

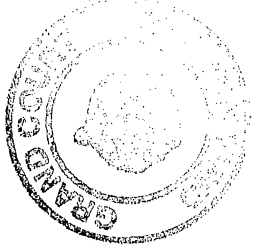
Filings
Family Law I Matrimonial Property

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
DIVORCE AND MATRIMONIAL CAUSES**

CAUSE NO. D.60 OF 1996

**BETWEEN: ELSIE S. SCOTT PETITIONER
AND: GLEN C. SCOTT RESPONDENT**

Ms.Zena Merren for Petitioner
Mr. Morris Garcia for Respondent



RULING

It is not often that an application of this nature is made by a husband Respondent. He seeks an order for the determination of the ancillary matters in the form of either personal or real property that may be found to be existing between the parties. This application is pursuant to Section 22(b) and (e) of the Matrimonial causes Law (1997 Revision) (which I will henceforth refer to as 'the Law'). The relevant subsections provide as follows:-

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

- (b) the disposition of matrimonial property, including the matrimonial home.
- (e) making financial provision from the property of either spouse for the children of the marriage and for the other spouse.

The parties were married in 1994 and parted eighteen months thereafter; there are no children of the marriage. The wife Petitioner filed for divorce in 1996. There is conflicting evidence as to the exact time that the relationship finally terminated. At paragraph 8 of his affidavit dated 5th May 1999 the Respondent averred as follows:-

That no attempts have been made at any reconciliation of our marriage since divorce proceedings commenced in 1996. I can also state that ever since I left the matrimonial home on December 1, 1995, I have not returned and have no intention of doing so.

The Petitioner's sworn testimony does not support this. She contends that although they parted after eighteen months of marriage, they got back together from February 1996 until April 1999 when they parted again during a visit to Tampa. While there it was decided to continue with the divorce proceedings. The Respondent has not strongly denied this and I fully accept that, although at times sporadic, cohabitation between the parties did not finally end until 1999. This being so the marriage was not as short as the Respondent has attempted to make it appear to be.

The Law requires both the disposition of matrimonial property and the making of financial provisions for either spouse. Matrimonial property consists of any assets owned or acquired by the parties during the course of the marriage. In this matter no issue has been joined regarding such property, as there is no real estate that is jointly owned by the parties. Each is the sole owner of their individual parcels of real estate, and are content

with the status quo as far as that is concerned. Not unlike his application, the Respondent has been very vague as to what he seeks. In fact there is no real or personal property that can be said to exist between the parties, whatever that means. It is no wonder that he has remained on the defensive throughout these proceedings. He seems satisfied to have the Court make such a determination that would bring this matter to a final conclusion, and a clean break made between the parties. Under these circumstances the only matter to be determined is that raised by the Petitioner in which she seeks an order under section 22(e) of the Law for financial provision in the form of a lump sum payment of \$15,000.00.

The principle by which the Court is guided in such matters is provided by section 19 of the Law. This provides as follows:-

In dealing with all ancillary matters arising under this Law, the Court shall have regard first of all to the best interest 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.

The main issue now before me is whether this is a proper case in which to order a lump sum payment. Although there are no guidelines on the award of such payments in cases where the assets are modest, the Court is obliged to consider whether or not to order the payment of a lump sum in every case where application for such payment is made, and if capital assets are available to meet the lump sum order the Court should not hesitate to make such an order in the proper case. (See Raydens 15th. Para 102)

Notwithstanding this, it has been held that no order for a lump sum payment should be made unless the party against whom it is to be made has capital assets out of which to meet the order without crippling his earning power. (see *Watchel V Watchel* (1973) 1 All. ER 829).

The history of this marriage as it relates to the assets of the parties provides some assistance in determining this matter. It is also a part of the Respondent's case in which he contends that he has already contributed more than sufficient towards the Petitioner: hence the Court is not entitled to make an order such as is being sought by her. Sometime before the parties were married the Respondent made arrangements to purchase a parcel of land. According to him he borrowed \$12,000.00 and gave it to the Petitioner as money was needed to finance the wedding and other matters. The reason given for this was that she had a checking account and he did not. He says that out of this money she gave him \$3,000.00 for the deposit on the land, spent \$5,000 on the wedding, and later returned \$4,000.00 to him which he added towards the amount he had already deposited on the land. The Petitioner claims that at the time that they viewed the land she withdrew the \$3,000.00 from her savings and gave it to the Respondent to pay down on it. She alleges that she did this as the land was supposed to be a wedding present to her, and at the time he had no money to make the deposit. She agrees that she spent \$5,000.00 on the wedding and returned \$3,400.00 dollars to him, but contends that the rest of the money was spent on miscellaneous expenses. Her narrative relating to the circumstances surrounding this matter is somewhat confused. If, as she claims, the land was supposed to

