

SAINT VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(DIVORCE)



CASE NO. 57 of 2003

BETWEEN:

CARMEL MASON

Petitioner

AND

ELDON MASON aka CORDON MASON

Respondent

Appearances:

Ms. N. Sylvester for the Petitioner

Mr. S. E. Commissiong for the Respondent

2005: October 5th

JUDGMENT

- [1] **COTTLE, MASTER:** The parties were married on 22nd May 1997 in England. This was not a first marriage for either party. The Petitioner was then aged fifty-four (54) and the Respondent was four (4) years older. In 2003, the Petitioner sought to have the marriage dissolved. The Respondent did not contest the proceedings and the marriage was accordingly ended on 26th December 2003.
- [2] The Petitioner now seeks ancillary relief whereby she prays that her interest, if any, in the matrimonial home be assessed.



The Evidence

- [3] The petitioner swore an affidavit in support of her application. This was filed on 4th May 2004.
- [4] She is a retired nurse in receipt of a pension of \$4,526.73 monthly. Her living expenses total \$4,252.00. The details are to be found in paragraph 4 of her affidavit. I note that she has monthly credit card debts of \$1,200. She does not say how these debts were incurred.
- [5] The Petitioner also swore that she contributed to the matrimonial home before the parties were married. She says she did so on the assurance of the Respondent that she would be entitled to an equal share in the property. She says she gave the Respondent \$6,201.00 to buy building materials and spent a further \$16,695 on paying workers and buying materials. This was in March 1996. In May 1996, she contributed a further \$7,155.00. Both parties left St. Vincent in August 1996 and returned to the U.K. They next came to St. Vincent in June 1997. At this stage, according to the Petitioner, the matrimonial home was unfinished and valued at \$120,000.00. The Petitioner then swears that she expended \$152,911.17 to purchase building materials to complete the matrimonial home. She also says she spent \$2,385.00 to build a water tank for the property. Apart from the real property and the contents of the home, the Petitioner also lists a vehicle as a family asset. No current valuation of the matrimonial home is provided by the Petitioner because she says she is afraid to go to the property.
- [6] In his affidavit in reply, the Respondent says that he purchased the matrimonial home in 1978 for \$50,816.00. He was assisted in the purchase by the Housing and Land Development Corporation. He says that he made improvements to the home over the years that followed and before any relationship with the Petitioner commenced.
- [7] The Respondent worked as a bus driver in the U.K. from 1970 – 1995. He also did some other work making optics from home. It is from this income the Respondent says that he funded all renovations and improvements to the property that became the matrimonial home. He swears that by the time the Petitioner first stayed in the property, in 1996, all renovations were already complete. He denies that the Petitioner made any contribution to

the renovation of the property. The Jeep is not part of the matrimonial assets, according to the Respondent, as he purchased it from his own funds after the Petitioner had left the matrimonial home. The Respondent lists his current income at £417.70 monthly as his company pension benefits plus state pension of £89.24 per week. He does not say what his living expenses are and he does not offer any evidence of the current value of the property. He points out that the marriage was comparatively short.

[8] On 29th September 2004 the Petitioner filed a further affidavit in reply. In that affidavit she says that her contribution towards the renovation of the property was £85,000 and that she contributed £4,000 towards the purchase of a car, which the Respondent later sold and applied to proceeds to buy a Suzuki Jeep. She seeks a lump sum of £89,000 in satisfaction of her prayer for ancillary relief.

[9] I pause to note that neither party seeks maintenance and there are no children with whom I am to be concerned. The single issue is whether and to what extent the contributions of the Petitioner entitle her to an interest in the matrimonial home.

[10] I invited both counsel to provide the court with written submission on this issue along with the authorities in support. I have been assisted in this regard only by counsel for the Petitioner.

[11] As I understand the submission of counsel for the Petitioner I should order the matrimonial home to be valued. I should then deduct from that value the amount of \$120,000 representing the value of the property before any input by the Petitioner. I should then divide the remaining balance and award one third of that sum of the Petitioner. Alternatively, I should award the Petitioner a lump sum based on the amount of her contribution to the matrimonial property.

[12] I begin by reminding myself that the onus is on the Petitioner to prove that I should make the award she seeks. The factors, which are to guide my assessment, are laid out in Cap. 176 of the Laws of St. Vincent and the Grenadines at Section 34 of the Matrimonial Causes Act. I do not repeat them here but Section 34 (1) (f) enjoins me to have regard to the contribution made by each of the parties to the welfare of the family. The aim of

course is to place the parties, in as far as this is practicable, in the position they would have enjoyed had the marriage continued. The issue of the conduct of the parties I will consider subsequently.

[13] The Respondent would have me believe that the Petitioner made absolutely no contribution towards the renovation of the matrimonial home. I do not accept this as true. But neither can I accept the assertion of the Petitioner that her contribution was in the amount of £89,000.00 or \$412,132.00 EC. The Petitioner swears that her contribution to the car of the family, which was sold by the Respondent, was £4,000.00. Yet she also swears that when the car was purchased in 1995 it was worth £1,500. There are also inconsistencies in the amounts claimed to have been spent by the Petitioner on materials and labour on the matrimonial home. In her first affidavit she totals these contributions at \$185,347.17 EC. In her second affidavit this figure has grown to £85,000.00 or more than doubled. The state of her evidence makes my task a very difficult one.

[14] I also note that the Respondent did not contest the grounds given for breakdown of the marriage. The conduct described therein is of a nature that I consider it would be inequitable to ignore. There is also the issue of his later conduct. The Petitioner had to issue proceedings to recover some personal items from the home. There was a court order, by consent, under which the Respondent undertook to deliver up certain personal property. Much of that property was delivered in a condition, which made the items valueless. I take a very dim view of the conduct of the Respondent in this regard.

The Ruling:

[15] The vehicle:

I believe the Petitioner when she says that the vehicle, which, was bought at auction in 1995, was valued then at \$1,500. When this was sold in 2001, the value would have been negligible. I therefore decline to consider the Suzuki Jeep as a matrimonial asset to be assessed on the basis of any contribution by the Petitioner to the purchase price.

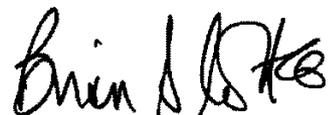
[16] The matrimonial home:

As indicated earlier, I accept that the Petitioner contributed to the renovation and repair of the matrimonial home. The state of the evidence makes it impossible for me to quantify the amount of the contribution with mathematical precision. However, there are some guidelines to assist me. I accept the value placed on the house by the Petitioner before her input at \$120,000. Considering all the factors laid out in Section 34 referred to above I find that the best I can do is to award the Petitioner a one quarter ($\frac{1}{4}$) interest in the value of the property above \$120,000.

The Order:

[17] The matrimonial home is to be valued. As neither party has yet done so, I direct that the valuation be carried out by Mr. Sebastian Alexander. The sum of \$120,000 is to be deducted from that value. The Respondent is to pay the Petitioner a lump sum equivalent to 25 percent of the remaining value of the property within three (3) months. The cost of the valuation is to be borne by the parties equally. The Respondent is to pay the costs of these proceedings in the amount of \$5,000.00.

[18] Should the Respondent fail to pay to the Petitioner the amount found due after the valuation is ordered, the matrimonial home is to be sold and the amount due paid to the Petitioner from the proceeds of sale. The Registrar of the High Court is authorised to execute the conveyance and all costs associated with the sale shall be for the Respondent to bear. Any surplus after payment of these costs from the proceeds of sale is to be paid to the Respondent.


Brian Cottle
Master