

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

(Family Division)

No. 25 of 2010

IN THE UNION OTHER THAN A MARRIAGE OF

ROBERT ALLEYNE

Applicant/Spouse

AND

WENDY EDWARDS

Respondent/Spouse

Before: The Honourable Madam Justice Kaye Goodridge, Judge of the High Court.

2012: May 9, 16

2013: April 23

Ms. Jaydene Thomas, Attorney-at-Law for the Applicant/Spouse.

Mr. Silbert Cadogan, Attorney-at-Law for the Respondent/Spouse.

DECISION

Nature of Action

[1] This is an application brought by the Applicant pursuant to **section 57 of the Family Law Act, Cap. 214 (the Act)** for a declaration that he

is entitled to a forty percent (40%) share and interest in the property situate at Diamond Corner in the parish of St. Peter (the Property). In the alternative, the Applicant seeks an order for the sale of the Property by public auction and that the net proceeds of sale be divided between the parties according to their respective shares as determined by the court.

The Background

- [2] The Applicant and the Respondent started a visiting relationship in 1989. They lived in a union other than a marriage from 1995 until 2009 when the Applicant vacated the Property after a protection order was made by the Magistrate's Court.
- [3] The parties are the parents of two children, a son born on 10 March 1990 and a daughter born on 19 April 1998 who is attending secondary school. The Respondent has the care and control of the daughter and is solely responsible for her upkeep as she receives no financial support from the Applicant.

The Proper Approach to the Application

- [4] The proper approach to be taken by a court in determining applications of this nature was outlined by our Court of Appeal in the

case of **Proverbs v Proverbs (2002) 61 WIR 91**, following the Australian authorities, namely:

1. The net value of the property of the parties must be identified and valued by the Court.
2. The respective contributions of the parties within the terms of **section 57(3)** must next be considered and evaluated.
3. The **section 53(2)** factors, so far as relevant, should then be considered.

In addition to applying the three step process set out above, **section 57(2)** enjoins the court not to make an order “unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.”

The Property

- [5] In 1991 the land and the house, which was then a wooden structure, were transferred to the Respondent by her mother by way of a Deed of Gift. The Property has been valued at \$310,000 by Jireh Consultants Inc. and this valuation was admitted into evidence by consent of the parties.

The Evidence of the Parties

The Applicant’s Evidence

- [6] The Applicant’s evidence is that after he moved into the Property, he suggested that it be expanded to include another bedroom, living room

- and the basement. He made a small contribution towards the work. At the time he was employed as a Clerical Officer in the Customs Department while the Respondent was a self-employed seamstress.
- [7] He contributed to the groceries, utilities and appliances. Sometimes he and the Respondent split the cost of groceries half and half. The Applicant usually cleaned up around the house, cut the grass and did some plumbing. He made financial contributions towards the upkeep of the property and bought tools to take care of the Property.
- [8] Under cross-examination, the Applicant agreed that when he started to reside with the Respondent, the house was a wall house and it was owned by the Respondent. He made no financial contribution to the acquisition of the Property. The Applicant admitted that he was interdicted and suspended from duties and sent on half-pay leave in 2003 after he was charged with drug trafficking. His employment was subsequently terminated and he is presently unemployed.
- [9] The Applicant stated that, in addition to his financial contribution to the construction of the basement, he gave the Respondent the sum of \$300.00 which went towards the cost of the wiring. He did not recall paying \$300.00 for remedial work in the bathroom. The Applicant

insisted that he gave the Respondent money to pay her brother-in-law who was the contractor and that he paid the plumber.

- [10] In further questioning, the Applicant admitted that when he was placed on half-pay leave this put pressure on the Respondent. He acknowledged that he pays no maintenance for his daughter. The Applicant disagreed with counsel's suggestion that he made no financial contribution to the conservation of the Property and denied that the Respondent was solely responsible for the conservation and improvement of the Property.

The Respondent's Evidence

- [11] The Respondent testified that she had obtained a loan in 1988 to construct a bathroom and the foundation for the front of the house from the Canadian Imperial Bank of Commerce (CIBC) and that the basement was completed in 1993. The Property was not under construction at the commencement of the union.
- [12] According to the Respondent, the Applicant made no financial contribution to the construction of the basement. He contributed \$300.00 to the cost of plumbing work. The Respondent testified that she received no assistance from the Applicant in repaying the loan

from CIBC. She alone paid for the services of the contractor and the sub-contractor.

[13] The Respondent testified that the Applicant did assist in cleaning around the house. When the Applicant was placed on half-pay leave, this created an additional burden on her.

