

BARBADOS

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
(Family Division)**

Suit No. 541 of 2007

BETWEEN:

WILBERT LEON WALTERS

Applicant/Husband

And

JUAN DEWELL SMITH-WALTERS

Respondent/Wife

Before:

The Hon. Madam Jacqueline A. R. Cornelius Judge of the High Court

Appearances:

Ms. Nicole C. Roachford, Attorney-at-Law for the Applicant/Husband

Ms. Margot Greene, Q.C., Attorney-at-Law for the Respondent/Wife

2009: January 26

2009: March 11, 12, 23 and 24

2011: May 19

2013: December 5

JUDGMENT

INTRODUCTION

- [1] **Cornelius, J:** This is an application for alteration of the property interests of a matrimonial home legally owned by Wilbert Leon Walters, the Applicant/Husband.

BACKGROUND

- [2] Wilbert Leon Walters was born on January 15, 1940. Juan Dewell Smith-Walters, who was to become his second wife, was born more than 30 years later on June 12, 1970. They were married in 1996, and at the time, they had already cohabited for at least 3 years. The parties were also the parents of a daughter, Crystal Danielle Walters, born two years before the marriage on July 30, 1994. At the time of the Application for Other Relief filed by Mrs. Smith-Walters, she was 14 years old and a student of the Ellerslie Secondary School.
- [3] On October 5, 2007, Mr. Walters, the Applicant, filed an Application for Dissolution of Marriage. In his Application he pleaded that the marriage had irretrievably broken down and the parties had been living separately since 2000. The Application was heard on November 13, 2007 and a *decree nisi* was granted.
- [4] Mrs. Smith-Walters subsequently filed an Application for Other Relief on April 17, 2008, seeking joint custody of Crystal, with care and control to herself and liberal access to Mr. Walters as well as an order that he pay monthly maintenance of \$1,000.00 in respect of the minor child, as well as one-half of all of her medical, dental, ophthalmic, pharmaceutical and educational expenses.
- [5] Mrs. Smith-Walters also made an application for the following orders in connection with the matrimonial home situate at 94 Husbands Heights in the parish of Saint James
- (i) An alteration be made pursuant to *section 57* of the *Family Law Act* transferring to the Respondent at least one-half share of the matrimonial property;

- (ii) The matrimonial property be valued by a valuer agreed by the parties, or, in default of such agreement, as fixed by the Court and that each party pay one-half share of the cost of the said valuation;
- (iii) The Applicant pay to the Respondent such sum as represents her share and interest in the property and such payment be made within 3 months of the Order of the Court;
- (iv) In default of any such payment by the Applicant to the Respondent the matrimonial property be sold by public auction or private treaty and that the Respondent be paid such sum as is due and payable to her in respect of her share and/or interest in the said matrimonial property from the proceeds of the sale; and
- (v) Such other Orders as the Court may deem fit.

[6] On January 26, 2009, the Court granted the order regarding the valuation of the matrimonial property and pursuant to that Order a valuation was conducted by G. Arthur Ramsay of George A. Ramsay & Co. Ltd, who inspected the land and house situated at No. 94, Husbands Heights, Saint James and in his Appraisal Report dated August 20, 2009 estimated its market value at that date as being \$600,000.00. This Appraisal Report was entered into evidence through an affidavit deposed by Mrs. Smith-Walters on September 24, 2009 and filed in the Registry on October 14, 2009.

AGREED FACTS

- [7] Based on the evidence given by each of the parties in their affidavits and oral evidence, it is clear that some relevant facts are not in dispute.
- [8] It is, for example, undisputed that the land at 94 Husbands Heights in the parish of Saint James was purchased by Mr. Walters from the National Housing Corporation for the sum of \$17, 424.00 long before the parties married. The conveyance dated August 9, 1982 by which the National Housing Corporation conveyed to him title to the land is in his name only.
- [9] It is also undisputed that the 3 bedroom, 3 bathroom concrete block house constructed on that land, which the parties shared as their matrimonial home, was built during Mr.

