



IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. D58/91

1-12-92

F V. F

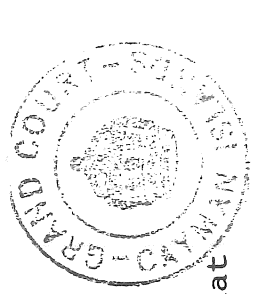
Mr. Hamilton QC and Mr. Levy for the Petitioner/wife
Mr. Hill QC and Mr. Hampson for the Respondent/husband

ORDERS

Schofield J.

The parties were married in England on 20th September, 1984. At the time of the marriage the husband was 38 years and the wife was 22 years. The petition for dissolution of the marriage was filed by the wife in this Court on 28th May, 1991. A petition was filed in England at about the same time by the husband, which was ultimately not proceeded with. There is one child of the marriage, born 24th December, 1985. An interim order was made on 31st October, 1991, for payment by the husband to the wife of US\$4,000 per month on the basis that the husband also pays the child's school fees. On 9th October, 1992, I adjourned the husband's summons for final determination of the ancillary matters so that I may receive reports and further affidavit evidence from the wife on her bank accounts and other possible assets. One outcome of that adjournment is that the husband has abandoned his application for joint custody of the child. There now falls to be determined the questions of distribution of the family assets and maintenance payments for the wife (if any) and for the child.

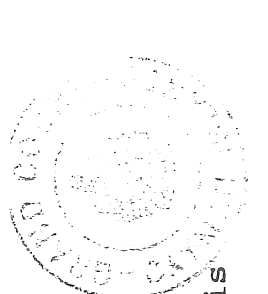
The main family asset is a house in England valued at £120,000 sterling. My order of 9th October, 1992, included an order that this property be sold and the proceeds held in escrow. The house is on the market but remains unsold. The house cost



£45,000 and it was purchased, it seems, at about the time that the two parties started living together in about 1983. The husband has put £25,000 into its purchase, but the wife's parents contributed towards furniture, wallpaper and curtains.

The parties moved to the Cayman Islands in August, 1986. In England the husband had run his own solicitor's practice with secretarial and accounting assistance from his wife. In Cayman the husband joined a firm of attorneys at first as a salaried assistant. When the child was very small the wife did not work, but from January, 1988, she worked first with the Cayman Islands Government, earning CI\$1000 per month, and then for two years with a firm of attorneys earning about CI\$1800 per month. She finished work in September, 1990, when the child changed school, and has not worked since.

Soon after their arrival in Cayman the parties purchased an apartment at Tamarind Bay, Grand Cayman. There is little evidence regarding the cost of and financing for this apartment but the husband has deponed that he put £30,000 from an inheritance into the purchase of the apartment and it seems the parties took US\$100,000 out of its sale and put that money on deposit. Out of this amount the parties paid off the mortgage on the property in England. The deposit fluctuated, but we have a statement from C.I.B.C. Bank and Trust Company (Cayman) Ltd. showing that on 1st February, 1992 there was US\$74,749 in the deposit account. According to the husband's affidavit of 30th October, 1991, the deposit had before that date reduced to \$60,000. We do not know what happened to the \$14,749 difference. The husband has deponed that \$40,000 of the \$60,000 was dissipated on bills incurred by the wife particularly on a trip to the United Kingdom in the summer of 1991, and on payments on a loan for the payment of land at Patrick's Island, Grand Cayman. I shall return to the question of that land later in this judgment. As at 30th October, 1991, there was a balance of \$20,000 which the husband placed on deposit and has claimed as



his own. The wife contended in her last affidavit, and there is nothing to contradict this, that the husband has since used the \$20,000 to purchase a further share in the partnership of attorneys to which he belongs. The husband has maintained throughout that he is entitled to the \$20,000. The parties brought an Audi motor car into the Island in 1990 and paid for it out of the certificate of deposit. The wife had the vehicle registered in her own name and has used it ever since. It was meant to replace the husband's older vehicle. The husband seeks to offset what he perceives as the loss of that motor vehicle by retaining the \$20,000 remaining from the deposit account.

