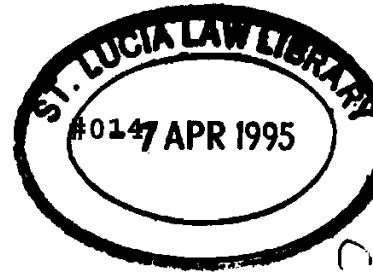


D46/1993



SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1995

Suit No. D46 of 1993

BETWEEN:

CYNTHIA CHARLES

Petitioner

and

MICHAEL CHARLES

Respondent

Mr. M. Michel and Miss N. Jolie for Petitioner

Michael Charles in Person

1995: February 3 and 10;
March 3.

J U D G M E N T

MATTHEW J. (In Chambers).

The Petitioner aged 34, and the Respondent aged 40, were married on March 31, 1979. They have three children as follows -

Michelle aged 15;

Jacky aged 13; and

Shirnel aged 9.

The Petitioner obtained a decree nisi for divorce on May 3, 1994 so that the marriage lasted just about 15 years.

CHARLES,
CYNTHIA
MICHELLE
CHARLES

On June 28, 1994 the Petitioner gave notice of application for ancillary relief. In that application she asked for custody of the three infant children with reasonable access to the Respondent; maintenance for herself and the children; a declaration under Section 41 of the Divorce Act; and an order that the Respondent transfer to her for the benefit of herself and the children his community moiety in the matrimonial home at Cap Estate and that the other property of the Parties be divided in such proportions as the Court sees fit.

On November 9, 1994 the Respondent filed his affidavit of means. In that affidavit he deposed that the company, Michael Charles Tyre Service Ltd., was in financial problems and he exhibited four writs of summons filed against the company in this regard. Two of these were by local banks and the other two were by foreign companies.

He stated that the matrimonial home at Cap Estate was used by himself and the Petitioner to secure a mortgage to the Bank of Nova Scotia in 1986.

He said he was the subscriber to 11,999 shares in the company and the remaining share belonged to Williamson Charles and the Petitioner does not and never had any interest in the company except that she was employed by the company and was adequately remunerated for her services. He deposed that his liabilities amounted to the sum of \$445,490.00 approximately.

He consented to the Petitioner having actual custody of the children but that he should have constructive custody of, and reasonable access to, them.

Since he has agreed in substance to what the Petitioner asked I should get this out of the way and order that custody of the three children shall remain in the Petitioner with reasonable access to the Respondent. I am not sure what is the practical effect of constructive custody and I reject that application of the Respondent.

He stated that he did not agree to pay the Petitioner any periodical payment or lump sum but as regards the children he asks that a maintenance order be made in the light of his financial circumstances with liberty to apply as soon as his financial situation improves. He asked that the Petitioner transfers her entitlement to a half share in the matrimonial home to him. He asked that certain income tax arrears be adjudged as community property. He tendered a document showing he was in arrears of income tax in the sum of \$62,414.78.

It is strange that the Respondent can say the Petitioner has no interest in the company and yet wishes her to bear the burden of half of tax arrears. As stated in paragraph 10 of his affidavit the company is his sole source of earnings so the tax assessed must of necessity be on profits supposedly made by the company. I

reject out of hand any notion that the Petitioner must be responsible for any arrears of tax or for that matter any debts incurred by the company.

At paragraph 19 he stated that the Petitioner is gainfully employed at the Green Parrot Restaurant and presently resides with a man called Didier Pascal.

On December 6, 1994 the Petitioner filed an affidavit in response. In her affidavit the Petitioner alleged that the Respondent was holder of 10,000 ordinary shares of the company and she was holder of 2,000 ordinary shares. She tendered as evidence in support the last annual return filed by the company on October 8, 1989.

She admitted having worked with the company but stated that she was never paid any salary or other remuneration by the company during her tenure of employment.

She denied that the Respondent was indebted in the amounts stated in his affidavit but admitted that the company had incurred significant debts and the reason was partly from the Respondent's deliberate decision to stop servicing the company's loans.

She admitted that she is presently employed at the Green Parrot Restaurant as a Reservations Manager and earns \$1,500.00 per month. She stated that her monthly expenses amounted to \$2,681.00 and that

figure does not include any items of clothing and other accessories for herself and the children of the marriage.

She said she is only able to survive and care for the children through assistance from her family and friends and that the Respondent makes no contribution whatsoever to her maintenance or the maintenance of the children.

I think I should deal with the maintenance here for the Respondent does not deny that he makes no contribution. When he made his closing address he stated -

"As regards my children an order can be made based on the money I make now but I am not making any money now".

I do not believe him and I order the Respondent to pay \$300.00 per month in respect of each of the children commencing March 31, 1995.

