

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(DIVORCE)**

CLAIM NO. GDAHMT2009/0004

BETWEEN:

JANIE HOLDER MASON

Petitioner

AND

GEORGE MASON

Respondent

Appearances:

Ms. P. Hannibal for Petitioner, holding for Ms. Daniella Williams-Mitchell for the
Petitioner

Mr. Dwight Horsford for Respondent

2010: November 10

2011: February 1

JUDGMENT

- [1] **PRICE FINDLAY, J.:** It has often been said that love is better the second time around. Alas for the parties to this matter, this proved to be untrue.
- [2] The parties were first married in 1965 and divorced in 1985. Love blossomed again and they remarried in 1999. Unfortunately, this second marriage also ended in divorce in November 2010.
- [3] This application before the Court is as follows:
1. A Declaration that the Petitioner is and was at all times the owner in possession fee simple of 14,000 sq. ft. of land being a portion of Dougaldston Estate with building thereon (hereinafter called "the said

property") at Dougaldston, situate at Dougaldston in the parish of St. John in the State of Grenada plan annexed to a Deed of Conveyance dated the 5th day of June 1985 made Barclays Bank International Limited of the First Part Sir William Allan Branch and John Augustus Branch of the Second Part and Janie Holder, the Petitioner, of the Third Part and recorded in the Deeds and Land Registry of Grenada in Liber Y13 at page 821.

2. A Declaration that the Respondent is not entitled to a share, estate or interest in the said property at Dougaldston, St. John's.
3. An order of possession of the said property being a portion of Dougaldston Estate situate in the parish of St. John in the State of Grenada admeasuring 14,000 sq. ft. owned by the Petitioner by virtue of a Deed of Conveyance dated the Fifth day of June One Thousand Nine Hundred and Eighty-five made between Barclays Bank International Limited of the First Part Sir William Allan Branch and John Augustus Branch of the Second Part and Janie Holder, the Petitioner, of the Third Part and recorded in the Deeds and Land Registry of Grenada in Liber Y13 at page 821.
4. Order that the Respondent do forthwith vacate the said property.
5. Costs.

[4] The application was supported by two affidavits on behalf of the Petitioner dated 7th May 2010 and 20th July 2010. The Petitioner also filed affidavits by Patricia Fullerton, David Fullerton and Douglas Phillip. The Respondent filed affidavits dated 28th June 2010 and 11th October 2010.

[5] The property presently in dispute and upon which the matrimonial home stood was purchased by the Petitioner in 1985 while she and the Respondent were living apart. It is not disputed that the Respondent made no financial contribution to the acquisition of the home. The property is registered in the sole name of the Petitioner.

- [6] The Petitioner built a house on the land in 1991. She and the Respondent were divorced. He made no contribution to the building of that home. For a time, she rented her home out; her neighbour David Fullerton collected the rent for her. Sometime after, she sold piece of her land to the said David Fullerton.
- [7] In 1999 the Petitioner and Respondent remarried and he came to live in the home which the Petitioner had built. By this time the Petitioner was residing in Canada and only visited Grenada periodically.
- [8] While she resided in Canada, the Respondent continued to live in Grenada in the house which the Petitioner had built. That the house at Dougaldston was intended to be the matrimonial home is disputed by the Petitioner. However, her own evidence is that she intended the Respondent to live with her at Dougaldston. The property at Dougaldston was the home which the parties intended to share after their re-marriage, and I find as a fact that the property at Dougaldston was the matrimonial home.
- [9] The Petitioner stated in her evidence that after her second marriage to the Respondent she sent the Respondent money and barrels of foodstuff and clothes from Canada. She produced some Western Union transfers in support of her claim. She also asserted that the Respondent had unlimited access to her bank account in Grenada and had authority to withdraw monies to pay utility bills and for his personal use.
- [10] According to the Petitioner, the Respondent took money from her savings account to spend whatever was necessary to do repairs to the home after Hurricane Ivan. The evidence was that the roof of the house along with some other damage occurred after the passage of Hurricanes Ivan and Emily.
- [11] There was an addition to the house, a shop. She testified that she would send the money to the Respondent and that he would manage the funds. The builder was her niece's husband. She claimed that the Respondent kept some of the money because he claimed that the builder was not doing the job as he ought to.

