

8/12/2000



file

1 IN CHAMBERS
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS
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4 CAUSE D90 OF 1995
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7 BETWEEN: HARRIET SOLOMON PETITIONER
8
9 AND: CALVIN SOLOMON RESPONDENT
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12 Before the Hon. Chief Justice Anthony Smellie
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15 **Appearances:**
16 Mr. Steven Roy of C.S. Gill & Co. for the petitioner
17 Mrs. Glenis Eileen Nervik of Nervik & Co. for the respondent.
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21 **RULING**
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24 This is likely to be one of the few remaining cases harkening back to the era when the
25 husband went to sea with the merchant marine and the wife stayed at home to run the
26 household and care for the children. For much of the 15 years between 1974 - 1989 when
27 this marriage subsisted that was the respective position of the parties. They separated in
28 1989. The petition was proved in 1995. Although she claims to have worked as a casual
29 worker from time to time, the wife accepts that the husband was the main breadwinner
30 throughout the marriage.

31 His income from the merchant marine supported the family until 1984 when he returned
32 from sea and thereafter he remained the main breadwinner until they separated in 1989.

33 The family included children : in June 1974 the first child Ciscely was born and in May
34 1980 the second Calvin, was born.

1 In resolving the ancillary matters remaining between the parties, I have determined that
2 the real issue for resolution is what is to be the equitable division of the property
3 comprising the matrimonial home.

4 No issue of past or future maintenance properly arises. The parties have been financially
5 independent since they separated in 1989.

6 Whatever the contention between them as to the respective contributions to the care and
7 control of the children since that time, the fact of the matter is that the children were
8 provided for and they are now adults. Both are in employment.

9 It is significant, however, that the children while minors always resided in the
10 matrimonial home with the husband even after the wife left in 1989.

11 In fact they continue to do so and it seems from what the husband states, that they will be
12 permitted to do so while the need exists. Both being adults I am not required to make
13 financial provision for them.

14 I am also satisfied that it would be inappropriate in this case to make financial provisions
15 for the maintenance either for the wife or husband. Both are employed, although the wife
16 clearly is in need of assistance suitably to complete her residence. She acquired a house
17 lot in Lower Valley on 24 January 1996 on which there is a chattel house in which she
18 resides. Through her own efforts and with the assistance of well-wishers, she has
19 progressed the construction of another more substantial house on site which will become
20 her home. Although she has not remarried, she now has two dependent children for
21 whom she is the primary caregiver. Her earning capacity, which is less than the
22 husband's, is therefore a relevant factor having regard to her needs for the future; but her
23 additional responsibilities are not to be treated as the husband's. So also must his

1 additional responsibilities be regarded in relation to the wife: he now has a young child
2 for whom he must pay \$100 per week by way of maintenance and he intends to remarry.

3 It is against all that background that I must arrive at what is the fair division of the only
4 significant asset, the matrimonial property acquired while the marriage still subsisted.

5 The funding it is agreed was provided entirely by the husband.

6 However, while the marriage subsisted, that fact cannot be taken to the disadvantage of
7 the wife who contributed by her care and custody of the children and doubtless to the
8 maintenance and care of the property.

9 As was recently reaffirmed by the House of Lords: "- - there is one principle of universal
10 application which can be stated with confidence. In seeking to achieve a fair outcome,
11 there is no place for discrimination between the husband and wife and their respective
12 roles. Typically, a husband and wife share the activities of earning money running their
13 home and caring for their children. Traditionally, the husband earned the money, and the
14 wife looked after home and children. This traditional division of labour is no longer the
15 order of the day. Frequently both parents work. -- whatever the division of labour
16 chosen by the husband and wife, or forced upon them by circumstances, fairness requires
17 that this should not prejudice or advantage either party when considering (the principles)
18 relating to the parties' contributions" per Lord Nicholls in White v White (judgment
19 delivered 26th October 2000).

20 The land was purchased by the husband in 1980 and the matrimonial house was
21 constructed sufficient for habitation by 1985. The parties therefore occupied it together
22 only for some 4 years until 1989 when they separated.

1 In 1986 the house and land had a combined value of approximately \$98,000; in 1992 of
2 \$118,000.

3 A median value of \$108,000 could have been fairly ascribed in 1989 when the parties
4 separated.

5 The house was still not then and is still not yet completed, but improvements to both the
6 house and land have been effected by the husband over the years and he has borrowed
7 over the years mortgage loans totalling \$95 000 which he spent on the development of
8 the property. From these loans there remains some \$17,700 to be repaid. The property
9 now has a market value of approximately \$221 000.

10 As already indicated, the husband has continued to benefit from living in the house with
11 the children over the years while the wife has had to make do on her own. But in so
12 doing he met the housing needs of the children. He also doubtless contributed to meeting
13 their other needs to which she also claims to have contributed.

14 I treat their respective outgoings for meeting the needs of the children and themselves
15 over the years since the separation as offsetting each other.

16 Thus, I regard the improved value of the matrimonial property since the separation as
17 attributable to the efforts and expenditures of the husband. The value I shall take will
18 therefore be that of \$108,000 ascribable as at the date of separation. This is an approach
19 which I take as advised also in the case law. Appreciation in value due to the efforts of
20 one party only and after separation can properly be awarded to that party. See Wallhead
21 v Wallhead (1979) 9 Fam. Law 85. CA; Backhouse v Backhouse [1978] 1 All E.R. 1158.

22 Having regard to all the factors I have mentioned, I regard an equitable division of the
23 value as between husband and wife at time of separation to be respectively 2/3 and 1/3.

1 While the law does not impose a presumption of equality of division, as there should be
2 no bias in favour of the money-earner and against the home-maker and child-carer, the
3 departure from equality requires that I explain the reasons more fully. Although both
4 parties have been and are likely to continue to be financially self-reliant, the lump sum
5 payment to the wife now will be a significant additional liability for the husband who had
6 assumed the burden of mortgage loans and other financial commitments before as well as
7 after the separation. The matrimonial home is still not completed and significant
8 expenses are yet to be incurred to effect its completion notwithstanding its appreciation in
9 value over the years.

10 Having regard to all the past circumstances as well as their respective needs for the
11 future, the division reached will provide the wife with sufficient funds for the substantial
12 completion of her dwelling which will not then be encumbered by a mortgage.

13 The result is an order for a payment of \$36 000 to the wife as it is only appropriate that
14 the husband shall keep the house.

15 That is the order I make. Suitable arrangements are to be made for a mortgage to be
16 raised by him in order to effect that payment.

17 Liberty to apply if that is not done within 60 days.

18 No order as to costs.

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Anthony Smellie
Chief Justice
Anthony Smellie



Dated this 1st day of November of 2000.