

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT OF JUSTICE

(Family Division)

[Unreported]

Suit No.178 of 2005

Between:

MARVA YVONNE BRANCH

APPLICANT/WIFE

And

HUGH GRAFTON BRANCH

RESPONDENT/HUSBAND

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

2011: September 12 and 13

2015: June 9

Appearances:

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

Mr. Rudolph G. Greenidge, Attorney-at-law for the Respondent/Husband

DECISION

[1] By her Application filed on October 17, 2008, Marva Yvonne Branch (“the Applicant”) urged the Court to transfer to her, pursuant to **section 57** of the **Family Law Act, Cap 214** of the **Laws of**

Barbados, one-half share of the property situate at Lot 13 Elizabeth Park in the parish of Christ Church which property formed the matrimonial home she once shared with Hugh Grafton Branch (“the Respondent”).

[2] She has also requested that the Court order that:

- (i) the Respondent/Husband do pay to the Applicant/Wife such sum as represents her share and or interest in the said property such payment to be made within a time to be stipulated by the Court; and
- (ii) in default of such payment by the Respondent/Husband to the Applicant/Wife in the time stipulated by the Court that the property be sold by public auction or by private treaty and that the Applicant/Wife be paid all sums due and payable to her in respect of her share and/or interest in the property from the proceeds of sale of the said property.

BACKGROUND

[3] The Applicant and the Respondent were both born in Barbados on February 20, 1952 and August 31, 1952 respectively. They met in 1972 when the Applicant was working with the Customs Department and the Respondent with the Port Authority. They became close friends and their friendship eventually progressed into a relationship of an intimate nature.

[4] The Applicant gave birth to their first child, Dwayne, on March 21, 1982. The parties then had twin girls, Nakita and Natasha, who were

born on July 23, 1987. On December 17 of the year immediately following the birth of the twin girls, the parties were joined in marriage at the St. David's parish church in St. David's, Christ Church. Immediately after their marriage, they moved into the matrimonial home, which the Respondent had constructed on land owned by him prior to the marriage. It was only at this stage that they began living together under the same roof.

[5] On March 29, 2005, the Applicant filed for the dissolution on the ground that the marriage between the parties had irretrievably broken down and there was no reasonable likelihood of cohabitation being resumed. According to her application, the parties had separated and had been living separately from around either 1999 or 2000 although the Respondent has alleged that the marriage had deteriorated long before that date.

[6] The application for dissolution came on for hearing on June 27, 2005 and a *decree nisi* was granted on that date. Custody of the children of the marriage was jointly vested in the parties with care and control to the Applicant. On October 9, 2006, the Court also ordered, pursuant to an Application for Ancillary Relief filed by the Applicant on July 4, 2006, that the Respondent pay the sum of \$300.00 towards the

maintenance of the twins, Nakita and Natasha Branch. The Respondent complied with this Order and only ceased paying maintenance when the children had completed their university education.

- [7] The Court granted an order under **section 42** on November 20, 2008 and the *decree nisi* became absolute on December 21, 2008. The only issue left for the Court's determination is the division of the matrimonial home.

ISSUE/S

- [8] The Court must consider whether it should exercise its discretion to alter the interest of the parties in their matrimonial home pursuant to **section 57** of the **Family Law Act, Cap 214 of the Laws of Barbados** and in what way its discretion should be exercised.
- [9] The Applicant has urged the Court to exercise its discretion so as to grant her a half-share in the value of the matrimonial home while the Respondent has argued that she is entitled to a share that is no more than ten per cent.

EVIDENCE

- [10] In support of her Application, the Applicant deposed and filed affidavits on June 3, 2009 and May 6, 2011 respectively. To these

affidavits, the Respondent responded by filing his own affidavits on July 7, 2009 and then on May 31, 2011.

[11] Both parties have also filed Statements of Financial circumstances. They provided oral evidence at trial and were cross-examined on their oral evidence, as well as their affidavit evidence.

[12] The Court has carefully examined all the evidence before it. It notes that much of the evidence is undisputed, although there are some critical areas of contention, particularly in relation to the nature and length of the marriage, the contribution of the Applicant to the acquisition and conservation of the matrimonial home and the Respondent's maintenance of the parties' daughters.

[13] The Court paid close attention to each party as they gave evidence at trial and particularly to their demeanour and responses to the questions posed during cross-examination. It has found the Respondent to be a forthright witness who testified and responded to cross-examination plainly, simply and honestly. It has been unable to reach the same impression of the Applicant and the evidence she has provided.

[14] Counsel for the Respondent has quite correctly observed, as has the Court, that the Applicant's evidence appeared to contain some clear

inconsistencies, one of the most significant being in relation to whether or not she owned real property other than the matrimonial home. It is on this particular point that she called her daughter, Natasha Branch, as a witness. The Court is not, however, persuaded that her daughter's evidence lends much support to the Applicant's credibility. The Applicant's own evidence is that her daughters have a much closer and warmer relationship with her in contrast to a much colder, and possibly non-existent, relationship with their father. The Court therefore finds the evidence of Natasha Branch neither impartial nor particularly convincing.

[15] It goes almost without saying that in light of the manifest inconsistencies in the Applicant's evidence and her demeanour at trial, the Court was not particularly impressed with her evidence. It simply was unable to find her as forthright a witness as the Respondent and, accordingly, on the points at which the evidence of the Applicant directly diverged from that of the Respondent, the Court has generally favoured the evidence of the Respondent over that of the Applicant.

THE APPROACH OF THE COURT

[16] The Applicant has approached the Court asking it to alter the interests of the parties in the matrimonial home pursuant to **section 57** of the

Family Law Act which provides in subsection (1) that the Court “*may make such order as it thinks fit altering the interests of the parties in the property*”.

