

ANTIGUA and BARBUDA

IN THE COURT OF APPEAL

Civil Appeal No. 18 of 1999

BETWEEN:

ORTHNIEL ARTNEL ROBERTS

Appellant

and

LOUISE FEDORA ROBERTS

Respondent

Before:

The Hon. Mr. Albert N.J. Matthew

Justice of Appeal (Ag.)

Apearances:

Mr. Dane Hamilton for Appellant

Mr. G. Watt Q.C. for Respondent

1999: November 8;
December 3.

JUDGMENT

[1] **MATTHEW, J.A. (Ag.) (In Chambers).** The Parties were married on September 26, 1968 and the marriage was dissolved by a decree absolute pronounced on November 25, 1996. The Respondent commenced these proceedings by originating summons under section 24 of the **Matrimonial Causes Act** and section 44 of the **Matrimonial Causes Rules** of the **Revised Laws of Antigua and Barbuda, 1992, Cap. 228.**

[2] By the said originating summons the Respondent claimed a number of reliefs but in a judgment of *Hariprashad-Charles J (Ag.)* dated July 21, 1999 the learned Judge declared only that the Respondent was entitled to a one-half share of the sum of \$20,000.00 held in the joint names of herself and the Appellant in a fixed deposit account at Barclays Bank PLC up to the closure of the account in June 1980 together with such interest

which ought to have accrued to the said account from June 1980 to the date of Judgment.

- [3] On September 29, 1999 the Appellant filed a motion for an order granting an extension of time to file a notice of appeal against the judgment delivered on July 21, 1999. The motion was supported by an affidavit by Jasmine Ashe, Managing Clerk in the Chambers of Mr. Dane Hamilton filed on the same day. A copy of the judgment was filed as well as a draft of the proposed notice of appeal.
- [4] The Appellant's application was heard by a single Judge of the Court in accordance with Rule 27 of the **Court of Appeal Rules**.
- [5] Learned Counsel for the Appellant in the course of his submissions drew attention to paragraphs 3 and 4 of the affidavit in support. These pertain to the reasons for the delay and I shall refer to them below. Counsel referred to the Appellant's seven grounds of appeal based on law and fact and he asked the Court to look at the judgment. Counsel stated that some of the cases raised by the other side were not pertinent to the issue.
- [6] Learned Counsel for the Respondent submitted that the authorities were very strict on questions of extension. He submitted that the Appellant had to show good and substantial reasons and referred extensively to the following authorities:
- (1) **Harold Simon v Carol Henry** Civil App. No.1 of 1995 Antigua and Barbuda;
 - (2) **Norwich and Peterborough Building Society v Steed** 1991 2 ALL E.R. 880;
 - (3) **Palata Investments Ltd v Burt** 1985 2 ALL E.R. 517;
 - (4) **Casimir v Shillingford and Pinard** (1967) 10 W.I.R. 270;
 - (5) **C.M. Van Stillevoeldt v EI Carriers** 1983 1 ALL E.R. 699.

- [7] According to **Order 64 Rule 5(1)** the time limit allowed for appealing in these proceedings is six weeks. So the Appellant had until September 1, 1999 to appeal against the judgment. He did not do that but some 28 days later he makes this application. Had the Appellant been 2 days later a single Judge would have been unable to hear his application. See **Order 64 Rule 6(1)**.
- [8] The power to extend time for appealing is governed by **Order 3 Rule 5** of the Rules of the Supreme Court. **Order 64 Rule 6(2)** states how the application is to be made. The application has to be supported by an affidavit setting forth substantial reasons for the application. And there must be grounds of appeal which *prima facie* show good cause therefore. The Court exercises a judicial discretion when applications for extension of time are made.
- [9] According to *McCowan L.J.* in **Norwich and Peterborough Building Society v Steed** at pages 881/882: *“The matters which this Court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reasons for the delay; thirdly, the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”*
- [10] **Norwich and Peterborough** was followed and applied by our Court of Appeal in **Harold Simon and Carol Henry**. I also applied the said principles in Civil Appeal 6 of 1997 **Ramsgate Resources N.L.** and *Others v P.H. Nominees Ltd.* from British Virgin Islands, delivered in February 1998. I shall look at those matters as they relate to this case.
- [11] **The length of the delay:** In **Norwich** *McCowan L.J.* stated that on any view a 6½ months delay was substantial. In **Ramsgate** the period was 7