be a gift to her from him, it is hard to understand why on the receipt of the \$12,000.00, she did not deduct the money she claimed to have paid on the land, why give it back to him. I cannot accept her claim that she paid the money out of her own pocket, and not from the money that he gave her. In any event it is accepted that within a year he sold the land at a loss. The Petitioner agrees that shortly after the wedding she was involved in a Court action and that the Respondent contributed \$6,000.00 towards her legal costs but denies that it was given as a gift and claims that it was repaid. There is no evidence to substantiate this, and the unrelated receipt that she tendered in an attempt to prove this repayment only served to damage her credibility. Later when the Petitioner sought a mortgage for the purchase of her house, the Respondent took her to his bank and assisted her to obtain one by co-signing for it. Thereafter she found the monthly payments too high and he facilitated a reduction by paying the sum of \$9,000.00 to the bank. I accept that on the two occasions when she failed to make the monthly payments, the bank had deducted each of these payments from his account. It does appear that he sank a fair amount of money into the marriage at the onset, but I greatly doubt his claim that he went into the marriage not owing a penny and after a year was over \$40,000.00 in debt.

The standing of the parties as far as real property, current income and expenditure are concerned is somewhat similar. The Petitioner owns and lives in a three-bedroom house in Newlands, the monthly mortgage being \$1,086.00. As a Civil Servant she receives a salary of \$2,350.00 per month, and claims to have monthly expenses of \$3,176.00. The list of her monthly expenses leads me to the conclusion that she lives far above her means. This list includes such expenditures as \$400.00 for food, \$320.00 towards credit

card payments, which incidentally, also include charges made for food. Her utilities, (light and water) together are in excess of \$300.00. She attributes these high expenses to the fact that she has a twenty-two year old daughter living with her. This daughter who is working and earning \$1,900.00 per month, which is almost as much as her mother's income, enjoys the luxury of her own eight cylinders motorcar, but contributes nothing to the upkeep of the household. What is abundantly clear is that with a scintilla of proper money management, the Petitioner could be financially comfortable, if not secure.

The Respondent has not made much mention of the premises in which he now lives but it is clear that he pays neither mortgage nor rent on it. He also has a duplex that he owned at the time of the marriage. This is currently rented, and for which he receives \$2,100 per month. He has testified that his monthly expenses are \$1800.00. As can be seen there is little difference between the monthly incomes of both parties. However it is obvious that the Respondent's financial situation during the latter part of the marriage has been far in excess of the Petitioner's. In 1997 he went into early retirement. There is some dispute over the amount of the pension payment that he received. The Petitioner claims that it was US\$290,000.00. He himself testified that it was US\$293,000.00, but later retracted, claiming that it was only US\$240,000. Having heard both parties I am inclined to believe that it was indeed the higher amount. He also received two years salary of CI\$130,000.00 which he claims to have lived on for three years. In 1998 he also sold his house in Northward for CI\$125,000.00, and from the proceeds paid off the mortgage on the duplex and gave his daughter \$70,000.00 towards the purchase of her own house. From what the Respondent has told the Court, it is clear that between 1997 and 1998 he came into

possession of over CI\$500,000.00. In his attempt to itemise the expenditure of this money, he has only been able to account for less than half of the amount. Apart from his real property he lists his present assets as US\$14,000.00 in stocks and shares that he owns jointly with his sister, CI \$1,200.00 in CUC stocks, \$300.00 in the Credit Union and approximately CI\$500.00 in saving accounts. I cannot accept that he divested himself of all that capital in less than two years, inducing the impecunious state in which he now professes to be. Indeed, the fact that in 1998, after paying off his mortgage, he was able to make the gift of \$70,000.00 (supra) to his daughter is not an action indicative of a man who is under any financial restraint.

It is obvious to me that all of the essential elements required for the ordering of a lump sum payment are present. All that is left is to assess the quantum in compliance with section 19 of the Law. I have already dealt with three of the main requirements, to wit, the actual and potential earnings, the responsibilities, and the financial and other resources of the parties. Once the ability of the Respondent to pay has been determined then the needs and deserts of the Petitioner, having regard to the length and nature of the marriage, must play an integral role in the assessment of the lump sum payment. This latter issue is more difficult due to the break in cohabitation.