[14] Under cross-examination, the Respondent said that the loan was repaid in 1998. She agreed that the Applicant provided groceries and paid bills. She denied that the Applicant gave her monies for personal spending. The Respondent maintained that the Applicant did not contribute financially to the improvement of the house. The Applicant did not clean up the house but he bought items for the house. While the Applicant was on half-pay the Applicant was unable to buy groceries and pay bills as before.

[15] The Respondent called one witness, Mr. Alistair Corbin, who testified that he did mason work for the Respondent for which she paid him. The witness testified that he knew the Applicant and that he had seen him at the house when he was working there in the latter stages on the handrails and the steps. The Applicant did not contract him to carry out any work nor did he receive any payment from him.

The Applicant's Submissions

- [16] Ms. Thomas, counsel for the Applicant, contended that the Applicant made small financial contributions toward the improvement of the property. She pointed to the Applicant's evidence that he contributed financially to the expansion of the Property.
- [17] Counsel submitted that the Applicant made an indirect financial contribution by purchasing several household items for the Property as well as paying the utility bills and buying groceries for the home. This contribution helped to "free up" the hands of the Respondent in repaying the mortgage.
- [18] It was also submitted that the Applicant made contributions to the improvement of the Property by being a handyman, cleaning up around the house and cutting the grass. While on half-pay leave, the Applicant would spend his free time doing household chores.
- [19] Counsel submitted that the Applicant's contribution as a spouse, father and homemaker was a notable one, which ought not to be treated in a token way.
- [20] It was Ms. Thomas' submission that the Applicant had made a significant contribution to the acquisition, upkeep and maintenance of the former matrimonial home such as entitled him to a 40%

share/interest. In support of her submissions Ms. Thomas cited the authorities of **Hunte v Hunte (1983) 18 Barb. L.R 103; Lawler v Lawler (1988) FLC 91-927; Bremmer v Bremmer (1995) FLC 92-560; and Cox v Cox (2007) 72 W.I.R 53.**

[21] Counsel next examined the relevant factors under **section 53(2) of the Act**. Counsel noted that the Applicant is older than the Respondent and he is unemployed. In view of his age, even though he is currently seeking employment, such employment is slim as he is nearing his retirement age. On the other hand, the Respondent is still employed.

[22] Further, the former matrimonial home is free from encumbrances. The Applicant owns no property in Barbados and he presently resides with his mother. The Applicant wishes to have a standard of living close to what he enjoyed prior to the breakdown of the union. He needs to acquire his own home and the funds representing his share and interest in the Property would be adequate to do this.

[23] It was also counsel's submission that the parties have an obligation to maintain the minor child but the Applicant is unable to do so at present.

The Respondent's Submissions

- [24] Mr. Cadogan, counsel for the Respondent, submitted that the Applicant did not directly or indirectly contribute financially to the acquisition, conservation or improvement of the Property. It was the Respondent's contention that the basement of the house was constructed specifically for the conduct and operation of her business as a seamstress.
- [25] Counsel submitted that the Respondent, having acquired the Property from her mother, thereafter completely reconstructed and improved the Property without any assistance from the Applicant. He noted that the Respondent's position is that the works were completed before the Applicant came to live with the Respondent and that she never requested from him and neither did he make any offer to assist her in the repayment of the loan.
- [26] Mr. Cadogan referred to the Respondent's admission that the Applicant had purchased groceries and assisted in the payment of utilities from which he himself benefited, and that on one occasion the Applicant paid the sum of \$300.00 for plumbing work which was carried out at the Property. However, counsel pointed out that the Applicant's suspension from duty in 2003 had a negative impact on

the financial resources of the household. He stressed that the Respondent had to take on the sole responsibility of providing for the minor child for the past 3 years.

[27] Turning to the **section 53(2)** factors, counsel submitted that since the Applicant does not provide financial support for the minor child, the Respondent is obligated to ensure that the child's financial needs are met, the household is maintained and that the family enjoys a standard of living which is acceptable and reasonable in the circumstances. Furthermore, the Respondent is self-employed and does not stand to benefit from any superannuation fund or scheme.

[28] Finally, counsel submitted that if the court was persuaded that the Applicant is entitled to a share in the property, that share or interest should be transferred for the benefit of the minor child and that there should be no order for the sale of the Property. He referred to the cases of **Thornhill v Thornhill BB 1987 HC 36** and **Wilson v Wilson BB 2007 CA 66** in support of his submissions.

Assessment of the Parties' Contributions

[29] It is agreed by the parties that the Respondent was given the land and the house by her mother by way of Deed of Gift and the legal title to the Property is vested solely in the Respondent. The Applicant made

no contribution to the acquisition of the Property. But the parties differ as to whether the Applicant made any direct or indirect financial contribution to the improvement of the Property.

