

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2007

CLAIM NO. AXA HMT 2005/0006

BETWEEN:

LEAH ZILPHA RICHARDSON

Petitioner

AND

OVIN WHITFIELD RICHARDSON

Respondent

APPEARANCES:

Mrs. Navine Fleming Kisob instructed by Joyce Kentish & Associates for the Petitioner
Ms. Paulette Harrigan for the Respondent.

Date: 2006: November 17th, 21st
December 7th
2007: January 19th

JUDGMENT

[1] **GEORGE-CREQUE, J.:** The Petitioner made an application for Ancillary Relief pursuant to the Matrimonial Proceedings and Property Act¹ ("the Act") on 26th September, 2006. She seeks the following orders:

¹ R.S.A C M60

- (1) that the Respondent continues to pay the sum of EC\$536.00 per fortnight as maintenance in respect of two (2) of the minor children of the family, the court having made an interim order for maintenance in this sum on 12th May, 2006;
- (2) That the Respondent pays one half of all medical and educational expenses relating to the said minor children;
- (3) That the Respondent continues to pay for his portion of Loan No. 345148 dated 2nd December, 2005, from the Caribbean Commercial Bank ("CCB");
- (4) A determination and valuation of the parties' right title and interest in the matrimonial property located at Blowing Point, Anguilla, and described on the Land Register as Parcel 160 Block 38410B Registration Section South Central ("Parcel 160")
- (5) Upon such determination as per paragraph 4 that the Respondent be ordered to pay the Petitioner her interest in the said property or alternatively that the matrimonial property be sold and she be paid the proceeds of her interest therein.
- (6) That the Respondent be made to pay the sum of US\$500.00 towards the rental of an apartment by the Petitioner or alternately that the Petitioner be given exclusive occupation of the matrimonial home until her interest therein has been satisfied.

[2] The Respondent in turn launched his own application for Ancillary Relief filed on 27th October, 2006, after time was extended for him to respond to the Petitioner's Application. He, in essence, seeks a declaration that Parcel 160 is his solely and for consequential orders for transfer of the Petitioner's interest therein to him. In the alternative he seeks a declaration as to their respective interest and consequential orders for transfer. In relation to the children he seeks orders:

- (a) for custody of the two minor children;
- (b) for the payment of maintenance by the Petitioner for the benefit of the children in the sum as he has been ordered to pay;

and other orders inversely similar to those sought by the Petitioner.

[3] The Petitioner relied on three (3) affidavits filed by her and the Respondent on his affidavit filed on 27th October, 2006. The Petitioner was cross-examined by counsel for the

Respondent. There was no cross-examination of the Respondent by Counsel for the Petitioner.

The background

- [4] The parties were married on 19th August, 1989. The Petitioner was then aged 31 and the Respondent aged 32. They produced three children, all boys, namely Shervin, born 16th August, 1987 and who is now an adult, Shanoi, born on 21st February, 1993 now aged 13 and Shermorie born 23rd December 1997 now aged 9. Shanoi attends the High School and Shermorie attends Road Primary School. Shanoi and Shermorie will be referred to as "the minor children". The court was afforded the opportunity of seeing the minor children, who, despite the turmoil in their lives though saddened, appear to be fairly well adjusted children. The marriage lasted approximately fourteen years.
- [5] By 2003, the marriage had begun to crumble. The Respondent accused the Petitioner of forming an association with another man and felt that the Petitioner had betrayed him. The Petitioner denies this and says that in fact it was the Respondent who was associating with another woman and blames this as the main cause for the breakdown of the marriage. From sometime in 2003, they each conducted separate households under the same roof. A decree nisi of divorce was granted to the Petitioner on 29th November, 2005. The Respondent admittedly formed an association with another woman who is now expecting his child but said that this was in 2004.
- [6] The parties and the minor children continued to live under the same roof. On 12th May 2006, however, the intervention of the court was necessary as the Respondent had on 23rd April, 2006, taken steps to evict the Petitioner and the minor children when he threw some of the Petitioner's clothing as well as some of the children's outside as well as changing the locks for the house. The Petitioner and the minor children were forced to find shelter at the home of the eldest son in fairly cramped conditions.
- [7] An order was made for the occupation of the matrimonial home by the Petitioner without interference of her use and enjoyment thereof by the Respondent and that he grant her

access thereto by the afternoon of the same date. At the same time an interim order was made for the payment by the Respondent in the agreed sum of EC\$536.00 per fortnight towards the maintenance of the minor children.

