

**BARBADOS**

**[Unreported]**

**IN THE SUPREME COURT OF JUDICATURE  
HIGH COURT  
FAMILY DIVISION**

**No. 281 of 1999**

**BETWEEN:**

**F. M. C.**

**APPLICANT/HUSBAND**

**AND**

**P. E. C.**

**RESPONDENT/WIFE**

**Before the Honourable Madam Justice Margaret A. Reifer, Judge of the High Court**

**Dates of Hearing: 2017 July 13<sup>th</sup>, 24<sup>th</sup>, 25<sup>th</sup>**

**Date of Decision: 2017 October 12<sup>th</sup>**

**Appearances:**

**Ms. Margot Greene Q.C. Attorney-at-Law for the Applicant/Husband  
Lady Beverley Walrond Q.C. in association with Ms. Deborah Carrington for  
the Respondent/Wife**

**Decision**

**Introduction**

[1] This matter has been before this Court for one year, but in the system (as seen by the suit number) for 18 years. It appears to have had a bitter and tortuous history, but the Application of 2000 was only presently made ready for trial.

[2] The parties married in 1986 (after having cohabited from sometime in 1984, some months after the birth of the couple's eldest child and son on the 24<sup>th</sup> August 1983). They separated in March 1998 (15 years later) after the irretrievable breakdown of the marriage. The Applicant/Husband (hereinafter referred to as the Husband) left the matrimonial home to reside elsewhere on or about November 1999. (There is some dispute as to whether he left voluntarily or after he was told to do so by the Wife's attorney. The record does not reflect that he was ordered to do so by the Court, although the Wife stated in her oral evidence that he was ordered to do so by **Moore J.** (as he then was)).

[3] The two children of the marriage were born August 1983 and January 1988 respectively. At the time of the separation the children were therefore 16 and 11 years old. The Application for Dissolution of Marriage proposed that the care and control of the children should remain with the Respondent/Wife (hereinafter referred to as the Wife) and that orders be made for both parties to be responsible for the maintenance of the children in an amount to be stipulated by the Court.

## **Background**

- [4] An Application for Dissolution of Marriage in this matter was filed by the Husband on May 27<sup>th</sup> 1999 and heard by **Moore J.** on October 11<sup>th</sup> 1999. On the latter date various Orders were made, inclusive of a **Section 27** Order and maintenance orders.
- [5] The record shows miscellaneous court appearances and specific Orders made over the years as follows: in 2000 **Moore J.** ordered the Husband to pay the Wife the sum of \$2000 by the 30<sup>th</sup> September 2000, this sum being outstanding arrears of maintenance; on June 16<sup>th</sup> 2003 **Haynes J. (Ag.)** ordered the Wife to make the matrimonial property situate at Friendly Hall Jackman's St. Michael available for valuation upon being given not less than forty eight hours notice; on the 7<sup>th</sup> June 2004 **Kentish J.** granted an Order under **Section 42** of the **Family Law Act**; on the 1<sup>st</sup> May 2012 **Goodridge J.** (as she then was) ordered both parties to file updated Statements of Financial Circumstances and scheduled the trial of this matter for June 20<sup>th</sup> 2012.
- [6] This Court makes no observations as to what occurred to prevent the completion of this matter between 2012 and 2016.
- [7] This matter first came before me on the 28<sup>th</sup> July 2016. On that date, on the complaint of counsel Mrs. Walrond about the length of time the matter had been in the system, this Court in strong terms expressed its wish to bring it to completion within 6 months consequent on the parties ensuring that it was

trial ready. However, it was not so ready on that date and case management orders were made to ready this matter for trial.

### **The Current Application**

[8] On August 31<sup>st</sup> 2000 counsel for the Wife filed an Application seeking Orders as it relates to the children and their maintenance, as well as matters relating to the matrimonial property. The relevant part of the Application is as follows:

“1. P. E. C., Teacher applies for the following orders:

- (a)...
- (g) A declaration that the parties are the owners as tenants in common of the former matrimonial home situate at Lot 1 Friendly Hall, Jackson in the parish of Saint Michael;
- (h) An order under Section 57 of the Family Law Act vesting an interest not less than 75 per cent therein in the Wife or such other interest as the Court may deem just;
- (i) A declaration that the Wife is entitled to a half share interest in the motor car Registration number MG 467 registered in the name of the Husband;
- (j) That the said motor car be immediately presented for valuation to the recognized agents for the car in Barbados and that a copy of the written Valuation be presented to the Court;...”

[9] The following Affidavits are considered relevant to the issues arising therefrom:

1. Statement of Financial Circumstances of F. C. filed May 27<sup>th</sup> 1999;
2. The Affidavit of P. C. filed August 31<sup>st</sup> 2000 paragraphs 6 to 17;
3. Statement of Financial Circumstances of P. C. filed August 31<sup>st</sup> 2000;
4. Affidavit in Reply of F. C. filed November 1<sup>st</sup> 2000;
5. Statement of Financial Circumstances of F. C. filed February 11<sup>th</sup> 2002;
6. Statement of Financial of P. C. filed June 2<sup>nd</sup> 2004;
7. Affidavit in Reply of P.C. filed June 7<sup>th</sup> 2004;

