

BARBADOS

[Unreported]

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

No. 5 of 2012

BETWEEN:

LOURAINE YVONNE GARRICK APPLICANT/WIFE

AND

CURTIS SLEWELYN GARRICK RESPONDENT/HUSBAND

Before the Hon. Madam Justice Margaret A. Reifer, Judge of the High Court.

2013: May 28, 29,

July 3,

October 4

Mr. Anthony D. Wiltshire, Attorney-at-Law for the Applicant /Wife

Mr. Kendrid R. Sargeant, Attorney-at-Law for the Respondent /Husband

DECISION

The Nature of the Claim

[1] This is an application filed in August 2012 by the Applicant/Wife for principal relief. Orders pursuant to Sections 27 and 42 of the Family Law Act were granted in February

2012 by Goodridge J. dissolving the marriage, and the Applicant/Wife now seeks a settlement of ‘property of the parties’ in the following terms:

- “(i) A declaration that the Respondent/Husband and I are entitled to 50% of the value of the motor car registration number S3093;
- (ii) A declaration that the Respondent/Husband and I are entitled to 50% of the value of the matrimonial property situate at Rectory Hill in the parish of Saint Peter;
- (iii) That the said matrimonial home be valued and the Respondent/Husband pay the Applicant/Wife 50% of the value after expenses, legal fees and other incidentals are deducted therefrom;
- (iv) Such other Order as to the Court deems fit.”

[2] While this wording lacks the specificity called for by the Family Law Act, it nonetheless indicates that the intent is to seek a declaration of the Applicant/Wife’s interest under Section 56 of the Family Law Act and alteration of said interest under Section 57 of the said Act.

Background to the Claim

[3] These parties were married in December of 2001 (the Husband was divorced but this was a first marriage for the Wife), and separated in November 2010. Prior to their marriage the parties lived together for one year. There were no children born to this marriage.

[4] Evidence in this trial was by way of the Affidavits of the parties filed August and October 2012 respectively, and by their sworn evidence before the Court. They were both cross-examined. No other witnesses were called to give evidence.

[5] Both parties also filed a Statement of Financial Circumstances and a Valuation Report of the chattel property at Farm Road, Speighstown, St. Peter was admitted by consent of the parties.

[6] The Respondent/Husband earned his living as a mason and his Statement of Financial Circumstances shows a modest income of \$22,800.00 a year and annual expenses of \$19,373.40, all within reasonable limits of expenditure. Stated differently, his income appears to meet his reasonable expenses with little or no disposable income left over.

[7] The Applicant/Wife’s on the other hand revealed a level of expenditure way above her declared level of income. With an income of \$7,800.00 per year, her expenses totalled

\$31,650.00 with no discernible evidence or explanation as to how they were met. Neither party challenged the other on the contents of their Statement of Financial Circumstances.

- [8] The Valuation Report revealed that the property consists of a single storey, three bedroom chattel house in fair condition, with an enclosed backyard with ‘storage sheds’ towards the back of this enclosure. The land is separately owned. The unchallenged valuation of this twenty-five (25) year old structure was \$90,000.00.

The Issue[s]

- [9] The sole issue raised by this application is the determination of what share and interest, if any, does the Applicant/Wife have in the matrimonial home and the motor car registration number S3093.

The Law to be Applied

- [10] In determining, declaring and altering the interests of the parties under Sections 56 and 57 of the Family Law Act, the proper approach is that advocated by our Court of Appeal in **Proverbs v Proverbs (2002) 61 WIR 91**, in which it adopted the approach of the Australian authorities from whom we have adopted our legislation. These authorities, in particular **Pastrikos v Pastrikos (1980) FLC 90-897; Lee Steere (1985) 91-626 and Ferraro v Ferraro (1983) FLC 92-235**, have applied the following three-step approach adopted by our courts:

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.

- [11] In addition to applying the three-step process outlined above, the Family Law Act enjoins the Court under section 57(2) not to make an order under this section “unless it is satisfied that, in all the circumstances, it is just and equitable to make the order”. The last has been referred to as the Fourth Step by some Australian authorities.