Walters' first marriage to Jean Jeanette Walters. The said Jean Jeannette Walters contributed the sum of \$85,000.00 towards the construction of the house while the remainder was provided by the Mrs. Smith-Walters, who subsequently paid his first wife \$125,000.00 for her share and interest in the property when they divorced in 1989.

[10] Mrs. Smith-Walters does not attempt to claim that she made a direct or indirect contribution to either the purchase of the land or the construction of the house that rests upon it. She accepts that the construction of the matrimonial home had been already been completed and the house fully furnished when she began to reside there with Mr. Walters in 1993. Mr. Walters nonetheless produced, possibly out of an overabundance of caution, evidence of his construction of the matrimonial home in the form of records showing expenses he had incurred in building and furnishing it.

[11] Both parties agree that Mrs. Smith-Walters was not employed during the first few years of their marriage. It was not until 1995 that she commenced working at the constituency office of Elizabeth Thompson and she remained working there until 1999, when she obtained employment as a clerical officer with the National Conservation Commission (NCC).

[12] Until he retired in 2000, Mr. Walters, who had a PhD in Education, was employed as a secondary school teacher. It is therefore undisputed that from 1993 until 1995, it was Mr. Walters alone who shouldered the financial responsibility for running their household. It is also undisputed that Mr. Walters, who likely earned more than Mrs. Smith-Walters, remained solely responsible for paying all utility bills, except the telephone and internet bill, even after his wife began earning a salary.

[13] Finally, Mrs. Smith-Walters does not challenge Mr. Walter's evidence that he was diagnosed with prostate cancer in 2003 and had received surgical treatment for it in 2004. His evidence is that his cancer is likely to return any time and he was therefore required to be on a special diet and take prescribed medication.

DISPUTED FACTS

[14] The primary areas of dispute between the parties are with respect to (i) the length of their union; (ii) the contributions allegedly made by Mrs. Smith-Walters to the improvement of

the matrimonial property; (iii) the contributions made by her in her capacity as homemaker and parent; and (iv) the effect of the relationship upon her earning capacity.

[15] There is some disagreement between the parties as to the date on which their relationship started as well as to the date on which they separated. Mrs. Smith-Walters alleged that the relationship commenced when she was just 17, while her husband claims that while they met when she was 17, she had actually been 23 years old when they became a couple. Both parties accept, however, that they commenced cohabitation in 1993.

[16] In his Application for Dissolution, Mr. Walters asserted that the parties separated in 2000. Mrs. Smith-Walters however, contends in her affidavits and through her counsel that the parties did not actually separate until at least around 2006. It is clear from the affidavit evidence of both parties, and I therefore find, that although the parties were experiencing matrimonial difficulties in 2000, and possibly even earlier, they had not actually separated on that date, but only did so on or around 2006.

[17] As to the length of the union, I find that regardless of the precise date at which they commenced their romantic relationship, the parties began cohabiting as a couple from 1993 and that their relationship ended in 2006. I therefore find that the parties were together for more than 10 years.

[18] Turning now to Mrs. Smith-Walter's contributions to the matrimonial property, the Wife testified that she had contributed directly to the preservation and improvement of the matrimonial property in a number of ways. She provided the following examples of her contribution:

- (i) tiling the bedrooms that were being used by the parties and their daughter in 2004;
- (ii) helping to repair the roof in 2006;
- (iii) replacing the wood in the front and middle bedrooms when they became infected with termites;
- (iv) since 1999, painting the house during the Christmas season in order "*to freshen it up*";
- (v) contributing money towards the land tax bill;

- (vi) helping to pay for the cost of landscaping the house;
- (vii) paying the telephone and internet bill; and
- (viii) buying a number of appliances for the home, as well as cutlery and other furnishings such as linen, curtains, rugs and ornaments.