8. Affidavit of F. C. filed June 23<sup>rd</sup> 2005;
9. Statement of Financial Circumstances of P. C. filed October 2<sup>nd</sup> 2006;
10. Further Affidavit of P. C. filed October 2<sup>nd</sup> 2006;
11. Statement of Financial Circumstances of P. C. filed June 26<sup>th</sup> 2012;
12. Affidavit of P. C. filed June 26<sup>th</sup> 2012;
13. Statement of Financial Circumstances of P. C. filed January 27<sup>th</sup> 2017;
14. Appraisal Report of the Matrimonial Home filed February 7<sup>th</sup> 2017;
15. Affidavit of P. C. filed February 6<sup>th</sup> 2017 (amended in Affidavit of June 23<sup>rd</sup> 2017);
16. Affidavit of F. C. filed April 20<sup>th</sup> 2017;
17. Statement of Financial Circumstances of F. C. filed April 20<sup>th</sup> 2017;
18. Affidavit in Response of P. C. filed April 25<sup>th</sup> 2017;
19. Amended Affidavit of P. C. filed June 23<sup>rd</sup> 2017;
20. Affidavit of F. C. filed July 11<sup>th</sup> 2017;
21. Further Affidavit of P. C. filed July 26<sup>th</sup> 2017.

### **The Issue**

[10] Arising from this matter is the question: what interest (if any) does the Husband have in the matrimonial home situate at Friendly Hall St. Michael, purchased in the joint names of the parties in 1988 for the sum of \$123, 000.

[11] The evidence considered is that to be found in the Affidavits listed above and in the oral evidence and cross-examination of the parties before this Court. Both counsel have submitted Written Submissions (in addition to their oral submissions) advancing their particular analysis and the findings of fact that they wish the Court to make.

[12] It is the observation of this Court that while there were not significant disputes of fact between the parties, the challenge lay primarily in the view and weight to be placed by the Court on particular aspects of the evidence.

### **The Case for the Wife**

- [13] The case for the Wife as revealed by her Application of August 31<sup>st</sup> 2000 is that she is entitled to no less than 75 per cent of the matrimonial home (“(h) An Order under **section 57** of the **Family Law Act** vesting an interest being not less than 75 per cent therein in the Wife or such other interest as to the Court may seem just.”).
- [14] In her Written Submissions filed April 11<sup>th</sup> 2017, the Wife urged the Court to find that her contributions during the minority of the children, to their tertiary education and to the property, were such as “to justify a transfer of the property to her in its entirety or as near to as may be just.” (See paragraph 43 of the said Written Submissions).
- [15] In her Written Submissions filed July 26<sup>th</sup> 2017, counsel for the Wife at paragraph 71 urged the Court to find “that the Wife has contributed so mightily during the minority of the children and to the acquisition, maintenance, upgrading and the retention of the property to justify vesting in her a percentage well in excess of the 75 per cent originally requested by her in her original application.”
- [16] In making this submission and emphasizing the Wife’s shouldering of the children’s tertiary education in its entirety, counsel for the Wife makes the point that **section 57(3)(b)** refers to a child of the marriage and that the word ‘child’ in the **Family Law Act** does not only mean a child under the age of

18. This submission highlights the fact that, in this case, there is no Maintenance Order requiring the Husband to maintain the children after age 18.

### **The Case for the Husband**

[17] While recognizing certain significant occurrences, (starting with his departure from the home in 1999), it is his submission that these events diminished, but did not extinguish his interest in the matrimonial home. The Husband's claim is that he should be awarded a one-half share of the property at the value that it had in 1999. This would be \$80,000 as the evidence is that in May 1999 (some months before the Husband left the matrimonial home) it was valued at \$160,000.00 by Mr. Michael Jemmott. (Later counsel submitted that the 2009 value, prior to the renovations by the Wife, would be the relevant valuation period). The obvious challenge to this submission (1999 value) is whether the relevant figure for these purposes is not the value of the equity in the property at that particular date as there is no dispute that there was in place at that time a mortgage with the Barbados National Bank. The current valuation dated September 2016 prepared by George A Ramsay & Co, is that the property now has a value of \$450,000.00. The mortgage was paid off by the Wife on or by October 2007.

### **The Relevant Law: the Proper Approach**

[18] In the recently decided case of **Griffith and Griffith No. 711 of 2006** (delivered April 4<sup>th</sup> 2017), this Court spoke to the provisions of **sections 56 and 57** of the **Family Law Act** as having become trite law and needing no rehearsal. While still holding to the view that it has become trite law, this Court now retreats from the position that it needs no rehearsal. That comment made no reference to the 2014 Amendment of **section 57 (3)** which now reads:

“(3) In considering what order should be made under this Section, the Court shall take into account the following:

- (a) The financial contribution made directly or indirectly by or on behalf of a party or a child to the acquisition, conservation or improvement of the property, or otherwise in relation to the property;
- (b) The contribution made directly or indirectly by a party to the marriage or the union, including any contribution made in the capacity of homemaker or parent to the welfare of the family which constitutes (i) the parties to the marriage or union as the case may be; and (ii) where applicable, any child of that marriage or union;
- (c) To the acquisition, conservation or improvement of the property by either party, including any contribution made in the capacity of homemaker or parent;
- (d) The effect of any proposed Order upon the earning capacity either party;
- (e) The matters referred to in section 53(2) in so far as they are relevant; and
- (f) Any other Order that may have been made under this Act in respect of a party.”

