

BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

No.70 of 2004

BETWEEN:

JEWEL EULENDA BREWSTER Applicant/Wife

AND

LEO FOZLO STANLEY BREWSTER Respondent/Husband

Before the Hon. Madam Justice Kaye Goodridge, Judge of the High Court.

2011: January 18, 19

February 8

June 15, 21

December 14

Ms. Margot Greene, Q.C, Attorney-at-law for the Applicant/Wife

Mrs. Beverley J. Walrond, Q.C, and Ms. Nailah Robinson Attorneys-at-law for the Respondent/Husband

DECISION

Introduction

- [1] This is an application in which the parties seek the court's declaration as to what interest, if any, in the former matrimonial home should be vested in the Applicant/Wife.

The Background

- [2] The Applicant and the Respondent started to live together in 1991. They resided in rented accommodation, first at Warners Gardens and then at Chancery Lane, both in Christ Church. At the time the Applicant was employed as a stenographer/typist and the Respondent as a marine biologist in the civil service.
- [3] The parties were married on 22 June, 1996 and separated in December 2002. The Applicant filed her application for dissolution of the marriage on 6 February, 2004. The decree nisi was pronounced on 4 July, 2004 and became absolute on 15 July, 2004.
- [4] The Applicant remained in the former matrimonial home until March 2006. There are no children of the marriage.

The Approach to the Application

- [5] The proper approach to be taken by a court in applications of this nature is set out in the case of **Proverbs v Proverbs (2002) 61 WIR 91**, namely:

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

In addition, the court should not make an order “unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.”

The Property of the Parties

- [6] The evidence disclosed that, prior to the start of cohabitation, the Respondent purchased a parcel of land at Inch Cape, in the parish of Christ Church. He completed the payments for this land in 1995. The land has been valued recently by the Commissioner of Land Tax at \$129,800.
- [7] The Respondent was a shareholder and director of two companies, Innovations R Us and Construct Inn Inc., which were incorporated in 2004 and 2005 respectively. The Respondent stated that, although the Coastal Zone Management Unit (CZMU) awarded contracts to Innovations R Us to undertake work for which the company received \$300,000, this money was paid to sub-contractors. He never received any money from the company and his involvement with both entities ended in 2007.
- [8] The Applicant disclosed that in 2010 her mother gave her a parcel of land which is situated in St. Lucy. The land is presently valued at \$81,000.
- [9] After the conclusion of the hearing, and pending the submission of updated valuation reports by the parties, counsel for the Respondent sought and obtained the leave of the court to file a further affidavit relating to the Applicant’s failure to disclose her purchase of a parcel of land in June 2006.
- [10] The Applicant filed an affidavit in response in which she admitted the purchase of the land for the sum of \$72,228. She also gave oral evidence that she was unaware that she had to disclose this information since the purchase was effected after the divorce had been granted. She admitted that she earned about \$54,000 from the sale which took place on 29 March 2010.
- [11] It must be reiterated that, when determining applications of this nature, the law requires that “all property of the parties is to be brought into account and appropriate weight is to be given to the different factors relevant to each item” – **Carter v. Carter (1981) FLC 91-064 at pp 76,491,76,492** and followed in **McClellan v. McClellan (1983) 18 Barb. L.R. 108 at p.113 to p. 114**.
- [12] The former matrimonial home is situated at No. 23 Maxwell Park in the parish of Christ Church. The parties were unable to agree as to its value and had submitted separate valuations some years ago. In the Respondent’s valuation dated 3 October 2011 which was prepared by Felicity Limited it was valued at \$580,000. Despite the issuance of reminders, the Applicant did not submit an updated valuation until 13 December 2011. That valuation prepared by George Ramsay & Co. dated 6 December 2011 valued the home at \$585,000. Having taken these valuations into account, the Court has arrived at a valuation of \$582,500 which it considers to be a fair representation of the value of the former matrimonial home. The principal balance on the mortgage as at December 2010 was \$125,116.30, with a net value of \$457,383.70.

The Evidence

- [13] Both parties swore affidavits, gave evidence and were cross-examined at the hearing. The Respondent called one witness in support of his case.
- [14] An evaluation of the evidence given in this case shows that there are not many significant areas of dispute between the evidence of the Applicant and the Respondent.
- [15] The evidence discloses that when the parties cohabited prior to the marriage in rented accommodation, the Respondent paid the rent and the utilities and purchased the bulk of the food. The Applicant bought items which needed to be replenished weekly such as bread, milk and vegetables.
- [16] The Respondent’s mother gave him the land on which the former matrimonial home was built. Neither the Applicant nor the Respondent made any financial contribution to the acquisition of the land. The title deeds to the land are in the Respondent’s name alone.
- [17] In 1997, plans were drawn for the house by Mr. Lester Toppin, the Respondent’s work colleague, friend and business partner. The Respondent paid for the plan.
- [18] The Respondent’s father paid for the construction of the house foundation at a cost of \$25,000 and the Respondent paid \$5,000 for the clearing of the site.
- [19] Construction of the house was financed by a loan in the sum of \$177,625 which the parties secured from the Barbados Mortgage Finance Co. Ltd. The Applicant is a guarantor of the loan.
- [20] The house was completed in 1998 and the parties moved into the house in October 1998. Both parties contributed to the purchase of the

