

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES

CLAIM NO. SVGHMT2013/0120

IN THE MATTER OF THE PETITION OF BERNARD FERNANDEZ FOR THE DISSOLUTION OF
MARRIAGE

BETWEEN:

BERNARD FERNANDEZ

PETITIONER

AND

RUTH FERNANDEZ

RESPONDENT

Appearances:

Mr. Jaundy Martin of Counsel for the Petitioner

Ms. Paula David of Counsel for the Respondent

2017: January 13
2018: September 28

JUDGMENT

[1] **Cottle, J:** After 21 years of marriage, the union of the parties was dissolved by a Decree Absolute of divorce on 16 December 2014.

[2] The wife has applied for ancillary relief subsequent to the divorce. The husband is now 66 years old. The wife is ten years younger. They are the parents of one daughter who is an adult but still undergoing full time education at university. In her application for relief the wife sought the following orders:

- (1) An order that the parties bear equally the cost of education of the child of the union;

- (2) An order that the husband refund the wife one half of the expenses she has met towards the education of the child since she was 11;
- (3) An order that the legal beneficial interests in the matrimonial home at Villa, St. Vincent be transferred to the wife;
- (4) An order that real property at Bequia be sold and the proceeds of sale be applied towards the mortgage payments for the matrimonial home at Villa which are still outstanding;
- (5) An order that the husband pay maintenance to the wife whether by way of periodic payments or by lump sum.

MATRIMONIAL PROPERTY

- [3] There are four major matrimonial assets which fall to be considered in this matter. There is the matrimonial home at Villa. This property is heavily mortgaged. The legal title before the mortgage was in the sole name of the husband. He occupies this property. He has subdivided it into apartments some of which are tenanted. There is a parcel of land at Bequia admeasuring 16, 342 sq. ft. It is not encumbered and is jointly owned by the parties. In the United Kingdom there is real property at 10 Canterbury Road, Leyton in the United Kingdom which is tenanted and there are certain common areas of an office complex in the United Kingdom. In his affidavit of means the husband also wishes the court to consider a pension policy which he says is in the sole name of the wife but in which he claims an interest, along with a beauty spa business which the wife now operates.

THE PARTIES

- [4] The wife is now 56 years old. She suffers from carpal tunnel syndrome and has had surgery to deal with that condition on the right hand. She says this has led to recovery of the right hand but the left hand remains untreated. She says that her daily work obligations cause her pain in both hands. She has qualified as a City & Guilds professional cook. She has retrained as a beauty therapist and now pursues this as her means of earning a livelihood. In the past she has been a public relations consultant and publisher as well.

- [5] The husband is 66 years old. He has had open heart surgery. At the trial he did not indicate that any cardiac complaints persist. He at present says he suffers from gout, a kidney problem which requires medication and like many males his age he has issues with his prostate gland.
- [6] The wife is still able to earn income from her practice as a beauty therapist though it is possible that she may require surgery to repair one hand at some time in the future. In his affidavit of means, the husband swore that he successfully ran a café business in St. Vincent for 3 years. This business earned \$3,000.00 per week. This indicates that the husband is able to generate significant income in the future.
- [7] In her affidavit of means, the wife says she earns \$31,640.65 per year. Her annual expenses are said to be \$76, 656.00. The husband has not indicated what his monthly expenses are. He lists no source of income except \$1,200.00 received from family as a gift each month. He lists monthly expenses of about \$960.00.

RENTAL INCOME

- [8] The husband occupies the matrimonial home. On the grounds of the compound he has transformed a building formerly used by the wife to house her spa business into an apartment. He lives there. He has rented out the main building which comprises an apartment on the top floor and an apartment on the ground floor. Both are rented to tenants. In his affidavit of means he did not reveal the amount of the rental income. There is also an apartment on the middle floor which the wife used to occupy. The apartment at 10 Canterbury Road, Leytonis rented. At one point the husband received one half of the rental income. He says that this has stopped since August 2014. The wife says she uses this income to support the daughter of the parties.

THE LEGISLATION

- [9] The Matrimonial Causes Act Chapter 239 of the Laws of Saint Vincent and the Grenadines revised edition 2009 sets out the applicable statutory provisions. Section 34 of the Act requires a court exercising its powers upon dissolution of a marriage to act so as to place the parties, so far as it is practicable, and having regard to their conduct just to do so, in the financial position they would have been if the marriage had not broken down and each had properly discharged his or her

financial obligations and responsibilities towards the other. The court is called upon to have regard to all of the circumstances of each particular case.