[12] It is relevant here to state that there is no presumption of equality in our law. In **Noel v Noel Civil Appeal No. 27 of 2001** (unreported decision of December 17, 2004) **Williams C.J. (Ag)** outlined the state of our law on this point as follows:

“..there is no presumption that in the division of property “equality is equity” or that “a proper starting point in ordinary circumstances” is that the property is to be divided equally between the parties. In

Mallet v Mallet (1984) 156 CLR 605, the High Court of Australia, overturned the “equality is equity” principle that had been established in some of the earlier cases by the Full Court of the Family Court in Australia; see **Proverbs** at paragraph [40] and Dickey at pages 706 to 709. A presumption of equality would be inconsistent with the discretion given under section 57.”

[13] As stated above, the matrimonial home has been valued and the stated value of \$90,000.00 accepted. The second asset referred to in the application poses a problem and I will deal with this issue here.

Motor Vehicle S 3093

[14] The Applicant/Wife is claiming a 50% share of this vehicle bought by the Respondent/Husband, admittedly without any direct contribution from her.

[15] Despite arguments as to whether there was an indirect contribution towards its acquisition by the Applicant/Wife and whether she encouraged the Respondent/Husband to buy it in order to transport his tools to work, or whether (as stated by the Respondent/Husband) he bought it because of their constant trips to the hospital and doctor’s offices because of her illness, the evidence as it relates to this asset, in the opinion of this Court, fails the first test, namely, this evidence does not establish on a balance of probability that it has any current value.

[16] The car was purchased for \$3,500.00 (the time of purchase has not been specified in the evidence nor the age and condition at the time of purchase and currently), but the Respondent/Husband’s unchallenged evidence was that it was ‘written off’ in April 2011. He said in evidence that he sold the gearbox (he gave no evidence as to the sale price and he was not asked in cross-examination), but the engine and the shell are at his home. No attempt to value this wreck was made by either party to assist the court in determining what value, if any, could be placed on it. The Applicant/Wife has failed to discharge that

burden, and it is my view, on a balance of probability, that it has no useful value. In consequence, no further consideration will be given to it in this exercise.

The Matrimonial Home

[17] I will therefore move on to assess the evidence of the parties as it relates to their respective contributions to the matrimonial home. In this regard, section 57(3) of the Act directs me as follows:

“In considering what order should be made under this section, the Court shall take into account the following:

- (a) The financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property, or otherwise in relation to the property;
- (b) The contribution made directly or indirectly to the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of homemaker or parent;
- (c) The effect of any proposed order upon the earning capacity of either party;
- (d) The matters referred to in section 53(2) in so far as they are relevant; and
- (e) Any other order that has been made under this Act in respect of a party.”

The Evidence

The Case for the Applicant/Wife

[18] The Applicant/Wife’s Affidavit gave a bare outline of the basis of her claim. She admitted that she “came and found” the Respondent/Husband with the chattel house, but urged that “she made substantial improvements to the matrimonial home”, and substantial improvements to the upkeep of the said house as a home-maker.

[19] The substantial improvements related specifically to a structure that was built at the back of the house and which was used by her as a boutique and for “keeping weddings”. She alleged in the Affidavit that it cost her \$5,000.00 in 2003 to build this structure. She also alleged that she purchased material and paid a workman to construct a built-in wardrobe

in one of the bedrooms. No evidence of this was produced to the court; no bills, no workmen's receipts, no evidence of a loan, borrowed or repaid, no third party evidence. With respect to the built-in cupboards, the Applicant/Wife could not recall how much she paid the workman or the cost of the purchased materials.

[20] As to her contributions to the upkeep, it was her Affidavit evidence that she cooked, cleaned the house, washed and pressed the Respondent/Husband's clothes, and that she physically painted the inside of the house without any assistance, after herself buying five gallons of paint to do so. The parties kept a kitchen garden and animals and she played a part in looking after them. The Applicant/Wife enumerated items of furniture, namely a room divider and living room furniture purchased by her for the house. She alleged that she bought groceries for the house and assisted the Respondent/Husband with the payment of bills when she was working ("*Garrick paid light and phone and we both contributed to food*"). She alleges that as a result of her contributions the Respondent/Husband was able to purchase a motor car registration number S 3093.