[19] However, this Amendment has merely cemented the interpretation of the approach to this provision by the Barbadian Courts over the years. The amendment adjusted the wording that spoke solely to ‘contribution to the property by homemaker or parent’ and now speaks to ‘contribution to the welfare of the family’ unit.

[20] In **Proverbs v Proverbs (2002) 61 WIR 91**, our Court of Appeal's first examination of the principles to be applied in the determination of applications under **sections 56 and 57 of the Family Law Act, Simmons CJ**. adopted the structured approach of the Australian Courts (**Pastrikos v Pastrikos (1980) FLC 90-897; Lee Steere (1985) 91-626 and Ferraro v Ferraro (1983) FLC 92-335**). This entailed the application of a three (3) step approach as follows:

1. The net property of the parties must be identified and valued by the Court;
2. The respective contributions of the parties within the terms of **Section 57(3)** must be considered and evaluated;
3. The **Section 53(2)** factors, as far as relevant, should then be considered.

[21] The final consideration or step (sometimes referred to as the Fourth Step) is to be found in **Section 57(2)** of the Act which enjoins the Court:

“... not to make an Order under this section unless it is satisfied that, in all the circumstances it is just and equitable to make the Order.”

[22] This Court undertook an extensive examination of the ‘just and equitable’ provision in the unreported case of **Johnson v Johnson No. 121 of 2000** (see in particular paragraphs 97 to 113).

## **Analysis of the Evidence and Findings of Fact**

### **What is the Property of the Parties**

[23] As is the norm in most actions of this nature, the only asset of significance acquired by the parties during their marriage was the matrimonial home. While the Wife's Application of August 2000 asks for a declaration that the Wife is entitled to a half share in the Hyundai motor car registered in the name of the Husband, this is just one of several chattels, inclusive of the contents of the home, taken into account by this Court in making a broad sweep of all relevant evidence in this matter.

[24] Counsel for the Husband submits that the property is important; it is a financial resource of both parties. Counsel states that the only property is the former matrimonial home which is now under the sole control, use and occupation by the Wife. The Husband has not had the use of this important resource for 18 years now, which said resource could not have been created without him. The Wife has been able to use that resource to build her business and to provide a home for herself and the children of the marriage. It has saved her the cost of expenditure on rent for her business, which would have been a significant saving for her in addition to providing her with shelter.

[25] The Husband took very little with him when he left, leaving behind a substantial majority of the house's contents. He, however, took the family car.

### **The Contributions of the Parties Evaluated**

[26] What is apparent from the evidence and submissions in this matter is that for the determination of the parties' contributions and interest in the matrimonial home, it is helpful to determine their respective contributions by looking at two time periods:

1. 1984 to 1999 the period of cohabitation by the parties;
2. After 1999. (What is relevant for this period is the adjustment to be made after one (1) above, and what factors are relevant in that adjustment).

### **1984 to 1999**

[27] This fifteen (15) year period was the period of acquisition of the matrimonial home and its contents. The evidence suggests, and is accepted by this Court, that in this period the financial constraints/limitations of the family resources did not permit repairs of any significance or improvements. This speaks to an allegation that the Husband between 1988 and 1999 (when Architect Michael Jemmott valued the home and detailed its weaknesses) was solely responsible for the deteriorating state of the home.

[28] It was the Husband's evidence, (accepted by this Court), that he was the financially stronger partner when the parties commenced cohabitation and subsequently marriage, and he took on the greater financial responsibility; the Wife and the couple's first child joined him at his apartment in 1984. The apartment had been furnished by him. He paid the rent, he purchased furnishings and appliances, and he paid bills and bought some of the groceries.

This was readily admitted by the Wife in cross-examination (i.e. that from 1984 to 1999 the husband purchased several items on hire purchase). She said in answer to the query as to what he purchased:-

“A living room suite, dining room suite, a fridge, a stove, bunk beds for the kids.  
... Yes a lawnmower  
... Yes, I think the washing machine”

(The husband in his evidence gave a more extensive listing which was not challenged). He was a graduate teacher earning far more than the Wife, although by 1992, after she had acquired her undergraduate degree, their salaries were largely the same. (Neither party experienced an increase in salary related to any further academic qualifications).

- [29] The Husband’s direct financial contribution, indirect financial contribution and non-financial contribution is most evident in this period. He provided the down payment of \$12,300 on the matrimonial home and paid the legal fees and expenses. After payment of the deposit, the parties were left with a mortgage of \$108,000.00. The deposit was acquired by way of a credit union loan (Public Workers’ Credit Union) of \$15,000.00, which he repaid. The mortgage payment to the Barbados National Bank was made directly from his salary from 1988 to 1992 (\$975 per month with a later increase to \$1025.00).
- [30] It is his evidence that his contribution to the welfare of the family exceeded this: he was responsible for the acquisition and maintenance of the family car;

he maintained accounts at Plantations, Modern Living, Courts, Da Costa Mannings and Cave Shepherd from which household items ranging from hire purchase furniture and appliances to clothing were provided for the family; it is his evidence that he provided and paid for during this period, living and dining room suites, stove, refrigerator, washing machine and other furniture. There was no challenge to this evidence. In fact, when questioned by the Court, the Wife corroborated the Husband's evidence on this.

