was comprehensive, well put together and most helpful recommends that the present arrangement that is in place pertaining to the children should continue. That is that both parents share custody, care and control of the children. The Court is often wary of making an order granting joint care and control of children, unless there are exceptional circumstances. The Court found itself, therefore, in a position where it needed to be further convinced about the recommendation made by the social enquiry report. Accordingly it was decided to meet with the three children, as it was considered that they were of an age where a meeting would prove productive. Having met with the three children, having read the social inquiry report, having heard the submissions of the attorneys, I have concluded that the present arrangement is the best in all the circumstances for the children. I would therefore grant joint custody, care and control jointly to both parents. The children are to spend two weeks of every month with the Petitioner and two weeks with the Respondent. It is the duty of the Court in exercising this wide discretionary power to have regard to all the circumstances of the case and in granting this unusual order, I bear in mind that the parties had made this arrangement previously and that it is, in fact, a working arrangement at the time of this application. I recommend the continuation of mediation to both parties. The fact that both parties are in counselling

has played a role in the conclusion arrived at by this Court and I am of the opinion that counselling has and will continue to play a major role in the amicable resolution of all matters relating to the children.

Maintenance for the Children

The parties have submitted that the interim order made previously for the maintenance of the children should be made permanent. At present, the Respondent pays the Petitioner \$100 per week per child whilst the children are with the Petitioner. There is however, no agreement as to the payment of the children's medical, dental optical expenses, school fees, extra curricular activities and wages for the helper, utilized by both parties. The Law does not discriminate between the sexes and it may well be that the Respondent could look to the Petitioner to share these costs. However, in view of the order for joint custody, care and control and the affidavit evidence that the Petitioner was responsible for the care of the family and was basically a home maker, the Court is of the opinion that the Respondent should be responsible in full for the following payments:

- (a). children's school fees;
- (b). school uniforms;

- (c). helps wages, and statutory payments in connection with helps employment such as insurance and pension; and
- (d). the children's medical, dental and optical expenses.

Her role in the family must have prevented her building assets and increasing her earning power, whilst the Respondent's earning power and income is far superior to that of the Petitioner.

Lump sum or Maintenance Payment for the Wife

As to the question of distribution of the matrimonial assets, consensus has not been reached. It is for the Court to make a decision. Having heard from the Respondent and the Petitioner, the Court is of the view that the matrimonial assets are as follows:


1. the matrimonial home belonging to the Respondent;
2. the Respondent's BMW 525;
3. the Respondent's boat;
4. the Petitioner's Mazda car;
5. the Dodge Caravan belonging to the Petitioner;
and
6. land in the Petitioner's sole name.

It is uncontradicted that prior to the marriage the Respondent had the land on which the matrimonial home was built and that in fact the Petitioner was not a major contributor to the building of the matrimonial home which was partially built at marriage. The matrimonial home is the only assets that the parties wish this Court to adjudicate on as the Respondent has agreed that the Petitioner can keep the two cars and the land. He alleges that he paid off a loan on the land, but makes no claims to the land. However, according to the Respondent, this payment was made on the understanding that the Petitioner would lay no claim to the matrimonial home. The matrimonial home is valued at CI\$522,000. The Petitioner alleges that it is worth approximately CI\$550,000. That valuation is unsupported and the Court is bound by the open market valuation of a professional, obtained by the Respondent. The redemption of mortgage which is on the property requires the Respondent to pay \$185,000. The redemption of a loan to Cayman Islands Government would cost another \$10,000 and the deductions to be applied, if the house is sold would amount to \$33,930 leaving a net value of approximately \$293,070. These figures can act as a guideline to the parties financial standing, but I am of the view that the Petitioner not having contributed to the development of the matrimonial home directly, nor there being any evidence of common intention at the relevant time, she is not entitled to a beneficial interest in

that property. It leaves the question of maintenance, if any, payable by the Respondent to the Petitioner who comes away from the marriage with approximately \$84,000 being the value of land and two cars. What she does not have is a home for the children to live in. She is presently living in rented accommodation. The need to attach greater weight to the welfare of the children in any order made by this Court self evidently means that orders for the wife are usually of trifling amounts. In this case, the Court feels that the requirement to give first consideration to the welfare of the children, inevitably requires a mother with joint care and control of the children to have periodical payments for her own support. I do not believe that it is in the best interest of the children for their mother to be in straightened circumstances. It is always best to have a clean break between the parties in a case in which there are obviously adequate financial resources to pay the Petitioner a lump sum. This in my view would end the parties financial interdependency on each other and would remove the only serious area of dispute between them. In view of the length of the marriage, the Petitioner's contribution to the family as outlined in the affidavits and her present financial situation and bearing in mind that she has joint care and control of the children, I am of the view that a maintenance order in the form of a lump should be made for the Petitioner.

When assessing the figure to be paid by the Respondent to the Petitioner, I bear in mind that the Respondent's only major asset is the matrimonial home, which is already mortgaged. In all the circumstances of the case, it would be just and equitable for the sum of \$30,000CI to be paid to the Petitioner as a lump sum computed at \$500 per month for five years. Accordingly, I order the Respondent to pay the Petitioner the sum of CI\$30,000 as a lump sum settlement. No order as to costs will be made in this matter.

Finally, I would like to congratulate both Counsel on the most professional manner in which this case has been conducted. Not only has it assisted the Court in the expeditious resolution of what could have been a prolonged and acrimonious matter. It has also, I am assured, been beneficial to the children in resolving issues related to their welfare.


Dated this 10 day of February, 2004



Madame Justice Priya Levers
Judge of the Grand Court