- [8] The Respondent has now complied with this order but he has still managed to make living under the same roof difficult for the Petitioner even though they occupy separate rooms and only share common areas of the house. There appears, on their evidence, to be constant friction over the use of water, the use of the bath and over laundry and [kitchen equipment](#) and cable services. This state of affairs leaves much to be desired.

Income and earning capacity

- [9] The Petitioner is employed as a housekeeper at Malliohana Hotel and earns a net salary of US\$300.00 per week. She has been steadily employed in this job for several years and is now aged 48. It is unlikely that her occupation will change in the foreseeable future. No mention was made as to whether she receives service charges and if so in what amounts. However, she produced a copy of her pay slip and on that a figure of \$4,104.00 appears in the year to date column for the pay period ending August 30th against an item called "service". It is reasonable to infer, given the nature of the industry in which she is employed, that this relates to service charge. She gives her average monthly expenses as being US\$955.00. She produced receipts in support of her expenses. The Respondent is a mason by trade and is usually self-employed. Apart from that, it is clear on the evidence that he did additional night jobs from time to time. He states his average monthly wage as being between US\$1,600 and \$2,000. He states his average monthly expenses as EC\$5,372.00. No supporting documents have been tendered in support of income or expenses. Whilst pay slips may not be forthcoming since he is self employed, it is expected that documentary proof in support of his expenses were obtainable. It is a notorious fact that Anguilla is experiencing a boom in construction as its tourism industry develops. From all indicators, this industry appears poised to be sustained for a considerable period of time. The Respondent will no doubt be able to find well paying jobs in the booming construction market.

The matrimonial property

- [10] Parcel 160 on which stands the matrimonial home is currently registered in the joint names of the parties. The Land Register reflects that the Respondent transferred Parcel 160 from his sole name into their joint names on 13th January, 2003, for love and affection. The matrimonial home comprises three bedrooms, a dining/kitchen, a laundry room and kitchen with a living room, an extra [bedroom and a porch](#) in the process of construction.
- [11] The Petitioner stated that she contributed monetarily to the building of the house as well as physically by mixing and passing concrete to the Respondent when he poured beams columns and lentil heads. She said she also assisted the Respondent in decking the roof. She stated that she is indebted to Anguilla Masonry Products for concrete purchased to pour the floor at the front of the house. She also, on occasion, with the help of the eldest son, pays cable and electricity bills. The Respondent would normally purchase food supplies. They received contributions of labour from friends and family members in the construction.
- [12] The Respondent, in his affidavit evidence, stated that apart from clearing the land and digging a portion of the foundation for the house some four years earlier, he did no further work on the house until 1987 by which time he was dating the Petitioner. He says he built the house by himself in his spare time and it took ten (10) years to build to a state for habitation. He received help from friends when pouring the floor and other areas as well as for the plumbing and electrics and he returned this favour to them in [like kind](#).
- [13] The Respondent also said he had a jollification when pouring the roof but he provided for all the refreshment save that the petitioner, to whom he was then married, helped to serve the food. He said that the Petitioner tried to physically assist on one occasion only when she was keeping him company whilst he was working on the house and that he received help from a member of her family only once.
- [14] He also stated that:
- (a) he purchased all the building materials or provided the funds for same;

