

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

(DIVORCE)

NO.: 19 OF 2003

IN THE MATTER OF THE PETITION OF DIANA FUSSEE-DURHAM NEE BAKER FOR  
DISSOLUTION OF MARRIAGE

BETWEEN:

DIANA FUSSEE-DURHAM NEE BAKER

Petitioner

AND

RODGER FUSSEE-DURHAM

Respondent

**Appearances:**

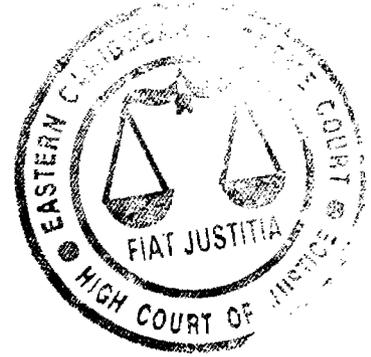
Ms. N. Sylvester and Ms. A. Grant for the Petitioner

Mr. S.E. Commissiong and Ms. S. Commissiong for the Respondent

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2005: November 3  
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**DECISION**

- [1] **MASTER COTTLE:** The parties were married in 1983. The petitioner filed for divorce in 2003 and a decree nisi was pronounced in 2003. The petitioner now seeks ancillary relief. There are no children of the marriage with whom the court must deal. The petitioner prayed for a property adjustment order in relation to the matrimonial home.
- [2] The petitioner is now 53. The respondent is aged 71. The respondent is in receipt of a monthly pension of \$1,250.00 U.S. He is retired and unlikely to ever return to work. The petitioner now paints houses. She earns \$1,600.00 - \$1,800.00 U.S. per month. She had been operating a concrete curbing business but has now leased her equipment to a



businessman in Dallas. It is not revealed what income is earned by the petitioner from this enterprise but she said in cross-examination that the business was not losing money when she leased the equipment out.

[3] Having regard to the age of both parties and the income and earning capacity of both I do not consider that this is a proper case to make an order for financial provision for either party under section 31 of the Matrimonial Causes Act.

[4] I thus confine myself to an examination of the way in which the matrimonial home is to be disposed of.

### **THE LEGISLATION**

[5] Section 32 of the Matrimonial Causes Act empowers the court, on granting a decree of divorce, to order a party to a marriage to transfer to the other party such property as may be specified, being property to which the first mentioned party is entitled.

[5] Section 34 sets out the factors which must be considered in deciding whether to exercise the power conferred by section 32.

### **THE MATRIMONIAL HOME**

[6] The matrimonial home is situate in Bequia on lands conveyed to the parties jointly. Thus the present position is that the parties each are entitled to an undivided half share of the matrimonial home. In order for this position to be varied I must have regard to all of the circumstances of the case. It is an important consideration that the parties chose to arrange their affairs in the way that they have.

[7] The respondent, in his affidavit, and his evidence under cross-examination, sought to demonstrate that he was financially responsible for the lion's share of the cost of construction of the matrimonial home. He suggests that at most the petitioner contributed

50% of the cost of adding a swimming pool and retaining walls, a driveway, a garage and a garden water tank. He quantifies this at one half of \$153,000 or \$76,500. He says the cost of construction of the matrimonial home was \$481,931.38. Mr. Commissioning on behalf of respondent urges me to find that, on the basis of the contribution of the parties to the cost of acquiring the matrimonial home, I should find that the interest of the respondent to be much more than fifty per cent (50%). I had the benefit of observing both parties as they were cross-examined. I did not believe the respondent when he suggested that the input of the petitioner was as minimal as he makes it out to be.

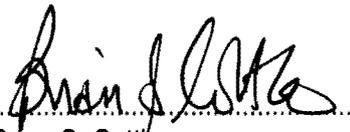
[8] The petitioner seeks a fifty per cent (50%) share of the matrimonial home. She says she contributed equally to its acquisition and the funds for the construction of the matrimonial home came from a common pool to which she contributed equally. I do not accept this. I think it is clear from the evidence that the respondent earned substantially more than the petitioner and would have made a greater contribution towards the cost of the home.

[9] That said, however, I am in no position to precisely calculate the exact proportion of the contribution of either party. I note that the respondent was a shrewd and successful businessman. He had been married before and divorced before (as had the petitioner). He would have been aware of the implications of choosing to have the property on which the home was to be built conveyed to himself and his wife jointly.

[10] I conclude that the clear intent of the parties was that they both be equally entitled to the matrimonial home. Indeed, when I consider all of the circumstances of this case I see no reason to interfere with the legal estate in the matrimonial home. I thus declare that the home is equally owned by the parties. I have seen valuations by both sides. I am not persuaded that either can be entirely relied upon. I direct that the matrimonial home be sold and the proceeds divided equally between the parties. Either party is at liberty to purchase the share of the other. There is liberty to both sides to apply for directions for sale.

[11] At the hearing of the ancillary relief application it was mentioned that the respondent might have earned some income from sale of a book. The evidence of this was scant. I make no order in this regard. For the purposes of completeness I also note that the issue of his inheritance was considered when I decided that no financial provision order should be made for either party by the other.

[12] In the circumstances of this matter I consider it just that each party bear his or her own costs and I so order.

  
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Brian S. Cottle  
MASTER