[19] Regarding her evidence as to her direct contribution to the conservation and improvement of the matrimonial property, Mr. Walters accepted that she paid for the telephone and internet bills and that she had bought some appliances. While he admitted that she had installed and paid for the telephone and internet, he contended that she did so for her personal use and it was not to his benefit. He also contended that the appliances she had bought were, save for the washing machine, all purchased despite the fact that the parties already had these appliances and there was therefore no need to do so. As to the tiling of the bedrooms, Mr. Walters had initially deposed that the tiling was the only alteration Mrs. Smith-Walters had made to the matrimonial home. However, in his evidence before the Court, he stated that while she had removed the carpets in those bedrooms without his permission and then obtained a workman to replace the tiles, he had helped her to do so. He strongly denied that she made any contribution to the land tax bill or that she had helped to pay for the roof or otherwise assist in maintaining the house. He also denied that she painted the house in preparation for Christmas, alleging that not only did the house not need painting, but that she had never spent the season there. It was also his evidence that any furnishings purchased by her had been purchased for use in her room only.

[20] Mrs. Smith-Walters sought to place considerable emphasis on her contributions as homemaker and parent. She alleged that as homemaker it was she who undertook the primary responsibility of cleaning the home. It was her evidence that once she commenced working she was also the person who financially maintained Crystal, the child of the marriage, paying for her medical supplies and expenses and purchasing all of her clothing, school uniform and supplies, personal grooming products and any other items she required. Her evidence was that she also paid for her daughter's lessons and leisure activities and that not only did she financially maintain Crystal, but she also looked after her by preparing her meals, ironing her clothes and helping her as a parent

should. Indeed, she alleged that on his retirement her husband did not help look after Crystal in any way, financial or otherwise. According to Mrs. Smith-Walters, she had not only looked after her daughter, but had also, during the course of the marriage, looked after her husband.

- [21] On the production by Mr. Walters of receipts for medical and dental services paid by him with regards to his daughter, Mrs. Smith-Walters was forced to concede in cross-examination, however, that her husband had paid for their daughter's medical expenses, but alleged that he had then insisted that she pay half of them and that she had in fact done so. The Court does not accept her evidence on this point.
- [22] Mr. Walters does not deny that his wife made some contribution, but strongly disputes the extent of it. He claims firstly that never during the marriage or after their separation did she wash or cook for him or the family. Indeed, he seems to say that she never cared for him at all, alleging that she offered no assistance, financial or otherwise, when he fell ill with prostate cancer in 2004. He also contended that she thought it below her to clean the house, but then contended first in examination-in-chief that that she only cleaned her bedroom and then in cross-examination that she sometimes cleaned.
- [23] It was also his evidence that he financially maintained the household by paying all utilities and purchasing the groceries, as well as initially giving his wife a monthly personal allowance for her needs. He alleged that although he worked and brought in the income, he also cleaned the home and yard and cooked all the meals, contending that Mrs. Smith-Walters refused to cook and thought it below her to clean.
- [24] According to Mr. Walters, financial responsibility of Crystal initially fell solely on his shoulders, but Mrs. Smith-Walters had later assumed some limited responsibility by purchasing clothes for their daughter, but only after he objected to the type of clothes that Crystal wore. He also accepted that she purchased food for Crystal and herself, but alleged that she did so only after the parties separated. He insisted that he had been responsible for the day-to-day care of their daughter but later alleged that Mrs. Smith-Walters limited his interaction with and influence on her, sometimes even preventing her from using items be bought for her.