[31] There is some conflict on this point, but I accept the Husband's evidence as the Wife's evidence shows some inconsistencies. For example, while giving the impression that the only thing the Husband did was pay the mortgage, she nonetheless admits in cross-examination that the Husband paid utilities and hire purchase accounts. (See paragraph 25 of the Written Submissions). The Wife alleged that she made an indirect financial contribution towards the welfare of the family equaling that of the Husband by running the household (food and bills) and taking care of the children's needs.

[32] In 1992, the financial burden, (in the Husband's submission), was too much, and he had the Wife pay for the mortgage from her salary (it is also clear that at that time the marriage was experiencing considerable conflict and this Court was left with the impression that this move by the Husband was a reactionary one to a present conflict). From his salary, he paid the utilities (electricity,

water and telephone), bought groceries and household necessities and assisted with the children's expenses. He continued to maintain the hire purchase accounts and payments towards the family car. This continued until he left the home in 1999; in short, this was his indirect financial contribution to the acquisition of the home and the welfare of the family for this period. On this point there is some conflict in the evidence as the Wife suggests that not only was she paying the mortgage from her salary, but she was maintaining the household as well. This is inconsistent with the admissions made above by the Wife as to the contributions by the Husband, as to the level of income earned by her and the effect of the austerity years on the family's budget.

[33] During this period (specifically what I call the Wife's study years) his contribution to the welfare of the family was significant. This Court does not accept the Wife's submission that the major contribution was hers, specifically that she was "the main caregiver and provider for the children during the marriage when in Barbados". I have no doubt that this may have been mostly the case before she commenced her studies, but the husband's contribution (generally and specifically) during her study years should not and cannot be, marginalized.

[34] When the parties married, the Husband's professional educational standing exceeded that of the Wife; he had a degree and she did not (she apparently

was completing her teacher's training at Erdiston). During this period (circa 1990 and onwards) the Wife (with the Husband's support, clearly waning in the latter years) started and completed her degree, studied for her Masters and completed her doctorate, all while still working fulltime as a teacher (with the exception of 4 years spent in Canada). It was her evidence before this Court that in order to achieve this she headed directly to the library and to her classes after work, where she stayed until late. By her admission, she spent a lot of time in the library because she could not afford to photocopy the material. The Husband had the responsibility of the home and children (when she started her studies in 1990 the children were 2 and 7 years old respectively); he took them home or received them, cooked for and fed them, washed and ironed their clothes, monitored their homework etc. There is an admission by the Wife that there were occasions (two or three) that she left home (the reason therefor was disputed and not determinative of this finding) and left the children in the Husband's exclusive care.

- [35] The Wife spent four years in Canada (1995 to 1999) pursuing her doctorate; during this time the Husband had the full responsibility of the children. There is no evidence of an extended family support system, and the indication is that the Husband carried the responsibility of the home and family by himself.

[36] During the period that the Wife was in Canada, the Husband had the benefit of her salary (with the exception of a four month non-payment subsequently paid) as her studies were funded by a scholarship and she was granted leave with full pay by the Barbados Government. She left her credit card for his use (the Husband's response being that the credit card had an upper limit of \$1000 and neither party spoke to whether this was the sum total spent for the 4 year period or who repaid it).

[37] Without a doubt the salary of both parties was needed to meet the household debt. Such was the position stated by the Husband and such was admitted by the Wife through her counsel. At paragraph 13 of her counsel's Written Submissions it is stated as follows:

“Evidence before the Court is that especially during the recession of 1990/1991 when both salaries were cut by 8 per cent and even later, there was not a lot of excess in the household and both salaries were needed. The family lived a modest lifestyle for the most part and both salaries were used in the home.”

[38] It is not necessary for this Court to determine the cause of the breakdown, but it is evident that during this period the marriage started to unravel. It did not survive the strain and sacrifice of this difficult period. The Husband felt that the Wife was not balancing her role as Wife and mother with that of student. The Wife felt that the Husband was unsupportive and jealous of her academic ambitions and success. Financial strain clearly played a critical role with both

parties feeling that the other was not carrying his/her weight and/or was financially irresponsible. The “austerity years” for the Barbados economy precipitated the 8% public sector pay cut, which hit this family’s budget hard.

[39] It is unclear if this fact played any part, but the evidence is that the Husband undertook his Certificate in Educational Management in 1997/98 and also started and completed a Masters’ degree at UWI paid for by Government funding.

[40] There were allegations by the Wife that in spite of the Husband having access to her salary, “he had run up debts which he insisted would not allow him to make a meaningful contribution to the maintenance of the children”. No evidence of this was provided and the Husband denied that this was the case. He had also borrowed monies to take a holiday to the United States with the children despite her opposition to the same on the ground that it was not affordable.

[41] When the Wife returned from Canada in 1999 the family was in a crisis which the marriage did not survive. By her own admission, when the Wife returned from Canada she had determined in her mind that the marriage was over. She told this Court that when she returned from Canada she was not wearing her wedding ring and she slept on the couch until she was able to purchase a bed

for herself. The growing acrimony and bitterness resulted in the divorce application and the Husband's expulsion from the matrimonial home.

