

BARBADOS
[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
FAMILY DIVISION**

No. 132 of 2000

BETWEEN:

CLEOPHAS ATHELBERT LAYNE

APPLICANT/HUSBAND

AND

ISMAY ZEPHERIN LAYNE

RESPONDENT/WIFE

**Before the Honourable Madam Justice Elneth O. Kentish, Judge of the High Court
in Chambers**

2008: November 01

May 14

September 18

2013: February 13

Mrs. Marguerite P. Woodstock Riley Q.C. for the Applicant

Mr. Samuel Legay for the Respondent

DECISION

Background

- [1] The parties in this matter were married on 19 September 1961. Prior to the marriage the Applicant/Husband had fathered four children by the Respondent/Wife but they did not live together.
- [2] On 10 November 2000 orders under *sections 27 and 42 Family Law Act Cap. 214 of the Laws of Barbados*, were granted dissolving the marriage between the parties.
- [3] Following the dissolution of the marriage the Respondent/Wife filed an application on 9 November 2001 seeking *inter alia* a declaration as to the respective interests of the parties in the matrimonial properties situate at Pilgrim Road, Christ Church and an order that the legal interest (sic) in the said properties be calculated (sic) so as to vest an one-half share of the same in the Respondent/Wife.
- [4] Some three years later on 30 July 2004 the Respondent/Wife filed an affidavit in support of that application in which she alleged, among other things, at para 7 thereof that the Applicant/Husband visited her in the U.S.A in or about the year 1983 and spent approximately four to six weeks at her residence; that during that time they resumed cohabitation and together made plans for their future; that the Applicant informed her of

- his plans to return to Barbados, construct some apartments on land his father had given him and live off the rents therefrom and that he invited her to join him in this project since, according to him, he was short of cash.
- [5] It is the testimony of the Respondent/Wife that over a period of years 1985 and 1997 she sent to the Applicant/Husband sums in excess of BDS\$215,000 to assist him with the construction of the property the subject matter of this application.
- [6] It is not contested that very, very shortly after the marriage of the parties, the Applicant/Husband left to reside in England and that the Respondent/Wife never joined him there. On his evidence he requested her to do so and she refused. In her evidence in chief she admitted that the Applicant/Husband asked her to join him but stated that she could not because she had four small children. However, also in her evidence in chief she stated that he would send money every month for her and the children because he did not want her to work.
- [7] She also testified that she left Barbados to go to the U.S.A in about 1974-1975 when her youngest child was seventeen years old and by that time there was no communication between herself and the Applicant/Husband.
- [8] It appears that the first communication between the parties after the Respondent moved to the U.S.A was in about 1979 when the Applicant/Husband spoke to her on the telephone. On the evidence of the Respondent/Wife after they had re-established contact, they started talking every weekend. According to her, the Applicant/Husband said he wanted his family to be reunited, that he is a changed man and he wanted to come to the U.S.A to see her so they could talk.
- [9] It is not in dispute that in the year 1983 the Applicant/Husband visited the U.S.A en route to Barbados and stayed in the home of the Respondent/Wife. It is during this period that the Respondent/Wife contends that there was a resumption of cohabitation between them.
- [10] The preliminary issue for determination on the application is whether in fact the parties had resumed cohabitation.
- [11] The testimony of the Respondent/Wife is also that during the Applicant/Husband's visit to the U.S.A she would come home in the afternoon and sometimes she would cook and prepare dinner for the three of them, the Applicant/Husband, their son Trevor and herself and they got along very good during that period.
- [12] On the other hand, the Applicant/Husband denies that they resumed cohabitation. He also denies the Respondent/Wife cooked or washed for him while he was in the U.S.A or during her yearly visits to Barbados when he allowed her to reside in the property in dispute.
- [13] He states that when she at first asked him to stay in the house in which he was living he refused but she persisted and he relented. She, however, occupied one room which she locked and he occupied another.
- [14] I find that the Respondent/Wife was not a candid and truthful witness for the following reasons:
1. Under cross-examination she stated that when the Applicant/Husband went to the U.K. he did not tell her he was going there to reside but in para 3 of her affidavit filed 30 July 2004 she stated that "shortly after our said marriage, the Applicant left Barbados to reside in England." Now it is her testimony in chief that the

Applicant/Husband sent money every month for her and the children because he did not want her to work.

So I must ask myself, why is it that a man who has just married a woman and leaves her the next day, as he says or shortly after as she concedes and sends her money every month to support herself and the children and herself would not tell her that he was going to the U.K. to reside but then would ask her to come join him in the U.K?

2. In para 7 of her affidavit of 30 July 2004 she also stated that she was reluctant at first to join him in the property project because he had once deserted her and she was wary of his motives. But the uncontroverted evidence is that he did not desert her. Even when she refused to join him in England, he would send money for their support. Is that the action of a deserter? I think not.
3. In para 4 of her affidavit of 30 July 2004 she stated that the Applicant/Husband occasionally sent money to her for the maintenance of the children but in oral testimony she stated that he would send moneys every month for me and the children. I would not say that sending money every month can be described as “occasionally”.
4. But most significantly when it was suggested to her under cross-examination that she never shared a room in the new house with the Applicant/Husband, the Respondent hesitated and asked “how must I answer that?” and then stated “yes we did”.
Now I cannot conceive under what circumstances that straightforward question could have elicited the hesitation and that response except that the witness is not being candid. Further when asked still under cross-examination, whether during her visits to Barbados and after she moved into the new house, she had cooked for him, it was only after the intervention of the court that she responded that she did.
5. On the other hand, I find that the Applicant/Husband gave his testimony candidly and without any hesitation.
6. Finally, given the history of their relationship I consider that the burden rested on the Respondent/Wife to establish on a balance of probability that the parties had resumed cohabitation, if in the context of their relationship “resumption” could be the proper word. I find that she has not satisfied that burden.

[15] I therefore reject the contention of the Respondent/Wife that the parties had resumed cohabitation.

[16] The application of the Respondent/Wife filed 9 November 2001, is dismissed.

Elneth O. Kentish
Judge of the High Court