[17] The discretion conferred upon the Court under **section 57(1)** has been rightly described as extraordinarily wide. However this discretion is restrained by **section 57(2)** which provides that no order shall be made under **section 57** unless the Court is satisfied that the Order is just and equitable in the circumstances. Justice and equity may be accordingly be regarded as overarching or overriding principles underlying the Court’s consideration of applications made under **section 57**.

[18] Specific guidance on how the Court is to exercise of its discretion under **section 57** is nonetheless provided by **section 57(3)**. This section requires a Court determining an application under **section 57** 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.

[19] The decision of the Court of Appeal of Barbados in *Proverbs v. Proverbs (unreported) Court of Appeal of Barbados, Civil Appeal No 7 of 2001, Decision of May 28, 2002 per Simmons CJ* established that in determining, declaring and altering the interests of parties in matrimonial property pursuant to **sections 56 and 57** of the **Family Law Act**, a Court had to first identify and value the net assets of the parties; then consider and evaluate their respective contributions under **section 57(3)** of the Act; and finally consider the factors set out in **section 53(2)** insofar as these factors may be relevant.

[20] Counsel for the Applicant has correctly observed that the three tiered approach recommended by *Proverbs* includes a retrospective element, in which the Court is required to consider the value of past contributions, as well as a prospective element where it examines the future economic means and needs of both parties to determine whether an alteration of the parties' respective interests is just and equitable in light of the circumstances.

[21] It is important to point out from the outset that in the division of matrimonial property under the **Family Law Act** there is no presumption of equality. Williams CJ (Ag.) noted in *Noel v. Noel* (*unreported*) *Court of Appeal of Barbados, Civil Appeal No. 27 of 2001, Decision of December 17, 2004* that:

“...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.”

[22] It nonetheless remains open to the Court to conclude that the property should be divided equally between the parties where the evidence before it on the contributions made by each party reveals “*an equality of contribution*”, to use the words of Mason J. in *Mallet v. Mallet (1984) 156 CLR 605 at 624-5*. The Court can only reach this conclusion after evaluating in each instance the contributions of one party as compared to the contributions made by the other.

[23] In assessing contributions, the Court has regard not only to the contributions made by the parties during the course of their marriage,

but also takes into account contributions made after their separation: *In the Marriage of Williams [1985] FLC 91-628*. It may also, where relevant, take into account contributions made before their co-habitation: see, for example, *W v W (1997) FLC 92-723* where the Full Court took into account contributions made by one party to the welfare of a child of the marriage before the parties commenced co-habitation. **Section 57(3)** does not in any way confine contributions to contributions made during the course of their marriage. It simply limits the contributions to be considered to those made by or on behalf of the parties to the marriage.

MATRIMONIAL ASSETS

- [24] As most applications for property settlement, the application before the Court concerns only one asset, the former matrimonial home of the parties, which would have been the asset of greatest value acquired by the parties.
- [25] The parties' matrimonial home is a single storey concrete structure located at Lot 13, Elizabeth Park in the parish of Christ Church. When it was initially constructed, the house had three bedrooms and two bathrooms together with a living room, dining room, patio, washroom and family room. It also included a garage and courtyard.

It was subsequently extended in 1989 to add two further bedrooms and an additional bathroom.

[26] There is currently no mortgage on the property and there is also no dispute as to its value. Mr. Stephen Wiltshire of Felicity Limited determined the market value of the property to be seven hundred and fifty thousand dollars (\$750,000.00) as at March 12, 2011 and his Report dated April 4, 2011 was admitted into evidence without any challenge.

THE RESPECTIVE CONTRIBUTIONS

[27] I now turn to consider the respective contributions of the parties pursuant to **section 57(3)**, which section requires the Court to consider:

- (a) the financial contribution made directly or indirectly by or on behalf of a party to the acquisition, conservation or improvement or otherwise in relation to the property; and
- (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 as homemaker or parent.

[28] It is clear that under **section 57(3)** the Court must identify and evaluate the direct and indirect economic contribution made by each party to the acquisition, conservation and improvement of the property

as well as any direct and indirect non-economic contribution made in relation to the same.

[29] In assessing the contribution of each party as required by **section 57(3)**, the Court is not required to examine the evidence of each and every alleged contribution in meticulous detail with a view to assigning a monetary value on each contribution as a precursor to completing a precise mathematical computation. Instead, the Court generally adopts a broad holistic approach by examining each party's overall contribution to the matrimonial property in dispute.

[30] The Court is specifically enjoined by **section 57(3)(b)** to consider, in relation to the non-financial contribution of each party, the contributions made by any party in their capacity as either homemaker or parent. Simmons CJ in *Proverbs (supra)* warned that the Court should not undervalue such contribution but instead urged it to recognize it in a substantial rather than token manner.

[31] It is important to point out that either party may make contributions in the capacity of homemaker or parent; contributions under this head are not made solely by the female partner to a relationship although the wife has traditionally assumed primary responsibility for the care of the children and the home. Secondly, contributions made in the

capacity of homemaker or parent are not limited to non-economic activities; the Court may take into account all contributions to the welfare of the family including any financial contributions made in this regard. As Strauss J. observed in *In the Marriage of Ashton* [1986] FLC 91-777 at 75,659:

“The words ‘including any contribution made in the capacity of homemaker and parent’ do not mean that the homemaker and parent contribution is the only one to be considered...On the contrary, all contributions to the welfare of the family, including financial contributions, must be brought into account and evaluated.”