[30] The Applicant contended that it was his idea that a basement be constructed and that he made financial contributions towards the construction which was undertaken after he moved in with the Respondent. The court has difficulty accepting this contention. Firstly, the Applicant's evidence as to his contributions is sparse. He did not attempt to particularize the amounts which he said that he provided, for example, for payment of the contractor and the plumber. In short, the Applicant did not provide the court with any satisfactory evidence on which it could have assessed the direct financial contribution which he alleged that he made.

[31] Secondly, the Respondent testified that the basement was completed in 1993 and this has not been disputed by the Applicant. The Applicant did not move into the Property until 1995, two years afterwards. How then could the work have been carried out after he moved in 1995?

[32] It is clear to the court that it was the Respondent who took the initiative to improve the Property by obtaining a loan from the bank

and that this occurred prior to the commencement of the union. I do not accept that the Applicant made any direct financial contribution to the improvement of the Property, and I find that he made no such contribution, having regard to the evidence.

[33] It is noted that a de minimis contribution was made by the Applicant through the payment of the sum of \$300.00 for remedial plumbing work which was carried out at some time. It is the finding of the court that the Applicant made a small/minimal contribution to the conservation of the Property between 1995 and 2003.

[34] The evidence discloses that it was the Respondent alone who repaid the bank loan. However the Applicant made an indirect financial contribution by way of his purchase of household appliances, assisting with the payment of utilities and the purchase of groceries. There is also his contribution of cleaning up the surroundings.

[35] Nevertheless, account must also be taken of the fact that, while the union lasted for thirteen years, for six of those years the Applicant was receiving half-pay until his dismissal. This circumstance would have impacted severely on the Applicant's ability to contribute to the household and would have placed strain on the Respondent.

[36] While it is accepted that the Respondent was the primary caregiver and homemaker, the court must also take into account the Applicant's contribution as a parent/father and homemaker.

[37] My review and assessment of the respective contributions of the parties has led me to conclude that it would be just and equitable to make an order that the parties' share and interest in the property should be in the ratio of 10% for the Applicant and 90% for the Respondent.

The Relevant Section 53(2) Factors

[38] I now turn to a consideration of the relevant **section 53(2)** factors and whether there should be a further adjustment of the parties' share/interest. These factors are:-

- (a) The age and state of health of each of the parties;
- (b) The income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;
- (c) Whether either party has the care or control of a child of the marriage or union other than a marriage, who has not reached the age of 18 years;

- (d) The financial needs and obligations of each of the parties;
- (e) Where the parties have separated or the marriage has been dissolved a standard of living that in all the circumstances is reasonable.

[39] The Applicant is 59 years old and the Respondent is 47 years old.

There is no evidence before the court as to the state of health of either party. The Applicant owns no property and resides at his mother.

[40] The Applicant is unemployed and there is no evidence as to whether he has any special skills. He is seeking employment but it is not unreasonable to assume that his chances in this regard are slim because of his age. Also, having regard to the fact that his employment was terminated, the possibility of his receiving a pension seems unlikely.

[41] The Respondent is a seamstress who relies on her skill to generate income. It must be recognized that her occupation is one which is vulnerable to prevailing economic conditions. A significant factor is that the Respondent has the care and control of the minor child who is now at the secondary school stage and whose needs will increase incrementally.

[42] Account must be taken of the parties' obligations to the minor child, in particular that of providing appropriate accommodation. It is clear that the Applicant was unable to contribute in any meaningful way financially towards the minor child's maintenance during the period of his interdiction, and no contribution has been made at all since 2009. Further, the possibility of his being able to do so in the foreseeable future is unlikely because of his age and limited circumstances. The Respondent therefore is the one who must provide for the child's needs.

[43] It is the opinion of the court in view of these factors that it is just and equitable that there should be a further adjustment of 7½% in favour of the Respondent. It would not be appropriate to order that the Property be sold.

Disposal

[44] It is therefore ordered as follows:

1. That pursuant to **section 57 of the Family Law Act, Cap. 214** the interest of the parties in the Property, situate at Diamond Corner in the parish of St. Peter is altered so as to vest 2½% thereof in the Applicant and 97½% thereof in the Respondent;
2. The Respondent shall pay to the Applicant the sum of \$7,750 which represents the Applicant's share and interest in the Property on or before the 31 August 2013;

3. In default of such payment, interest shall accrue on the said sum at the rate of 6% from 1 September 2013 until payment.
4. The parties shall bear their own costs.

Kaye Goodridge,
Judge of the High Court,