

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO. D 128 of 2000

BETWEEN:

SCHOLASTICA ST. VILLE

Petitioner

and

CYRUS ST.VILLE

Respondent

Appearances:

Mr. Andre T.M. Arthur for the Petitioner
Ms. Esther Greene-Ernest for the Respondent.

2002: January 31
February 05

JUDGMENT

- [1] **HARIPRASHAD-CHARLES J:** The Petitioner / wife and the Respondent / husband were married on 25th day of June 1995 after a period of visiting relationship which lasted for ten years. The only child of the family, AVA MALLAR ST. VILLE was born on 28th day of April 1987 prior to the marriage of her parents. She is now 14 years old and attends the Corinth Secondary School.
- [2] On 7th day of November 2000, the Petitioner petitioned for divorce on the ground of irretrievable breakdown of the marriage in that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. An Answer

and Cross-Petition was filed by the Respondent alleging that the Petitioner has behaved in such a way that he cannot reasonably be expected to live with her. A decree nisi was pronounced on 7th day of May 2001. It has not yet been made absolute.

[3] On 5th day of June 2001, the Respondent filed a Notice of Application with supporting affidavit for Ancillary Relief claiming the following reliefs namely:

1. PROPERTY

That the Community Property comprising dwelling house situate at La Bayee, Bexon in the Quarter of Castries be sold and the proceeds be divided between the parties.

2. CUSTODY

That the Respondent be granted custody of the minor child of the family namely AVA MALLAR ST. VILLE with reasonable access to the Petitioner.

[4] On 21st day of June 2001, the Petitioner filed an Affidavit in Reply claiming not only one-half share in the matrimonial home but also one-half interest in a truck valued at \$45,000.00 which was purchased during the subsistence of the marriage. The Petitioner also asks the Court to reinforce the Order made on 18th day of October 2001 whereby the Respondent was ordered to pay her maintenance of \$250.00 monthly.

[5] The Respondent swore and caused to be filed an affidavit in reply on 7th day of December 2001. In that affidavit, he claimed two additional reliefs namely:

- (1) Maintenance for the child, AVA MALLAR who resides with him and
- (2) Variation of the Order made on 18th day of October 2001 by deleting paragraph 4 in respect of maintenance of the Petitioner.

[6] At the hearing, there seemed to be no real dispute in respect of the matrimonial home. It was agreed that the matrimonial home be sold and that the proceeds thereof be divided equally between the parties.

- [7] The contest between the parties relates to the following:
- (a) Whether or not the motor-truck or the proceeds thereof form part of the community of property?
 - (b) Whether the Respondent should continue to maintain the Petitioner?
 - (c) Whether the Petitioner should pay maintenance for the minor child of the family who lives with the Respondent?

(a) **MOTOR TRUCK**

- [8] It is accepted that the Nissan motor-truck was bought during the subsistence of the marriage on 9th day of July 1997 at a cost of \$38,000.00. It is accepted that the Respondent took a loan from Barclays Bank to pay for the said vehicle. The dispute relates to whether the motor-truck forms part of the community of property or is separate property. As is usually the case, the Petitioner says one thing and the Respondent another. However, I am more inclined to believe the evidence of the Petitioner. She impressed me as a witness of truth. I cannot say the same of the Respondent. I found him to be very evasive and an untruthful witness. I believed the Petitioner when under cross-examination by Mrs. Ernest, she testified as follows:

“ I will agree that the Respondent always had a vehicle from the time I met him. The loan was paid for the truck from the Respondent’s earnings but I handled big responsibilities so much so that I don’t have a bank account.”

- [9] Later on, in re-examination, she clarified what “big responsibilities” were and stated:

“Big responsibilities meant taking loans and helping him pay labour both during and after marriage. I took loans and paid workers when the house was being built and to furnish the house. I paid the loans solely by myself.”

- [10] I am of the firm view that the motor-truck formed part of the “family assets”. See: **Lang v Lang [Civil Suit No. 30 of 1991] [unreported] [Saint Lucia]**. She is therefore entitled to one-half share of the said vehicle which no longer exists. The Respondent traded in the

Nissan truck for a 1993 Nissan Sunny car on 6th day of October 2001. The said car was sold for \$12,000.00 in December last year.

[11] The Respondent will pay to the Petitioner the sum of \$6,000.00 [being one-half of the sale price of the car] no later than 30th day of April 2002.