Duration of the Parties’ Marriage

[32] The duration of the parties’ marriage is relevant to the assessment of their respective contributions. It is also one of the factors listed under **section 53(2)**.

[33] It is clear from decisions such as *In the Marriage of Olliver* (1978) 32 **FLR 129** that in calculating the length of the union, the Court begins its calculation not from when the parties were legally joined in marriage but from the date at which they commenced cohabitation.

[34] Cohabitation in this sense refers not merely to living under the same roof but to the *consortium vitae* or marital relationship which “involves many elements; some or all of which may be present in a particular marriage - elements such as dwelling under the same roof,

sexual intercourse, mutual society and protection, recognition of the existence of the marriage by both spouses in public and private relationships”: ***In the Marriage of Todd (No. 2) 9 ALR 401 cited in Marconi v. Marconi (unreported) High Court of Barbados Suit No. 12 of 1986, Decision of June 24, 1986.*** Thus, for cohabitation to have occurred, the parties are not necessarily required to reside under the same roof although living together will certainly be stronger evidence of the same.

[35] The parties in this case agree that they were engaged in an intimate relationship before their marriage to each other. This is beyond dispute as, indeed, all the children of their marriage were born before the actual marriage. From the evidence before the Court, it is clear that, at the very latest, the parties had commenced cohabitation from the birth of their first child in March of 1982.

[36] The Applicant says that at this time the parties were “*courting*”. They were “*boyfriend and girlfriend*” and she used to go to the Respondent’s home “*nearly every day*”. The Respondent conceded that the Applicant would spend “*some days*” in his home and accepted that their relationship had become “*serious*” when the Applicant fell pregnant in 1981 although they had remained living apart.

[37] As to when the parties separated, according to the Application for Dissolution filed in this matter, the parties began living separate and apart sometime in 1999 or 2000. Counsel for the Respondent argued, however, that the Court could not ignore the history of the marriage and submitted that the parties had separated long before 2000.

[38] The evidence of the Respondent is that the parties started sleeping in separate beds from as early as 1989, scarcely a year after they were married and it is clear from a letter sent to the Respondent by the Applicant's then attorney-at-law that the reason for the separate sleeping arrangements was not snoring, as the Applicant had initially deposed, but matrimonial turmoil. The Respondent's evidence goes even further. He indicated that he scarcely ate at the matrimonial home. Indeed, it was his evidence that he only did so on Sundays. It is undisputed that the Applicant hardly did any domestic tasks for him with the Applicant alleging that this was because he was a mummy's boy. On the basis of this evidence, it therefore appears to the Court that it is quite possible that the parties may have separated in the sense meant by the Act much earlier than 1999.

[39] However, as the Respondent neither directly disputed the date of separation contained in the Application for Dissolution nor provided

an alternative to that date, to find that the parties separated on any other date would, even in this context, be speculation on the part of the Court. The evidence of the Respondent on the separation date has, sadly, been somewhat incomplete. Accordingly, the Court has no choice but to accept that the parties separated in 1999 although it is clear that they separated before that date. Their marriage was therefore one of ten years, but their union, calculated from the date at which cohabitation commenced, was 17 years. Their relationship may therefore be regarded as one of a long duration.

[40] Counsel for the Applicant, however, argued that the relationship should be regarded as being even longer than 17 years, suggesting that it should be viewed as having been 25 years in duration. She justified this proposal by presenting what the Court found to be a novel argument and one that has certainly never been made before this Court.

[41] Counsel for the Applicant submitted that the presence of children in a marriage added “*notional years to the chronological years of the marriage*” and she therefore suggested that:

“...in assessing the length of the marriage in cases where there are children it is necessary to add to the chronological number of years of cohabitation an additional notional number of years for the birth of

children, thus for three (3) children nine (9) notional years should be added to the marriage [and if] that is done in this case it would make this a marriage of twenty-five (25) years duration.”

[42] In support of this particular submission, Ms. Greene, QC cited observations made by Malcolm D. Broun, QC in Australian Family Law and Practice (Volume 3) at ¶38-272 on pp. 30,851-30,852 and provided the Court with a copy of the same.

[43] The Court notes that Mr. Broun’s comments were made after a discussion of cases where the Court had “*placed stress on the length of the marriage in assessing the significance of the homemaker’s contribution*”. It was in analysing these authorities, that Mr. Broun, QC pointed out that the weight accorded to the contribution of a wife as homemaker in a short marriage was quite different from that in a long marriage. He offered two opinions. Firstly, he suggested that where the wife’s contribution as homemaker was measured solely against the husband’s contribution as wage earner, no assets having been brought by the husband into the marriage, it was difficult to see why her contribution should be valued less than his.

[44] Secondly, he argued that a further qualification was required where although the marriage was short it had produced children and suggested that in assessing the length of the marriage notional years

should be added to its chronological years to ensure a proper assessment of the homemaker's contribution and create uniformity. He was careful to point out that this suggestion was not one "*for which any authority is to be found in any case but ...[was] merely an endeavour to offer the experience of one practitioner to other practitioners*".

[45] The Court does not believe that adopting the approach suggested by Mr. Broun, QC of adding a period of notional years for each child of the marriage to the chronological years of cohabitation will make the assessment of the respective contributions of the parties any easier. Mr. Broun's "*rough rule of thumb*" is premised on the need to ensure that the contribution of one party as homemaker is given due weight as intended by the legislators. It is quite possible for the Court to achieve this end without the addition of any notional years to the chronological years of cohabitation. The Court therefore declines to follow Ms. Greene in adopting his proposal for calculating the length of the marriage.