- (b) he obtained a bank loan which was used for purchasing material for the house and he alone paid the monthly payments;
- (c) On a few occasions the petitioner purchased cement when he may have had no funds to do so.
- (d) apart from these acts the petitioner did nothing more.
- (e) They moved into the matrimonial home in 1997, which is still a work in progress and he continues to work on it in his spare time.
- (f) That he loved and trusted the Petitioner and that in 2002, he transferred Parcel 160 to her as he was leaving the island and wished to ensure that no one interfered with her or the children and also in the event that something happened to him. It is to be noted, however, that the transfer was not made to her but to them jointly.
- (g) In 2003, he decided to build an extension to the house to include a living room, bath, bed and an L- shaped porch. He did all the construction work and paid for all the materials.
- (h) A further loan was obtained from CCB in 2004 in his sole name, which was for the purchase of a car and to pay off the prior loan which he alone repaid.
- (i) In 2005, they jointly obtained a further loan which was used to pay off an earlier loan, for purchasing materials for the extension and for purchasing a vehicle for the Petitioner. They agreed to and do pay equal sums towards the monthly installments.
- (j) The Petitioner did no physical work on the extension which is not yet completed.

[15] Paragraphs 30 and 31 of the Respondent's affidavit bear setting out, in part, as they capture his views and beliefs in this matter. He stated:

" 30. I am not happy that the Applicant continues to reside in the matrimonial home because the house is my house, it is on my family lands and I physically built the house and paid for the materials to construct it. The Applicant has purchased her own land..... and I verily believe that she should not have an interest in my property."

"31. I believe that a man should provide for his partner and whilst I was married to the Applicant I did so but since [she] has chosen to have a relationship with another man I believe that her new partner should provide her with a home..... ."

[16] The Petitioner, in her affidavit filed on November 10th, 2006, in reply to the Respondent refutes the Respondent's assertions pertaining to the minimal assistance which he in essence said she gave in the construction of the matrimonial home as well as her overall assistance to the family. She produced documentation showing rent payments made by her as well as receipts for the purchase of blocks, and for ready mix concrete between 2001 and 2003, as well as the loan documentation in respect of the CCB loan. She maintains that she purchased or credited most of the materials for the matrimonial home. She denies that she was associating with another man and says that it is the Respondent who formed an association with another woman in 2003. She denies owning any land with her son and produced the land register showing land registered solely in the name of one of her older sons.

The minor children

[17] With regard to the minor children, the sole custody of whom he seeks, the Respondent stated in essence that the petitioner is neglectful of the children as she would go out socializing at nights and leave them at home alone. He further stated that she was not affectionate to them and that she was resentful of Shermorie's relationship with him. He then said that the minor children were at an age where they needed a firm hand and guidance and that the Petitioner will be unable to cope. He also said he believed that the Petitioner will ill treat Shermorie out of spite for him, and he would be unhappy if he was forced to live with the Petitioner.

[18] The Petitioner refutes the claims made by the Respondent relating to the minor children and proposes shared custody with her exercising primary care and control. She stated that she goes out twice per month with colleagues and when she does, her eldest son Shervin is left to look after the minor children. Further, she said she assists them with their home work and takes them to church and other social functions. She further stated that the Respondent only started helping Shermorie with his home work as from the first term of school in September of last year. She states that the Respondent did not leave his night job so as to look after the children but that his employment was terminated.

The Law

[19] These proceedings are governed by sections 24, 25, 26 as well as Section 47 of the Act. Section 25 empowers the Court to make orders for the transfer and settlement of property having regard to all the circumstances of the case including but not limited to those factors as set out in section 26. The contributions made by each of the parties to the welfare of the family or in looking after the home is but one of the factors and is to be accorded no greater precedence than any of the other factors in seeking to arrive at the ultimate goal being a determination which is fair to the parties. I stated this view fairly recently in the case of **Romney -v- Romney**². Indeed, I am fortified in this view given the opinion expressed by the Eastern Caribbean Court of Appeal in **Stonich -v- Stonich**³ cited by the Court of Appeal in the later case of **Fusse-Durham -v- Fusse-Durham**⁴ as being the leading case in the jurisdiction on the approach to the division of matrimonial property. At paragraph 4 of his judgment, Gordon JA in **Durham** quoted from the Judgment of Saunders JA in **Stonich**. I consider it equally important, in the context of the proceedings before me, and having regard to the fact that the Act is on all fours with the MPPA of British Virgin Islands, quote the same passage from Saunders JA's Judgment thus:

