

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CIVIL SUIT NO. 411 OF 1995

BETWEEN:

COLORITA ANNELCIA DUBLIN Petitioner

and

FELTON DUBLIN Respondent

Appearances:

Stephen Huggins for the Petitioner
Zoila Ellis Browne for the Respondent

.....
2001: July 5,13 and 27
September 26
.....

JUDGMENT

[1] **WEBSTER, J. (*acting*)**. This is an application by the Petitioner for a property adjustment order in respect of the matrimonial home at Roseau, St. Vincent, and for maintenance of the minor child of the marriage Damion Justin Pete Felton Dublin. The application for maintenance of the Petitioner was neither pursued nor withdrawn.

FACTS

[2] The parties were married on June 26, 1977. The marriage produced six children. Five of them are now adults and the minor child, Damion Justin Pete Felton Dublin, age 12 years, lives at home with his parents.

[3] When the parties got married the Petitioner was a seaman. He came back from sailing in 1987 and has worked since then in the construction field. The Petitioner operated a shop which she eventually closed and opened a catering business selling food to workers at the

Stone Mill. At some stage she was also a clerk at Catos Drug Store and assisted a Mr. Reynold Murray in his catering business. She has been operating her own catering business for the last seven years.

[4] During the first year of the marriage the parties used their combined resources to build the matrimonial home at Rosseau on land owned by the Government. From time to time the Petitioner borrowed money from a credit union to renovate and improve the house. There is no evidence as to when these monies were borrowed or when the renovations and improvements were done, but insofar as they were done after the Respondent returned to St. Vincent, I accept his evidence that he helped with the work. The Petitioner repaid the loans to the credit union.

[5] There are two reports of the value of the property. The first is by Joseph Lewis FAA of Horizon Investments dated June 20, 2001 who valued the building at \$74,810.00. The other valuation is by Moulton Mayers, Architects, dated July 2, 2001 who valued the building at \$68,000.00 and the land at \$20,950.00. Neither valuator was cross-examined. For the purposes of this application I find that the value of the house is approximately \$71,405.00.

[6] On January 13, 2000 the Petitioner obtained a decree nisi on the ground that the marriage had broken down irretrievably in that the Respondent had committed adultery and his conduct was such that the Petitioner could not reasonably be expected to continue living with him. The decree was made absolute on May 17, 2000.

THE LEGISLATION

[7] The Petitioner's application for maintenance of the minor child and for a property adjustment order is made pursuant to sections 31 and 32 respectively of the Matrimonial Causes Act, Cap. 176 ("the Act"). I will deal firstly with the application for the property adjustment order.

[8] Applications for property adjustment orders are now made under section 32 of the Act which provides as follows-

“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 a child, such property as may be so specified, being property to which the first mentioned party is entitled, either in possession or reversion.”

During the course of her final submissions Learned Counsel for the Respondent submitted that the Court does not have jurisdiction to make a property adjustment order under section 31 because neither party has title to the land on which the matrimonial home stands, and this aspect of the case should be adjourned until the Government vests title in one or both parties. Regrettably, that was not an option open to the Court because any adjournment beyond the 31st July would result in the case having to be heard *de novo*. The Court therefore granted a short adjournment to allow Counsel for both parties to check on the status of the parties' application to get title to the property. At the resumed hearing on the 27th July both Counsel informed the Court that matters were well advanced with the Government and that it was expected that the Government would grant the legal title to the parties in the near future. In the circumstances I am satisfied that the parties have an equitable interest in the land, and the legal title will follow shortly. This is a sufficient interest in the property for the Court to make an order under section 32 provided that the operation of the order is suspended until the title to the property is transferred to the parties.

[9] In making a property adjustment order under section 32 the Court is required to consider the matters listed in section 34 of the Act. Section 34 provides that-

“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, 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 have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other."

The factors listed in section 34(1) are not exhaustive and the Court should adopt a flexible approach and deal with each case on its own facts. The learned editors of **Halsburys Laws of England** 4th ed. Volume 13 paragraph 1060 put the matter this way-

"In the end, however, the Court must view the situation broadly and see that the financial arrangements it proposes meet the justice of the case; the result may mean that both parties will have to cut down their standard of living, but it may be as much as can be done in the circumstances."