[21] In her sworn evidence to the Court, the Applicant/Wife gave further relevant evidence, specifically, that she worked at Mademoiselle for five (5) years during the course of the marriage and that the \$5,000.00 referred to above, was borrowed from her boss at that establishment. She told the Court that she repaid him weekly from her salary. The only contribution to this enterprise by the Respondent/Husband was that he paid for the wiring of the shop. The work was done by one of his friends and she paid the workman. She stated that she catered for three (3) (she later said two (2)) weddings from the shop and her sister sent in two barrels of clothing which she sold from the shop. In her estimation, she made about \$2,000.00 from this enterprise of which she sent back about US\$200.00 to her sister in the United States of America. She made little profit from the weddings she catered.

[22] She admitted that the Respondent/Husband paid all her medical bills during the relationship (he promised her that he would do this from the beginning), specifically when she had surgery during the marriage, and that every week the Respondent/Husband gave her \$200.00 which he later reduced to \$150.00 which went into the purchase of foodstuffs.

[23] The Applicant/Wife admitted that she was diagnosed with lupus in 1994, long before she got into this relationship. There is no suggestion that the Respondent/Husband did not

know of her medical condition before the marriage, in fact, it is stated in the written submission of her counsel, (noticeably not in her evidence), that she was ill at the time of the marriage and that was the reason for her unemployment.

[24] It is stated in her Affidavit, and also stated by the Applicant/Wife in her evidence to the Court that the Respondent/Husband supported them both from his earnings as a mason. This is significant, because in her evidence she was adamant that she was not often sick as a result of her lupus and unable to work; that she did not have to go to the hospital often as a result of it; and that the Respondent/Husband did not take care of her during the marriage because of this. She stated that during the marriage she was on a low dosage of her medication and it was not as expensive as it was before her marriage. The implication is that for the period of her marriage her condition was always stable and successfully managed by her medication. Her medical condition, according to her, did not prevent her from painting the entire interior of the house. She stated:

“I do everything around the house, including kitchen garden from which we sold Chinese Cabbage to Jordans Supermarket. We had ducks, rabbits and I raised chickens. We both looked after these animals. He left at 7:00 a.m. and I left at 9:00 a.m. and between us we did the chores”.

[25] Her evidence was that the ducks and rabbits were kept for about two (2) years and thereafter sold to Super Centre. The proceeds of sale were kept by the Respondent/Husband. Details of quantities of animals and birds kept and amounts earned were noticeably absent, making it considerably difficult for the court to make an assessment. Presumably, the outlay in terms of purchase and maintenance was the Respondent/Husband's as he was the sole wage earner for much of the time.

[26] In my view, it is reasonable to conclude on the balance of probability, taking into account the limited resources of the parties, the Applicant/Wife's health challenges and the Respondent/Husband's work (he advanced in evidence that he often worked on weekends) that the mixed farming merely supplemented their food supply and the excess sold was used to purchase groceries. There is no evidence that it was a great money making affair.

[27] She is now 50 years of age and gave evidence that since the separation she has been diagnosed with cancer of the spine. No medical evidence of this was provided, (nor for

that matter of the current status of her lupus), but this evidence was not challenged by the Respondent/Husband. She alleges that her only source of income is the sale of snacks from her home. When it was put to her that she ran a shop in Mason Hall Street, she replied that she closed that shop a long time ago. This line of questioning was pursued no further.

The Case for the Respondent/Husband

[28] The case for the Respondent/Husband was outlined in his Affidavit in Response and in his sworn evidence to the Court. The house was bought in 1982 for \$5,000.00 and repairs carried out to it from his resources long before his relationship with the Applicant/Wife (2001), and during their relationship no substantial improvements were made to the house.