The parties intended to purchase a plot at Patrick's Island, Grand Cayman, in the wife's name for US\$110,000. The ten per cent deposit for the land came out of the certificate of deposit. Instalment payments were due of \$3,000 per month. By the time I made the interim order on 31st October, 1991, these instalments were in arrears and the \$73,000 which the parties had put into the land stood to be lost or forfeiture of the land. A total of \$78,000 was ultimately put into this land, but instalments payments were not kept up to date and the land was forfeited. Each party blames the other for this loss. In the wife's earlier affidavits she deponed that legal advice led her to believe she could recover some of the equity in the land. Her last affidavit deponed to the opposite view. At this moment it is uncertain whether the parties will recover anything on the sale of the land subsequent to its forfeiture.

The parties also had other, smaller, deposits and investments which must be taken into consideration. There was a deposit with the Midland Bank in England of £2,000 or \$2,000, according to which of the husband's affidavits one accepts. According to the husband this was deposited in the event that his elderly mother needed financial assistance. When the wife visited England last summer she cleared that account. There is dispute over whether she used the amount to make essential

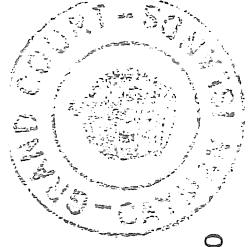


payments on the English house as she alleges. The parties had an account with Grant Thornton, a firm of accountants in England. The amount in that account of just over US\$4,000 was also withdrawn by the wife, again on her disputed assertion that she put the money into the English house. The husband holds a security still intact worth £3,057 in England and a deposit of £55.60 with the Midland Bank in England. One payment of £1,500 was made into a pension plan in England but no further payment has been made. It is not in evidence whether this amount is redeemable. There are shares held by the husband in the Cayman Islands the value of which was not given in evidence but it was described by him as a "small shareholding".

The wife has produced statements for her bank accounts which show small deposits in England and the Cayman Islands. They also bear out her evidence that she has borrowed substantial amounts from her parents since she separated from her husband. Her parents are wealthy but the evidence shows that they have not settled any money on her or the child.


The husband was employed as an assistant or associate attorney in his legal firm until September, 1990, and until that time was paid a salary with commissions. In September, 1990, he purchased a share in the partnership, paying US\$54,000 against office equipment and making a monthly payment, to be deducted from his drawings, towards his share of the partnership. The \$54,000 came from the certificate of deposit. At the end of October, 1991, one of the partners left the firm and the husband had to pay a further US\$20,000 for the retiring partner's capital asset. An extra monthly payment has to be taken against the husband's drawings to pay for the retiring partner's good will in the partnership. It seems the capital payment of \$20,000 was the final drawing on the parties' certificate of deposit.

The husband draws a salary of CI\$5,000 per month (approximately US\$6,100 p.m.) from the practice. In July and



August, 1992 his drawings from the partnership were US\$10,500 each month and in September US\$7,000. He also received a payment by way of quarterly dividend from a corporate services company of which he is a director of \$8,100. His average drawings for the three months were, therefore, just over US\$12,000 per month. These figures are not very far away from projected drawings the husband gave me at the October, 1991, hearing, of US\$13,000 to US\$14,000 per month. This is, of course, in addition to his salary of US\$6,100 per month. From this is deducted approximately \$8,100 which is the husband's contribution to the partnership. That contribution will reduce to US\$3,397.37 at the end of September, 1995, and will cease altogether after October, 1996. I think it is safe to assume that the husband will take from the practice a net figure of US\$10,000 per month as matters stand at present.

From September, 1988 to September, 1990 the wife was earning CI\$1,800 per month (US\$2,195). Before then she had worked, except for a period soon after the parties' arrival in Cayman when the child was very small. She maintains it was a family decision for her to cease work to devote more time to the child. Her husband maintains that this was only intended to be a temporary situation whilst the child changed schools and the wife found more amenable employment. Given the wife's past history of employment and from my observation of the parties and their attitude to this litigation I prefer the husband's evidence in that regard. In any event, now that the parties have to maintain two households it does not make sense that the wife should endeavour to stay at home. She has secretarial experience which I am certain could be used on this Island, even though she is an expatriate and would need a work permit. She has worked in the past and, as I stated in the interim order, if she expects to maintain her earlier lifestyle, she should contribute financially. Given that to work the wife would probably need to employ a helper/nanny I assess her potential net income at US\$1,750 per month.