- [25] As to the effect of the marriage on the earning capacity of Mrs. Smith-Walters, Mr. Walters deposed that he had sought to urge upon his wife the importance of education and attempted to encourage her to embark upon tertiary education so that she could make something of her life. He alleged that he had paid for her airline ticket to Canada precisely so that she could do so but that she had failed to take advantage of that opportunity. He revealed in cross-examination, however, that on her return from Canada he had intended to marry her and have a child with her and that he did prefer that she remain at home to look after their child until the child was 3, although he insisted he had consistently sought to persuade her to continue her education at the Barbados Community College. He admitted that he played no part in the O-levels she had subsequently received from the O'level institute and did not even know in what subjects they were.
- [26] Mrs. Smith-Walters testified that she had become fascinated with and fallen in love with Mr. Walters when she was 17 and that he had been lonely and wanted a child. She alleged that she had indeed wanted to pursue a post-secondary education in Canada, but her husband had begged her to return to him. She also contended that he had wanted her to remain at home and look after their child and had been displeased when she searched for and eventually found employment.
- [27] From the evidence of both parties, it is clear to the Court that financial responsibility for running the household fell upon and was borne almost entirely by Mr. Walters, as his wife, by her own admission, was not employed outside the home for much of their relationship. Indeed, it was her own contention that her husband requested her to remain home to look after their child rather than to take on outside employment and Mr. Walter did indeed admit to this in his cross-examination. It is clear to the Court, however, that Mrs. Smith-Walters did make some contribution to running the household after she became employed and did so to the best of her ability, but the Court finds that the contributions of her husband also never ceased.
- [28] It is evident to the Court that Mr. Walters has deliberately sought to underplay any contribution made by his wife while Mrs. Smith-Walters has sought to inflate the same. I find it difficult to believe, however, that during the course of the marriage, Mr. Walters not only worked but also undertook primary responsibility for the care of the household

and child with the Wife doing little to nothing. In this respect, I am unable to accept his evidence and favor that of his wife. Accordingly, I find that, despite Mr. Walters' somewhat contradictory evidence to the contrary, Mrs. Smith-Walters did assist in cleaning and cooking for the household and it was she who was also primarily responsible for looking after the child of the marriage.

ISSUES

- [29] Given the facts of this case as outlined above, the primary issue in this case, as in most applications under *section 57* of the *Family Law Act*, is whether Mrs. Smith-Walters is entitled to any share and/or interest in the matrimonial property or to any adjustment of the said share and/or interest in her favor.
- [30] In order to determine this issue, the Court is required to determine whether Mrs. Smith-Walters has made any contribution, financial or otherwise, to the conservation of the matrimonial property as she has alleged and as her husband has categorically denied, and the extent and effect of any such contribution.

SUBMISSIONS TO THE COURT

- [31] Learned Counsel for Mr. Walters, Ms. Roachford, firstly submitted that the Court should consider the marriage between the parties as having been a short marriage rather than a long one. It was her submission that although the decree absolute had not yet been granted, the longest period for which the parties could have cohabited was from 1993 to 2000, which was a total period of 7 years.
- [32] Counsel pointed out, quite correctly, that where a short marriage was found to have occurred, the respective contributions of the parties to the direct acquisition and conservation of the matrimonial property had to be scrutinized closely, whereas in a long marriage, the weight to be attached to the initial substantial contribution by one party could be eroded by the later contributions of the other party and each initial contribution did not therefore have to be examined with such care.
- [33] Counsel strongly disputed Mrs. Smith-Walters' evidence with respect to the direct and indirect financial contribution she had allegedly made to the conservation and

improvement of the matrimonial property and urged the Court not to accept it, noting that it was not substantiated by any documentary proof. Counsel also pointed out that her evidence with respect to her contribution as homemaker and parent had been challenged by the evidence of Mr. Walters.

[34] Ms. Roachford argued that whether the Court preferred the evidence of the Mrs. Smith-Walters or Mr. Walters, the contribution of Mrs. Smith-Walters was clearly minimal and she was not therefore legally entitled to any share or interest in the matrimonial home. In making this submission, she directed the Court to the English case of *Pettitt v Pettitt* [1969] 2 All ER 385, in which Lord Reid had held that a wife was not entitled to a share in matrimonial property simply as a result of cleaning the house or helping the husband to redecorate as improvements that have the effect of altering one party's interest should be of a capital or non-recurring nature. Ms. Roachford submitted that the position adopted by the English Court in *Pettitt* was equally applicable to Australia from which inspiration for the *Family Law Act of Barbados* had been obtained.

[35] With respect to the application of *section 53(2)*, Ms. Roachford directed the Court to the Australian authorities of authorities of *Waters v Jurek* [1995] FamCA 101 and *Mallet v Mallet* to submit that the factors listed in *section 53(2)* could not be used to give a party a share and interest in the property where she had none as the purpose of taking into account the *section 53(2)* factors was simply to ensure that any order made was just and equitable; the aim was not to equalize the financial strengths of the parties.