Acquisition and Improvement of the Matrimonial Home

[46] The Court now turns to consider the contribution of each party to the acquisition of the matrimonial home. It is clear from the evidence of

both parties that the matrimonial home was acquired almost entirely (if not solely) by the efforts of the Respondent. It was he alone that purchased Lot 13 Elizabeth Park on March 30, 1987. And it was he alone that was financially responsible for the house's construction. The Applicant, by her own evidence, had little involvement in it, especially not "*moneywise*".

[47] The Respondent explained that he purchased the land at Lot 13, Elizabeth Park and constructed the matrimonial home after he had sold a house in Lodge Terrace that he had owned and had rented out. The Applicant had never been involved in the purchase, rental or sale of that property.

[48] Although the Applicant conceded that she had not made a direct financial contribution to either the purchase of the land or to the construction of the home, her evidence was that she had made both an indirect financial contribution and a non-financial contribution to the same.

[49] The Applicant says that she and the Respondent had discussed purchasing a home together even before their first child was born and implied that it was because she did not find Lodge Terrace a suitable

place to raise children that the Respondent had sold that property, an assertion that the Respondent has quite firmly denied.

[50] According to the Respondent, he had purchased Lodge Terrace on “*the urgings of [his] father*” and had not been thinking of settling down when he did so. It was his evidence that he had only sold the property at Lodge Terrace in order to purchase the land in Elizabeth Park which became available on the market at short notice.

[51] The Respondent also denied that any discussion had taken place between himself and the Applicant before he purchased the land at Elizabeth Park. He deposed that he had had purchased that land as soon as he learnt that it was up for sale as it was very close to where his father lived. The Applicant’s evidence, however, was that the parties had gone together to look at plots of land on which they could build a home and that the Applicant had offered her opinion on the sites they had visited although she accepted that the decision to purchase the land had been solely that of the Respondent. The Respondent described her evidence in this respect as containing “*little truth*” and the Court accepts his position.

[52] The Applicant’s evidence as to her involvement in the construction of the house is one of the areas that casts some doubt on her candour.

The Applicant appeared uncertain as to when construction began and how it had been conducted, initially deposing that the Respondent had “*hired the workmen, purchased the building materials and paid the workmen*”. It was only after the Respondent pointed out that he had hired a contractor that she mentioned that the Respondent told her he was going to use the same contractor that built his father’s home.

[53] Of particular note is that she claimed at para 25 of her second affidavit that:

“I was very heavily pregnant with the twins at this time and could not move about a lot (both babies were born weighing 7½ and 6½ pounds respectively) but I still helped with the house.”

[54] The twins were born in July 1987. In cross-examination the Applicant revealed that she carried them full term. The land, however, was not purchased until March 1987. Moreover, the agreement made with the contractor for its construction, a copy of which was annexed to the Respondent’s second affidavit, was made on November 13, 1987. The Court therefore accepts the Respondent’s evidence that construction had not begun until after the twins were born and further that the Applicant played no part in it.

[55] The Court does not accept that the Respondent asked the Applicant to select the doors and windows or that she chose the kitchen sink and tiles. It is also unable to accept that she tidied up after the workers when the house was being extended, given the Respondent's clear denial of that evidence. He deposed that:

“The contractor ensured that on a daily basis the house was kept tidy by the workmen. After the technical work was finished I looked after the tiling and painting. This work was done speedily and I vividly remember that the tiler would keep his work area very tidy.”

[56] The Court notes that even if it were to accept the Applicant's evidence on the issue of her non-financial contribution to the acquisition and construction, her contribution would still be negligible as compared to that of the Respondent. As it is, her evidence directly contradicts that of the Respondent who denied that she had been involved in any way in the process or that he had taken advice or counsel from her. As the Court finds him a more reliable witness, it holds that she was not in any way involved in the purchase or construction of the matrimonial home and did not therefore make any non-financial contribution to its acquisition.

[57] As to her indirect financial contribution to the home, the Applicant's argument is that she made an indirect financial contribution to the

construction of the home when she “*took over the full cost of the maintenance of Dwayne and paid all of the medical bills related to the second pregnancy*”. She says that she did so because the Respondent had told her that he was unable to assist her since he needed to direct his earnings towards the construction of what became their matrimonial home. The Applicant explained that:

“...knowing that he was using his income to build the house. I made no demands of him at that time thus freeing him to use his earnings to build the former matrimonial home.”

[58] In arguing this point, Counsel for the Applicant relied on the authority of the Australian case of *Stathopoulos v Stathopoulos (1977) FLC 90-289*. She drew particular attention to the assertion of the Court therein that it had “*the distinct impression that the husband fell far short in his obligation for reasonable contribution towards the support of his children*”. The Wife in that case had found the matrimonial home, arranged for its purchase, paid the deposit, the overwhelming majority of mortgage payments and solely maintained the child on the parties’ separation after just 5 years of living together. It is thus quite clear that *Stathopoulos* is a case with a very different set of facts than the one before me.

[59] On the evidence before it, the Court cannot arrive at the same conclusion about the Respondent. The Respondent has denied ever giving the impression that he was so cash-strapped or impecunious as to be unable to carry out his responsibilities. He testified that the money he had used for the construction of the matrimonial home did not come from his salary but from his savings because after he sold the house at Lodge Terrace and before he began construction he had more than enough money to pay for the construction. He had therefore been able to and continued to support his children during the construction of the home. He had also continued to maintain the children after the marriage. The contribution of both parties to maintenance at that stage is discussed in greater detail below.

[60] While the Court accepts the Respondent's evidence that, unlike the husband in *Stathopoulos (supra)*, he had not fallen far short of his obligation to reasonably maintain his children, it nonetheless finds that the Applicant had made an indirect financial contribution towards the matrimonial home but not precisely on the ground she has put forward.