[42] Much is made by the Wife of the Husband's poor relationship with his teenage son when she returned. The Husband has since that time not been able to maintain any relationship with his son, but states that he has maintained 'somewhat' of a relationship with his daughter, but it is not a close one. It is noted once again, that there was no Court Order for payment of maintenance beyond the age of maturity (18), but had it been heard, case law does indicate that this, and the reason for it, would have been under consideration by the Court.

### **After 1999**

[43] This period (more so 2012 and onwards) was one of conservation and improvement of this asset. Ostensibly, this was a period of conservation and improvement by the Wife, but counsel for the Husband nonetheless submits that the Husband contributed to the conservation and preservation of the matrimonial home.

[44] The apparent breakdown in the Husband's relationship with the children after he left the home, resulted in the Wife becoming the exclusive caregiver after this time. The children would have been 16 and 11 years of age respectively.

[45] In what this Court saw as a reversal of roles, her contribution to the welfare of the family significantly exceeded his during this period. She became mother, father and almost sole provider and manager of the home, paying the bills and all that comes with managing a household. She exclusively furnished the children with their tertiary education.

[46] In looking at the years after 1999, this Court has analysed the evidence generally under five (5) heads:

### **1. Non-payment of mortgage**

It cannot be denied that after the Husband left the home in 1999 he made no payments towards the mortgage. Also he would not have made an indirect financial contribution to the mortgage since he was out of the house and not paying utilities or purchasing groceries or doing anything that would relieve the Wife of that financial obligation. The Wife carried the mortgage alone for 8 years (1999 to 2007), compared to 11 years joint contribution.

Much is made of the fact that the Wife saved the house from sale by the bank without any assistance from the Husband, but this Court has indicated above that the Wife carried the mortgage alone for 8 years and this has been taken into account.

### **2. Conservation and improvement between 1999 and 2017**

It is without a doubt that after 1999 the Wife did much to conserve and improve the property, but it is undetermined how much of its current value of \$450,000 is directly attributable to the Wife's repairs and upgrades since the last valuer (Ramsay Property Services) was not cross-examined before this Court. It is also unclear how much the improvements were meant to facilitate the fact that she has been conducting a business from her home (for example, at paragraph 49 of her Written Submissions it is stated: "The Wife also uses part of the property which she has upgraded by putting in a habitat screen for the purpose of screening out the evening sun from the

children.” Much of the work was done circa 2012 as before that the Wife only earned sufficient to meet her and her children’s needs. The repairs and improvements only started when her business income started to increase, when the Wife renovated and refurbished the home. The Approved Report filed February 7<sup>th</sup> 2017 details the following works at p. 4 of the same:-

“Works effected included: new fencing, new bathroom, new laundry room, new bedroom cupboards and new roof. Screens were installed to all windows, new PVC windows installed to the back section and security grills installed to the kitchen, bathroom and front door. The exterior of the property was painted. Since our last valuation in 2012, the patio has been retiled and roll shutters have been added to the exterior windows, a large screen has been installed to the patio and a backup generator installed. However, there are still major upgrades needed, ie. the internal floors to be retiled and kitchen to be upgraded.”

All land taxes have been paid for by the Wife since 1999.

### **3. Allegation of outstanding maintenance and unpaid ancillary expenses**

This issue can only be looked at broadly as both parties are short on specifics, but the Husband through his counsel does admit that he did not “pay with any regularity the maintenance in respect of the minor children of the marriage despite the order of the Court.”

In February of 2002 the Husband filed an Application to have the Maintenance Order varied to \$100 per month per child.

The Affidavit evidence of the Wife alleges amounts owed at specific times (in 2004 she filed an Affidavit claiming arrears of \$37,400 under the maintenance Order) but beyond admitting that some amounts were received there is insufficient evidence for any arithmetical assessment to be made of amounts owed (at paragraph 8 of her Written Submissions counsel for the Wife states: “... Sometime later, prior to Wife’s Affidavit filed in October, 2006, the Husband started paying the Wife \$300 monthly for their daughter while she was a minor and ceased payment when she completed secondary schooling prior to going off to university.”) There is an admission of receipt of two lump sum payments totaling \$4000 and an unsubstantiated allegation that a Court allowed the suspension of the

maintenance order. The maintenance order had two (2) years to run for the son and seven (7) years for the daughter.

The Wife alleges that the Husband has never paid any of the ancillary expenses for the children and this allegation is undisputed.

#### **4. The issue of tertiary education**

It also is not in dispute that the Husband made little or no contribution to the tertiary education of the children. Two further points are made in this regard: firstly, that he did not have the financial wherewithal to do so; and secondly, that he had no legal obligation to do so.

It is noted that in her Application for Ancillary Relief filed August 31<sup>st</sup> 2000 the Wife sought a permanent maintenance order for the minor children until they had completed their tertiary education to first degree level together with one-half of their medical, dental, ophthalmic and pharmaceutical and educational expenses. This claim was not prosecuted and no order was ever made in this regard. Counsel for the Husband made the point that by the time the son reached 18 there was little or no relationship with his father.

It is not disputed that the Wife paid for the son's education at the Community College and at the University of the West Indies, the majority of which was government funded.

The Wife also submitted in her affidavit of June 26<sup>th</sup>, 2012 that she supplemented their daughter's scholarship at St. Augustine's College, Raleigh, North Carolina in an amount in excess of \$31,555.44 and paid for her orthodontic expenses.

