

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
(DIVORCE)

SUIT NO. ANUHMT 2008/0128

BETWEEN:

LUCINE STEADROY HANLEY

Petitioner

and

YVONNE ELIZABETH HANLEY

Respondent

Appearances:

Dr. David Dorsett for the Petitioner

Mrs. Maureen Hyman for the Respondent

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2009: November 12

2010: January 15
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JUDGMENT

- [1] **MICHEL, J:** The Petitioner, Lucine Steadroy Hanley, and the Respondent, Yvonne Elizabeth Hanley, were married to each other from 20th March 1999 until their divorce on 29th May 2009 - their marriage having been terminated on a Petition for Divorce filed by the Petitioner on 10th September 2008 on the basis

that the parties had been separated from March 2007. There were no children of the marriage.

[2] On 12th June 2009 the Respondent filed a Notice of Application for Ancillary Relief giving notice to the Petitioner of her intention to apply for various orders. On 19th June 2009 the Respondent filed an Application for Ancillary Relief together with Application for an Order that the assets of the parties be divided fairly and equally between the parties. An Affidavit in Support was also filed on 19th June 2009. In her Affidavit the Respondent stated that prior to and up to the date of her Affidavit she worked for the Bank of Antigua. She also stated that she and the Petitioner put their resources together and obtained joint loans to construct their apartments and to complete their matrimonial home during their time together. She identified three parcels of land (numbered 13 2086B 84, 56 2084D 6 and 34 2482B 211) which she stated were registered in the sole name of the Petitioner, but were acquired with their joint funds. She stated that she and the Petitioner had joint accounts at several banks in Antigua, including Bank of Antigua and Antigua Commercial Bank. She stated that she and the Petitioner obtained a joint loan from the Bank of Nova Scotia to build a set of apartments on one of the earlier-mentioned parcels of land and that they built the apartments as a joint project. She stated that the apartments and the matrimonial home were insured in both their names and that they both contributed to the construction of the home and the payment of the premiums. She stated too that the apartments were marketed as upscale apartments and were leased by both of them as landlords. In her Affidavit the Respondent asked that all other residuary property, assets and cash be accumulated and valued and the value be divided into equal shares between the Petitioner and herself.

[3] The matter came before Harris, J. in Chambers on 3rd July 2009 whereupon the parties were ordered to attend mediation and to return to Court on 9th October 2009 to report on the outcome of the mediation.

[4] On 18th September 2009 the Petitioner 's father, Hubert Hanley, filed an affidavit in the matter in which he stated that in 2002 he transferred a parcel of land to his son on the clear understanding that it was to be developed in the interest of "blood family," in particular, one of his daughters who is mentally challenged. He also loaned his son the sum of \$300,000 to help construct the apartments on the parcel of land. A company was later formed with his son and one of his daughters and himself as directors as the corporate vehicle for the development of the property. He asserted that the Respondent had no right, share or entitlement whatsoever in this property.

[5] The Petitioner himself filed an affidavit on 23rd September 2009 in opposition to the Respondent's application. In his affidavit the Petitioner stated that he acquired the parcel of land numbered 15 2084D 84 and built the house on it prior to his marriage (which house was apparently the matrimonial home) and that all that the Respondent contributed was some payments which she made towards a loan she had taken for the purchase of some of the furniture for the house. He stated that, other than an interest in some of the furnishings in the house, the Respondent has no interest in the house since she made no contribution to its acquisition. He stated also that the parcel of land numbered 34 2482B 211 was transferred to him by his father in 2002 with the express understanding that it was to be developed in the interest of "blood family," especially for one of his sisters who is mentally challenged. He stated that his father then loaned him \$300,000, in the form of cash and credit from his business place, for use in the construction of apartments on the parcel numbered 34 2482B 211. He stated that he also took a loan from the Bank of Nova Scotia to assist in the construction and furnishing of the apartments. He stated that the loan was taken on the joint names of the Respondent and himself and the property insured accordingly because it was the bank's policy that it be done that way with respect to a married man, but that the Respondent made no financial contribution whatsoever towards the repayment of the loan over the entire period. He stated that although he had some of the lease documents relating to the apartments drawn up in their joint names, the

Respondent had nothing to do with the apartments. The Petitioner stated that the third parcel of land referred to in the affidavit of the Respondent (the parcel numbered 56 2084D 6) was given to him by his father in 1987, prior to his marriage. He stated that this property has nothing whatsoever to do with the Respondent. He stated too that although there existed joint accounts in the names of the Respondent and himself, the accounts were really individual accounts fed and operated by either the Respondent or himself and that neither got involved in the other's funds.