The husband is involved in a new relationship and I think lives with his lady friend. He puts his monthly requirements for accommodation, groceries and utilities at a modest US\$2,500 per month. This is in marked contrast to the wife's estimate of monthly expenses for herself and the child of CI\$5,250 (US\$6,402). Of course the wife bears the total monthly cost of her own accommodation, but she has chosen to remain in an up-market apartment despite her reluctance to work and help in financing her accommodation. It is possible for her to find cheaper accommodation and had she done so her debts would not be so high. Furthermore the evidence shows that since the separation the wife has embarked on a costly holiday and has otherwise imprudently incurred expenditure. I cannot lay the wife's debts at the door of her husband.

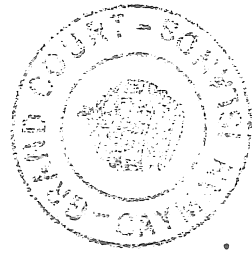
The child's school fees are CI\$1,600 per annum (US\$1,951) or US\$162.60 per month which the husband has undertaken to pay. He has also offered US\$500 to US\$600 monthly maintenance for the child.


The husband offers no monthly maintenance for the wife and has suggested that she leaves this Court with a lump sum payment amounting to £27,500 sterling which is computed by taking the value of the English property, subtracting various amounts which he contributed to the family assets and then dividing the balance in half. The wife suggests that the husband be ordered to purchase an appropriate home for her in Grand Cayman, which on her assessment would cost between US\$488,000 to just over US\$1 million. She also asks for a lump sum payment of US\$300,000 and the payment of her debts of US\$60,000 or thereabouts.

As I indicated in my order of the 9th October 1992, neither of these suggestions is realistic. The husband's figure would give the wife insufficient to start a new life for herself and the child. The wife's figures bear no relationship to the capital assets available for distribution and the net income

which is actually and potentially available to the parties. Whilst both parties desire a clean break, on the figures before me they have neither the capital assets nor the potential or actual income on which to make the kind of borrowing necessary to effect that clean break. I am driven to the conclusion that to do justice to the parties I must give the wife a lump sum out of the realisation on sale of the house in England together with a periodical payment of maintenance.

I do not regard the husband's interest in the legal practice as an asset which I can take into account for the wife's benefit. In Dinan v. Dinan (Cause D 131 of 1991) Sir Denis Malone CJ. held that the wife had an interest in a capital sum which the husband, a partner in a firm of accountants, paid into the partnership as a frozen asset. But this case is very different from Dinan. In that case the parties had been married for ten years longer than the parties in this case and the wife thus made far greater contributions to her husband's career. In this case the parties have been married just over eight years which is a little over one third of the husband's professional life. The husband had fourteen years professional experience before they were married and he brought certain sums of money into the marriage. It is not a case where the parties have been together throughout the whole of the husband's professional life and where it can be said that the husband's professional success is the outcome of years of teamwork. If as seems to be the case, the final \$20,000 from the parties' certificate of deposit was utilized by the husband to pay for the retiring partner's share in the partnership then I consider the husband is entitled to the benefit of it. Of the US\$74,749 remaining on deposit in February, 1991, a substantial portion went on bills incurred by the wife and on payments towards the Patrick's Island property which was a family asset. That such asset has been lost to the parties is, I accept, largely the wife's responsibility. She would not agree to have it sold, wanting to retain it when it became clear that to do so would put a tremendous strain on the



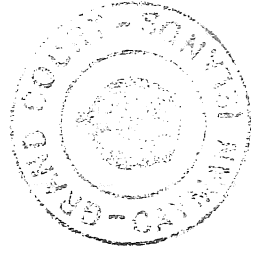


husband's income. When one also takes account of the fact that the wife acquired a reasonably new car out of the deposit whereas the husband's car is much older and will soon need to be replaced, this Court cannot begrudge the husband the balance on the certificate of deposit.

I also consider that the husband should retain the small investments which he has in shares in Cayman and in England. They are offset against the two amounts which the wife deducted from the Midland Bank and from the Grant Thornton account when she was in England in the summer of 1991. The wife depones that she put those amounts towards expenses on the English property but she has produced no documentary proof in that regard. I prefer the husband's evidence which indicates that it is unlikely she did so. I think it likely that the wife either spent the money or still has it.

