

BARBADOS.

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

NO. 458 of 2008

BETWEEN:

VICTORINE PATRICIA GARVEY *Applicant*

AND

PETER ATHELSTON WILKINSON *Respondent*

Before the Honourable Mr. Justice William J. Chandler, Judge of the High Court.

2010: March 16, 17

April 20

May 10

2011: July 01

Mr. Clement E. Lashley, QC. with Ms. Honor Chase for the Applicant.

Mr. Ralph A. Thorne, QC. for the Respondent.

DECISION

Introduction

[1] This matter involves an application for property settlement under the provisions of the **Family Law Act of Barbados Cap. 214**.

[2] The properties involved are:

1. A dwellinghouse situate at 4th Avenue, Park Road, Bush Hall, St. Michael, and valued \$150,000.00.

2. A chattel dwellinghouse situate at Danesbury, Black Rock, St. Michael, valued \$17,000.00 (the Danesbury property).

3. A Toyota motor car valued \$7,500.00

[3] The properties have been valued by Mr. Stephen Wiltshire of Felicity Limited and the valuations given above have been agreed as their fair market values.

[4] The Applicant seeks a declaration that:

(1) The relationship which existed between the respondent and herself was a union other than marriage within the meaning of **section 39 of part 5 of the Family Law Act of Barbados.**

(2) The two properties are owned by the parties jointly;

(3) A declaration of the respective interests of each party in respect of both properties

(4) A declaration in respect of the furniture and appliances in possession of the respondent found at the house situate at Park Road, Bush Hall, St. Michael.

(5) The applicant seeks such consequential order/orders to give effect to the said declarations above referred to pursuant to **section 56(2) of the Family Law Act.**

(6) Further or other relief

Background

[5] The parties cohabited in a union other than a marriage from about 1996 until August 2007. This is the union in respect of which these proceedings arose. Prior to this union, they were involved in a relationship which lasted four or five years before the applicant left Barbados to reside abroad.

[6] It is common ground that the Respondent promised to marry the applicant but this promise was never translated into action. The applicant joined the church and withdrew from the cohabitation which she then regarded as contrary to her Christian principles.

[7] In the affidavit dated 28th July 2008 and filed on the 6th August 2008 in support of the application, the applicant deposed that:

1. In so far as the facts and matters deposed to herein are within my own knowledge, they are true. In so far as they are not within my knowledge, they are true to the best of my information being derived from my Attorney-at-Law.

2. The relationship between the Respondent and me commenced in the year 1996 when we lived at Sealy's Land, Bank Hall, St. Michael for about 9 months. Thereafter we moved to Park Road, Bush Hall, St. Michael where we rented his sister's house. With my funds I furnished the entire house with items of furniture, bed, appliances, curtains, cutlery, pots and pans. It was in the year 2000 that we started the demolition of this wooden house and started the construction of a wall house on the same land. In a joint effort we purchased cement blocks, stone, grit, sand, steel, windows, tiles, wood and all material essential for the construction of such a structure.

3. We commenced construction of the said house in January 2000 and completed it in December the same year.

4. In regard to the wood and wall house near Danesbury, Black Rock, St. Michael, this house was purchased by the Respondent for the sum of \$18,000.00 in 1994 and I made a contribution of \$10,000.00 towards the purchase of this house. The house has been rented since the year 1994 to 1995 at \$375.00 per month and but for the occasional minor repairs the Respondent has been the sole Beneficiary of these rents from that time until now.

5. In this regard I say that from the time the house was built and throughout the years I have made direct contributions to the acquisition conservation and improvement of both properties.

6. Throughout the duration of the relationship I cleaned the house, cooked the meals and washed for both the Respondent and

myself. I was conscious of my obligation to the Respondent as his companion and in this respect I saw to the personal and intimate needs of the Respondent. I therefore made a significant contribution as a homemaker.