- [10] In the application of its statutory obligations this court has often taken guidance from the approach adopted by Saunders JA (as he then was) in the case of **Stonich v. Stonich** Civil Appeal 17 of 2002 from the British Virgin Islands. The general aim of the court is to achieve fairness. Usually, in the distribution of matrimonial assets equality achieves fairness.
- [11] A departure from equal distribution should only occur when there is a good reason for such departure and the departure should be restricted to the extent required to achieve fairness in the circumstances.
- [12] In the present case I will attempt to deal with the matrimonial assets on two parcels of land which have been combined and are treated as a single property. The husband seeks to have the court view the house and the parcel of land purchased in 2001 as jointly owned by the parties while he claims an absolute interest in the parcel acquired in 1989 prior to the marriage. I see no reason to adopt this artificial and impossible to implement division. I view the matrimonial home and the two parcels on which it sits as a single property for the purposes of this claim.
- [13] I am content that fairness demands that this parcel be declared to be owned by the parties equally. The property is at present heavily mortgaged.
- [14] The common areas of the office complex in the United Kingdom I also declare to be owned by the parties in equal shares. The parties have already arranged their affairs in this way and I see no reason to disturb the arrangement. The Bequia property is already owned by the parties in equal shares. I see no need to disturb this position either. Similarly, the apartment at 10 Canterbury Road Leyton in the United Kingdom I declare to be jointly owned by the parties in equal shares. The furniture and utensils in the matrimonial home I also declare to be the joint property of the parties in equal shares. Should the parties not agree on a partition of these furniture items and utensils I direct that they be sold and the proceeds equally divided between the parties.
- [15] There are other assets which the parties wish to have considered. The wife has a pension policy. The husband wishes to have the court award him a share of the proceeds of that policy. The

premiums for this policy have benefited from no input by the husband. It is declared that any proceeds of the policy of the wife remain her property exclusively. So too the husband has a pension policy of Pearl Assurance Co, it is to remain entirely his property.

[16] During the currency of the marriage the parties ran a business known as the Time Out Café. Arrears of rent and National Insurance Contributions for employees remain outstanding. Having regard to the conduct of the husband. I declare that he is entirely responsible to meet these payments. The wife has been making contributions to these payments. She is to be credited for all payments in this regard. Such payments can be easily set off against the receipt for sale of the property I order below.

[17] The wife now operates a beauty spa, "Jan's Beauty Clinic" The husband seeks to have the court allocate him a share of this business. I do not consider this to be a matrimonial asset. Even if it were, it would not be just in my view to award the husband any interest in it. For the removal of doubt, I declare that the beauty spa business is wholly owned by the wife.

[18] During the course of the marriage the wife says that she has had to bear the cost of educating the daughter of the parties without any assistance from the husband. Clearly the responsibility for the maintenance and educational expenses of the child of the union should have been borne jointly by the parties. The wife says that she has had to borrow \$25,000.00 from a friend to assist in meeting educational expenses and this sum is still being repaid. In my view it would be just to compel the husband to pay one half of this amount. This payment can also be recovered from the sale proceeds of property referred to below.

[19] **THE ORDER**

1. It is declared that the matrimonial home is equally owned by the parties subject to the subsisting mortgage. The property is to be sold and any remaining proceeds after satisfying the outstanding mortgage are to be divided equally between the husband and the wife. Either party is allowed to purchase the interest of the other in the matrimonial home. Until a sale is finalized any rental income is to be equally shared and mortgage payments are to be jointly paid by the parties in equal shares. I direct that the husband should have conduct of the sale. Should he fail to act there is liberty to the wife to apply to the court for leave to conduct the sale.

2. The common areas of the office complex in the United Kingdom are to be sold and any proceeds equally divided among the parties. The wife is to have conduct of the sale and there is liberty to the husband to apply for leave to sell should she fail to act.
3. The land at Bequia is to be sold and the proceeds equally divided. The Husband shall have conduct of the sale with liberty to the wife to apply for such conduct should the husband neglect to act.
4. The parties are at liberty to retain or dispose of the apartments at 10 Canterbury Road Leyton. All rental income is to be shared equally.
5. The Husband will bear one half of all further educational and maintenance expenses of the child of the marriage until she completes her university education.
6. The husband will pay all outstanding rental and National Insurance contributions relating to the Time Out Café to the relevant authorities.
7. I make no order for payment of maintenance by either party to the other. I consider that each party has sufficient earning capacity to maintain himself or herself in the foreseeable future.
8. I make no orders about the motor vehicles. The parties will retain their present pension policies and the husband will have no interest in the business of the beauty spa known as Jan's Beauty Clinic.
9. I make no order as to costs.

Brian S. Cottle
HIGH COURT JUDGE

By the Court

Registrar