(b) MAINTENANCE OF THE PETITIONER

[12] In deciding matters of maintenance, Section 25 of the Divorce Act is instructive. Subsection (1) provides as follows:

(1) "It shall be the duty of the Court in deciding whether to exercise its powers under sections 22, 23 or 24 in relation to a party to the 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) contributions 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...."

[13] The Petitioner is 35 years old and is presently employed with Maragh earning a salary of \$420.00 per month or \$210.00 a fortnight. The Respondent testified that he is currently unemployed. He was gainfully employed in June 2001. Although unemployed, he lives a

life of luxury with cable vision, telephone and car to say the least as compared to that of the Petitioner who could hardly fend for herself on a meagre monthly salary of \$420.00 out of which she pays a monthly rental of \$200.00 and transportation of \$120.00 to get to work. She has remaining \$100.00 per month or \$50.00 per fortnight to purchase groceries and other incidentals.

[14] Having had the opportunity of seeing the witnesses and looking at their demeanour, I do not believe that the Respondent is unemployed. The Respondent is currently paying \$250.00 monthly towards the maintenance of the Petitioner. He must continue to pay the said sum of money with liberty to apply to vary if and when the Petitioner's present status improves.

(c) MAINTENANCE OF THE MINOR CHILD

[15] Section 25 (2) states:

" Without prejudice to subsection (3), it shall be the duty of the Court in deciding whether to exercise its powers under section 23 or 24 in relation to a child of the family 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 financial needs of the child;
- (b) the income, earning capacity (if any), property and other financial resources of the child;
- (c) any physical or mental disability of the child;
- (d) the standard of living enjoyed by the family before the breakdown of the marriage;
- (e) the manner in which he was being and in which the parties to the marriage expected him to be educated or trained."

[16] Broadly speaking, it is the duty of the Court to place the child, so far as it is practicable and, having regard to the considerations mentioned in relation to the parties to the marriage in paragraphs (a) and (b) of subsection (1), just to do so, in the financial position

in which the child would have been if the marriage had not broken down and each of those parties had properly discharged his or her financial obligations and responsibilities towards her.

[17] Section 23 of the Divorce Act empowers the Court to make financial provisions for the maintenance of the children of the family.

[18] Having carefully considered and analyzed the evidence and given the present impecunious state of the Petitioner, I think it would be unreasonable to burden her with the maintenance of AVA MALLAR. Accordingly, I will order that the Respondent continues to maintain his daughter as he has been doing over the last two years.

CONCLUSION

[19] This is a relationship that lasted for approximately 16 years. There is only one child of the family who is a minor. The parties are still relatively young. The Petitioner is 35 and the Respondent 41. The prospect of re-marriage for both of them is fairly good.

[20] Both parties have worked throughout the marriage, however menial their jobs might have been. The Petitioner is a machine operator by profession while the Respondent is a certified welder and a driver. Both parties contributed towards the acquisition of the matrimonial home and the truck. Neither party is able to provide documentary evidence as to his or her contribution. The Court recognizes that the special relationship between husband and wife inevitably gives rise to difficulties of proof when the marriage breaks down and questions of ownership have to be considered. But from the evidence, I am more inclined to believe the evidence of the Petitioner that she contributed to the acquisition of the matrimonial home and the truck. Where there is difficulty in quantification of contribution made by the respective parties, the principle of "equality is equity" should prevail. See:

(1) *Redhead v Redhead*, Volume 2 OECS Law Reports page 311.

(2) *Rimmer v Rimmer* [1952] 2 All ER 863.

(3) Fribance v Fribance [1957] 1 All ER 357.

[21] Based on the evidence and an analysis of the law, my Order is as follows:

- (1) That the matrimonial home be sold as soon as practicable and that the proceeds be divided equally between the parties.
- (2) That, if necessary, a valuer to be agreed upon by the parties and/or their Counsel view and value the matrimonial home within one month from the date of this Order; the cost of the valuation to be borne equally by the parties.
- (3) That the Respondent pays to the Petitioner the sum of \$6,000.00, being one-half of the value of the car which was sold in December, 2001. This sum is to be paid no later than 30th day of April 2002.
- (4) That the Respondent continues to pay to the Petitioner the monthly sum of \$250.00 as previously ordered by the Court on 18th day of October 2001.
- (5) Liberty to apply.
- (6) That each party bears his or her own Costs.

INDRA HARIPRASHAD-CHARLES

High Court Judge