[61] Contribution, for the purpose of the **Family Law Act**, includes “*any act or the provision of any advantage which has economic*

significance”: Anthony Dickey, Family Law (Fifth Edition) at p. 572.

The Court is to have regard to any contribution made by or *on behalf* of any party to the acquisition, conservation and improvement of the matrimonial property.

[62] *In the Marriage of Pellegrino [1997] FLC 92-789*, the Australian Full Court found that the provision of rent free accommodation by the parents of the wife could be regarded as a contribution made on her behalf as it reduced the parties’ expenses and enabled them to apply their savings to build up other assets.

[63] In this case, the children of the marriage lived with the Applicant in her mother’s home until the parties moved to the matrimonial home on its completion in 1988. The parties therefore benefited from the provision of accommodation for their children by the Applicant’s mother for around six years.

[64] As a consequence of this rent-free accommodation obtained on behalf of the Applicant, neither the Applicant nor the Respondent had to worry about providing the children of the marriage with a roof over their heads. This no doubt reduced the expenses required for the children’s care and had the objective, intended or not, at increasing the amount of money to be expended on other pursuits. It therefore

constitutes an indirect financial contribution made on behalf of the Applicant and needs to be considered by the Court although, as the Court pointed out in *Pelligrino*:

“The weight to be attached to that contribution must of course depend on an overall assessment of contributions in light of all the facts.”

Conservation of the matrimonial home

[65] According to the Applicant, it was she alone who shouldered the responsibility for cleaning the house. She deposed that she swept, dusted and mopped the house. Counsel for the Applicant argued that by doing so the Applicant preserved the house from dilapidation and deterioration and kept it in good repair and had therefore contributed to its conservation.

[66] The Applicant sought to draw attention to other ways in which she had made a contribution under this head. She said that she had pointed out leaks in the roof to the Respondent and had even marked the leaking parts of the roof with xs. She indicated that she had cleaned the grease trap every six months while she was living at the property. She also said that when the workmen had warned the Applicant about termites outside the guard wall, on the Applicant's failure to take any measures against them, she had sprayed the wall

and the exterior of the house. Finally, the Applicant testified that she had also painted the interior of the house, specifically the kitchen, dining room and living room, about ten years after the house was completed and had accidentally changed the colour used by the painter. Her evidence was that she had painted the kitchen every year at Christmas.

[67] The Respondent denied ever seeing the Applicant paint the house, although he conceded that she had asked him to buy paint for her to do so but that he had not done as requested. In response to her evidence on pointing out the leaks, he testified that the roof had been leaking after the house was built and that these leaks could have been evident to anyone spending time in the house, even a guest and further that he had spent over \$75,000.00 on the roof to resolve its problems. The Respondent agreed also that the matrimonial home had been infested with termites but deposed that he was the person responsible for taking care of the termite infestation. Again, the Court prefers the evidence of the Respondent on these points of disagreement.

[68] The Court notes, however, that Respondent did not challenge the Applicant's evidence on cleaning and maintaining the house and the Court therefore accepts her evidence on this particular point. It also

accepts that she may even have painted the kitchen every Christmas, although this would have clearly been done without the knowledge or involvement of the Respondent.

[69] Housework such as that performed by the Applicant may be classified both as a non-financial contribution to the conservation of the property as well as under the head of a contribution made by a party as homemaker and/or parent. There is no reason to justify placing contribution of this nature under one head as opposed to the other but the Court must be careful to ensure that it is not counted twice as to do so would be unfair.

Contributions as Parent and/or Homemaker

[70] The Applicant placed substantial emphasis on her role as parent and homemaker in order to justify the alteration of interests in the matrimonial property in her favour. Counsel for the Applicant submitted that the Applicant made the matrimonial house into a home for the Respondent and their 3 children.

[71] While it is not denied that the Applicant cared for the matrimonial home, it is equally undisputed that she did not, in making a contribution as homemaker, look after the Respondent. She herself alleges that he kept “*drawing up under his mother*”. It is clear

therefore that she did very little cooking, cleaning or pressing for him. It is largely undisputed that she did, however, care for the children in this manner, although their paternal grandmother also cooked for them regularly during the marriage and the Respondent says that he gave her money for doing so. The Applicant attempted to show by her evidence that her contribution in this regard far outweighed that of the Respondent.

[72] As a result of the reliance placed by the Applicant on her contribution in this regard, the Court has carefully considered whether and to what extent each party cared for and maintained the children of the marriage. It is apparent to the Court that it must examine these contributions in three different stages: (i) the pre-nuptial period; (ii) the marital period; and (iii) the post-separation period.

[73] The pre-nuptial period would have spanned from the birth of Dwayne in 1982 to the parties' marriage in 1988, a period of some six years. At the time of the marriage, Dwayne would have been six years old and the twins just a year. Prior to the marriage they would have been living solely with the Applicant at her mother's home and the provision of such accommodation by the Applicant's mother has already been considered above.

[74] It is not disputed that the Applicant was the primary caretaker for the children. According to the Applicant, she initially received \$100.00 a month in maintenance from the Respondent but she stopped receiving this sum in her hand when she became pregnant with the twins and/or the Respondent started to construct the matrimonial home. It is unclear as to which since the Applicant, as the Court earlier observed, deposed, quite incorrectly, that construction had begun when she was pregnant with the twins. Regardless, it is clear from this that the Respondent in no way shirked his responsibility in maintaining his children during the pre-nuptial period. This is apparent from the evidence of the Applicant herself.