- [12] She contends that the construction of the shop was done with no contribution from the Respondent. She initially sent the money for the construction of the shop to the Respondent, but because he was having issues with the contractor, she eventually sent money directly to the builder. She did not have all the receipts but stated that she did not expect that things would have turned out this way.
- [13] That the receipts bore the Respondent's name, she said that it was money which she sent to him that he spent. He physically paid the bills, but did so with monies sent by her. She was in Canada, the Respondent was in Grenada, hence the receipts bore his name.
- [14] The Petitioner asserts that she not only sent money to the Respondent to cover the utility bills but also to clear barrels which she sent from Canada. She contends that the Respondent made no contribution to the upkeep or improvement and repair to her home and is not entitled to any interest in the home.
- [15] She did in cross-examination admit that he brought items of furniture as well as a deep freeze. She also admitted that the Respondent did construct a fence around the house but stated that only a portion remained, because the Respondent removed a portion of it for use at a property which he owns elsewhere.
- [16] The Petitioner witnesses could not speak from personal knowledge about the expenditure on the property, but David Fullerton spoke of galvanize which the Petitioner bought, and wood which he lent to the Respondent to use as rafters.
- [17] Douglas Phillip spoke of work done on the house prior to the marriage, repairs to the floor of the verandah, and the house being completed before the Petitioner's second marriage to the Respondent. But he does speak of the Respondent being involved in the repair to the roof of the home after the passage of Hurricane Ivan. He said that repairs were done after Ivan by one Fillmore Hinds.
- [18] The Respondent in his evidence admits that the home was built prior to his second marriage to the Petitioner. He admits that he made no contribution to the acquisition of the land or the building of the home.

- [19] The Respondent denies that the Petitioner ever sent money to him, but says that he put a closet on the bedroom at his expense and that he fixed broken pipes around the house and that he paid water and electricity bills each month, and he continues to do so.
- [20] The Respondent testified that some \$2,000.00 of the monies spent on the home was in fact his money and not that of the Petitioner, even though he provided no documentary proof that this was in fact so.
- [21] The Respondent also testified that he effected repairs to the home after Hurricanes Ivan and Emily. He testified that it was largely through his efforts that the men from the church came to the home and assisted with the repair of the roof.
- [22] I am not willing to make the assumption that the Bank account which the Petitioner had and which the Respondent had access to was a joint account as no such evidence was led in the matter. Suffice it to say, the Petitioner and the Respondent both say that the Respondent had access to the said account and the Court accepts that evidence.
- [23] When deciding how matrimonial property ought to be divided, the Court has to consider the powers given to it under s. 25 of the Matrimonial Causes Act 1973. This section reads as follows:

"25-(1) It shall be the duty of the Court in deciding whether to exercise its powers under section 23, 24, or 24A above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.

(2) As regards the exercise of the power of the Court under section 23(1) (a), (b) or (c), 24 or 24A above in relation to a party to the marriage, the Court shall in particular have regard to the following matters –

(a) the income, earning capacity property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including the case of earning capacity any increase in that capacity which it would in the opinion of the Court

be reasonable to expect a party to the marriage to take steps to acquire;

(b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contribution which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;

(g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it;

(h) in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring."

[24] As already stated, the property was purchased by the Petitioner prior to her marriage to the Respondent. No valuation was presented by either party.

[25] In determining the diversion of this asset and with all matrimonial assets, I take guidance from the principles laid out in the case of **Miller v Miller** [2006] 2 WLR page 1288, para 11 per Lord Nicolls:

"When marriage ends, fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties housing and financial needs, taking into account a wide range of matters such as the parties' ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter."

At paragraph 16 Lord Nicholls in reviewing the observation that "husband and wife are now for all practical purposes equal partners in a marriage", stated,

"This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the partnership, unless there is good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase "unless there is good reason to the contrary." The yardstick of equality is to be applied as an aid, not a rule."

- [26] In this matter I find that there is good reason to the contrary. When one looks at the contributions made by the Respondent to the welfare of the family, to the "partnership" to achieve not just the acquisition of the matrimonial assets but towards the mutual benefits of the parties forming the family unit, I find that the Petitioner's contribution was far greater than that of the Respondent.
- [27] The evidence before this Court is that the Petitioner by virtue of hard work and endeavour paid for and acquired the land, built the home prior to the marriage with no contribution from the Respondent.
- [28] I accept the evidence of the Petitioner that she sent monies from Canada for the household utilities and for the addition of the shop to the premises. I do accept that the Respondent built the fence on the property and that he assisted with the repairs to the roof of the property after Hurricanes Ivan and Emily. I do not accept that the monies which were utilized for the construction of the shop came from the Respondent. The evidence clearly shows that these monies were sent by the Petitioner to the Respondent by way of Western Union. The Respondent failed to convince the Court that he had any savings or any adequate income at the relevant time to be in a position to assist in funding such a project.
- [29] I accept that the Respondent did make some contribution to the paying of the utility bills, that he did erect a fence around the property and that he did give of his labour in replacing and repairing the roof after hurricanes Ivan and Emily. I also find that he fixed pipes around the house on several occasions out of his pocket. I also find that he was the person responsible for obtaining the assistance of the workmen who assisted in the repairs of the roof.