[36] Using *Clauson v Clauson* [1995] FamCA 10 as authority, Ms. Roachford argued that the fact that Mrs. Smith-Walters had care of the minor child was not a factor in her favor as her care of the minor child, who was almost an adult, did not hinder her ability to work or continue her education.

[37] Ms. Roachford argued that the *section 53(2)* factors favored instead the Mr. Walters. He was elderly and not only had a history of prostate cancer, but was also feeling the effects of his advanced age upon his health. In contrast, his wife was relatively young and in good health, having no history of any diseases or illnesses. Mr. Walters was also retired and survived solely on his pension, as his gratuity had been used to pay his medical bills. The proposed maintenance also increased his liabilities and expenses. His wife, however,

remained gainfully employed and was likely to continue being so employed for a number of years to come. Her earnings, argued Ms. Rochford, were also likely to increase once she obtained her Bachelor's degree. Moreover, counsel for the Applicant urged the Court to take judicial notice of the fact that by working for the NCC, a statutory board, for the last 10 years, Mrs. Smith-Walters had legally qualified for a pension and gratuity under *sections 9 and 10* of the *Statutory Board (Pensions) Act, Chapter 484 of the Laws of Barbados*. She submitted that her capacity to earn and her future pension and gratuity placed her in a much stronger financial position than Mr. Walters.

[38] Finally, Counsel argued that if the Court was minded to make any alteration or adjustment in light of the factors listed in *section 53(2)* of the Act, on the facts of the case, a downward adjustment should be made to any interest of Mrs. Smith-Walters. She should not be given more than a 5% share in the matrimonial property, which share would amount to \$30,000.00, but should really, according to Mr. Walters, be given no share at all.

[39] Ms. Margot Greene, QC, who appeared on behalf of Mrs. Smith-Walters accepted that the sole issue for determination was what share, if any, her client was entitled to in the matrimonial property. Relying on the Australian case of *Pastrikos v Pastrikos (1980) FLKC 90-897*, learned Queens Counsel submitted that in determining an application under *section 57* of the *Family Law Act of Barbados*, the Court was required to conduct a dual exercise. The Court first had to examine the history of the marriage and the past direct and indirect financial and non-financial contributions to the acquisition, conservation or improvement of the matrimonial property. The Court was then required to examine the maintenance element i.e. the current financial resources and means of the parties, as well as their future needs and obligations and what would be just and equitable in view of their individual financial circumstances.

[40] According to Ms. Greene, Q.C. Mrs. Smith-Walters had made a non-financial contribution to the conservation or preservation of the former matrimonial home in her capacity as homemaker or parent. Ms. Greene pointed out that although the term “*homemaker*” had been used in the Act, it had not been defined. She urged the Court to give the term the widest possible definition that was reasonable in the circumstances of

the case. She submitted that any definition should take into consideration all those duties which are recognized as being part of the proper management of a household including the domestic duties traditionally undertaken by a housewife, as well as the responsibilities of a mother. Such a wide interpretation had been, she pointed out, favored by the Court in the Australian case of *W v W (1980) FLC 90-872*.

[41] In making this submission, Counsel for the Respondent also directed the Court to the Australian cases of *Wardman v Hutson (1978) FLC 90-446* and *Zappacosta v Zappacosta (1976) FLC 90-089* where the Court had held that a wife bearing and rearing children and minding a home freed her husband to engage in economic activities and was therefore entitled to share in its fruits. Ms. Greene argued that in the instant case, although the land was bought and the house constructed by the Husband before the parties married or cohabited, the wife had engaged in its daily maintenance and her activities entitled her to a share in the property.