[75] The Applicant deposed that with the birth of the twins she had assumed “*almost full responsibility*” for the maintenance and upkeep of the children. She then stated, however, that the Respondent assisted her in the cost of purchasing diapers, milk and other food supplies and also paid their medical expenses but contended that she purchased their clothing. The Respondent has firmly, however, denied that the Applicant bought the majority of their clothing and, needless to say, the Court accepts his evidence on this point. He indicated that he would also have paid the nursery expenses for

Dwayne. The expenses to which the Respondent would have contributed would have constituted the majority of the needs of children of that age. The Applicant has therefore failed to show how precisely she has arrived at the assertion that she assumed “*almost full responsibility*” for the maintenance of the children before the marriage.

[76] In examining contributions made under this head during the second stage i.e. the duration of the marriage, the Court begins by noting that it was not disputed that the Respondent had almost entirely furnished the house with the Applicant purchasing only the washing machine, dryer and “*about two other pieces of furniture*”.

[77] It was equally undisputed that the Respondent paid all the utilities without the assistance of the Applicant. The Applicant does not deny that the Respondent paid the water, electricity and gas bills, as well as the land tax and the house insurance. He did so even after the parties separated. He also paid medical insurance and everyone in the family was at one time on his medical plan.

[78] The Applicant explained in cross-examination that the Respondent paid all these expenses because on their marriage the parties had agreed that the Respondent would pay the utilities while the Applicant

would look after the food. She says that it was the Respondent who kept her out of most utilities in relation to home.

[79] There is some dispute regarding the purchase of clothing and school supplies. Despite the Applicant's evidence to the contrary, the Court accepts that the parties shared these expenses. It notes that although the Applicant initially deposed that she purchased any required school supplies and paid for extracurricular activities, she later qualified this evidence by conceding that the Respondent had purchased school books (although mainly for Dwayne) and made contributions towards their petty fees and textbook loan scheme and may have paid for their lessons ("*too much lessons*").

[80] Finally, the Respondent opened bank accounts for each of the children. His evidence, not disputed, is that he was primarily responsible for placing money on the accounts and did so on birthdays and other special occasions. Each bank account contained between \$2,500.00 to \$3,500.00 when he eventually gave the Applicant control over the bank accounts after separation.

[81] There is little dispute in relation to the final stage. Counsel for the Applicant deposed that the Applicant "*singlehandedly maintained the three (3) children of the marriage since 2000 when they were aged 18*

and 14 respectively” as the Respondent refused to contribute towards their maintenance. She explained that the twins had stopped speaking to the Respondent and alleged that after they stopped speaking to him, he had stopped playing his part and she had supported them with assistance from other family members and using savings which the Respondent had accumulated on their behalf. The Applicant agreed, however, that the Respondent always had a good relationship with Dwayne and did not claim that he ever stopped supporting him. Indeed, the Applicant did not dispute that the Respondent was primarily responsible for Dwayne’s maintenance after their separation.

[82] The Respondent agreed that he “*fully supported Natasha and Nikita until they were fourteen*” but had stopped doing so when they ceased speaking to him. He says, however, that he still continued to accept his responsibility as father and helped to pay for spectacles for Nikita and books for Natasha. It is apparent from the Respondent’s own evidence that he only did so when called to do so by the Applicant and then subsequently the Court in its Order dated October 9, 2006.

[83] The Court therefore finds that after the separation of the parties the Applicant was primarily responsible for the maintenance of the twins

although the Respondent continued to provide them with a home for which he paid all utilities. He did little else. He did, however, fully maintain his son, Dwayne.

[84] It is apparent from the evidence before the Court that both parties made a contribution to the welfare of the family. The Respondent did not avoid his responsibilities in this regard, as alleged by the Applicant, although he fulfilled his obligations in an entirely different manner.

[85] The Court, however, holds that the contribution of the Applicant under this head became greater than that of the Respondent as a result of her maintenance and upkeep of the twins after the parties' separation despite the Respondent's maintenance of Dwayne which somewhat counterbalanced the Applicant's contribution after separation.

Contribution to Business Activities

[86] During the course of the marriage, the Respondent was engaged in a number of business ventures. He operated a business called E. T. Enterprises that was engaged in the rental of videos. He also started a business with his brothers called Double Bs in 2000. He left his position at the Ministry of International Transport in 2005, he says in

order to work in the car rental business. Both businesses eventually folded, ET Enterprises in 1996 and Double Bs in 2005.

[87] The Applicant has alleged that she made some non-financial contributions to both business ventures. She said she did so by helping to create advertisements for the video rental business and by dropping off and picking up rental cars for the other. It is clear that any contribution she made was indeed negligible.

Conclusion on the Parties' Respective Contributions

[88] Mr. Greendige, Counsel for the Respondent, submitted that the case before the Court was one where one of the parties had neither made any substantial contribution to the purchase, construction, improvement or conservation of the matrimonial home nor any significant contribution in the capacity of homemaker. He therefore argued that the contributions of the Applicant entitled to her an interest that was no greater than 10 per cent of the value of the home.

[89] In making this submission, Counsel directed the Court's attention to the Barbadian case of *Watson v Watson (unreported) High Court of Barbados, Suit No. 128 of 1991, Decision of July 15, 1995 per King J* where the Court had awarded a 20 per cent share of the matrimonial property to a wife who had argued that she had helped in the business

in a situation where the property had been purchased after the marriage. As the Applicant had played an even smaller supporting role than the Wife in *Watson*, he submitted that she was entitled to much less.

