

EASTERN CARIBBEAN SUPREME COURT

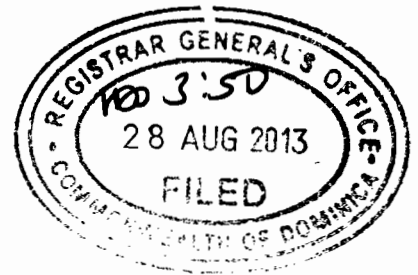
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHMT2007/0003

BETWEEN:

WILFRED PELTIER



Petitioner

and

INGRID PELTIER

Respondent

Appearances:

Mrs. Dawn Yearwood-Stewart for Petitioner

Mrs. Singoalla Blomqvist Williams for the Respondent

2013: February 18th, 21st

August 28th

JUDGMENT

[1] Cottle, J: The parties were married in 2001 after an extended relationship. The petitioner says the relationship began in 1986. The respondent says the relationship began in 1990. The petitioner was born in 1964. The respondent is 4 years younger. The petitioner is a taxi driver and has been pursuing that occupation since 1983. The respondent is a bank clerk and has been so employed since 1988.

[2] The union produced three children and continued until the parties separated in 2004. A decree dissolving the marriage was pronounced in 2007. The petitioner husband now applies to the court for ancillary relief. He seeks joint custody of the

minor children of the marriage. He also prays for a property adjustment order declaring him entitled to a half share in the matrimonial home. The property is at present registered in the sole name of the respondent wife. The husband also asks the court to order the property sold and the proceeds divided between the parties equally.

The evidence

- [3] In his affidavit in support of his application the husband swore that he contributed to the acquisition of the land on which the matrimonial home was built. He says he did so in cash. The loan, which was taken to finance the purchase of the land, was in the sole name of the wife. The loan was repaid through deductions from the wife's salary. In 2001 the parties jointly obtained another loan to finance the construction of the matrimonial home.
- [4] The mortgage loan for the land had not yet been paid off. The two loans were consolidated and the husband co-signed. He says that as the wife had a fixed salary, she would make the monthly payments while he would take care of all the household expenses. He also said that the amount loaned was \$189,000.00 while the total cost of construction amounted to \$235,000.00. The husband says the additional funds to bridge this gap came solely from his pocket. He also assisted by transporting building materials to the site.
- [5] In 2006 the husband applied to the bank to have his name removed as co-signatory to the mortgage loan. The bank agreed. The mortgage period is 30 years. The husband was party to the mortgage loan for only 5 of those years.
- [6] The wife in her affidavit in reply says that she purchased the land on which the matrimonial home would be built 4 years before the marriage and without any assistance or consultation with the husband. She says that the husband merely co-signed the building loan because he would be living in the house and thus the bank wished him to be responsible for the loan too. This was in the event of anything befalling the wife so the bank would have no problems if they wished to evict the husband to be able to sell the property to service the loan.
- [7] She denies that the husband made any contributions to the construction of the home in financial terms. She adds that three years passed between the separation of the parties and the eventual divorce and a further 3 years have passed before the husband applied for ancillary relief. As the court pointed out in Rossi v Rossi [2006] EWHC 1482; 2007 1 FLR, there is no formal time limit in ancillary relief applications but delay increases the risk of injustice.

- [8] The present marriage lasted 3 years effectively. 6 years have gone by since the parties separated. Nicholas Mostyn QC, sitting as Deputy High Court Judge in Rossi v Rossi was of the view that it would be very difficult to successfully prosecute a claim for ancillary relief over 6 years from the petition for divorce unless there is very good reason for the delay. In the present case the reason for the husband's application at this stage can be gleaned from paragraph 3 of the outgoings he listed in his affidavit filed on 22nd June 2010.
- [9] He says that he is aware of the fact that the wife is now in another relationship and he is concerned that the parties "could take action to deprive (him) of (his) rightful share in the matrimonial property." He gave the impression to the court that he would have made no application for relief against the wife *dum sola et casta vixerit*.
- [10] During the hearing of this matter much emphasis was placed by both sides on evidence to show the relative financial contributions of the parties to the acquisition of the matrimonial home. The wife was able to adduce documentary evidence which showed that she has funded the purchase and construction of the home. The husband had no such supporting documentary evidence.
- [11] In considering the application for a property adjustment order, this court must have regard to all the circumstances of the case. The issue of the financial contribution is only one aspect or factor which falls for consideration. In many cases the contribution by one party to a marriage is easily quantifiable in terms of acquisition of marital assets. Usually the wife's contribution is in terms of maintaining the family structure and household while the husband brings in the bacon. In the present case it cannot be said that the husband was the home maker and contributed in that way.
- [12] Many of the modern cases in this area such as Miller v Miller and McFailane v McFailane both referred to in Fussee-Durham v Fussee-Durham Civil Appeal 23 of 2005 from St. Vincent stress that the court should aim to achieve a fair distribution of the marital assets. This does not, in my view, relieve a litigant who wishes the court to grant him relief, from the duty to adduce evidence which will satisfy the court. The husband is asking the court to interfere with the proprietary interest of the wife. He must give evidence of factors which are relevant and which will provide the court with a basis on which to act.
- [13] This is the difficulty in the present case. The husband says that he has contributed. The documentary evidence does not bear that out. At the trial the

demeanor of the husband suggested an effort to get back at the wife. Evident bitterness still persisted despite the passage of time. I also consider the substantial delay in making the application suggests that the claim to have contributed in the acquisition of the matrimonial home is without basis. As earlier noted, the reason he now applies is merely because he knows that the wife has embarked on another relationship. Counsel for the wife also points out that the husband is \$19,000.00 in arrears of ordered maintenance payments for the minor children of the marriage. This suggests that he would not have had the funds to make the financial contributions he claims to have made.

[14] When I look at the matter as a whole I think it less likely that the husband made the contributions he claimed. The application for joint custody of the children is not resisted by the wife. Joint custody is thus awarded to both parties. The children will continue to reside with the wife and the husband will have reasonable access at all times. I do not think this is an apt case for the award of costs. I direct that each party will bear his or her own costs.

[15] The husband's application for a property adjustment order is not granted. The parties will have joint custody of the minor children



Brian J. Cottle
Brian Cottle

High Court Judge