furnishings for the house. The Applicant made curtains and sheets and pillow cases for the beds. When the Applicant left the home in 2006 she removed the furniture which she had purchased.

- [21] Payments in respect of the loan began in November 1998. The monthly payment was \$1620.04. The Applicant paid \$300 and the Respondent paid \$1320.04 per month.
- [22] While the parties resided in the house the Applicant and the Respondent shared the household chores. The Respondent paid the sum of \$253 monthly to have the lawns and exterior of the house kept neat and tidy. The arrangement in respect of the payment of utilities and the purchase of their household supplies which existed during cohabitation (see para [15] above) continued.
- [23] The Respondent provided a car for the Applicant to drive. When the car was sold, the Applicant used the monies towards a down payment for a car of her own.
- [24] In September 2000 the Respondent left Barbados for postgraduate study in Wales. The Applicant remained in the house. Prior to leaving, the Respondent made provision to have \$600 deducted monthly from his salary to be sent to a joint account for the Applicant towards maintaining the household. He also continued paying for the monthly upkeep of the lawn right up until his return to Barbados in September 2003.
- [25] Mr. Lester Toppin testified that he knew both parties well and had met the Applicant in the early 1980s and the Respondent in 1988 when he came to work at the CZMU. He knew the property well as he was asked to design a building to be sited at Lot 23 Maxwell Christ Church. He subsequently constructed the building.
- [26] In 2006 he was requested to carry out an inspection of the property and compiled a report in which he identified defects which he found, the measures required to remedy those defects and the associated costs.

The Applicant's case

- [27] Ms. Greene, Q.C. counsel for the Applicant, contended that the Applicant made a direct financial contribution to the acquisition of the matrimonial home by joining the mortgage as a guarantor thus making herself liable for the repayment of that sum. She also paid a share of the monthly mortgage installments for a period of eight years.
- [28] It was also submitted that the Applicant made an indirect financial contribution towards the acquisition of the property by purchasing the ancillary groceries weekly and to that extent freed the Respondent from that obligation.
- [29] As for non financial contributions, it is counsel's submission that during the marriage the Applicant performed the duties of homemaker, keeping the property in good order. When the Respondent pursued studies abroad she remained in the home, cleaning, dusting and mopping and conserving it on her own. The Applicant's conservation efforts continued for the three years she remained in the house after the marriage ended.
- [30] Counsel submitted further that the relationship between the parties was not a short one as they were together for eleven years. The union produced no children but the evidence clearly shows that they pooled their efforts to acquire the former matrimonial home and the Applicant should be awarded a not insubstantial share based on her contributions. She submitted that the Applicant should be awarded a 40% share of the value of the house.

The Respondent's Case

- [31] Mrs. Walrond, Q.C. counsel for the Respondent, submitted that the Applicant had overstated her contributions. She noted that the Applicant paid less than one-fifth of the mortgage for only a period of approximately eight years. She submitted that for the period when the Respondent was abroad he contributed the lion share of the mortgage and provided the Applicant with \$600 monthly and paid for the upkeep of the lawns.
- [32] Counsel contended that the Applicant's assertion that she preserved the home single handedly from dilapidation and deterioration is not supported by the evidence. Mrs. Walrond pointed out that, while the Applicant did repair the plumbing and serviced the windows, this contribution is of a de minimis nature. Several defects were listed in the report of Mr. Lester Toppin of Quality Woods Construction and Homes Design Ltd and the accompanying photographs showed that there were repairs to be undertaken to the house which had not been carried out.
- [33] Counsel acknowledged that the Applicant could not have been expected to undertake all the work which was needed as some of the work may have been beyond her finances but argued that there were other simple things to be done which were not done.
- [34] Turning to the Applicant's claim that she tried to be a good homemaker, counsel submitted that the evidence shows that when the parties resided together they both washed, cooked and cleaned the homes in which they lived. Her assessment of the Applicant's claim that as part of her contribution she swept, mopped and cleaned the house while the Respondent was away is that this is but a contribution to herself.
- [35] Taking all the circumstances into account and having regard to the fact that the equity in the house has risen without contribution from the Applicant, it was the Respondent's submission that a percentage of not more than 15% of the property would be a just and equitable award to the Applicant.

