

EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

COMMONWEALTH OF DOMINICA
DOMHMT2009/0011

BETWEEN:

ROSY-PIERRE CASIMIR	Petitioner
and	
ZACHARY OSBORN CASIMIR	Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Ms. Joanne Commodore for Petitioner
Mr. David Bruney for the Respondent

JUDGMENT

[2010: October 15th]

[2011: January 24th]

- [1] **COTTLE J:** The parties were married on 1st August 2000. The petitioner filed for divorce in January 2009 and a decree nisi was granted on 5th September 2009. The decree was made absolute on 12th August 2009. The petitioner now seeks ancillary relief. There are two minor children both, girls, aged 14 and 10 respectively.

[2] When a marriage comes to an end the assets of that marriage stand to be divided between the parties. Those assets are the capital assets such as the matrimonial home and other real property. The earning power of the parties also stands to be allocated. The aim of the court is making the allocation of assets, both capital and income, is to place the parties, as far as this is possible, in the financial position they would have been if the marriage had subsisted and each party had carried out his or her financial obligations and responsibilities to the other.

[3] The Legislation, the Matrimonial Act 1973 (UK) sets out some of the factors to which the court must have regard in coming to its decision but it is all of the circumstances which must be kept in mind at all times. In the present case the assets are

1. The matrimonial home. This is located in Glanvillia on a portion of land registered in the name of the respondent. The home was built in 1995 while the parties were cohabitating but before they were married. There is a second building on the parcel. It houses a grocery shop and bar. This is being rented and the respondent husband collects and keeps all of the rent. The land and buildings have a total value of \$170,000 approximately
2. 3.862 acres of land at Forest Estate near Glanvillia. This parcel as largely agricultural in use but has a potential to be subdivided into smaller lots. This parcel has a value of \$154,000. It was purchased during the subsistence of the marriage. The parcel is registered in the sole name of the respondent.
3. Money in a joint account at the Portsmouth Credit union. The petitioner says the account stood at \$12,000.00 during the marriage but the respondent kept the passbook and she is unaware of the amount in this account now.

Revenue assets

1. The petitioner is a waitress and now earns \$380.00 per fortnight.
2. The respondent is a farmer. He has not disclosed his earnings from farming. He has rented out the shop located on the parcel

with the matrimonial home. He has not disclosed the amount he collects in rental.

- [4] The duty of parties to make full and frank disclosure to the court is two well known to be questioned suffice it to quote Olhretti-Joseph J in Wheatley v Wheatley BVI HMT 2006/0014 "It is well established that both parties are under a duty to make full and frank disclosure of all material facts to the court and that such disclosure is a crucial part of the investigative process in applications for ancillary relief."
- [5] Parties who fail in the duty to disclose are apt to have adverse inferences drawn. Byron J.A did so in Hughes v Hughes 45 WIR 149 where a husband failed to make full and frank disclosure. In the present case the respondent was able to construct the matrimonial home and other building. He was able to service a loan to acquire the Forest Park lands. He now have capital assets worth over \$320,000.00. I conclude that his income from rental and farming must be substantially greater than the petitioner. There is no indication that the respondent's property is in any way encumbered.
- [6] I consider this a fit case to order the respondent to pay a lump sum to the petitioner in lieu of periodical payments. In the absence of better information from the respondent I fix the amount of the lump sum as \$75,000. The real property will remain the sole property of the respondent. Should the respondent fail to pay, the petitioner is at liberty to apply for an order of sale of either property. \$75,000 of the proceeds of sale would go to the petitioner with the balance going to the respondent. The cost of such sale will be for the respondent.
- [7] The minor children reside with the respondent. They will remain in his primary care but I award joint custody to both parents. The respondent will remain responsible for the maintenance of the children

Personal items

- [8] The respondent has retained some personal items of the petitioner. I order that he forthwith return these.

High Court Judge
Justice Brian Cottle