[90] The Court is unable to fully agree with submissions of Counsel for the Respondent. The Court notes firstly that although the Applicant in *Watson* had argued that she had assisted the husband in his business, King J had not accepted her evidence on this point, finding that because of the nature of the relationship between the parties and the allegations of domestic violence against the husband, the husband did not trust his wife to such an extent as to permit her to handle his accounts and manage his business in his absence. Accordingly, the share of the property received by the wife in *Watson* was made on the basis of her financial contribution to the household income and her role as homemaker.

[91] Secondly, on the basis of all the evidence placed before it, the Court finds that in this case the Applicant has made an indirect financial contribution to the acquisition of the matrimonial home, although this contribution is significantly overshadowed by the Respondent's contribution to the same. The Court also finds, however, that she

made a contribution in the capacity of homemaker and parent and while the contribution of the Respondent in this regard may have been equal or greater, her contribution prior to separation could not be dismissed as minimal and was greater with respect to the twins after separation.

[92] Accordingly, the Court assesses the respective contributions of the parties to the acquisition, conservation and improvement of the property of the parties to the marriage and otherwise to the marriage particularly in the capacity of parent and homemaker to be in the proportion of 80 per cent to the husband and 20 per cent to the wife.

[93] The Court therefore finds that the Applicant is entitled to 20 per cent of the share in the value of the matrimonial home. It now turns to consider whether it is just and equitable to alter each party's share in the matrimonial home on the basis of any of the factors set out in **section 53(2)**.

THE SECTION 53(2) FACTORS

[94] **Section 57(3)(d)** stipulates that the Court, in seeking to exercise its discretion to alter interests in matrimonial property, should consider the factors set out in **section 53(2)** of the **Family Law Act** insofar as they are relevant. The **section 53(2)** factors are factors to be

considered when determining maintenance and include the financial resources and the means and needs of the parties, as well as other matters.

[95] The Court is required to carefully examine these factors, where relevant, in order to determine whether they justify an adjustment being made to the entitlement of any party to the matrimonial property on the basis of their respective contributions: *Wilson v Wilson (unreported) Court of Appeal of Barbados, Civil Appeal No. 5 of 2003, Decision of March 22, 2007 at para 35, per Williams JA.*

[96] The factors listed in **section 53(2)** relevant to an application under **section 57** are listed below:

- (a) the age and health 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) whether either party has the care or control of a child of the marriage or union other than a marriage, who has not attained the age of 18 years;
- (d) the financial needs and obligations of each of the parties;
- (e) the responsibilities of either party to support any other person;
- (f) the eligibility of either party for a pension, allowance, or benefit under any Act or rule, or any superannuation fund or scheme, or the rate of such

- pension allowance or benefit being paid to either party;
- (g) where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;
 - (h)
 - (i)
 - (j) the duration of the marriage or union other than a marriage, and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration:
 - (k) the need to protect the position of a woman who wishes only to continue her role as a wife and mother;
 - (l) ...
 - (m) ...
 - (n) any fact or circumstances that in the opinion of the court the justice of the case requires to be taken into account;

[97] Williams JA stressed at para 17 of *Noel v. Noel (unreported) Court of Appeal of Barbados, Civil Appeal No. 27 of 2001, Decision of December 17, 2004* that there is “no hierarchy in relation to the [section 53] factors” and the weight to be accorded to a given factor will depend on the facts and circumstances of a particular case. The weight to be attached to each factor will therefore rest in the discretion of the Court.

[98] The relationship between the parties in this case was long, spanning over ten years. There is no evidence, however, that it impacted negatively on the earning capacity of either party.

[99] I turn now to the age and state of health of each of the parties. The parties are close in age, having been both born in 1952 little more than 6 months apart. The Applicant is now 62 years of age while the Respondent is 61 years old. There is no evidence before me showing that the health of either party is anything other than good.

[100] The second factor listed above relates to the income, property and financial resources of the parties, and their capacity for employment. It seems to appropriate in this case to consider this factor together with **section 53(2)(f)**, the eligibility of either party to a pension or the rate of the pension being paid to such a party since the Respondent is receiving a pension and the Applicant indicated that she was also likely to retire soon.

[101] At the time of the application the Applicant earned \$50,886.96 in salary and wages per year. She testified, however, that she was due to retire shortly and she has no doubt already done so. Unfortunately, she did not disclose the pension which she expected to receive after retirement. Counsel for the Applicant, however, indicated that “*both*

parties are entitled to state pensions since both were civil servants”.

In light of her submissions and the fact that the Applicant has, on her own evidence, been employed as a civil servant for over thirty years, the Court can reasonably conclude that the pension that she expects to receive will certainly be no less than that already received by the Respondent.

[102] It is likely that the Applicant will also receive a gratuity, much like the Respondent received on his retirement. No evidence was placed before the Court on the amount that she was likely to expect as gratuity, although given the years of service she has performed, it is reasonable to conclude that this sum is likely to be significant.

[103] In contrast to the Applicant, the Respondent was a pensioner at the time of the application and at trial. He earned considerably less than she. The Respondent disclosed an annual income of \$25,309.32 of which \$24,284.40 came from his pension with the remainder being dividends and interest from shares and debentures he owned in companies. The Court notes that the Applicant too reported owning shares and debentures in Sagicor valued at \$12,000.00 but did not disclose to the Court any dividends or interest from these.

