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IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: D57/2002

23-05-03

BETWEEN:

ROSA EMILIA ESAU

Petitioner

AND:

BRIAN GRANT HENRY ESAU

Respondent

BEFORE: The Honourable Justice Levers

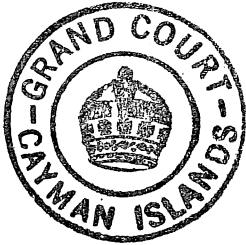
APPEARANCES:

Counsel for the petitioner: Mrs. Karen Thompson of Karen Thompson & Co.

Counsel for the respondent: Mr. Phillip Boni of Truman Bodden & Co.

HEARD: 14 May 2003

REASONS FOR JUDGMENT



Levers J.

The application before in this matter is a summons for the following reliefs:

1. An Order in respect to matter relating to custody maintenance, welfare and upbringing of the child of the marriage, Chantelle Marisol Esau who was born on the 25th of June 1996.
2. An order in respect to the disposition of the matrimonial assets.
3. Any further Orders as this Honourable Court may deem fit to make.

Thanks to the diligence of counsel, the question of custody in this matter was resolved amicably and a consent order has been entered, granting the Petitioner and the Respondent joint custody of the child of the marriage with care and control to the Petitioner. Other attendant orders pertaining to the child were also done. The question that now remains is a distribution of the family assets in

accordance with the law. This too has been made easier by both parties agreeing to the identification of the family assets. The issue simply revolves around what liabilities, if any, this Court is going to allow from the list claimed.

FACTS

There is in my view no need to go into the details of the breakdown of this marriage. The parties have conceded that it would be fair and equitable to apply a 50/50 split when it comes to the distribution of the family assets. However for purposes that would become apparent later, a brief outline of the facts would prove an useful excuse. The Petitioner and the Respondent were married in Vancouver, BC. on the 14th May 1993 there was a child of the union. They lived in Canada before moving to the Cayman Islands. On or about the 5th February 2001 the relationship deteriorated to such an extent that the marriage came to an end. On or about the 16th April 2002, the Petitioner commenced divorce proceeding:

THE PETITIONER

The Petitioner is a Mexican who is on a work permit in the Cayman Islands. She came to Cayman with her ex-husband. She contends that during the marriage she worked side by side with the Respondent lending him her support, looking after the child and also contributing what little she could towards the matrimonial

expenses. The Respondent on the other hand, is a successful banker, highly educated with a bright future and perhaps more importantly for purposes of this application he has a very generous father who has assisted him in the success that he has achieved to date in the financial world. There is some concern on the Respondent's part that he may be repatriated back to Canada and his earning potential and/or his future income may be curtailed. I do not take that statement as truly reflective of the position in this matter as I am assured that for purposes of this application the Respondent's earning potential is far superior to that of the Petitioner.

THE LAW

I believe it is common ground that the provisions of section 19 and 22 of the Matrimonial Law gives this court a wide discretion when it comes to financial provisions and any awards made to either party. I am aware however, that I must take into account various factors in exercising my discretion and coming to a conclusion. They are:

1. The welfare of the children;
2. The income earning capacity;
3. Property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;
4. The financial needs, obligations and responsibilities each of the parties to the marriage has or is likely to have in the foreseeable future;

5. The age of each party to the marriage and the duration of the marriage;
6. The standard of living enjoyed by the family before the breakdown of the marriage;
7. The conduct of each of the parties if that conduct is such that it would in the opinion of the Court be inequitable to disregard it. Having taking all those matters into consideration, I am reminded also that the Court's favour a clean break between the parties in a case, in which there are adequate financial resources to order it. This is because, to end the financial inter dependency on each other would remove the only serious source of dispute between them.

As stated previously the assets that this Court in this matter has to consider are agreed. That is:

1. The CIBC Employee Share Plan
2. The CIBC Drip Account #3015950807
3. The CIBC Drip Account #002177473
4. Investors Edge Account # 572-21472
5. CIBC Cayman Investment Account # AG6783
6. CIBC :Mutual Fund Account # 1468578
7. CIBC Spousal RRSP Account #59068788
8. 1997 Chrysler Stratus
9. Ford Escort LX Motor Car
10. Furniture stored in Canada
11. Royal Bank of Canada (operating account)

It is also agreed that the furniture (in 10 above) stored in Canada would be for the Respondent's credit and that the Ford Escort and the Chrysler Stratus (8 and 9) would be reduced equally in value from date of purchase. The total matrimonial assets therefore amounts to CAN\$213421.64 or CI\$128,053. The liabilities if they are to be taken jointly fall into two categories. Monies borrowed

by the Respondent to invest in shares and monies borrowed from the Respondent's father to invest in what is called the "RRSP Account". This Court has already indicated to the parties and now confirms that any monies borrowed prior to the marriage will not be taken into account as a liability. The question therefore is whether the money borrowed from the Respondent's father for the RRSP Spousal account to achieve the value it has to date, is to be deducted as a liability to the Petitioner and the Respondent equally or to the Respondent alone. This is not a case of a 50/50 distribution. If, in fact, the Respondent had not offered a 50/50 distribution then I believe that any reasonable and equitable Court would perhaps have given the wife 40% of the net assets. However, as it is a 50/50 offer I intend to allow the Respondent the following liabilities from the assets:

The RRSP Spousal debt	34,000.00
The CIBC Investment debt	7,578.00
The CIBC Common #107024 now #707268 to buy shares	18,958.00
The CIBC Common # 101864 for	6,538.00
CIBC Education #106467 (MBA degree)	<u>1,240.00</u>
Totaling	<u>\$68,314.00</u>

Net worth therefore will be CAN\$145,107.64. Any monies received by the Petitioner will represent the Petitioner's entire savings from the marriage and indeed, if she were not to remain in Cayman, the Petitioner's earning capacity and ability to maintain the same standard of living, for herself and the child will be in the future unlikely to be anything but a struggle. Bearing that in mind, in order to give the Petitioner a start in her life and to alleviate the inevitable financial

struggle she will face by resettling in her capacity as a single mother, I intend to order the Respondent to pay the Petitioner the sum of CI\$350.00 per month as maintenance for one year commencing on the 1st June 2003. The Order of the Court therefore, is sum of CI\$43,532.92 to be paid to the Petitioner forthwith as a lump sum payment and the sum of CI\$350.00 per month as maintenance, for one year.

Dated this 23rd day of May, 2003



P. Levers
Judge