[29] The only addition was the construction of the shop in the backyard and his evidence conflicts with that of the Applicant/Wife in that he alleges that he alone paid the carpenter (about \$300.00 for three Saturdays), and the materials for the job were bought by them jointly. She was on vacation at the time and he gave her the money and told her what to buy. In his estimation the shop cost approximately \$1,500.00 and he was the main contributor to this cost.

[30] The Respondent/Husband disputed the Applicant/Wife's indirect contributions. It was his case that her illness not only prevented her from working steadily outside of the home, but prevented her from pursuing steady or strenuous work in the home. She had several bouts of illness during the course of the marriage. In consequence, he alleges that he had to do the majority of the work inside and outside of the home as well as pay her medical bills. He bought the paint for the shop and did the majority of the painting himself with very limited assistance from the Applicant/Wife. The inside of the house was painted once during the marriage (this was in 2007) and it was done by him.

[31] It was he, he alleges, who paid his friend/workmate to build the wardrobe. He bought the materials from the lumber company and paid the carpenter \$150.00. The Applicant/Wife took the receipts for this purchase and others when she left the home. The Applicant/Wife only occasionally bought groceries for the house and paid the telephone bill, he paid the other utilities and in addition thereto gave the Applicant/Wife money weekly for the groceries and other things for the home.

- [32] According to his evidence, visits to the hospital as a result of her illness were frequent (many nights he had to sleep at the Queen Elizabeth Hospital and then leave at 5:00 a.m. to take the first bus to Speightstown). If she were admitted he would have to travel back and forth with her meals as she would not eat the hospital food. It was this which prompted his purchase of a car, because of the amount of money spent by him on taxi fares to and from the hospital and doctors' offices. He purchased the car for \$3,500.00 for this purpose, but he also used it for going to work. It was not disputed that the Applicant/Wife made no financial contribution to the purchase of this car.
- [33] The Respondent/Husband alleged that the Applicant/Wife left him with a large telephone bill of \$900.00, but no evidence was produced in support of this and she strenuously denied this. No consideration was given to this by the Court.
- [34] The Applicant/Wife, he said, took most of the furniture and furnishings (even several plants in pots) when she left, leaving him with two beds and a living room suite, which she did not take only because he called the police. She left the curtains also after he protested. It was his case that the things she took they had purchased together. No value was given for the items taken by the Applicant/Wife.
- [35] He has always been employed throughout the marriage and to date, whereas the Applicant/Wife was unemployed when they got together and it was he who took on the burden of looking after the house alone. It was during the time that she got the job at Mademoiselle that they had a disagreement and she moved firstly to a shelter and later rented a house with a friend. He would visit the house and buy her groceries. He noticed during this period that she furnished this house with a living room and dining room suite. After her friend left she could not pay the rent of \$900.00 per month. He paid it for her, until she asked his permission to return to the matrimonial home and they resumed cohabitation. It was his evidence that "*her wages was not big*", she was getting in hand just over \$100.00. As a result, her contributions to the household expenses were small.
- [36] On the issue of his contributions as homemaker, he agreed that she did the cooking, but they had a washing machine and he wore clothes that did not need to be ironed. He agreed however, that she was responsible for the ironing of the clothes.
- [37] He told the Court that the shed is "*just there*", it was used when the Applicant/Wife lived at the matrimonial home to store clothes and wedding gowns that they had ordered. It is his contention that he gave the Applicant/Wife the money to send to her sister who then

sent in clothes in a barrel. It was his assertion that people who were planning a wedding would come and try on the gowns, but most of them never came back. The Applicant/Wife was able to get a few sales for the dresses from her workmates and whatever money she received she controlled. It was his evidence that they never did the catering for any weddings.

[38] In summary, it was his case that the Applicant/Wife did not make a substantial direct or indirect contribution to the matrimonial property. When the Applicant/Wife was leaving she told him that she was taking the things in the house for the “time that (she) was living there”.

Findings of Fact

[39] The allegations by the Applicant/Wife, that she made substantial direct and indirect contributions to the property were not borne out by the evidence. It was observed by the Court that both parties sought to embellish their evidence in support of their respective cases, the Respondent/Husband being at times reckless in his allegations.

