

Reminis

SAINTE LUCIA

CIVIL APPEAL NO.1 of 1975

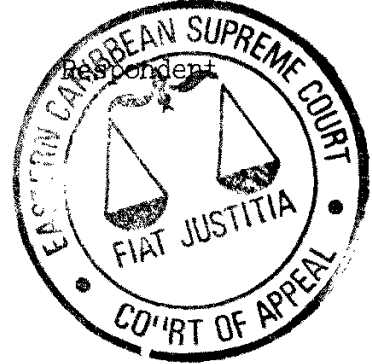
BETWEEN

AUGUSTUS JUSTIN

Appellant

AND

CHERIE JUSTIN



Before The Honourable the Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin

V. Cooper for appellant.  
M. Gordon for respondent.

1975, October 13, 14, 15, 20

J U D G M E N T

ST. BERNARD, J.A.

The respondent in her declaration dated the 8th November 1974 made allegations of cruelty and desertion against the appellant and sought the following relief:

- "(1) That she may be judicially separated from bed and board from the defendant.
- (2) That the defendant be declared forfeit of all rights in the community and that the defendant be ordered to return to the plaintiff the following items of community property, namely, one refrigerator, one bedroom suite, one dresser, one stereo set and oil paintings which said items the defendant removed from the matrimonial home on his desertion therefrom.
- (3) That the plaintiff be granted custody of the said children of the family.
- (4) That the defendant be ordered to provide a sum to be determined by the Court for the maintenance of the plaintiff and the said children of the family.
- (5) That the defendant be ordered to pay for the costs of these proceedings; and
- (6) Such other relief."

At the hearing of this appeal counsel for the respondent stated that he had abandoned at the trial paragraph (2) of the prayer. The defence put in issue the questions of desertion and cruelty, and the custody of the children.

The trial judge found the allegations of desertion and cruelty proved and made the following order:

- "(a) That she be judicially separated from bed and board from the defendant.
- (b) That she be awarded the custody of the three children of the marriage, namely, Andre Mark born 3rd October 1963, Darren Augustus born on the 6th March 1967, and Orrin Jason Paul born on the 20th February 1973.
- (c) That the defendant do pay into Court the sum of \$550 monthly for the maintenance of the plaintiff and the said three children of the marriage with effect from 15th March 1975.
- (d) That the defendant be granted access to the said children once a week at a time and place to be agreed upon between the parties in consultation with counsel on both sides.
- (e) That there be separation of community in so far as it relates to the following properties which are in community of property:
  - (i) The Barnard Hill property;
  - (ii) No.17 Chaussee Road; and
  - (iii) the business carried on at No.17 Chaussee Road and known as the Lithographic Press (St.Lucia) Ltd.
- (f) That the defendant is ordered to pay the costs of these proceedings."

The grounds of appeal are as follows:

- "(a) That the learned trial judge erred in holding that the property of the Lithographic Press is community property or the property of any Company.
- (b) That the learned judge further erred in making any order relating to the Company called the Lithographic Press Limited or any property if any which it owned, since the

said Company was not a party for the proceedings and therefore was outside the jurisdiction of the Court.

- (c) That the learned trial judge's interpretation of "possession" under Article 1192 of the Civil Code of Saint Lucia is erroneous and was a misdirection in law, and as a consequence the whole of the judgment relating to community was wrongly applied.
- (d) That the learned judge's findings that No.34 Groton Road was community property as soon as payment for it was completed since it was never legally possessed until after the marriage was a misdirection in law.
- (e) That the restriction on the right of access once a week to the defendant/appellant's children is unreasonable."

The relief sought is a declaration that the business, equipment and machinery, the goodwill and other appurtenances of the Lithographic Press and run as a printing business by the appellant was not community property and that daily access to the children be granted to him.

Counsel for the appellant argued grounds (a), (b) and (d) together and submitted that the judge was in error when he adjudicated in relation to the company which was not a party to the proceedings and did not have an opportunity of being heard. He submitted that the business was purchased with the proceeds of the London property which was separate property and remained separate since it was acquired prior to marriage. He further submitted that assuming that the property prior to the formation of the company was in community the parties on the formation of the company had divested themselves of it and that any order in regard to that property could not bind the company. He contended that it ought not to be held that because husband and wife are shareholders in the company that any judgment in a cause to which the company was not a party could bind the company.

In answer to this submission counsel for the respondent stated that he did not support the judge's interpretation of the word "possession" and conceded that the London property was not in community but contended that she had an equitable interest since there was uncontroverted evidence

that the respondent had contributed after marriage towards the mortgage payments. He further submitted that this being so she would have an interest in the proceeds of the sale and since the business was bought with the proceeds the property was in community.

In reply to this argument counsel for the appellant pointed out that according to the laws of St. Lucia the principles of equity apply subject to the provisions of the Civil Code and that the Civil Code deals amply with the question of community property, that is to say, what is community property, how it is held and also in what manner the community is dissolved.

I agree with the submission of counsel for the appellant.

Notwithstanding the arguments in this appeal I would point out that the relief sought in the declaration of the respondent did not include the question of whether or not the property in the Lithographic Press was in community. This question, in my opinion, was not an issue at the trial nor was there any mention in the declaration in relation to the company. According to the provisions of the Civil Code and the Code of Civil Procedure relating to the community property, an order of separation from bed and board has the effect of dissolving the community and also provides the machinery for disposition of the property. It follows therefore that the learned judge, in making the order affecting the company, went beyond what was required under the law when he stated in paragraph (e) of his order that there should be separation of community in so far as it relates to No.17 Chaussee Road and the business known as the Lithographic Press (St. Lucia) Ltd.

On the question of access to the children I agree with counsel for the appellant that there was not sufficient evidence on the record to justify the order restricting the appellant's access to once weekly. I would allow daily access with respect to the child Andre Mark and access three times weekly in respect of Darren Augustus and Orrin Jason Paul.

In the result I would allow the appeal and (1) vary the order in regard to access as stated above and (2) by deleting paragraph (e) of the said order. Costs to be taxed.

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E.L. ST. BERNARD  
JUSTICE OF APPEAL

DAVIS, C.J.

I agree.

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MAURICE DAVIS  
CHIEF JUSTICE

PETERKIN, J.A.

I also agree.

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N. PETERKIN  
JUSTICE OF APPEAL