[6] On 24th September 2009 the parties went to mediation on the matter, but the parties did not settle and the matter returned to Chambers on 9th October 2009, whereupon it was set down for hearing on 12th November 2009.

[7] On 12th November 2009 the matter came before the Court for the hearing of the application for ancillary relief. The Respondent, having given Notice to the Petitioner, as per the Notice of Application for Ancillary Relief filed on 12th June 2009, that she intends to apply for an Order that:

- "1. The Petitioner do pay to the Respondent such monthly or weekly sum in respect of maintenance as may be just.
2. The assets of the Petitioner and Respondent be valued and divided into equal shares between the Petitioner and Respondent as both the Petitioner and Respondent have worked together to build their assets.
3. The Petitioner do settle half of the apartments situate at Falmouth in the Parish of St. Paul Registration Section: Falmouth and Bethesda; Block no. 34 2482B; Parcel; 211 to the Respondent for her benefit. The said land is vested solely in the name of the Petitioner.

4. Half of the legal and beneficial interest in the parcel of land situate at Registration Section: South East; Block no. 56 2084D. Parcel: 6 be settled on the Respondent for her benefit.
5. Half of the legal and beneficial interest in the land registered at Registration Section: South Central; Block No. 15 2086B and Parcel: 84 be settled on the Respondent for her benefit.
6. That the Petitioner do settle the matrimonial home at Buckleys on the Respondent free from encumbrances and in good and substantial state of repair.
7. That the boat that the Petitioner owns and is valued at over one million Eastern Caribbean dollars (EC\$ 1,000,000.00) be included and form part of the matrimonial assets.
8. Such consequential orders as the Court deems fair and just.
9. Cost."

the Respondent then put in an unspecific application for ancillary relief "together with the Application for an Order that the assets of the parties be divided fairly and equally between the parties." In her affidavit in support of her application the Respondent essentially asked for a valuation of properties, assets and cash, etc. and a division of that value equally between the parties. In her submission on behalf of the Respondent at the hearing on 12th November, Learned Counsel for the Respondent informed the Court that the Respondent's application is for proper financial provision and property adjustment as necessary arising from the grant of a divorce on application by the Petitioner. In the written submissions filed on behalf of the Respondent on 1st December 2009, Learned Counsel submitted that what the Respondent wants is to receive 50% of the assets of the union.

[8] From the outset, in his affidavit filed on 23rd September 2009, the Petitioner has been attacking the Respondent's application as being improper or inappropriate in that, under the guise of an application for ancillary relief in divorce proceedings, what the Respondent is really doing is claiming an interest in property owned by the Petitioner.

- [9] This attack is repeated and reinforced in the oral submission made by his Counsel at the hearing and in the written submissions filed on his behalf on 24th November 2009.
- [10] The Petitioner's attack on the Respondent's application appears to be well founded. The Respondent has consistently asked the Court, using different language at various stages, to settle on her for her benefit property vested solely in the Petitioner, or to make an order that the assets be divided fairly and equally between the parties, or to accumulate and value property, assets and cash etc. and divide them equally between the parties, or to make a property adjustment order or to put all family assets into one basket and divide it equally.
- [11] There is nothing in the Divorce Act of Antigua and Barbuda to ground the Respondent's application for an order that property owned by the Petitioner should be declared to be owned in whole or in part by the Respondent, however the Respondent may euphemize her application. The fact is that the three pieces of real estate referred to by the Respondent in her application are all registered in the name of the Petitioner only and were either acquired by him before his marriage to the Respondent or were gratuitously transferred to him only by his father. The Petitioner has also emphatically denied any interest of the Respondent in these properties and sufficiently explained the mention of the name of the Respondent in a loan application, an insurance policy and a lease in respect of one of the properties.
- [12] This Court can find no basis upon which it can or is minded to, in the context of divorce proceedings between the parties, interfere with the Petitioner's property in the manner sought by the Respondent. Counsel for the Petitioner is correct in his assertion that if the Respondent claims any beneficial interest arising from a constructive trust founded on contributions which she might have made to the acquisition, improvement or maintenance of any of the properties in which the

legal estate is vested solely in the Petitioner then she should make the appropriate application to the Court in that regard. Having regard to the contents of the Divorce Act of Antigua and Barbuda, an ancillary relief application in divorce proceedings is not the appropriate vehicle to transport her to that destination.