The Patrick's Island property is now lost to the parties because mortgage repayments were not kept up. Whether there is any equity to which the parties are entitled is in doubt. I can only follow the suggestion of counsel that if in the future there is any recovery of money by the wife in respect of that transaction the money falls to be distributed between the parties and if they cannot agree upon such distribution they will have to return to Court for a determination upon the issue.


That leaves me to determine the amount which each party will take out of the sale of the English property and the amount of maintenance which the husband must pay the wife. In doing so I pay regard to the "one third rule" which has been adopted in these Courts, whilst stressing, as we always do, that it is no more than a rough and general guide, in appropriate cases, to the distribution of family assets and to assessing maintenance. I also pay regard to the fact that the husband's professional and financial future appears secure whereas in contrast the wife's professional and financial future are not so comfortably mapped



out.

In distributing the proceeds of sale of the English property the husband asks in his affidavit of 26th August, 1992 that I deduct three amounts: (a) £25,000 which he originally invested in the house; (b) £30,000 which was from an inheritance which he invested in the purchase of the apartment (later sold) at Tamarind Bay, Grand Cayman (c) US\$20,000 from an old certificate of deposit. I consider that a more just way of looking at the position is to regard the figures at (b) and (c) as forming, notionally at least, part of his contribution in terms of direct payments and deductions from his drawings into his legal partnership. His wife is not regarded as having an interest in his "business asset" but she should not be prejudiced by the husband having taken amounts which could be regarded as family assets and putting them into his business. I would, however, consider it just that the actual amount which he put into the property, £25,000, be regarded as the husband's. Of the balance having regard to the fact that the wife will receive maintenance payments, I consider she is entitled to one-third.

The amount I award for maintenance has caused me a good deal of concern because of my view that the wife should be able to gain employment. The husband's remuneration is such that I can award her sufficient to live on if she chooses not to work but not such a sum as will impoverish the husband or unduly enrich the wife if she chooses to do so. Of course it is no one's interests that the wife's standard of living should fall considerably as a result of the divorce. I must pay particular regard to the interests of the child in this respect but this Court cannot force her to take employment so as to improve her income. On the other hand the husband should not be made to suffer because of his wife's lack of resolve to improve the joint situation. I would order maintenance for the child at the rate of US\$500 per month. Taking that into account and the husband's obligation to pay the school fees, I consider a proper award of



maintenance for the wife is US\$3,250 per month. I have been urged to make any award of maintenance on a "tapering-off" basis so that the parties can achieve in the future that which they desire - a clean break. However I do not see a particular period of time in which I consider the wife should be definitely capable of standing on her own feet so as to achieve this clean break. The passage of time has a habit of changing circumstances so as to achieve that which today seems difficult. I must leave it to the passage of time and give the parties liberty to return to this Court should the circumstances of either significantly alter.

The orders I make therefore are:

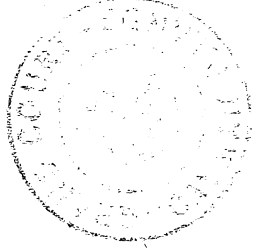
- (1) The wife shall have custody, care and control of the child of the marriage and the husband will be granted reasonable access. The child is not to be taken from the jurisdiction without permission of the Court;
- (2) Each party is to retain the bank and investment accounts presently in his own name;
- (3) On the sale of the house in England and after deduction of all fees necessary to effect that transaction, the husband is to deduct L25,000. Thereafter the balance is to be divided with one third going to the wife and two-thirds to the husband;
- (4) The wife must report to the Court and to her husband's attorney the results of her endeavours to recover any equity to which she may be entitled in the Patrick's Island property. If there is any recovery of money from the sale it is a family asset which falls to be divided between the

parties;

- (5) The husband is to pay to the wife, from one month after the date upon which she receives her share of the sale of the English property, the sum of US\$3,250 per month for her own maintenance and US\$500 per month for the maintenance of the child of the family. Up to that date the husband is to continue to pay the interim maintenance at the rate of US\$4,000 per month;
- (6) The husband is to pay the school fees for the child of the marriage;
- (7) Liberty to either party to apply.



Judge



Dated this 1st day of December, 1992