There is an "elephant" in the room, hinted at by both parties, and it is the issue of 'parental alienation' of the Husband and the cause of the husband's poor relationship with the children. There were competing stories on both sides. It certainly appears to this Court that financial circumstances were not the only reason that the Husband maintained the children to age 18 and not beyond.

#### **5. The family debt carried by the Husband**

The Husband alleges that he carried with him "family debt" when he left the home in 1999, and in examination by this Court, the Wife readily

agreed that the husband carried with him some of the matrimonial debt. In particular, she identified the hire purchase accounts, admitting that there were about 4 or 5, together with the car loan. This Court found corroborative evidence in “Exhibit FC1” to be found in his affidavit filed June 2005, which shows that the Husband consolidated his debts in 1999 with the Bank of Nova Scotia in an amount of \$44, 656.35. This amount included the following:

	\$
Government Stamp Duty	291.75
Registration Fee	10.00
Loan Application Fee	150.00
BPWCU	25,185.93
Barbados National Bank	4,217.63
Credit BNS A/C 16667	144.69
	<hr/>
Total Principal	30,000.00
Plus Interest	14,656.35
	<hr/>
<b>Total</b>	<b>44,656.35</b>

As can be seen, the major amount (BPWCU) represented the debt for the family car (purchased while the Wife was studying in Canada) which the Husband took with him and was used exclusively thereafter for his benefit. This debt was amortized over forty-eight (48) months and should have been repaid by 2002.

His submission that there were other debts was not substantiated and this Court accepts this as his total debt at the time. His counsel conceded that while the Husband would have had the exclusive use of the car (a wasting asset) the Wife would have remained in the house which is by far the more valuable asset. The Husband would have been paying for something which did not enure to his benefit in the long term, because a car is a wasting asset.

### **Section 53 (2) Matters**

[47] Counsel for the Husband, in adverting to the discretion of the Court to make an alteration of the parties' interests in the matrimonial home under **Section 57**, has extensively examined the **Section 53(2)** matters or future needs element of the Application, and clearly is of the opinion that they must play a significant role in this Court's assessment of the circumstances of this matter. It is here noted, that counsel for the Wife has taken the position that **Section 53** factors ought not to be brought into account. Counsel for the Husband submits that a consideration of the 'future needs' factors "allows the Court to look ahead to the future needs and obligations of the parties and to consider what order would be 'just and equitable' in light of the present and the future financial positions of each party."

[48] Under **Section 53(2)(a)** she observes that the parties are 57 and 55 respectively, and both appear to be enjoying good health. The Husband previously had an episode with health challenges after the separation, but appears to have put them behind him. In short, these circumstances do not lend themselves to a **section 53(2)(a)** alteration.

[49] **Section 53 (2)(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. Counsel submits that at 57 the Husband's public service career prospects are on the wane as compared with the thriving

and successful business being run by the Wife from the former matrimonial home. *“The Husband has no such prospects. He is still a public servant with no extra skills to start a business and certainly no capital to do so. If the Wife retains the house she would also have an asset which she can leverage for her business and which also provides her and her children with shelter.”*

[50] The Wife’s current Statement of Financial Circumstances filed January 27<sup>th</sup> 2017 shows her income to be almost twice that of the Husband. She styles herself a Literary Specialist, and it certainly appears that her services are in great demand. (Her business started in 2004, and is called Literacy Services). The Husband will have to retire at age 67, while she may continue her business (which operates in a niche market) indefinitely. In short, his future financial prospects are not as bright as the Wife’s. Counsel submits at Page 18 of her Written Submissions;

“His future financial prospects are therefore nowhere near as bright as those of the Wife. He would hardly be able to obtain a mortgage at his age to build a house either of the same or even near the value of the former matrimonial home and if, even if he was able to secure a mortgage his repayments would likely be very high taking into consideration his age and the length of time he has left on the job.”

[51] This Court must also balance this against the fact that the Husband’s public service pension is likely to be greater than that of the Wife, who would have retired from the public service in 2004; and that he too has a financial resource in the land purchased by him at Coverley. His Statement of Financial

Circumstances does not indicate any outstanding liabilities as it relates to this parcel of land, but it is noted that at page 34 of the Written Submissions, it is stated that he is still paying for it. His Statement of Financial Circumstances filed April 20<sup>th</sup> 2017 reveals loan repayments to the Government of Barbados, without more. One cannot totally discount his possible career advancements in the 10 years left to him. It is not to be forgotten that he is the holder of post graduate qualifications by way of a Certificate in Educational Management and a Masters degree. He has advanced from teaching to being a Senior Education Officer and I have no doubt is quite capable of going farther. From as far back as 1999 he has shown himself to be paying relatively significant amounts towards several insurances, the cash values for which should provide an important financial resource.

[52] What also has to be balanced is the fact that for 18 years the Wife has been able to use the financial resource of the matrimonial home to build her business and to provide a home for herself and the children of the marriage and the Husband has had no similar benefit. Counsel submits at Page 19:

“It has saved her the cost of expenditure on rent for her business which would have been a significant saving for her and had provided her with a shelter.”