7. The Respondent has given me the use of a Toyota Corolla motor car 1992 model which is valued at \$12,000.00 after I sold my car for \$5,000.00. He retains ownership of the same. Two years ago I paid \$2,500.00 to have this vehicle repainted together with other major work, thereto.
8. I moved away from the house at 4th Avenue Park Road, Bush Hall, St. Michael in August 2007 and I live in rented accommodation, paying \$1,450.00 per month.
9. I am employed as a Dental Hygienist earning the sum of \$5,000.00 while the Respondent is employed at Caribbean Broadcasting Corporation as a Senior Broadcaster Supervisor. His income is unknown to me.
- 9.1 There are no children from the relationship.

[8] No orders are sought under **section 57** of the **Act**.

Union other than marriage

[9] This is defined in **section 39** of the **Family Law Act** as follows:

“Union other than marriage or union means the relationship that is established when a man and woman who not being married to each other, have cohabited continually for a period of 5 years or more and have so cohabited within the year preceding the institution of the proceedings.”

Both parties have acknowledged that they cohabitated in a union other than marriage as defined by the **Act**. Accordingly, the Court has no difficulty in finding that such a union existed and that the provisions of the **Act** are applicable to these proceedings.

Property at Park Road

- [10] The applicant deposed that the property at Park Road was formerly an old chattel house which was falling apart. She stated that she and the respondent decided to build a wall house. The present structure was built without a mortgage. The respondent sold some land that he had in Gibbons, Christ Church and those monies were put into the construction. She was not aware of the price it was sold for.
- [11] She deposed further that she worked as a dental hygienist at the time and they cohabited in the house which was being converted into a house of masonry construction. She stated that she put money every month into the construction from the beginning.
- [12] She said she bought blocks, grits, sand and grout amongst other things. She either gave the respondent a cheque or she purchased the materials as required. The respondent, Mr. Wilkinson paid the workmen, she never paid them. She estimated that she bought ninety-nine percent (99%) of all the food, whilst he paid the other one percent (1%).
- [13] She said further that she paid the utility bills, M.C.T.V., telephone, gas, light, water and furnishings for the house. She bought the appliances. The living room suite was bought for \$5,000.00 from DaCosta's Limited, dining room suite was \$1,500.00 to \$2,000.00 She replaced six dining room chairs for a cost of \$199.00 each. She gave evidence that she purchased two beds, refrigerator, stove, washing machine, pots, pans and microwave. The appliances were purchased on hire purchase and she paid for them monthly.
- [14] Construction started in January 2000 and by December 2000 the house was partially completed.
- [15] The applicant further stated that she would sometimes give the respondent money for the construction and at other times, if he told her that blocks were needed, she would purchase them, pick them up in her car and transport them to the site. The two down (marl) and gravel were delivered by truck and she would give the respondent \$800.00 to \$1,000.00 to pay for them.
- [16] There was never an agreement as to how much money or material she would put in. She just put in because she was planning a life with the respondent and she wanted a better home and better surroundings.
- [17] She did the washing, 95% of the cooking and 100% of the cleaning. She kept most of the bills for the building materials.
- [18] She gave further evidence that the respondent got a loan from the Caribbean Broadcasting Corporation, his employer, to help cover the

cost of the roof which was between \$10,000 and \$15,000.00. She paid \$200.00 per month towards that loan throughout the period during which the house was under construction.

- [19] The applicant gave evidence that she purchased the bathroom fittings, tiles, bathroom sink and faucet; she purchased a double kitchen sink and all the tiles for the house. She also purchased four windows for the bedrooms, a double door for the living room and the window for the living room.
- [20] The respondent, she said, paid part of the cost of the electrical installation and she contributed. Most of the electrical fittings were purchased by the electrician, but she purchased the door bell.
- [21] She purchased the air conditioning unit for the master bedroom for \$500.00 and paid Knights Air Conditioning and Plumbing \$300.00 to \$400.00 for installation and wiring. The solar water heater she purchased for \$2,500.00 but the hire purchase charges brought it up to \$2,973.75. Custom made drapery for the house was purchased by her at a cost of \$3,460.00.
- [22] The applicant kept an account of moneys expended and items purchased for the property which was put into evidence by consent.
- [23] Under cross-examination, she agreed that she left the respondent voluntarily. The applicant said that the title to the land on which the house at Park Road was built was vested in his nieces. She was aware that the land was family land since 1996 and she was also aware that she was putting money into a building