[40] It was undisputed that the parties ‘cohabited’ for ten (10) years, nine (9) years of marriage and one (1) year of cohabitation prior to marriage. However, interestingly, the Applicant/Wife gave unchallenged evidence that she spent one (1) year at a shelter for abused women, and that after she left there, she rented a house for an unspecified time period before returning to the matrimonial home. This begs the question, unanswered by the evidence, as to the exact number of years that the parties cohabited.

[41] The furniture taken by the Applicant/Wife when she left the matrimonial home was jointly owned. According to her, (“*when he gave me money every week I would pay for it*”). This referred to the living room suite and the room divider. There was additional furniture “*taken out*” which she also took with her. No attempt was made by either party to place a value on these items.

[42] The only income admitted to by the Applicant/Wife was her five (5) years earnings while employed at Mademoiselle. Any evidence with respect to what she earned therefrom was noticeably absent, but the Applicant/Wife insisted that she repaid \$5,000.00 by way of weekly deductions of \$50.00 from her salary. It is reasonable to infer, if accepted as true, that for that reason her take-home pay would have been small, and the Court finds reasonable the Respondent/Husband’s evidence that she got in hand just over \$100.00 weekly. She would consequentially, (unless there was some other source of income)

have had very little disposable income to make a direct financial contribution to the household and by her own admission was dependant on a weekly sum paid to her by the Respondent/Husband.

- [43] It was my conclusion on observing the parties and assessing their evidence that the Respondent/Husband purposely sought to minimize the role of the Applicant/Wife. I accept the evidence of the Applicant/Wife as to the role she played as homemaker, and find as a fact that throughout the marriage/relationship, she did the washing, cooking, ironing and looked after the Respondent/Husband and the home. I accept the Applicant/Wife's evidence that she purchased the paint and at her pace painted the inside of the house. I believe that the Respondent/Husband would have assisted her when he could.
- [44] It is my finding of fact that they worked together in looking after the kitchen garden and the ducks and rabbits.
- [45] The clothing business was not successful and there was no challenge to the Respondent/Husband's evidence that the majority of the clothes were taken by the Applicant/Wife when she left for St. George, her present residence. This enterprise contributed little or nothing to the matrimonial assets.
- [46] I believe neither party to be entirely truthful about the impact of the Applicant/Wife's illness. The Respondent/Husband clearly exaggerated the effect of her illness and the Applicant/Wife sought to minimize its effect, but I accept that the Applicant/Wife did have bouts of illness from time to time and that the management of her medical condition would have necessitated more visits to doctors and/or the hospital than a healthy person. His evidence that "*this week she would be good and next week she would be under the weather*" rang true. It was his evidence that during the course of the marriage she had two operations and two other admissions to the hospital of a few days in each case.
- [47] It is difficult to accept the evidence of the Applicant/Wife that she spent \$5,000.00 on the shop. The lack of any corroboration of this is unsettling, and it is difficult to accept on the balance of probability. It is significant, in the Court's view, that the Valuation Report placed very little value on this structure. It is lumped together with the fencing, paling etc, and included in a reference to 'sheds' in the backyard with a composite value of \$8,000.00. This Court concludes therefrom that the shop/shed did very little to improve the overall value of the property.

[48] This Court found the Respondent/Husband's evidence on this point more credible than the Applicant/Wife's. He stated:

“There is a shed for the washing machine. Where I take to make the shop was a fowl run. The carpenter that did the work cut two squares at work; I brought them home and I bought a few uprights (2 x 3's) along with some that I had at home. The shop was faced with cardboard on the insides. The outside was galvanize. Lattice is on the front. The galvanize is to the back. The lattice is plastic.”

[49] His estimate is that the total cost was around \$1,500.00, which in the opinion of the Court is a more credible number.