[13] The Respondent also asked for a lump sum payment to be made to her by the Petitioner. There is a basis for such an order under section 13 of the **Divorce Act 1997** of Antigua and Barbuda. There is no information, however, which was provided to the Court on which to make a determination of an appropriate amount for a lump sum payment. In particular, other than the length of time the spouses cohabited, which can be ascertained as being eight years based on the date of the marriage and the date of the separation, no information has been provided to the Court on which it can consider the factors to be considered under subsections (5) and (7) of section 13 of the **Divorce Act 1997**.

[14] Notwithstanding these inhibiting factors militating against the making of a lump sum award by the Court, the Court nonetheless feels constrained to make some provision for the Respondent who, it appears, has exited her marriage to a person of some material worth with her hands swinging, while her erstwhile husband appears to have exited with his hands full. She has certainly alleged that he owns property of some significant value, which he has not denied, while he has not alleged that she owns any property.

[15] The Court will in the circumstances award to the Respondent a lump of \$200,000 to be paid to her by the Petitioner within two months of her leaving the matrimonial home or within two months of the date of this order, whichever is the later (so that she can have a start towards the acquisition of a home) and will supplement this lump sum award with a periodic payment of \$1,000 monthly (so that she can have a contribution towards the payment of a mortgage loan and the possibility of a variation of the amount of the monthly payment if the circumstances so merit). The monthly payment shall be made by the Petitioner to the Respondent from the

31st day of January 2010 and continuing on the last day of every month thereafter until the death or remarriage of the Respondent.

[16] Based on the evidence, the Respondent is entitled to and shall accordingly have half of the furniture in the matrimonial home. Any interest which the Respondent has or had in any accounts held jointly by the parties, however, can be and probably has been dealt with by the Respondent without the Court's intervention.

[17] The Petitioner is ordered to pay the Respondent costs in the sum of \$1,000 in respect of the ancillary relief proceedings.

[18] The Court's orders are as follows:

1. The Respondent's application for a property order in these proceedings is denied.
2. The Petitioner is ordered to pay the Respondent a lump sum of \$200,000 within two months of the Respondent leaving the matrimonial home or within two months of the date of this Order, whichever is the later.
3. The Respondent shall have one half (in value) of the furniture in the matrimonial home.
4. The Petitioner shall pay to the Respondent the monthly sum of \$1000 from the 31st day of January 2010 and continuing on the last day of every month until the remarriage or death of the Respondent.
5. The Petitioner shall pay the Respondent's costs in respect of the ancillary relief proceedings in the amount of \$1000.

[19] The following cases were referred to by Counsel in the course of their oral or written submissions and were considered by the Court in its deliberations:

By Counsel for the Respondent –

1. **Thomas v Thomas¹**
2. **Payne v Payne²**
3. **Hughes v Hughes³**
4. **Trippas v Trippas⁴**
5. **O'Donnell v O'Donnell⁵**
6. **Gojkovic v Gojkovic⁶**
7. **Goth v Goth⁷**
8. **SRJ v DWJ⁸**
9. **White v White⁹**

By Counsel for the Petitioner –

1. **Abbott v Abbott¹⁰**
2. **J. v J.¹¹**
3. **Livesey (formerly Jenkins) v Jenkins.¹²**



Mario Michel
High Court Judge

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1. (1952) F.L.R. 688
 2. [1968] 1 All E.R. 1113
 3. (1993) 45 WIR 149
 4. [1973] 2 All E. R. 1
 5. [1975] 2 All E.R. 993
 6. (1992)
 7. [1992] 2 All E. R. 920
 8. [1998] EWCA Civ 1634
 9. [2000] 3 WLR 1571
 10. [2007] UKPC 53
 11. [1955] 2 All E.R. 85
 12. [1985] 1 A.C. 424