Assessment of contributions

- [36] The land on which the property was built was given to the Respondent by his mother as a gift and the title is vested in the Respondent. It is well established that a gift by the parent of a spouse would be regarded, without more, as a contribution by that spouse alone- **In the Marriage of Kessey [1994] F.L.C 92-495 at 81,149-81,728**. There is no allegation by the Applicant that the mother intended the gift of the land to be a gift to both the Applicant and the Respondent. It is my opinion and I hold that the land on which the matrimonial home is built was a contribution made by the Respondent alone to the acquisition of the property.
- [37] It is the finding of the court that the house was built through initial investments made by the Respondent and his parents and a mortgage which the parties obtained jointly. That mortgage was repaid by the Applicant and the Respondent in disproportionate amounts. The Applicant paid the sum of \$3,600 a year for eight years. The Respondent paid the sum of \$15,840.48 a year from November 1998 until March 2006 when the Applicant vacated the property. Since that date he has been solely responsible for the mortgage and will have the burden of the outstanding balance on the mortgage.
- [38] The Applicant claimed that she made an indirect financial contribution to the acquisition of the property by her purchase of ancillary groceries on a weekly basis when the parties lived together. This was a contribution, albeit small, towards the acquisition of the property. But the point must be made that it was the Respondent who purchased the monthly groceries and paid all the utilities.
- [39] The evidence shows that while the Respondent was out of the island for three years pursuing studies, he continued to pay his share of the mortgage and gave the Applicant the sum of \$600 monthly to assist with her living expenses. He also continued to pay for the gardening services. So that in terms of direct contributions to the acquisition and conservation of the home, the Respondent's contribution is almost 4.4 times that of the Applicant.
- [40] As for non financial contributions, the Applicant says that she cleaned the house thereby preserving it from dilapidation and deterioration. But it is admitted by her that they both washed, cooked and cleaned the homes in which they lived. On the evidence there is not much difference between the parties in home making when they lived together. Consequently I have not placed a substantial value on her role as homemaker.
- [41] The Applicant undertook minor repairs to the house during the time she resided there alone. She also paid for the installation of natural gas service and purchased the necessary hardware.
- [42] The inspection report from Mr. Toppin shows that the house needed various repairs. There was termite infestation to the western side of the building, sporadic surface cracks along sections of the walls and areas of mildew. The cupboards in the kitchen, the dining room and two of the bedrooms needed to be repaired. Remedial work was required in the master bedroom, bathroom and walk in closet. While some of the problems identified existed before the Respondent left Barbados and were not rectified at that time, it is clear that the Applicant did not possess the financial resources to undertake the repairs. The Respondent paid for the remedial work which was done to the house after the Applicant left.
- [43] It is evident that throughout the cohabitation and subsequent marriage the Respondent earned significantly more than the Applicant and assumed responsibility for the majority of the household expenditure. He has been the major contributor to the acquisition and preservation of the property.
- [44] I now turn to a consideration of the **section 53 (2)** factors. The Applicant is 47 years of age and the Respondent is 48 years old. There is no evidence that either party is in other than good health. They are both employed, the Applicant as an Executive Secretary and the Respondent as the Director of the CZMU. His income is greater than that of the Applicant. Both parties will probably be entitled to government pensions but there is no indication as to the likely sums which they would receive.
- [45] As stated previously, the Applicant has been given a piece of land by her mother which she states in her statement of financial circumstances is valued \$81,000. The Respondent has a parcel of land at Inchcape Terrace, Christ Church which has been valued by the Commissioner of Land Tax at \$129,800.
- [46] There are no children of the marriage and so no maintenance obligations arise for either party in this regard. The Respondent now occupies the house with his new family. The Applicant lives in rented accommodation. The Respondent has had the sole use of the property since 2007 while the Applicant had the sole benefit of the property from 2003 to 2006.
- [47] The parties cohabited for 5 years and the marriage lasted 6 years. Having regard to the respective contributions of the parties and applying the relevant principles, I consider it is just and equitable that the Applicant's share and interest in the property be assessed as 20% of the net value of the property.

Disposal

- [48] It is therefore ordered as follows:
1. The Respondent shall pay to the Applicant such sum as represents twenty percent (20%) of the value of the former matrimonial home after deduction of the outstanding mortgage on or before 31 March 2012.
 2. In default of such payment the Respondent shall pay interest on the said sum at the rate of 6% per annum from 1 April 2012 until payment.

3. Each party shall bear his or her own costs.
4. There shall be liberty to apply.

Kaye Goodridge

Judge of the High Court.