

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

FAMILY DIVISION

HIGH COURT

No. 86 of 2002

BETWEEN:

HERMA JOHNSON **Applicant**

AND

RONALD JOHNSON **Respondent**

Before the Honourable Mr. Justice Randall Worrell, Judge of the High Court.

2005: November 18

December 12, 14,15,

2006: May 25

Mr. Cecil McCarthy and Ms. Laura Gooding for the Applicant/Wife.

Mr. Wilfred Abrahams with Ms. Alicia Archer for the Respondent /Husband.

DECISION

Introduction

[1] This is an application under the family law act brought by the applicant **HERMA EULENE JOHNSON** for the following relief.

1. Joint custody of the children of the marriage
2. Care and control of and access to the said children
3. Maintenance for the said children in the sum of \$500.00 each per month, together with one half of

the relevant incidental costs, namely, medical, dental, ophthalmic and educational expenses in relation to the children of the marriage.

4. Declarations to the parties respective interests in the matrimonial property.

[2] There are, it would appear, no issues for the Declaration of this Court in relation to the joint custody of the children in the marriage which is obviously vested in both parties with care and control of the said children of the marriage granted to the applicant wife and access to the respondent husband.

[3] The issue of the interests of the parties with respect to the Division of the matrimonial property has been a matter of significant dispute as evidenced by the affidavits filed by both the applicant and the respondent.

[4] In dealing with the issue of the matrimonial property, this court has to first identify the Assets which make up the matrimonial property and these are as follows:-

- (1) Dwelling house situated at Lot 7, Clover Crescent, Prior Park, St. James.
- (2) Contents of the matrimonial home, payment has already been made to the applicant.
- (3) Severance payments paid to the Respondent in the sum of \$41 000.00.
- (4) Vehicles owned by the parties, there is no claim by either party to this action.

[5] In dealing with the matrimonial home, this property is presently vested solely in the name of the Respondent Roland Johnson. The application of the wife Mrs. Herma Johnson is to the effect that she wishes to have a Declaration under the family law act for the alteration of the interest in the property and both parties have to date been unable to agree on what each should be entitled to have, the main reason for the matter non engaging the court's attention.

[6] In relation to the matrimonial home, this court has two valuations before it. The applicant/wife valuation is in the sum of \$330 000.00 and the respondent/husband's valuation, is in the sum of \$305 000. This court will take the valuation of the matrimonial home to be \$317 500, as being the mean figure of the combined valuations. Therefore this court finds that the value of the matrimonial property is \$317 500.

[7] In approaching the issue of determining the interests of the parties in the matrimonial home the court has to determine the respective contributions of the parties. In effect the court has to make findings as to the matter in which the matrimonial assets have been built up. How have the parties contributed to the accumulation of the property and to what extent? These are the questions which are to be uppermost in the court's mind for the consideration of the interest of the parties.

[8] The affidavit evidence of the applicant of 23rd October 2002 indicates at paragraph 10

The respondent/husband purchased the land on which the matrimonial home stands out of his earnings and I made a small monetary contribution. The matrimonial home was constructed using our joint earnings."

[9] She states further at paragraph 11 that she helped the respondent by purchasing the building materials and she borrowed \$3 000.00 from her niece. She also deposes to purchasing ceiling material on credit from DaCosta Mannings.

In her affidavit she also states that

“The whole sum of \$3 000.00 was repaid and I contributed to a great part of the repayment.”

In this court her evidence on that issue is as follows:-

“I am not saying that I recall paying all of the \$3 000.00. I am now saying that I repaid all of this money myself. The receipts are at home.”

[10] The applicant also stated in her affidavit of January 28, 2004 that she contributed money towards the payment of the monthly instalments in respect of the said land on more than one occasion and also that the matrimonial home was built using both her savings and the respondent savings. She also states that she was unemployed for sometime and that during the period of her unemployment she borrowed money from friends and family members to assist in completing the matrimonial home.

[11] She also indicated that she provided the full range of services as a wife, mother, homemaker during the marriage.

[12] So in effect the Applicant has stated that she made direct financial contributions and she is seeking an equal share in respect of the matrimonial home.