I make no maintenance order in respect of the Petitioner who is employed and who is associating and living with Didier Pascal as husband and wife. Indeed in her closing address Miss Jolie submitted that the Petitioner is prepared to forego her claim to maintenance.

When she gave evidence, Cynthia Charles stated that she was an Accounts Supervisor at the Green Parrot Restaurant. She said the Respondent did not support her nor the children. She said she

presently resides at Darling Road but before that she lived at the matrimonial home at Cap Estate but had to move out when the Respondent caused the electricity supply and the water supply to be disconnected.

She said before she worked at the Green Parrot Restaurant she worked with the company for 15 - 16 years during which time she received no salary or remuneration.

She said she owned 2,000 shares in the company although she was unable to show any document to this effect.

She stated that the properties owned by herself and the Respondent are the property at Cap Estate and the property at Marchand.

She tendered in evidence two deeds of sale in respect of the Marchand property and I note that in both deeds she is referred to as an officer of the company, in the first as Director and in the second as Secretary.

In her closing testimony in chief she said she was asking for maintenance for the children and their custody. She asked that he be ordered to pay \$500.00 a month in respect of each child.

Notably she did not ask for maintenance for herself. I believe this omission is due to the fact that it was realized that she was

not on firm ground.

She was cross-examined extensively by the Respondent who certainly possesses some skills. She said under cross-examination that besides the dwelling house in Marchand there is an office made of wood and wall; a galvanized warehouse where stock is kept and a wall building under construction. So I see the property at Marchand is of some considerable value.

She admitted that the company was in existence before they were married and she did not have a share certificate from the 2,000 shares and she did not know where the 2,000 shares came from and she invited the Respondent to tell her where they had come from.

She said her friend's name is Didier Pascal and he gives her money for living in the apartment and thanked God for him.

Michael Charles stated that he lives at Bishop's Gap and is a tyre merchant. He said he agrees to give the Petitioner custody of the three children with reasonable access to him.

She said when the Petitioner worked with the company both of them drew money from the company whether it was for food or for her to do her hair.

He tendered in evidence statements from the Bank of Nova Scotia

showing his current credit balance to be \$1,020.66 on November 30, 1994.

He tendered in evidence two cheques in favour of Cynthia Charles for \$1,200 on March 31, 1992 and \$300.00 on June 24, 1992. I do not know why they were tendered but in my view they are useless if it is meant to show he gave her money. It could have been money to pay for something for the company.

He tendered in evidence a deed of sale of the Cap Estate property in the joint names of Michael Charles and Cynthia Charles.

He stated that at the present time he was owing over a million dollars. He said finally -

"I want my wife to say how much she wants for her entitlement to Cap Estate".

I shall tell him in a little while. Under cross-examination he said there was no document indicating that the Petitioner was a Director of the company and he was not aware that the documents he tendered in evidence show that the Petitioner and himself were directors of the company. He however admitted that the two cheques referred to above show that.

He said further -

"Cynthia and I did own a property at New Village. We sold it

to Patrick Fell We put the money back into the company.

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We also owned a property at Forrestiere. That property was sold. The money was put back into the company".

He said the house at Cap Estate was closed since the Petitioner left on February 6, 1994. He agreed the house has a substantial rental value but indicated that the house needed repairs and after that he could probably get a rental of \$4,000 a month for the house.

It is only left to deal with the two properties owned by the Parties. I have regard to Sections 23, 24 and 25 of the Divorce Act as I was asked to do.

I am of the view that although the property at Marchand is community property the Respondent was the dominant force behind the company whose assets include the land at Marchand. I order that the property at Marchand be awarded to the Petitioner and that he be solely responsible for all the debts which are in fact owned by the company.

The property at Cap Estate is community property. Miss Jolie has suggested that the Petitioner be paid her half share of the value

of the Cap Estate property after the sum of approximately \$100,000 owed to the Bank of Nova Scotia has been deducted.

In all the very many documents filed in this case I have not seen any document stating specifically whether and to what extent the matrimonial home is encumbered. I have also not seen a valuation of the matrimonial home.

I therefore accept Miss Jolie's suggestion and order as follows:

1. That the Respondent pay to the Petitioner half of the balance of the value of the matrimonial home after the full amount owed to the Bank of Nova Scotia is deducted.
2. That the Respondent pay to the Petitioner the sum of \$300.00 per month commencing March 31, 1995 for the maintenance and support of each of the children of the marriage until each attains the required age or until further order.
3. That the Petitioner retains custody of the said three infant children with reasonable access to the Respondent.
4. I declare that I am satisfied that for the purposes of Section 41 of the divorce Act the only children who are children of the family are Michelle, Jacky and Shirnel and that the arrangements for their welfare have been made and are the best that can be devised in the circumstances.

5. That the Respondent pays the Petitioner's costs in the sum of \$1,200.00.

A.N.J. MATTHEW

Puisne Judge