

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 137 OF 1997

BETWEEN:

CHARMAINE ANGELA RUTH FRANCIS NEE THEOBALDS

Petitioner

and

BRADLEY EVERETTE FRANCIS

Respondent

Appearances:

Mr. Samuel Commissiong for the petitioner

Mr. Arthur Williams for the respondent

2001: November 16, 28; December 18

JUDGMENT

IN CHAMBERS

ALLEYNE J.

[1] This is an application for ancillary relief consequent upon the granting of a decree of divorce on the 26th June, 1997. It has been agreed by the parties and is ordered by consent as follows:

1. That the respondent convey his half share interest in the matrimonial home at Queen's Drive, Saint Vincent and the Grenadines, to the petitioner in trust for the children of the marriage.

2. That the respondent service the mortgage loan on the property and keep the matrimonial home aforesaid in a good state of repair and condition, provided that if the petitioner remarries and continues to live in the matrimonial home, with her husband, she will thereupon assume responsibility for the payment of the mortgage and the maintenance of the matrimonial home.
3. That should the petitioner cohabit with a man in the matrimonial home, she shall upon commencing to do so and thereafter undertake responsibility for the payment of the mortgage and the maintenance of the said home.
4. That the respondent do forthwith transfer to the petitioner his entire legal and beneficial interest, free from all incumbrances, in the motor vehicle registration number P 916, and put the said motor vehicle in a good state of mechanical repair and condition.

[2] The issues outstanding for decision by the court are the matter of maintenance for the three children of the marriage, and for the petitioner, and for a lump sum in favour of the petitioner. There is in place at the present time an order of the court whereby the respondent pays towards the maintenance of each of the children the monthly sum of \$250.00, and for the petitioner, the monthly sum of \$500.00.

[3] The petitioner and the respondent were married on August 15, 1987, and appeared to have enjoyed a happy and harmonious relationship for the first five years approximately, but the second five years appear to have been characterised by a progressive deterioration in the relationship, culminating in the petitioner filing the divorce petition herein on April 17, 1997. There are three children of the marriage, Diego, age 14, Krystle, age 13, and Nicholas, age 10. The child Diego suffers from a bronchial asthmatic condition and requires regular medication. The other children are in normal health. They appear to be all normal, well adjusted

children, and appear to have normal and healthy relations with both parents despite the breakdown of the marriage.

- [4] The petitioner is a teacher and earns a net salary of about \$1200.00 per month, while the respondent is a Civil Engineer, a principal in an engineering and construction company owned by members of his family, including himself, which undertakes major engineering and construction contracts for the government and other clients.
- [5] As part of the benefits of his employment, from which he claims to earn a monthly salary of \$3500.00, the respondent also occupies a dwelling house which belongs to the company, and has the use of company vehicles.
- [6] Learned Counsel for the petitioner makes reference to a series of cancelled cheques entered in evidence, and contends that these cheques must be presumed to represent personal expenditure of the respondent. I do not agree. An examination of the cheques, and in particular of the names of the payees, reveals very clearly that the amounts were paid to business associates of the company, for business related expenses of the company, and cannot be accounted as expenditure of the respondent in his personal capacity or from personal funds.
- [7] The respondent admits to having a fund at the Building And Loan Association, standing at the sum of \$20,000.00. He has implied that this fund is intended for the future educational needs of the children, and I order that this fund, and any future accretions thereto, be held in trust by the respondent for the children, to meet their future educational needs, and that the respondent be restrained from withdrawing from the principal or interest of the said fund without the prior agreement of the petitioner or the approval of the court, and for the benefit and education of the children or any one or more of them.

[8] Counsel for the petitioner also urged that the court rule that the sum of \$200,000.00 evidenced by exhibit BF1, held at the Caribbean Banking Corporation, is an asset of the respondent, and should be taken into account in considering this application. On the other hand, the respondent claims that this money belongs to his mother, and has been used as security for advances to the family business, with the approval of his mother.

[9] Notwithstanding that the fund was held by the bank in the names of Bradley Francis, the respondent, Noreen Francis, his mother, and Charmaine Francis, the petitioner, who apparently was not aware of the existence of this fund, the respondent disclaims any beneficial interest in that fund in himself or the petitioner. However, in his affidavit filed on June 15, 2000, the respondent says,

"My mother Noreen Francis, the Petitioner and I had a fixed deposit at the Caribbean Banking Corporation Limited, this money has since been withdrawn."

The respondent does not in that affidavit aver that the money is beneficially owned by anyone other than the named depository.

[10] It is clear that the petitioner has had no benefit from this fund, and no accounting has been made to her in respect thereof. I hold that the petitioner is beneficially entitled to a one third interest in the said sum, and direct that the respondent pay to the petitioner in respect thereof the sum of \$66,666.66 with interest thereon from the date of the deposit, *viz.* July 3, 1997, at the rate of 5% per annum until payment.

[11] As regards the land acquired by the respondent at Diamond, I hold that the respondent is entitled to hold this land free of any claim on the part of the petitioner, he having agreed to convey to the petitioner all of his interest in the matrimonial home and expressing the intention to build his own home on that land.

- [12] The evidence discloses and it is agreed by both parties that the respondent provides separately for the mid-day meals of the children, and also to some extent contributes to their weekend meals. This, in my view, would greatly reduce the financial burden on the petitioner. Notwithstanding this, the petitioner contends that she is unable to meet the needs of the children from her present earnings and the provision presently made by the respondent. In this regard, the petitioner draws attention to the extra curricular activities and aspirations of the children.
- [13] On the evidence before me, and having given full consideration to the matters drawn to my attention by Counsel, in which regard I am particularly grateful to learned Counsel for the petitioner for his comprehensive written submissions, I confirm the interim order that the respondent pay for the benefit of the petitioner the monthly sum of \$500.00.
- [14] Paying due regard to the several considerations set forth in section 34(2) of the Matrimonial Causes Act Cap. 176, I order that the provision made by the respondent in respect of the children of the family be increased to \$300.00 per month in respect of each child.
- [15] Counsel for the petitioner urges the court to find against the respondent's claim that he is the beneficial owner of no more than 5 shares in the family company **Franco Construction Limited**. There is no evidential basis on which I can so hold. However, it is clear to me that, even if the respondent's circumstances are at present somewhat straitened as he claims, his longer term financial and economic prospects are far better than those of the petitioner. At the present time, and on the state of the evidence before me, I cannot reasonably make better provision than I have made for the petitioner and the children. However, in view of the respondent's future prospects, including the future maturing of term insurance policies and the potential for growth in the benefits which he may realise from the family business, I grant the petitioner liberty to apply at any time in the future for provision for a lump sum, secured provision, and additional maintenance for

herself and the children, should the circumstances of the respondent be significantly altered to his advantage.

[16] The petitioner to have her costs of these proceedings.

Brian G.K. Alleyne
High Court Judge