"One of the useful features of the MPPA (Matrimonial Proceedings and Property Act) is that it gives the Court a broad discretion in apportioning assets built up over the course of the marriage. The ultimate and overriding objective that the court must strive at is fairness. In apportioning the assets, the Court must consider the various factors the legislature has asked it to take into account and then arrive at a solution that is, in all the circumstances fair to the parties. The wide discretion available permits the Court the ability to interpret fairness in the light of the prevailing societal standards. In assessing the respective contributions of husband and wife, there was a time when one regarded the fruits of the money earner to be more valuable, more important than the child rearing and home making responsibilities of a wife and mother.

The time has long gone for the courts to eschew this approach. That kind of reasoning pays too much regard to a contribution merely because it is easily measurable in hard currency and too little to a contribution that is less tangible but equally important to the

² Victoria Romney –v- Glenford Romney AXAHMT No. 107/1998 (Anguilla – unreported)

³ Civil Appeal No. 17/2002 (BVI – unreported)

⁴ Civil Appeal No. 21/2005 (SVG – unreported)

family structure. In the vast majority of cases where these two types of contribution are in issue – that of a home maker and that of an income earner, it is the wife who has stayed at home while the husband has performed the role of bread winner. There is therefore an element of gender discrimination in degrading the woman's role in the home.

The MPPA does not rank in any order of preference any of the factors to which the courts are obliged to have regard. It is for the Court to consider all of them. In one case, the facts and circumstances may call for a particular factor to be given special importance. In another case another factor may assume most significance. The point is that there is no basis in laws for the Courts to regard always as decisive or of special importance the financial contribution made by a party to the welfare of the family.”

[20] The views as expressed by Saunders JA and Gordon JA in the Court of Appeal accord with the sentiments I have long held in the approach to matters of this kind and happily those decisions are binding on this Court. At paragraph 7 of his Judgment in **Durham**, Gordon JA stated thus:

“ It is always unfortunate when a marriage which has , as in this case, lasted for some fifteen years with the parties on good terms..... comes to an end and the spouses seek to examine minutely the contributions made by each other. In the end the reality is it cannot be done unless the parties have lived their lives together preparing for divorce – a sufficiently unlikely circumstance as to be ignored. That is why courts must seek ‘fairness’ painted with a broad brush as they undo multi- layered relationships.”

Accordingly, I consider counsel for the Respondent's focus on the Respondent's contributions as being at odds with this approach and thus unhelpful.

Assessment

[21] With this approach firmly in mind, I now turn to evaluate the facts and circumstances of the case at bar. I have had considerable opportunity to observe and evaluate the parties. They were before me when it was necessary to make an order directing the Respondent to give access to the Petitioner and the minor children so that they may continue to occupy the matrimonial home and restraining him from interfering with her occupation and also for maintenance of the minor children. Throughout the proceedings the Petitioner has appeared calm, rational and co-operative. She strikes me more as a witness of truth more so than the Respondent. It became quite clear to me based on the Respondent's

affidavit as well as hearing and observing him that he is a controlling person and seeks to exact revenge when his views or his wishes are not adhered to or complied with. He has gone as far as running the risk of flouting the court's orders. So strong is his belief that his views, whether held rightly or wrongly, must prevail. At times during the proceedings I found the Respondent to be simply intractable. His legal advisor, to her credit, valiantly put his case before the court. He, however, did little to assist. I have no doubt in believing the Petitioner when she says that the Respondent continued to make her life miserable by disconnecting the cable supply and arguing about her use of the bathroom and as cutting her off from the water supply in the home.