[42] Ms. Greene, QC agreed with Counsel for the Applicant that the Court had to consider the length of the union between the parties, but challenged Ms. Roachford's submission that the union had been short in duration. The parties, she alleged, had been cohabitating with each other before the marriage and this period, she submitted, should be considered, just as it had been in *Olliver v Olliver (1978) FLC 90-449*. It was the submission of Ms. Greene that if one took into account the period of co-habitation before the marriage, the couple would have been together for 15 years, although they had only been legally married from 1997 for, in contrast to Ms. Roachford, Ms. Greene erroneously contended that the marriage had ended in 2008 and not 2000. Given the evidence of her client, however, it is clear that Ms. Greene had intended to submit that the marriage had exceeded 10 years and had ended either in 2005 or 2006.

[43] Ms. Greene argued that solely on the basis of the contributions made by the Wife to the conservation and improvement of the matrimonial property, as well as her contribution as homemaker and parent, the Wife was entitled to a share that consisted of at least 30 percent of its current value.

[44] With respect to the factors set out in *section 53*, Ms. Greene agreed that the Husband was considerably older than the Wife, but submitted that they both enjoyed good health.

While she conceded that Mrs. Smith-Walters was currently employed and Mr. Walters was not, she pointed out that her position was that of a lowly governmental clerk as she was still in the beginning stages of her working life, despite her age. She contended that Mrs. Smith-Walters was at that stage of her career because she had compromised her educational opportunities by cohabiting with Mr. Walters and bearing him a child that she was forced to raise with little help from him. Mrs. Smith-Walters had, on the urging of her husband, remained home to take care of their daughter and the marriage and Ms. Greene submitted that this had impacted upon her future prospects in the world of work and should be taken into consideration by the Court.

[45] As to *section 53(2)(b)*, Counsel pointed out that this was a very wide and a very important provision that permitted the Court to look at the entire financial resources of both parties including their capital and income, regardless of its source. She accepted that Mrs. Smith-Walters was mentally and physically capable of employment and had sufficient income to support herself adequately. Ms. Greene readily conceded that it was possible that her income could increase, while the fixed income in the form of a pension upon which the Husband relied was unlikely to change.

[46] Counsel indicated, however, that Mrs. Smith-Walters had no property to provide her with shelter or additional earnings and that her sole asset was any share that she may possess in the matrimonial home. Counsel accepted that the matrimonial home was the sole property of Mr. Walters who resided in it and therefore urged the Court to order a lump sum payment of the wife's share in the property which could then be used by her towards the purchase of a home.

[47] Ms. Greene argued that two factors in favor of Mrs. Smith-Walters that should have the effect of increasing her share of the matrimonial property was the fact that she had care and control of the minor child of the marriage and the fact that she was entitled to a reasonable standard of living. Relying on *Aroney v Aroney (1979) FLC 70-709*, she submitted that the standard of living to which Mrs. Smith-Walters was entitled was to be determined in light of the standard to which she had been accustomed during the marriage and that such a standard entitled her to at least be able to provide a comfortable home for herself and her minor child.

[48] Finally, Ms. Greene contended that *section 53(2)(n)* required the Court to consider any fact or circumstance which the justice of the case required to be taken into account had had to be interpreted broadly as it had been in *Aronney v Aronney (ibid)*, *Olliver v Olliver, Tuck v Tuck (1981) FLC 91-021 and Perry v Perry (1979) FL 90-701*. Interpreting this section broadly required the Court to take into account the disparity in the ages of the parties and the influence that Mr. Walters had on his wife during the early stages of the marriage. This influence, it was argued, had caused the wife to follow a course of conduct that would have been beneficial to her husband but no help to her and was responsible for her being a lowly clerk in a government department working for a small wage and having, at the time of trial, no real prospect of advancement.

THE LAW

[49] The law governing this application is to be found in *section 57* of the *Family Law Act, Cap. 214 of the Laws of Barbados*. *Section 57* confers upon the Court a wide discretion to alter the respective interests of the parties to a marriage in the matrimonial property. In deciding whether and how to exercise this discretion, the Court is required by *section 57(3)* to consider the following:

- (i) the financial contribution made directly or indirectly by the parties to the acquisition, conservation or improvement of the property;
- (ii) any non-financial contribution made directly or indirectly to the acquisition, conservation or improvement of the property by the parties including any contribution made in the capacity of home-maker or parent; and
- (iii) the matters referred to in *section 53 (2)* of the *Family Law Act* in so far as they are relevant.