[53] Counsel submits that the Husband has paid rent for an apartment for the last 18 years and currently has no prospects of owning his own home. This Court

however makes the observation that this cannot be deemed to be entirely the Wife's fault. The 'matrimonial debt' should have been repaid by 2002 and the Husband stopped paying maintenance circa 2006/7 when his daughter reached age 18. By his own admission in any event, he never paid the Court ordered maintenance with any regularity. The Husband has had more than 18 years to recover his financial health. There is some allegation of a period of ill health, but no indication that it had serious impact or any impact (for that matter) on his finances.

[54] Pursuant to **Section 53(2)(g)** counsel observes that the Husband is entitled on a dissolution of the marriage to "*a standard of living that in all the circumstances is reasonable*": see **Aroney v Aroney (1979) FLC 70 - 709**.

[55] This Court observes that, other than the fact that the Husband lives in rented accommodation, there is no evidence that for the last 18 years his standard of living has not been a reasonable one. The Wife's earnings have only recently benefited from a large upswing and the Husband has enjoyed a doubling of his income since the dissolution of the marriage.

[56] Under **Section 53 (2)(i)** the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party. While there is no application for the payment of maintenance in these circumstances, counsel for the Husband

submits that this provision is nonetheless relevant, because “*the Husband did contribute to the Wife’s earning capacity. The Husband looked after the children for several years thus allowing the Wife to pursue her studies and put herself in a position where she could improve her ability to earn. As a result of that contribution the Wife was able to qualify herself and start a business using those skills. He contributed to the Wife’s business in a significant way*”: see page 23 of the Written Submissions.

[57] However, this must be seen in the context that the Husband was able during this period to complete a Certificate of Educational Management and a Masters’ Programme. In other words, the Wife’s studies did not prevent the Husband from furthering his studies and training, and pursuing his own career advancement.

[58] Under **Section (2)(j)** the duration of the marriage or union other than marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration, counsel submitted that the Husband’s earning capacity was affected by the marriage when she submits at Page 24:

“It can certainly be said that this marriage has affected the lifestyle and expectations in life of the Husband. Rather than working as a team with his Wife he found himself shouldering the responsibilities of the household and the children on his own while his Wife diligently pursued her studies.”

[59] Stated differently, the Wife’s studies afforded her the opportunity to be financially secure for the future and the Husband faithfully and

accommodatingly facilitated this. Counsel submits that the Husband made a significant sacrifice that enabled the Wife to improve her prospects in life significantly, and that the Court should pay special regard to this in taking into account the **Section 53** matters.

[60] In summary, counsel's submission is that when the period 1999 to present is taken into account, the Husband's contribution should be discounted, but when you review the **Section 53** or future needs factors, there should be a rebalancing, or adjustment as the Husband is at a disadvantage when compared with the Wife. It is on this basis that counsel has argued her 50% of the value up to 1999 and latterly 2009. (This being the approximate period that the mortgage came to an end and before the Wife did any renovations or significant changes to the house). Unfortunately, counsel was unable to assist the Court as to a 2009 (or pre-2012) value.

### **Not a Mathematical Computation**

[61] The philosophical underpinning of **section 57(2)** clearly directs that mathematical computations have no place in this exercise. Such an approach can undoubtedly lead to an 'unjust' and 'inequitable' result: See this Court's discussion of the 'just and equitable' provision at **paragraphs 97 to 113 of Johnson v Johnson (supra)**.

[62] This Court has nonetheless paid due regard to the numbers: the Husband submits that he is entitled to one half of the value of the property in 1999 (valued at \$160,000) and later the value in 2009. Such approach takes no account of the actual equity in 1999, and provides no rationalization to balance the events post 1999 (non-payment of mortgage and maintenance in particular and the section 53(2) factors).

[63] Similar constraints arise from the Wife's computation (as seen in her Affidavit of October 2<sup>nd</sup>, 2006 and argued by her counsel) that the Husband paid the total sum of \$55,950.00 towards the mortgage, to which was latterly added the sum of \$15,000 (this being his down-payment on the house) to bring a grand total of \$70,950, which is then juxtaposed against the sum of \$254,092.72 allegedly paid by the Wife on the mortgage for the period 1992 to 2007.

[64] The Wife alleges that since 2012, she has spent \$125,545.49 in repairs and up-grades. The parties agree that in 2001 the balance owed on the mortgage was \$67,488.16 and that the equity in the house around that date was \$92,511.84.

[65] The Wife computed an amount, close to \$40,000.00, spent on the couple's daughter while she attended university in the United States.

[66] This Court can only pay regard to these numbers, there can be no mathematical computation. In this regard, I adopt the words of Williams **CJ.** in **Noel v Noel No. BB 2004 CA 26** at **paragraph 17** where he states:

“... First, contribution is only one of a number of factors to be considered in exercising discretion to alter property interests. There is no hierarchy in relation to the factors to be taken into account and the relative weight to be given to each factor will vary according to the circumstances of each case. Secondly, an elaborate mathematical approach to ascertain the contribution of each party to the acquisition of property is in most cases inappropriate.”

### **Findings of Fact**

[67] This was a fifteen (15) year marriage (2 years cohabitation as a family included) with two children. By all accounts this was a marriage of long duration. For the period 1984 to 1999 the Husband’s direct financial contribution exceeded that of the Wife: he was the financially stronger partner who was earning more, who brought to the relationship a furnished home, a first car, without whose ability to borrow and provide a down-payment, the matrimonial home would not have been acquired.