[22] I am satisfied that they both contributed to the home and to the welfare of their family as needed. I am of the view that the Petitioner's contribution was recognized by the Respondent at the time when the marriage was still good as well as upon the Petitioner's insistence since she was required during that period, to pay off the loan from her earnings. Thus he transferred the land and the matrimonial home to their joint names. Now that the relationship has soured irreparably, the Respondent seeks to change the position. I am not surprised, given the nature of his character as displayed before the Court.

[23] The marriage lasted for some fourteen years. There is no significant difference in the ages of the parties. I am of the view, however, that the Respondent will fare better in the future in terms of earnings than the Petitioner given the observations I made earlier in this Judgment. Looking at the matter in the round, I consider that the Petitioner is entitled to an equal share in the matrimonial home and Parcel 160 on which it stands, and I so order. The Respondent's application for a declaration of sole ownership to him and the consequential orders thereon are correspondingly refused.

[24] Given the difficulties encountered by the Petitioner in the occupation of the matrimonial home, it is not desirable that this state of affairs continue. The matrimonial home is clearly within close proximity of the Respondent's relatives. He alluded to difficulties which may be encountered from them. This may become even more acute now that the parties are divorced. The solution lies in either the Respondent purchasing out the Petitioner's

interest at fair market value or alternatively a sale of the matrimonial home to a third party and the parties paid their respective share from the net proceeds. Section 53 of the Act empowers the court to make an order either for the sale of the matrimonial home, or an order requiring one party to pay to the other such sum representing the other party's contribution. The parties are tacitly ad idem that the Respondent pays the Petitioner for her share therein. Accordingly, I am minded to order that the Respondent pays to the petitioner a sum representing her share of the value of the matrimonial home and the land on which it stands, properly adjusted by such sum equivalent to her obligation to repayment of one half of the remaining bank loan to CCB in respect of which the property is charged, to be effected within a certain period, failing which the same should be put up for sale on the open market.

- [25] Pending a sale or a purchasing out of the Petitioner's interest by the Respondent or vice versa, the question arises as to whether the Petitioner, given the difficulties being encountered at the hands of the Respondent, should be allowed to occupy the matrimonial home to the exclusion of the Respondent until sale and payment to her of her interest, or alternatively, whether the Petitioner should cease her occupation of the matrimonial home and live in rented accommodations and order the Respondent to contribute towards the rental payments until such time as the Petitioner receives payment for her share in the matrimonial home. I propose to deal with this later in this judgment for reasons which will then become clear.

Custody and maintenance of the children

- [26] In making orders as to custody and maintenance of children of the marriage, the court must be satisfied that arrangements for their welfare are satisfactory or are the best that can be devised in the circumstances. It is their welfare which takes paramount consideration and not the views or wishes of the parties. The Respondent has sought to suggest that the petitioner is an unfit mother although he has conceded that she is not physically abusive to the children. He has not been able to point to any concrete facts in support of his allegations save seeking to draw conclusions from the state of mind of the petitioner as perceived only by him, without any proper basis. To the contrary, it is the

Respondent who has engaged in physical attacks against the Petitioner in the presence of the children. Furthermore, it is the Respondent who excluded not only the Petitioner but also the children from the matrimonial home necessitating a court order for relief. Unfortunately, the Respondent fails to appreciate that when he engages in such selfish acts in his blind determination to inflict pain and suffering on the Petitioner he also causes pain and suffering to the children who he professes and I do believe loves. Further, I have had the benefit of seeing and hearing the minor children.

[27] In all the circumstances, I do not consider that granting custody of the minor children to the Respondent solely is what is in their best interest. The Petitioner seeks an order for joint custody and I am accordingly minded to make such an order but with the Petitioner charged with their primary care and control.

[28] With regard to maintenance of the children, I have been given no good reason as to why the sum as proffered by the Respondent and ordered in the interim order of 12th May, 2006 ought to be reduced save that he expects the birth of another child. If his circumstances do indeed change, then I would be prepared to review the sum currently ordered in light of such change as the circumstances may necessitate.