months and I came to the conclusion that the period of delay was also substantial. In **Harold Simon** the delay was 2 months. The learned Justice of Appeal who delivered the judgment said that in deciding whether that period can be described as being reasonable or as being inordinately long, the application would have to be considered with its own particular facts and a relevant factor for such consideration would be the reason for the delay. He went on to consider the reasons for the delay before deciding on the length of the delay. He said if there is no reason or the reason is unacceptable then there should have been no delay and a delay of 8 weeks would be inordinately long. It behoves me then to consider now the reasons for the delay before I pronounce on the length of the delay.

[12] **The reasons for the delay:** For this I turn to the affidavit of Jasmine Ashe containing only six paragraphs. In the first paragraph she states her position or office and in the second she says the judgment was delivered on July 21, 1999. In the third paragraph she says it was during the second week of August the details of the judgment were communicated to the Appellant who indicated that he wished some time to consider the implications. So it took about 17 days to communicate the judgment to the Appellant. No reasons are advanced for this extraordinary delay. Counsel for the Appellant during his submissions quite rightly said he was successful on most of the issues at the trial. The only success of the Respondent was a half-share of \$20,000.00. What implications therefore he had to consider? The learned Trial Judge held the Respondent was not entitled to an interest in the original matrimonial home at Tindale Road, in the Parish of St. John's'. The learned Trial Judge also held that the Respondent was not entitled to an interest in certain property situate at Creekside in the Parish of St. Mary's. The learned Trial Judge held that she did not own a one-half share in motor car H2038.

- [13] In paragraph 4 of the affidavit the deponent stated that the Appellant left Antigua for the United States during the last week of August, 1999 having tried unsuccessfully to meet with his solicitor. It follows that Appellant left Antigua between August 22-31. By the time he was leaving the time limit for appeal was getting to a close. As learned Counsel for the Respondent submits, he does not say how many times he tried to see his solicitor who was said to be engaged at an inquest in the Magistrate's Court.
- [14] In paragraph 5 of the affidavit it is said that it was while the Appellant was abroad he intimated his desire to appeal to his solicitor. It follows that a personal contact with his solicitor was not absolutely necessary.
- [15] Paragraph 6 of the affidavit simply states that a draft notice of appeal was exhibited to the affidavit. I have read the judgment and have perused the notice of appeal and grounds of appeal. The grounds all touch on the half share of the \$20,000 which the learned Judge found to have been held on a fixed deposit at Barclays Bank PLC in the joint names of the Parties.
- [16] I have come to the conclusion that the affidavit of Jasmine Ashe does not set forth substantial reasons for this application for extension of time. I also come to the view that the length of delay is inexcusable.
- [17] **The chances of the appeal succeeding:** The judgment looks fair and reasonable and the Appellant has not impressed me by his grounds of appeal that he has a likely chance of success.
- [18] **The degree of prejudice:** The Respondent who was successful in the Court below is entitled to regard the judgment in her favour as being final and conclusive. According to *Lord Donaldson* in **Norwich and Peterborough** at page 855: "*If he is to be deprived of this entitlement, it can only be on the basis of a discretionary balancing exercise.*" In this

case the balancing exercise would be unlikely to come down on the side of granting an extension of time. It would not be right to deprive the Respondent of her entitlement.

[19] The Appellant has failed to show substantial reasons for his application. He has also failed to show grounds of appeal which *prima facie* show good cause.

[20] Accordingly, I order that the application be dismissed with costs to the Respondent, to be taxed, if not agreed.

A.N.J. MATTHEW
Justice of Appeal (Ag.)