ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 346 OF 1996

BETWEEN:

CARMALIE PATRICIA BROWNE

Petitioner

and

CHESLEY AUGUSTUS BROWNE

Respondent

Appearances:
Richard Williams for the Petitioner
Colin Williams for the Respondent

2000: July 28, 31

DECISION

[1] MITCHELL, J: This was a contested application for ancillary relief arising out of divorce proceedings. In issue were the maintenance of the children and the matrimonial home of the family.

[2] The evidence in chief of the parties was by affidavit. Only the husband/Respondent was required to be cross-examined. Counsel for the Respondent did not require to cross-examine the wife/Petitioner. The various affidavits of the Petitioner were filed on 24 October 1997, 24 March 2000, and 12 July 2000. The affidavits of the Respondent were filed on 13 July 1998, 21 June 2000, and 26 July 2000. The principal dispute between the parties evident from these affidavits was the question of whether or not the Petitioner had any interest at all in the matrimonial home. The position of the Respondent was that he had acquired the matrimonial home prior to the marriage and it was his alone, with the

Petitioner having no interest in it. The Petitioner claimed that they had purchased the property jointly, but that the deed had been put in the name of the Respondent only.

[3] The facts as I find them are as follows. The Petitioner is a teacher with the Government of St Vincent. She earns a gross salary of $2,049.00 per month. The Respondent is an employee of VINLEC, the public utility supplying electricity to the citizens of this State. His salary for 1999 was $25,623.83, or about the same as the Petitioner's. He also operates a mechanic shop at his family property at Richland Park. He claims that it operates at a loss, and he produced a recent tax return which stated that in financial year 1999 the mechanic shop made a loss of $5,060.45. He also makes extra money by purchasing old cars and repairing and reselling them. There is no evidence as to how much he makes from this last activity. He claims to have very little if any disposable income after meeting his monthly commitments. I take it that it is axiomatic that all husbands in divorce proceedings with cash-based income always operate at a loss pending the determination of the divorce proceedings. After the divorce proceedings are complete, such husbands automatically and fortuitously revert to a profit making status. St Vincent is no different to other parts of the world, and St Vincent husbands are no different to other husbands, in this respect. The point is that the Respondent is solely responsible for how much profit he makes at his mechanic shop and from his sale of refurbished cars.

[4] The parties had been going out since 1987 when the Petitioner was 17 years old. At the time, she was a secondary school student. The parties were married on 12 August 1989. The Petitioner was by then a teacher, while the Respondent was a mechanic. Her marriage certificate says she was 20 years of age, while the Respondent was 30 years of age. The Petitioner is, thus, now about 31 years old, while the Respondent is about 41 years old. There are two daughters of the marriage, twins, born on 30 July 1992. The Decree Nisi was granted on the

adultery of the Respondent on 26 June 1997 and made Absolute on 27 September 1997.

[5] The matrimonial home at Dauphine (pronounced “Daphne”) is on a small lot of land measuring some 3,398 sq ft, according to a copy of a loan application in evidence. It was purchased with a mortgage on or about 3 February 1989. The deed was put in evidence. The husband claims that he purchased it on his own long before the marriage. I find however that the property was purchased for the matrimonial home just a few months before the marriage on 12 August 1989. The loan is presently seriously in arrears. The Respondent has for some years stopped making the quarterly loan payments of about $1,800.00. About $50,000.00 has been paid on the loan, and a balance remains of about $50,000.00. The building is a 2 bedroom concrete structure covered with galvanize sheeting. There was no current valuation of the matrimonial home before the court so that a lump sum order might be considered. Both parties had worked during the marriage at improving the home. The Petitioner had made substantial cash contribution on at least one occasion of $10,000.00 to the construction and completion of the house. While the Respondent used to pay the mortgage, until he stopped doing so some years ago, the Petitioner’s salary had been entirely committed to the family and household expenses. The Respondent has other obligations outside the family. He supports a number of other children by other women, for example, to a total cost of about $750.00 per month. There are various other loans and commitments owed by both of them making significant inroads in their income. There are vehicles purchased with borrowed funds which are still owned by both of the parties. There is not a lot, if any, of surplus disposable income. The Respondent has been paying $200.00 per month, a totally inadequate sum, to the Petitioner as his contribution to the support of the 2 daughters of the family. The Petitioner had at one time after the breakdown of the marriage moved out of the home and attempted to live in rented accommodation. She has had to move back into a small apartment downstairs of the matrimonial home with the children because she could not manage the expense of rented

accommodation. The Respondent occupies the main part of the home in the upstairs of the building.