[50] Guidance as to how the Court should exercise its discretion has been provided by the Court of Appeal in *Proverbs v Proverbs (unreported) Court of Appeal of Barbados, Civil Appeal No. 7 of 2001, Decision of May 28, 2002* where it was held that the Court was to adopt a three-step approach that required it to do the following:

- (i) the Court had to identify and value the net property of the parties;

- (ii) the Court was then required to evaluate and consider the respective contributions of the parties to the matrimonial property; and
- (iii) finally, the Court had to consider the factors listed in *section 53(2)* of the *Act*, in so far as these factors are relevant.

[51] It was pointed out by Reifer, J in *Archer v Archer (unreported) High Court of Barbados Suit No. 432 of 2001, Decision of March 14, 2006 at para 11* that the Court's obligation to ensure that any order made is just and equitable could be considered a fourth step.

The Matrimonial Property

[52] In the instant case, there is no difficulty identifying the property of the parties. Neither party has much assets and it is accepted that the matrimonial property consists solely of the matrimonial home situate at 94 Husbands Heights in the parish of Saint James, which has been valued at \$600,000.00.

The Contribution of the Parties

[53] As the matrimonial property has been identified and valued without any difficulty, the Court is now required to assess the contribution of the parties within the meaning of *section 57(3)(a) and (b)* and to thereby “*determine their entitlement based on contribution expressed as a percentage of the net value of the property*”: *Wilson v Wilson (unreported) Court of Appeal of Barbados, Civil Appeal No. 5 of 2003, Decision of March 22, 2007 at para 30*.

[54] Where the marriage is not a short one, the Court in assessing the parties' respective contributions, is required to consider generally the overall contribution made by each party to the property: *In the Marriage of Woodham [1984] FLC 91-547*. The value to be accorded to the contribution will depend on the individual facts of the case: *Mallet v Mallet (1984) 156 CLR 605*. The Court's examination of the contributions made is not confined to financial contributions only. Indeed, the Act in *section 53(b)* specifically requires it to examine any contribution made in the capacity of homemaker and parent.

[55] In *Proverbs (supra)*, the Court of Appeal quoted with approval the now oft-cited dictum of *Evatt CJ* in *Rolf v Rolf (1979) FLC 90-629* who emphasized that the contribution of a

wife to her home and family as a homemaker “*should be recognised not in a token but substantial way.*” It is clear that this was the intention of Parliament when it drafted the **Family Law Act** that this be done.

- [56] Although using the term homemaker, Parliament did not, as Ms. Greene, QC rightly noted, make any effort to define the term. However, assistance as to its meaning is available from the judgment of Williams JA of the Barbados Court of Appeal in **Cox v Cox (unreported) Civil Appeal No. 19 of 2005, Decision of Decision of March 22, 2007** where he examined in some detail the term as it has been defined in Australian jurisprudence. Among the cases to which he referred is the case of **Green v. Robinson (1995) 18 Fam L.R. 594** where the judge noted that homemaker was a curious expression not defined by statute and observed that while homemaking may and usually does involve significant work of a domestic nature, it was not limited to domestic tasks but essentially involved the creation of “*a comfortable and welcoming environment in a household and an emotional environment of stability*” for the members of the home.
- [57] The marriage in this case, including the two years of cohabitation prior to the marriage, was clearly a long one, lasting in total around 12 years. It is therefore the overall contribution of each party that must be examined, rather than each particular contribution.
- [58] It is undisputed that Mrs. Smith-Walters has not made any contribution at all to the acquisition of the matrimonial home. As Mr. Walters, to use his own words, “*worked hard for the home*” and was responsible for its construction and furnishing, he appeared to have regarded the matrimonial home as being his home only, admitting that he sometimes referred to it as “*my home*” and alleging that his wife did not and never had any interest at all in the property (which the Court does not accept) while she has testified that she considered it to be their home.
- [59] Having carefully considered all the evidence given in the matter, I have already found that each of the parties have made valuable contributions during their course of their marriage to each other, the husband primarily as breadwinner and the wife mainly as mother and homemaker. Her role as homemaker cannot be disregarded.