[104] As to the financial resources owned by each party, the Applicant disclosed in her Statement of Financial Circumstances her ownership of furniture, one 1997 Nissan Sentra and shares and debentures in Sagicor, together valued at \$32,000.00, as well as the half-share she claimed in the matrimonial home. No mention was made of any other real property. Indeed, her Counsel alleged that she owned no other property and she too initially gave or appeared to give evidence to that effect, although she did depose in her first affidavit that she had *“recently joined [her] daughter as a guarantor for her to purchase her own home.”*

[105] The Applicant subsequently stated:

“The child has since purchased a house at #9 Neil Kirt Gardens, Farm Road, St. Philip and I have joined her to enable her to qualify for the mortgage. It is not my property but I feel that I should disclose to the Court my involvement in the project.”

[106] In his second affidavit, the Respondent produced a certified copy of a conveyance dated July 1, 2008 made between Ten Investments Inc. as vendor and the Applicant as purchaser. This document revealed that the Applicant alone had purchased the fee simple estate in Lot 9, Neil Kirt Gardens in St. Philip and was the legal owner of that property.

[107] The Respondent also disclosed a mortgage that the Applicant had obtained from the Barbados National Bank over that property and in which she alone was named as mortgagor. She produced no documents showing that she had acted as a guarantor for a mortgage obtained by her daughter. In fact in a further charge entered into evidence, it was revealed that Natasha had actually acted as surety for her mother.

[108] The Court has no doubt that it was this evidence that led the Applicant to concede at trial that she did “*partly own*” property in St. Philip although she maintained that she had to put her name down for the conveyance so that her daughter could get a loan from the bank and thereby purchase her own land and home. In their evidence, both she and her daughter insisted that regardless of whose name appeared on the title deeds, the land belonged not to the Applicant but to her daughter, Natasha Branch.

[109] As the Court noted above, the parties’ daughter, Natasha Branch, provided evidence at trial to in support of her mother’s case. She was questioned only about the property in St. Philip and testified that she “*regard[s] the property as [her] own*” and that at the end of the day it belonged to her, not the Applicant. Natasha explained that when she

had started working she had seen some houses in St. Philip that she liked and had approached the bank for a loan but reported that she had been unable to receive one as she had, at that time, just commenced working for Ernest and Young and was not a permanent employee. It was her evidence that she had started working at the firm on June 1, 2008 and became permanent three months later. This was, according to her, the reason why the Applicant was named as mortgagor.

[110] The Respondent pointed out that when the land in St. Philip had been purchased, Natasha Branch had been in her final year of university education. The Applicant had indeed deposed that Natasha had graduated from UWI in October 2008. While it is possible that Natasha may have commenced working at Ernest and Young in June 2008, she would have only been working in that position for one month at the date of the conveyance and, thus, when the entire land transaction was completed. The Court finds the Applicant's evidence that she played no part in the purchase of that land other than allow her name to be placed on legal documents in order to facilitate her daughter's purchase quite unbelievable and does not accept it. It is clear that, whatever may be the true circumstances, surrounding the

purchase of this property, it is property in which the Applicant can reside.

[111] As to their responsibility for any other person, the evidence before the Court does not reveal that either party presently shoulders such a responsibility. All of the children of the marriage have now reached adulthood, achieved university degrees and appear to be gainfully employed. The evidence does not reveal the existence of any other dependents.

[112] Despite this, there is significant disparity in the parties' financial needs and obligations, as disclosed to the Court. The Applicant revealed total annual expenses of \$45,506.58 with her single greatest disclosed expense being \$10,800.00 in food and household expenses followed by income tax and national insurance. In contrast, the Respondent's total expenses amounted to \$28,391.83 with the largest expenses listed as house repairs and food and household supplies at \$6,000.00 and \$8,000.00 respectively.

[113] Neither Counsel for the Applicant nor Counsel for the Respondent has drawn the Court's attention to any factor they submit should be considered by the Court pursuant to **section 53(2)(n)**. This section is broad enough for the Court to consider under this head the failure of

the Applicant to provide full disclosure of property which she owns, regardless of what reason she gives for failing to do so. It is the duty of each party involved in property proceedings to make full disclosure of their financial affairs including all property that they own: See, for example, *In the Marriage of Weir [1993] FLC 92-333*.

[114] On carefully considering the **section 53(2)** factors applicable to this case, the Court is certainly unable to find that on the basis of any these factors it is just and equitable for it to make an adjustment in favour of the Applicant. Any adjustment made on the basis of equitable and just principle favours not the Applicant, but the Respondent.

[115] However, while the Respondent appears to be a little less financially comfortable than the Applicant, the Court finds that the **section 53(2)** factors still do not support the making of any adjustment in his favour. Neither party is in a significantly better position than the other to justify an adjustment being made.

DISPOSAL

[116] In light of the foregoing, the Court orders that the interests of the parties in the matrimonial home situate at Lot 13, Elizabeth Park in the parish of Christ Church be altered so as to grant the Applicant 20 per cent share in the value thereof.

[117] As the value of the matrimonial home which has been accepted as being \$750,000.00, the Court accordingly hereby orders that the Respondent pay the Applicant \$150,000.00 representing 20% of the value of the matrimonial property. Such payment to be made no later than September 30th, 2014. In the event that this sum is not paid to the Applicant by the above date then the property is to be sold and 20% of the net proceeds of any such sale are to be paid to the Applicant no later than December 31st, 2014. Should any sum remain due and unpaid to the Applicant beyond December 31st, 2015, then the usual rate of interest payable on such sum shall accrue to the benefit of the applicant.

COSTS

[118] In accordance with **section 94(1)** of the **Family Law Act**, each party will bear their own costs of these proceedings.

LIBERTY TO APPLY

[119] The parties are at liberty to apply to the court should any matters arise in relation to the giving effect to this judgment, inclusive of whether or not the property should be advertised for sale prior to September 30th, 2015.

RANDALL I. WORRELL
Judge of the High Court