[6] The Respondent at the hearing accepted responsibility for the maintenance of the 2 daughters and for the provision of a roof over their heads. His proposal was that he would pay maintenance of $350.00 per child, or a total of $700.00 per month, to help cover their maintenance and accommodation, and that he alone should keep the house which he claims as his own. He worked the child support offer out as $400.00 per month for maintenance, and $300.00 per month as his contribution to their accommodation. His proposal was that the wife and children would move out of the house upon the above order being made for their maintenance. The Petitioner, by contrast, sought an order for a contribution by the Respondent to the maintenance of the children, and a property adjustment order to the effect that the Respondent transfer the house and property to the Petitioner with the Petitioner taking over the mortgage liability. The Petitioner seeks no maintenance order for herself from the Respondent. One problem, as I see it, to be dealt with is that the loan is now some $30,000.00 in arrears, and the bank might foreclose on the matrimonial home at any moment. Unless the loan is refinanced, the house may not be available for occupation by anyone for much longer. However, the Petitioner claims to be able to obtain the necessary bank refinancing.

[7] The relevant law in St Vincent is the Matrimonial Causes Act, Cap 176 of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines. Section 32 provides for property adjustment orders in connection with divorce proceedings. Section 32 provides that:

> On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say:

(a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such child, such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

(b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

(c) an order . . . ;

(d) an order . . .;

subject, however, in the case of an order under paragraph (a), to the restrictions imposed by section 38(1) and (3) on the making of orders for a transfer of property in favour of children who have attained the age of eighteen.

In connection with the facts of this case, the two possible orders permitted by section 32 are an order that (a) the Respondent transfer some or all of the legal and beneficial interest in the matrimonial home to the Petitioner; or (b) a settlement be made of the property for the benefit of the Petitioner or the children and or the Respondent.

[8] Section 33 of the Act provides further provision for the sale of matrimonial property as follows:

(1) Where the court makes, under section 31 or 32, a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order,

being property in which, or in the proceeds of sale of which, either of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

(2) Any order made under subsection (1) may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include:

(a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates; and

(b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

[9] Section 34 of the Act sets out the matters to which the court is to have regard in deciding how to exercise its powers under section 32. It provides that

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 31(1)(a), (b) or (c), 32 or 33 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to say:

(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;

(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 made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) in the case of proceedings for divorce or nullity of marriage, the value to either 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;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

These are very flexible and wide-ranging powers conferred on the court by the Act. The cases that have followed have explained that the provisions of the Act must be applied in the light of the particular circumstances of each case. It has been held that the powers of the court under the Act are not to be considered to be cut down or forced into a particular line by the decisions of the courts.

[10] Counsel for the Petitioner relied on a number of authorities from without the region. It would have been useful if there was guidance from St Vincent Court of Appeal cases, but apparently there are none that are applicable. The cases produced for the assistance of the court included copies of the judgments in Watchel v Watchel [1973] 1 All ER 829, Chamberlain v Chamberlain [1974] 1 All ER 33, Smith v Smith [1975] 2 All ER 19, and Scott v Scott [1978] 3 All ER

65. The starting point in these matters as always is Lord Denning's judgment in the first case, recognised as the leading case in these matters, and which first attempted to set out some of the principles to be applied when granting ancillary relief pursuant to the powers conferred by the Act. That judgment has been considerably explained and expanded by considering the differing circumstances in the many cases that have been reported in the years since.