[60] To my mind, I assess the Mrs. Smith-Walters' contribution, primarily resulting from her role as homemaker and parent, at 20% of the value of the matrimonial home.

The Section 53(2) factors

[61] As the Court has assessed the parties' respective contributions under *section 57 (a) and (b)* and it now turns to consider whether any adjustment should be made to the share to which each party is entitled by reason of the parties' present and future needs and means in light of the factors listed in *section 53(2)* of the Act.

[62] The factors in *section 53(2)* relevant to the instant case 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;
- (c) whether either party has the care or control of a child of the marriage who has not attained 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; and
- (f) the duration of the marriage.

[63] The primary factor in favor of Mr. Smith-Walters is his age and health. He is now retired and his sole source of income is his pension. He is, by his unchallenged evidence, still suffering from the effects of his cancer. His health is not likely to improve with time.

[64] In comparison, Mrs. Smith-Walters is healthy and still relatively young. To her credit, she is enrolled at the University of the West Indies pursuing an undergraduate degree in Sociology, whose completion should increase her employability, and therefore the salary available to her. The Court has no doubt that she will make a concerted effort to achieve her degree as it is clear to the Court that she recognizes the value of academic qualifications and is determined to obtain them. She had, by the unchallenged evidence of her husband, achieved 3 additional O-level qualifications after she left school with an insufficient amount and did so while employed and, according to her, also having primary responsibility for her daughter.

[65] The *section 53(2)* factor primarily supporting an alteration in favor of Mrs. Smith-Walters is that that she has care and control of the child of the marriage. Both she and the child are entitled to maintain a reasonable standard of living and such a standard of living should, of course, include a roof over their heads. This is a factor carrying substantial weight.

[66] There is, however, an additional factor in her favor. The marriage, which as I have mentioned earlier was one of some duration, was one in which she made sacrifices that benefited her family but have also had an adverse impact upon her financial resources and her standing in the employment field.

[67] Taking in to account all the relevant *section 53(2)* factors, the Court can only conclude that in light of these factors and despite the age and health of Mr. Walters, it is just and equitable to make an adjustment of at least 5% of the parties' interests in the property in favor of Mrs. Smith-Walters, who the Court has emphasized has to look after not only herself but the child of the marriage.

CONCLUSION

[68] In the circumstances, the Court is satisfied that the Wife has, primarily as a result of her contributions as homemaker and parent, made a contribution of no more than 20% to the conservation and improvement of the matrimonial property and further that in light of the *section 53(2)* factors it is just and equitable in the circumstances to increase her interest in the property from 20% to 25%.

[69] Accordingly, it is hereby ordered that:

- (i) the Applicant and Respondent be granted joint custody of the minor child of the marriage with care and control to the Respondent and liberal access to the Applicant;
- (ii) the Applicant pay \$750.00 a month towards the maintenance of the minor child, Crystal Danielle Walters, and one half of all medical, dental, ophthalmic, pharmaceutical and educational expenses incurred by the Respondent/Wife from time to time in respect of the said minor child until the said child reaches

the age of 18 or until she completes her first university degree, associate degree or vocational training;

- (iii) a decree absolute be granted under *section 42* of the *Family Law Act* as it is declared that the Court is satisfied that proper arrangements have been made for maintenance of the child of the marriage;
- (iv) an order under *section 57* of the *Family Law Act* altering the interests in the matrimonial home situate at 94 Husbands Heights in the parish of Saint James so as to vest 25% in the Respondent/Wife; and
- (v) an Order that the Applicant/Husband pay the Respondent/Wife the value of 25% of the matrimonial property, or failing which, that the property be sold and 25% of the proceeds of any such sale after expenses be paid to the Respondent/Wife.

COSTS

[70] Pursuant to *section 94 (1)* of the *Family Law Act*, each party to this action is to bear his/her own costs.

Jacqueline A. R. Cornelius

Judge of the High Court