[50] The Applicant/Wife apparently brought no assets or financial resources to the marriage and the items of furniture and furnishings taken by her when she left the matrimonial home would have had significant direct and indirect contribution from the Respondent/Husband, who was the primary wage earner. This fact is taken into account in the Court's analysis but the Court has been hampered or stymied in this exercise by the failure of the parties to clearly particularize and value the items taken. This Court accepts the submission of the Respondent/Husband that 'her wages were small', and in consequence it would have been a significant challenge for her to make a direct financial contribution.

[51] In summary, it is this Court's finding that the Applicant/Wife's direct contribution to the preservation and conservation of the matrimonial home was not substantial, in fact it was negligible. Her only direct financial contribution was, in the opinion of this Court, to the construction of the wardrobe in one bedroom, but this Court also finds that the Respondent/Husband contributed to this enterprise. It is also my finding that the Applicant/Wife exaggerated the outlay on the shop, but what is significant is my further finding that the Respondent/Husband contributed to this, but further and most importantly, that it added little to the overall value of the matrimonial home.

[52] Her significant or substantial contribution was an indirect one, as homemaker: (See **Cox v Cox Civil** Appeal No. 19 of 2005) (unreported decision of June 21, 2007). In his efforts to minimize her role the Respondent/Husband never sought to denigrate the quality of her contribution, merely to state that he performed the same tasks as well. I have no doubt that the Applicant/Wife contributed to the best of her abilities to the household, but for the reasons as documented above these abilities were limited.

[53] I assess the Applicant/Wife's contribution at 10%.

Section 53(2) Matters Considered

[54] I next look at the section 53(2) matters, a consideration of which will determine whether this Court should make a further adjustment of the parties' share or interest.

[55] This Court found the following section 53(2) matters to be relevant:

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

[56] In **Proverbs v Proverbs, Simmons CJ** (as he then was) had this to say on the application of section 53(2) matters in the application of sections 56 and 57 of the Family Law Act:

“[38] The section 53(2) factors come into play in situations where there is a disparity of resources, including a disparity in future earning capacity, or there are special needs on the part of one party...An adjustment is made because one has greater needs and the other has stronger means”.

See also **Williams CJ** (Ag) at paragraph [14] of **Noel v Noel (supra)** where it is stated:

“Dickey at pages 718-719 suggests, based on the Australian cases that when the maintenance factors are considered in the context of the alteration of property interests, “they have a more general function and are to be considered broadly...and not restricted to the topic of spousal maintenance or support.”

[57] In the **Marriage of Bates v Bates [1985] FLC 91-627**, after analyzing the evidence as it related to the respective contributions of the parties, the Court had this to say at 80,090:

“Obviously in determining within this area what is a just and equitable order to make under section 79 the Wife's present and future needs and responsibilities are very significant factors”.

[58] In **Noel v Noel Williams CJ** (Ag) had this to say:

“First, contribution is only one of a number of factors to be considered in exercising discretion to alter property interests. There is no hierarchy in relation to the factors to be taken into account and the relative weight to be given to each factor will vary according to the circumstances of each case. Secondly, an elaborate mathematical approach to ascertain the contribution of each party to the acquisition of property is in most cases inappropriate”.

See also **Cox v Cox Civil Appeal No. 19 of 2005** where Williams JA discussed all the above concepts.

Disposal

[59] The circumstances of this case lend themselves to a consideration by the Court of the ‘future needs’ of the Applicant/Wife. In view of this, and all the circumstances outlined above, this Court considers it *‘just and equitable’* to make a further adjustment and an order for the payment of a lump sum rather than an order for sale. In light of the foregoing, it is ordered as follows:

1. That pursuant to section 57 of the Family Law Act, Cap. 214 the interest of the parties in the chattel property situate at Farm Road, Speightstown, St. Peter is altered so as to vest 15% in the Applicant/Wife and 85% in the Respondent/Husband.
2. The Respondent/Husband shall pay the Applicant/Wife the sum of \$13,500 in full satisfaction of such share and interest on or by December 31st 2013.
3. In default of such payment, interest shall accrue at the rate of 6% from January 1st 2014;
4. Each party shall bear his or her own costs;
5. Liberty to apply.

Margaret A. Reifer

Judge of the High Court