Guided by these principles I will now apply the facts of this case to the matters in section 34(1) that are relevant.

Income and Earning Capacity

- [10] The Petitioner earns approximately \$3,600.00 per month from her catering business and her personal and business expenses are approximately \$3,353 per month. This leaves her with approximately \$250.00 which she says she spends on clothes and household items for the family.
- [11] The Respondent works in construction. His average take home pay is \$500.00 per month. He has offered to pay \$200.00 per month for the maintenance of his son, and he has other personal monthly expenses.

Financial Needs and Standard of Living

- [12] Both parties occupy the matrimonial home and neither one has a substantial income. If the Court is to make an order for either party to vacate the matrimonial home it needs to be satisfied he or she will enjoy a reasonable, though lower, standard of living when he or she moves out of the matrimonial home.

Duration of Marriage and Age of Parties

- [13] The marriage lasted 23 years and produced six children. The Petitioner and the Respondent are 55 and 51 years respectively.

Contributions to the Welfare of the Family

- [14] The sole asset of the family is the matrimonial home. It was built in 1977 after the parties got married. The Respondent contributed US\$200.00 per month towards the family during the construction period and after. The Petitioner contributed the income from her shop and later her catering business. She is also the spouse who stayed at home and looked after the children while the Respondent was at sea. When the Respondent returned from sea he continued to make financial contributions to the Petitioner until about a year ago.
- [15] The Petitioner paid for the improvements and renovations to the house with the loans from the credit union. The Respondent's contribution to these improvements was in the form of labour.

- [16] I find that the matrimonial home was acquired by the joint efforts of both parties, with both making substantial contributions with the intention that the house would be used by them during their joint lives for their benefit.

OCCUPATION OF MATRIMONIAL HOME

- [17] The Petitioner's application includes a request for an order that the Respondent be excluded from the matrimonial home based on his conduct. It is not clear if this is to take effect immediately or when the Respondent's interest in the property is settled. Insofar as it may be required immediately, I do not find that the Respondent's conduct is such that he should be expected to move out and find alternative accommodation. There is some evidence of conflict between the parties but this is inevitable when parties who are divorced live in the same house. If the conflicts become more serious the Petitioner can apply to the Magistrates Court for an exclusion order under the Domestic Violence Act.

ORDERS

- [18] In making a final assessment I am mindful of the principle in **Halsbury's Laws of England** 4th ed. volume 48 paragraph 612 that-

"Disputes between spouses now rarely require resolution of their strict property rights under trust law as the court has wide discretionary powers in proceedings for divorce, nullity or judicial separation to distribute property as it sees fit without having to ascertain the shares of the parties in the property"

I am also mindful of the tailpiece to section 34 which requires the Court in exercising its powers under sections 31 to 33 to put the parties, as far as possible, in the financial position they would have been in if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other. The order that the Court makes in this case should be that one party owns and occupies the matrimonial home and makes a reasonable payment to the other. The Petitioner has made the more substantial contribution to the acquisition of the matrimonial home, and the infant child will be living with her. The Petitioner should therefore be the party who is allowed to own and occupy the matrimonial home, and she should pay a reasonable amount to the Respondent. The payment should be sufficient to enable the Respondent to

use as a deposit on his own home, and still leave him in a position to service a mortgage. Doing the best I can I find that this amount should be \$30,000 which is just over 40% of the value of the matrimonial home, payable when the Government grants title to the property. In this way the Court is doing the best it can to put the parties, as far as possible, in the financial position they would have been in if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

[19] The following are the orders of the Court:

- (a) The Petitioner pay to the Respondent the sum of \$30,000 within 30 days after the Government grants title to the property to the parties or either of them.
- (b) On payment in full of the said \$30,000 the Respondent transfer his interest in the matrimonial home to the Petitioner.
- (c) The Respondent vacate the matrimonial home within one month of receiving payment in full of the said \$30,000.
- (d) The Respondent pay to the Petitioner for the benefit of the child Damion Justin Pete Felton Dublin the sum of \$200 per month commencing October 31, 2001 and thereafter on the last working day of each month.
- (e) Each party will bear his or her own costs.
- (f) The parties have liberty to apply.

Paul Webster
High Court Judge (*Ag.*)