It is not disputed that the marriage was a relatively short one. During the time that the parties were together the Respondent contributed an average of four hundred dollars per month towards the upkeep of the home. The Petitioner took care of both the mortgage and other expenses. It must be noted however it was not a matrimonial home in the true

sense of the word. It was the Petitioner's home in which she and her two children resided. Each month he was in fact paying one utility and half the cost of the food. During their time together he was never required to provide a matrimonial home, neither by purchase nor by rental, but enjoyed a mortgage free, rent free existence at the expense of the Petitioner. Even after accepting the fact that the Respondent made two gratuitous payments on her behalf, the \$6,000.00 for her legal fees, and the \$9,000.00 to reduce the mortgage, I do not find that either one of these payments was by nature altruistic. In my view, without the services of a good attorney, an adverse judgement to his wife could have placed the Respondent under an obligation for a much greater sum than the \$6,000.00. Regarding the sum to reduce the wife's mortgage, it must be remembered that he was a co-signer, and as such responsible for the debt had she failed to pay. By reducing the amount to be paid each month he decreased the likelihood of his having to pay the entire amount. It also served to reduce the chances of the bank ever again taking the mortgage payments from his account on the occasions when she failed to make the monthly payment. Accordingly, I find that these payments were, to a great extent, made in his own interest.

It is now left for me to determine needs of the Petitioner as is required by the relevant section of the Law. Her list of monthly expenses appears to be more a manifestation of her requirements rather than of her needs. In *Dart v Dart* (1996) 2 FLR 296, Thorpe LJ explained the difference between 'needs and 'requirements.' In this regard His Lordship said, *inter alia*, " As a matter of ordinary language what a person requires is likely to be

greater than what that person needs. There must be an objective appraisal of what the applicant subjectively requires to ensure that it is not unreasonable.”

The above enunciation applies equally to this case. An objective appraisal will reveal that her requirements are far in excess of her actual needs. In my opinion her monthly salary, and what she ought to reasonably obtain from any adult in staying in her household, should be more than adequate to meet her needs.

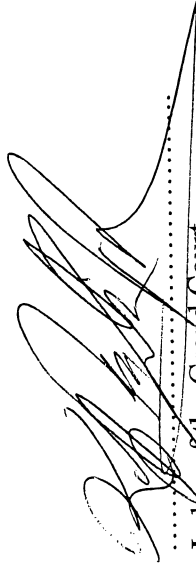
I now come to the issue of her deserts. Notwithstanding the relatively short period of cohabitation, the parties have now been married for some six years. Although the Petition was filed in 1996 it is difficult to determine when the relationship was actually terminated. What is certain is that he enjoyed rent free living at her expense for at least eighteen months. As we have also seen, during the course of the marriage the Respondent obtained and spent large sums of money. The Petitioner is now seeking a lump sum payment of \$15,000.00. The circumstances of this case show that it is a proper case in which the Court should not hesitate to order a lump sum payment if capital assets are available. At this point I am constrained to reiterate my firm belief that the Respondent has not been completely honest with this Court regarding his present capital assets. In any event, even if I accept his word in this regard, he is still in possession of sufficient unencumbered real property to realise the relatively small sum of money required for the lump sum payment to which the Petitioner is entitled.

In arriving at the sum due to the Petitioner I have taken into consideration the duration of the marriage and the length of time in which he enjoyed a rent and mortgage free stay in

her house. I am also cognizant of the amount he has already spent on this marriage. I am however constrained to take note of the fact that, unlike the Respondent, the Petitioner, who is a Civil Servant, is still in employment and will eventually be the beneficiary of a pension that will not be shared with the respondent. In view of all these factors it is my considered opinion that the Petitioner is entitled to a lump sum payment of no more than \$10,000.00. This ought to be sufficient to enable her to clear her credit cards thereby making an extra few hundred dollars available to her each month. On the other hand the Respondent should have no trouble realising this amount. I am satisfied that he can make this payment without being in any way financially crippled. In any event he should have no difficulty in obtaining it from the daughter to whom he was so generous.

I therefore order that a lump sum payment in the sum of \$10,000.00 be made by the Respondent to the Petitioner on or before 1st September, 2000.
Costs to the Petitioner.

Dated this 30th day of May 2000.


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Judge of the Grand Court