[11] The particular circumstances of this family have to be taken into account when applying the learning or guidance in the authorities referred to. In this case, the income of the wife is fixed, and given the lot of teachers in St Vincent is not likely to significantly increase for many years to come. The income of the husband, by contrast is much more flexible, and his basic salary from VINLEC is capable of being supplemented by him from his garage and car dealings. The Petitioner needs a home in which to bring up the children. If the marriage had not broken down, the Petitioner and the Respondent would have remained together in the house. She would have had the benefit of his earnings, payment of the outgoings, the mortgage instalments, and the like. She will now be much worse off. While her income is fixed, his is flexible and likely to increase. There is no evidence that either the Petitioner or the Respondent is preparing to remarry.

[12] Concerning the capital asset in dispute, the family home, I am satisfied from the authorities that the starting point, where the marriage has lasted for several years, the parties have both contributed to the acquisition and construction of the asset, is that the wife is entitled to one half of the matrimonial home. Of the limited equity in the house, unknown except that some $50,000.00 has been paid on the mortgage, the Petitioner would presently hold one half and the Respondent one half. The present value of the property is unknown, except that we know that we are dealing with a very small house on a very small lot of land. A possible order in these circumstances might have been for the property to be equally the property of the Petitioner and the Respondent subject to the mortgage; for the Respondent to be ordered to meet the mortgage payments that he has neglected for several past

years; for the property to be sold when the children arrive at the age of majority in 10 years time; and, for the proceeds of sale to be then divided equally between the parties. If the parties had owned the property outright, and if there was not a large mortgage, which the Respondent had neglected for many years, on the property, that would have been a fair order. The difficulty with such an order in the circumstances of this case is that there is no guaranteeing that the Respondent will meet the financial commitment on the mortgage. He has not shown himself ready to do so up to now. He has testified in great detail in his affidavits that it is quite impossible for him to meet the mortgage payments. If such an order were made and he continued to miss the mortgage payments, the bank is likely to foreclose on the mortgage and the family would lose the home unless the wife purchased it. She is unlikely without favourable financing to be able to redeem the mortgaged property. An order in such a form would more likely than not be futile and would cause more confusion than assistance. Some other solution than such an order is necessary. The Petitioner has instead offered to meet the mortgage payments of the existing loan herself out of her limited salary if the matrimonial home could be transferred to her.

[13] I accept the submission of counsel for the Petitioner that a more fair and equitable order in the circumstances of this case would be to relieve the Respondent of any further financial commitment to the housing of the family, and to order the entire property to be transferred to the Petitioner with the Petitioner taking on from now on the burden of financing the balance of the mortgage. The right thing in this case is to order the transfer of the matrimonial home to the Petitioner alone so that she has the security to bring up the family as they have been accustomed in the past. The property should be vested in her absolutely, free of any share in the Respondent. The Respondent will lose very little, as I am satisfied that he has very little equity in the house at present. The financial contribution of the Respondent to the support of each of his two daughters should then be reduced from the $350.00 offered by him for their maintenance and accommodation to the sum of $200.00 per month per child for their maintenance until they reach the age

of 18. The Respondent will thus be able to use the extra money in hand produced by this reduction in his volunteered financial obligation to his daughters to, instead, make arrangements for a rental apartment or as a part-payment in acquiring other housing for himself.

[14] There will be judgment accordingly as follows for the Petitioner:

(a) The property at Dauphine in the Parish of St George in the Island of Saint Vincent being lot number 26 in the plan lodged in the Survey Office on the 28th day of October 1983 under number G1061 and which said parcel of land contains 3,398 sq ft together with all buildings erections etc and presently held by the Respondent by deed 454 of 1989 shall be transferred by the Respondent to the Petitioner forthwith at the cost of the Petitioner;

(b) the Registrar is authorised on behalf of the Respondent to execute the deed to be prepared by the solicitors for the Petitioner if the Respondent should fail to execute the deed;

(c) The existing mortgage obligations relating to the balance of the purchase price of the said property are to be the obligations of the Petitioner alone from the date of such transfer;

(d) The Respondent shall pay the Petitioner the sum of $200.00 per month for the support of each of the two children of the marriage until the said children shall have reached the age of 18 or sooner dies commencing with the month of July 2000 by paying the said sums into the Registry of the Supreme Court for the said children;

(e) The Petitioner shall have her costs to be taxed if not agreed;

(f) Liberty to apply.

I D MITCHELL, QC
High Court Judge