

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

FAMILY DIVISION

No. 508 of 2013

IN THE MARRIAGE OF:

RODNEY HINDS

APPLICANT/SPOUSE

AND

MARIA LORIS SORIANO ROUCO

RESPONDENT/SPOUSE

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

Date of Hearing: 2016 January 29th

Date of Decision: 2016 February 24th

Mr. Dave Cumberbatch Attorney-at-Law for the Applicant/Spouse

Ms. Margot Green Q. C. with Mrs. Peta-Gay Lee-Brace, Attorneys-at-Law for the Respondent/Spouse

DECISION

Brief Background

[1] The parties constructed a dwelling-house called “Tara House” on land situate at Douglas Road in the parish of Saint Peter in this Island which is the subject matter of pending proceedings before this court. The property was sold and the net proceeds paid into court by order of this Court made on

the 20th day of August, 2015. On the 26th day of November 2015, **Worrell J** made an order that the sum of \$310,000.00 be paid to the Respondent out of the said net proceeds of sale to be deducted from any share in the property that might be awarded to her by the court. That money was to defray future medical expenses to be incurred by the Respondent.

The Application

[2] The Applicant/Spouse, by application filed 10th December 2015, applied for the following orders:

- (a) That the sum of \$215,180.23 be paid to him from the net proceeds from sale of the property known as “Tara House” situate at Douglas Road in the parish of Saint Peter in this Island, and
- (b) That the said sum of \$215,180.23 be deducted from whatever the Court determines that the Applicant is entitled to as his share in the said house,
- (c) Such other orders as the Court may deem fit.

[3] The Application is supported by an affidavit filed on even date in which the Applicant deposes, *inter alia*, that his boat is laid up and in need of repairs to the tune of \$102,494.22. This boat is used to ply his trade as a water sports operator and is his sole source of income. He was forced to borrow moneys

from his relatives and friends to assist him in paying his rent and day to day expenses and charges incurred with respect to berthing fees for the boat with the Barbados Port Authority. He also required funds to pay his Attorney-at-Law for appearances on previously heard matters which came on, on certificates of urgency.

- [4] The Respondent filed an affidavit in opposition to the present application. She alleged that the Applicant never worked consistently during their relationship. The lady from whom he allegedly borrowed funds was his lady friend with whom he cohabited. His sister worked as a housekeeper at Crystal Springs and it was doubtful whether she could afford to lend the Applicant any money. The Respondent also deposed to the fact that the Applicant had refused to sign the conveyance and a court order had to be obtained to have him sign the said conveyance which was not the actions of a man in need of money.
- [5] She also deposed that his dogs were kept at the rented house whilst he lived with his lady friend.
- [6] The parties were cross-examined on their affidavits. It transpired that the Applicant had purchased a pair of sunglasses for his lady friend for \$800.00 duty free at an establishment where the Respondent worked and the Respondent was the salesperson at the time. The tenor of the Respondent's

cross-examination suggested that the Applicant did not have a genuine need for the payment applied for.

The Applicant's Submissions

[7] The Applicant submitted that the court ought to make the order since it was unfair for him to be under threat of suit from his creditors. The failure to make the order sought might be a disincentive to others to lend him moneys in the future. It would be incongruous to deny his application when the Respondent was successful on a similar application which was heard shortly before his present application.

The Respondent's Submissions

[8] The Respondent submitted that the Applicant lived with his new partner, kept the rented accommodation to house his dogs and it was doubtful whether he had borrowed money from his sister, relatives and friends. He was uncooperative in executing the conveyance which indicated that he had no urgent need for funds.

[9] Counsel relied on **section 53(2)** of the **Family Law Act** to suggest that any order made should be just and equitable. It would not be just and equitable to grant the Applicant a share of the assets by way of immediate payment. He had not shown immediate need of medical care as the Respondent was

and had not invested any of his own funds into the acquisition of the property.

[10] Counsel submitted that the Applicant should await the final outcome of the matter in order to be granted any share of the assets.

The Issue

[11] The sole issue is whether the Court ought to grant the Applicant's application for the sum requested prior to the conclusion of the substantive matter before the Court. The parties indicated that they had no case law or other authorities to hand up to the Court on the issue.

The Law

Law

[12] The Law is to be found in **sections 56 and 57** of the **FLA (FLA)** which are now set out in this decision.

“56. (1) in proceedings between the parties to a marriage or Union in respect of the existing title or rights to property, the court may declare the title or rights, if any, that a party has in respect of the property.

(2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition, and interim or permanent orders as to possession.

(3) An order under this section is binding on the parties to the marriage or union, but not on any other person.