[30] I also accept that the Respondent spent the sum of \$3,660.00 to assist the Petitioner with the home at Dougaldston. This was not refuted or denied by the Petitioner either in her affidavit evidence or on cross-examination.

[31] The Respondent played a limited role in contributing to the welfare of the family, and this has led me to depart from the starting point of equality in deciding what equity, if any, the Respondent has in the matrimonial home.

[32] One of the factors I have considered in attempting to achieve a fair division of the matrimonial assets is the earnings and earning capacity of the parties. The Respondent has not disclosed exactly what his earnings are, but from the evidence he stated that NIS monies were placed into the account which bore the Petitioner's name. But I do find that the Petitioner was a hard working woman who despite the adverse circumstances of the parties' first marriage picked herself up, got back on her feet and acquired a property and built a home. I find that she continued to work hard and sent monies from Canada to the Respondent for the upkeep of both himself and the home.

[33] In the circumstances, I find that the Petitioner is entitled to a 95 percent share in the home and the Respondent a 5 percent share in the home.

[34] The Petitioner testified about the Respondent's conduct in these proceedings. In **Miller v Miller** Lord Nicholls said,

"In most cases fairness does not require consideration of the parties conduct. This is because in most cases misconduct is not relevant to the bases on which financial ancillary relief is ordered today. Where, exceptionally, the position is otherwise, so that it would be inequitable to disregard one party's conduct, the statute permits that conduct to be taken into account."

[35] In most divorce matters, it is the conduct of one or both of the parties which leads to the demise of the marriage, and in most cases the conduct of the parties has no bearing on the ultimate distribution of the matrimonial assets. While the Respondent did not treat the Petitioner in the manner that a loving husband would treat a wife, I find that the conduct complained of in this matter does not rise to the

level which would allow me to consider it as a factor in the division of the property in this case.

[36] In making the award I have been guided by the matters set out in s. 25 of the Matrimonial Causes Act 1973:

1. The earning capacity of both parties
2. The minimal contribution made by the Respondent to the maintenance and upkeep of the home
3. The age of the parties
4. The credibility of the parties in giving their evidence, and my finding that the Respondent was not always forthright in his evidence.

[37] The Petitioner is now retired and wishes to return to Grenada to live. Both parties cannot reside in the same home; the relationship has deteriorated to the point where sharing a home is not feasible.

[38] The Petitioner built the home and wishes to live out her golden years without rancour and the unpleasantness which would result should she have to share the home with the Respondent.

[39] I find that after her years of hard work that she is entitled to enjoy her home free of the Respondent. He will have to make the necessary arrangements to find alternative accommodation.

[40] He will not have to leave immediately but he will have to vacate the home at Dougaldston within four months of the date of this judgment. I think that is a reasonable time frame for him to do so, especially in light of the fact that he has alternative accommodations which are available to him.

[41] My order therefore is as follows:

1. The matrimonial home situate at Dougaldston in the parish of St. John is awarded to the Petitioner and is her sole property.

2. That the matrimonial home be appraised by a qualified appraiser, the cost of the appraisal to be borne by the parties equally, the appraiser to be agreed by the parties.
3. The Petitioner do pay the Respondent 5 percent of the value of the appraised value of the matrimonial home.
4. The Respondent is to vacate the matrimonial home on or by the 31st May 2011.
5. Each party to bear their own costs.

[42] I wish to thank Counsel for their assistance in this matter.

[43] The following authorities were cited in this matter:

The Matrimonial Causes Act 1973

White v White [2001] 1 ALL ER

Miller v Miller [2006] 3 ALL ER

Salmon v Salmon JM 1999 SC 45

Collie v Collie & Williams BS 2005 SC 31

Coley v Coley JM 2008 SC 59



Margaret Price Findlay
High Court Judge