[68] His contribution to the welfare of the family generally was significant: the Wife corroborates his evidence of his purchase of the substantial and unsubstantial contents of the home by way of hire-purchase; his management of 4 or 5 hire-purchase accounts for the benefit of the family; his payments of the mortgage up to 1992. His role as a father for the period 1984 to 1999 has been consistently marginalized. His Wife was a student at Erdiston Training

School when they became a family, and she remained a student for the next decade: from Erdiston to a Bachelor's Degree, to a Masters' Programme to a Doctorate. Through it all, he assisted with the children; this Court accepted that he played a large role in taking them to and from school, feeding them (he spoke of washing and pressing their clothes) and generally supervising and caring for them while the Wife studied after work.

[69] There were three (3) periods before the Wife left for Canada in 1995, when she left the home for extended periods, leaving the children in the exclusive care of the Husband. The children were in the exclusive care of the husband for four (4) years while the Wife studied for her doctorate in Canada.

[70] It is not credible that the Wife alleges that she has always been the primary caregiver to the children and that her contribution to the welfare of the family exceeded that of the Husband.

[71] I find that the Husband's contribution for this period easily exceeded that of the Wife.

[72] It is the effect of his contribution (or lack thereof) for the period 1999 and after that creates a challenge. Does it extinguish his contribution for the period 1984 to 1999?

[73] The support of two households rather than one on a tight budget is difficult. The Husband had to leave the home and create a new home/household for himself.

[74] Thereafter, he made no contribution to the mortgage or matrimonial household. He states that he could not afford to do so and to a certain extent this Court accepts that initially he could not do so. The Wife dedicated her efforts to herself and her family, taking on more work to increase her earnings and making the decision to start her own business which clearly realized the potential that she discerned could increase her level of income.

[75] It is clear however, that the Husband made a determination on the issue of maintenance: his son rejected him, for whatever reason his son chose sides in this conflict; he was 16 when the parties separated. The Husband, in the opinion of this Court chose to maintain his children up to age 18 and not beyond. There was no legal compulsion to do so as the Court never dealt with the issue of tertiary education. It is not the role of this Court to pronounce on his moral obligations.

[76] While finances would have been tight in the initial stages, they would have improved over time. The Bank of Nova Scotia loan was for 48 months, there were salary increases over the years (the Husband's salary doubled between

2002 and 2017); the daughter of the marriage turned 18 around 2007 and he immediately ceased paying any maintenance.

[77] The Wife, in addition to paying the mortgage saw both children through their tertiary education single handedly. It appears that only after the completion of the children's studies was she able, in 2012, to carry out her works on the matrimonial home.

[78] The Wife in her evidence speaks to having spent \$125,545.49 on improvements. It is however noted that the amounts totalled by the Court from the receipts submitted is \$102,111.55, (a difference of \$23,433.94). I have however, noted her counsel's submissions that some of the documents had been lost.

[79] Her contribution to the welfare of the family for the post 1999 period is outstanding, but must be qualified by the factors discussed above (eg. that for part of that period the children were over 18 and there was no Maintenance Order in effect, the **section 53(2)** factors outlined by counsel for the Husband).

### **Disposal**

[80] It is the finding of this Court that the Husband's interest in the home in 1999 was undeniably diminished by later events, but not completely extinguished. Some consideration has been given to the 'future needs' of the Husband, but

for the reasons touched on above, this Court is unable to weigh in as heavily as submitted by the Husband's counsel.

[81] On a consideration and application of the 'just and equitable principle' taking into account all the matters discussed above, this Court is of the view that it is just and equitable that the Husband be awarded a lump sum of no less than 10% and no more than 15% of the current value of the home. I have given consideration to the submission of counsel for the Husband that he should be awarded a percentage of 1999 value (\$160,000) or the 2009 value (unknown).

[82] The generally accepted practice in this jurisdiction has always been to use the property value at the time of the hearing. The same obtains in Australia, (see **In the Marriage of Omacini [2005] FLC 93-218**), but there is authority that in special circumstances the assessment of the matrimonial property ought to be made at the date of separation: See **In the Marriage of Cozanitis [1979] 4 Fam LR 709** and **Schultz v Schultz [1992] Fam CA 78**. I am not persuaded that I should depart from the norm in these circumstances.

[83] The Order of the Court therefore is as follows:

1. That pursuant to **Section 57** of the **Family Law Act**, the interest of the parties in the property situate at Friendly Hall, Jackman's, St Michael is altered so as to vest 15% thereof in the Applicant/Husband and 85% thereof in the Respondent/Wife;

2. The sum of Sixty Seven Thousand Five Hundred Dollars (\$67,500.00) is payable on or by 31<sup>st</sup> December, 2017 and in default of such payment, interest shall accrue on the said sum at the rate of 6% from 31<sup>st</sup> December, 2017 until payment;
3. On payment of such sum the Husband shall execute or endorse all necessary documents to effect legal transfer to the Wife, failing which the Registrar of the Supreme Court is hereby authorized and required to execute or endorse such documents in the name of and on behalf of the Husband upon being satisfied by affidavit that such failure has occurred;
4. Each party shall bear his or her own costs.

**MARGARET A. REIFER**  
Judge of the High Court