[29] I now revert to the question of the occupation of the matrimonial home pending the satisfaction of the Petitioner's interest therein or its sale. Section 52 of the Act empowers the court to make an order granting to one party the right to occupy the matrimonial home for such period and on such terms as may be just. Under the May 12th Order of the Court, it had been hoped that the Respondent would not exclude the Petitioner or the children from the matrimonial home pending a resolution of these matters. Further, the order directed that the Respondent was not to interfere with the Petitioner's use and enjoyment of the matrimonial home to the intent that they would both continue to occupy and enjoy the home with all amenities as far as necessary and convenient until their respective rights had been determined and finalized. Unfortunately, the Respondent by his own conduct, based on the evidence of the Petitioner and his own

evidence, has made this unworkable and intolerable. His actions such as the cutting off of the water supply, must necessarily adversely impact upon the children also.

[30] I have considered the option of the Petitioner moving into rental accommodations and making the Respondent responsible for paying a sum towards such rental accommodation. My concern with this approach, however, is that the Respondent has already by his conduct displayed a dilatory attitude with regard to maintenance payments for the children. Given his considerable enmity demonstrated toward the Petitioner, the very real probability is that the Petitioner may find that she is unable to make the rental payments on her own with the Respondent's contribution not forthcoming leaving her to resort to enforcement proceedings in the court. This in turn would adversely affect the quality and standard of living of the children. This would, in my view, defeat the primary purpose of such an order.

[31] Accordingly, I feel compelled to make an order for exclusive occupation of the matrimonial home in favour of the Petitioner so as to ensure the welfare of the children and generally as being in all the circumstances the most appropriate order to make pending the satisfaction of the Petitioner's interest in the matrimonial home.

The Orders

[32] Based upon the foregoing, I make the following declaration and orders:

- (1) That the Petitioner is entitled to a one half share in the matrimonial home and the land described as Registration Section South Central, Block 38410B, Parcel 160 ("the Property")
- (2) It is directed that the Respondent pays to the Petitioner such sum representing the fair value of the Petitioner's one half share of the Property properly adjusted to take account of the Petitioner's obligation in respect of any remaining sum due on the loan No. 345148 to Caribbean Commercial Bank, ("CCB") said payment to be made by the Respondent not later than six **(6) months** from the date hereof, failing which the Property be sold on the open market.

- (3) Pending the satisfaction of the Petitioner's interest in the Property whether by way of payment made by the Respondent to the Petitioner or by way of sale, the Petitioner is hereby granted the exclusive right, with the minor children, to occupy the Property.
- (4) Pending payment by the Respondent or sale of the Property as aforesaid, the parties shall each continue to pay their portion of Loan No. 345148 to CCB.
- (5) Custody of the minor children is hereby granted to the Petitioner and the Respondent with their primary care and control being vested in the Petitioner. The Respondent shall have liberal access to the said children.
- (6) The Respondent shall continue to pay the sum of EC\$536.00 per fortnight towards the maintenance of the minor children (that is to say \$ 268.00 per fortnight per child) until each child shall attain the age of eighteen (18) years or sooner dies.
- (7) In addition, the Respondent shall bear one half of all medical and educational expenses incurred in respect of the said children upon the production of invoices or receipts by the Petitioner, said payments to be made not later than fourteen (14) days after receipt of the said invoices or receipts.

[33] To the extent that I have made orders in favour of the Petitioner, the Respondent's application for similar orders in his favour is refused.

Costs

[34] There remains now outstanding the issue of costs. Counsel for the Respondent urges a costs order to the effect that each party bears their own costs or that total costs be capped at \$900.00 with each party bearing one half thereof. The Petitioner has been successful in her Application. There is no good reason why she ought to be deprived of an order for costs in her favour. I accordingly order that the Respondent bears the cost of this Application assessed in the sum of US\$1,200.00 to be paid within sixty (60) days.

.....
 Janice M. George-Creque
 High Court Judge