[13] The respondent indicates that he purchased the land on which the matrimonial home is situated solely from his earnings before the marriage and that the construction of the house was financed by a number of loans from Bottlers Barbados United Credit Union and the payments were automatically deducted from his earnings each month.

[14] In respect of the \$3 000.00 borrowed from Rosalyn Foster he says that he was required to reimburse Ms. Foster and he has no idea as to what this money was used for since the vast majority if not all of the outgoings in relation to the construction of the matrimonial home were met by him.

He accepts that the applicant/wife did credit the ceiling material but that only related to the initial deposit. He then had to pay the balance.

[15] His affidavit contends that he was the sole breadwinner for almost the whole marriage and that he was also required to perform the household duties, in effect he was also performing duties as parent and homemaker.

[16] In evaluating the evidence of the parties given on affidavit and also in sworn testimony before the court I find that

there was very little direct financial contribution made by the applicant to the purchase of the land. Indeed I find that the bulk of the financial contribution to the land was made by the respondent/husband. The applicants evidence in relation to the direct financial contribution to the property in relation to the repayment of the \$3 000.00 is contradictory as she said an oath that she repaid all of this money whereas in her affidavit evidence of 23rd October 2002 she has deposed that "The whole sum of \$3 000.00 was repaid and I contributed a great portion of it."

[17] The applicant has also given evidence in the affidavit in relation to the acquisition of the land. On the one hand she states that the respondent/husband purchased the land on which the matrimonial house stands and that she made a small monetary contribution. On another occasion she states that she contributed money towards the payment of the monthly installments on more than one occasion. I do not find this evidence as helpful to the applicant's case and indeed her evidence in relation to working was to the effect that she did not work until 1994. Based on this evidence and also the evidence in relation to the applicant's employment history I do not accept that the applicant made any substantial payments to the purchase of this land. I also find that the evidence of the applicant on oath in relation to her contributions to the construction of the matrimonial home was incredible as she indicated that the home was constructed from the joint savings of the parties but that she had no account of this and that every cent she worked for went into the house yet she cannot give a figure as to how much money she put into the house. I find it incredible that someone like the applicant who gave evidence on oath that she kept records does not have an idea about what the house cost to build and also cannot help this court as to the amount of money she would have contributed to this house, especially bearing in mind the fact that there is evidence from her to show that she was not working before 1994 and that she has no recollection of what her maximum salary was during the construction of the matrimonial home.

[18] I find the evidence of the Respondent helpful in relation to the question of the direct financial contributions to the purchase of the land and the construction of the property. I also find, and it is not contradicted by evidence, that the respondent was engaged in consistent employment and that he was the person who made a very significant financial contribution both to the purchase of the land, and the construction of the matrimonial home. Indeed paragraph 8 of the applicant's affidavit of January 28, 2004 confirms that the Respondent took out a loan from the credit Union to assist with the construction of the house in 1994 and this court finds that the Respondent was indeed the driving force as far as the financial input in acquiring the land and constructing the dwelling house is concerned. I find that the applicant would have made a minor direct financial contribution to the purchase of the land and the construction of the matrimonial home.

[19] As far as indirect financial contributions are concerned this court accepts that there was a period, early in the marriage, where the parties were either living rent free or at a reduced rent in accommodation provided for by the applicant's family. I accept that this would have formed an indirect contribution to the purchase of the land and to some extent the constructionS of the matrimonial home. This rent free accommodation and reduced rent must have permitted both the parties to make a contribution to the property. In the case of the applicant who was not working for some of the time and indeed did not work until 1994, this must be regarded as part of her indirect contribution by way of allowing the respondent to save funds which could be directed towards the purchase of

the land.

[20] It is also quite apparent from the affidavit evidence that both parties performed the roles of parent and homemaker. For a considerable time the wife was unemployed or under employed. Indeed the applicant also recognizes that at paragraph 19 of her affidavit of January 2004.

[21] I find that the applicant wife did contribute to the acquisition, improvement and conservation of the matrimonial property but that this contribution both directly and indirectly was greatly overshadowed by the respondent's contribution both directly and i