57. (1) In proceedings in respect of the property of the parties to a marriage or union, or of either of them, the court may make such order as it thinks fit altering the interests of the parties in the property, including

- (a) an order for a settlement of property in substitution for any interest in the property; and
- (b) an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage or union, such settlement or transfer of property as the court determines.

(2) The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order”.

[13] Property has been defined in **In the Marriage of Duff (1977) FLC 90-217** as follows:

“We are of the view that the intention of s 79 is to enable the court to take into account and assess all the property of the parties upon being asked by either of them to make an order altering the interests of the parties in property. We are further of the view that when s 4 defines property as being "property to which the parties are entitled whether in possession or reversion" the words "whether in possession or reversion" are not intended to indicate that the kind of property with which this Act can deal must be property to which a party is entitled in possession or reversion but rather the phrase "whether in possession or reversion" is, as a matter of grammar, an adverbial phrase which qualifies the word "entitled". The phrase means that the entitlement to the property may be either in possession or reversion; ie, the phrase is descriptive of the entitlement and not of the property and it removes any fetter upon the court in dealing with property under this Act by limiting the nature of the entitlement thereto to entitlement in possession.”

[14] **Section 59** of the **FLA** provides that the court, in exercising its powers, may do any or all of the following:

- “(a) order payment of a lump sum, whether in 1 amount or by instalments;
- (b) ...
- (c) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs;
- (d) to (h) ...
- (i) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives or until further order;
- (j) impose terms and conditions;

- (k) ...
- (l) make any other like or dissimilar order as those mentioned in paragraphs (a) to (k) that the court thinks it necessary to make to do justice”.

Discussion

[15] The definition of property in the **FLA** is broad enough to include the proceeds of sale of the property. The net proceeds of sale now held by the Registrar of the Supreme Court under my order represents the property of the parties, albeit in altered form. It is property to which the Applicant is claiming a share in the substantive proceedings. The power of the Court under **s. 57** is so wide that it enables the Court to make orders altering the interests of parties not only in particular items of property but also to take into account all the property of the parties and “... make an order in any form that it considers will best meet the justice and equity of the case. This includes, of course, an order for the payment of a lump sum...” [**In the Marriage of Collins [1977] F.L.C. 90-286**]. The Court has power under **s. 57** of the **FLA** to make a partial property order altering the parties’ interests in the property pending a final order. Such an order has sometimes been referred to as an interim order in the Australian jurisdiction. (**See Family Law 5th Edn by Anthony Dickey pg. 515**).

[16] The objection to the orders sought is based upon the submission that the Applicant must show need or urgent need in order to succeed. No authority

was cited to support that contention. This seems to me to be relevant to a consideration of urgent maintenance under s. 55 of the FLA and not to the instant matter. The net proceeds of sale now held by the Registrar of the Supreme Court under my order represents the property of the parties, albeit in altered form. It is property to which he is claiming a share.

[17] It has not been contended that he is not entitled to a share in the property, the issue is the extent of that share. I am of the opinion that the relevant considerations are:

- (a) Is the Applicant entitled to a share or interest in the proceeds of sale? If so;
- (b) Is the sum being applied for likely to exceed the likely percentage share that the Applicant might ultimately be awarded by the Court in the substantive case?
- (c) If the answer is in the negative, the sum ought to be awarded.
- (d) It would be just and equitable to order the sum to be deducted from a final sum which the Court will award at the conclusion of the substantive matter.

[18] I am of the view and hold that the Applicant is entitled to a share in the property the subject of this application. The sum of \$215,180.23 is 7.2 % of the net proceeds of sale of \$2,975,557.47 deposited into Court. I am also of

the view that any sum which might ultimately be awarded to him is likely to exceed the amount claimed. There is no requirement that the Applicant show urgent need to access moneys to which he is entitled as of right.

[19] If the sum awarded is not deducted from the Applicant's final award, he will be unjustly enriched to the extent of the payment received under this order. I find, therefore, that it is just and equitable to make the orders sought.

[20] In the premises, it is therefore ordered that:

- (a) That the sum of \$215,180.23 be paid to the Applicant by the Registrar of the Supreme Court from the net proceeds of sale of the property known as "Tara House" situate at Douglas Road in the parish of Saint Peter in this Island now being held by the Registrar under the order this Court made on 20th August 2015, on or before 29th February, 2016.
- (b) That the said sum of \$215,180.23 be deducted from whatever sum the Court determines that the Applicant is entitled to as his share in the said property on the final disposition of this matter, and
- (c) That each party bear their own costs of this Application.

**WILLIAM J. CHANDLER
JUDGE OF THE HIGH COURT**