

GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO: GDAHMT2005/0020

BETWEEN:

KATHLYN ROSE OLIVE

Petitioner

and

FRANCIS OLIVE

Respondent

Appearances: Ms. C. Edwards for the Petitioner
Dr. Alexis for the Respondent

2008: June 26

DECISION

[1] **HENRY, J.:** The relationship between the parties started in 1983. In 1984 the respondent went to the United States for training and upon his return he commenced living with the petitioner at her mother's house. They were married in March 1989 and continued living at her mother's house. In 1991 they went to live in a house owned by respondent's mother. Their only child, Keitisha, was born in 1996. They eventually built the matrimonial home in 2002. The marriage however, broke down in 2004. A decree Nisi was entered in 27th February 2007 and made absolute in April 2007. The instant proceeding is for ancillary relief. The petitioner seeks the following relief:

1. ~~A property adjustment order: that the Court declares that she is entitled to one half the value of the matrimonial home and that the respondent do transfer all of his share or interest in the said matrimonial home to the petitioner for herself and the child of the marriage.~~
2. Sole custody of the child, Keitisha Olive;
3. Periodic payments for Keitisha in the sum of \$1,000 per month;

4. That the respondent to refund the petitioner the sum of \$649.46 on account of outstanding utility bills.

[2] The respondent for his part contests petitioner's claim to be entitled to one half interest in the matrimonial home. He asserts that she is only entitled to a 15% interest in the said home. He requests an order that he be allowed to pay petitioner for her share and that she be released from the mortgage. He also seeks joint custody of the child Keitisha and that the payment of maintenance be set at \$500.00 per month in addition to providing half her school books and two uniforms yearly.

[3] The parties are not wealthy persons. The respondent is a Police Officer whose current net salary is \$2,564.89 and the Petitioner is an Assistant Nurse whose net salary is \$2,025.57.

The only property acquired during the marriage is the matrimonial home.

[4] The matrimonial home is in the name of the respondent only. Although the petitioner asserts that the land was given to both parties by respondent's mother for the purpose of building a matrimonial home, the documentary evidence clearly shows that the land was transferred to the respondent as part of his inheritance from his father who died in December 1994. The petitioner nevertheless bases her claim to one half of the matrimonial home on the following assertions:

1. She borrowed \$5,000 from the Credit Union to put into their account so that there would be sufficient for a mortgage deposit;
2. In 2001, she joined with him in obtaining a mortgage of \$75,000 for construction of the matrimonial home as evidenced by her name on the mortgage deed;
3. During the building of the house she borrowed another \$3,000 for the purchase of locks, tiles, linoleum for the kitchen and four gates, in addition to paint;
4. She took an additional loan from the bank in the sum of \$10,000.00 to build a retaining wall and a gap to the house to prevent them having to pass through the neighbour's property to access the matrimonial home.

5. The purchase of all the furniture in the house from Courts on hire-purchase, which account she alone services.
6. During the subsistence of the marriage, she paid for the food and other household expenses such as clothing and telephone and also provided maintenance for Keitisha.

[5] The respondent seeks to refute most of the contributions allegedly made by the petitioner. He asserts that the land is his and that he decided to build a house on the land he had inherited. He states that he told his plan to petitioner in 1999 and she said it was a good idea. He asserts that if petitioner borrowed \$5,000 from the Credit Union same was not made available to him for purposes of obtaining the mortgage. He admits that some of the furniture in the new home was purchased by the petitioner.

[6] Respondent also denies that petitioner spent \$10,000, which she borrowed, on building a retaining wall and gap. He says that the retaining wall cost \$12,000 and that he contributed \$9,000 and the petitioner only \$3,000. He also disputes the \$3,000 she alleges that she spent on locks and other items for the house.

[7] It is common ground that the parties had separated briefly in 2000. The petitioner asserts that the respondent threw her out of the house. Respondent says he did not, that she went to live with a male companion. This the petitioner denies. In any event, respondent admits that he invited the petitioner to join him in the mortgage to entice her back to the marriage. In his words "I thought that my inviting the petitioner to join me in the mortgage would have attracted her away from Paradise where she was living with Johnny Morrasf and would have consolidated our marriage; I therefore invited her to do so". In any event, the parties eventually resumed cohabitation and moved into the newly constructed matrimonial home in February 2002.

[8] According to respondent, during the marriage he paid for electricity, water, taxes, insurance on the property and a demand loan he had taken from the bank to buy a car; he also contributed to the grocery bill equally with the petitioner and contributed substantially to the clothing bill; that he also purchased school books and school uniforms for Keitisha.

- [9] In regard to payment of the mortgage, he asserts that he alone has always paid the mortgage from its inception; that petitioner did not provide any security for the mortgage such as a salary assignment; only the respondent's salary has been assigned. For all the above reasons, respondent asserts that the petitioner is not entitled to an equal share or interest in the matrimonial home.

THE LAW

- [10] Wide discretionary powers are given to the court by the Matrimonial Causes Act 1973. The House of Lords in **Miller v Miller** [2006] UKHL 24 points out that in these matters the search is always for what are the requirements of fairness in a particular case. The Court then enunciated what is known as the equality principle. It noted that every relationship of marriage gives rise to a relationship of interdependence; the parties share the roles of money-earner, homemaker and child-carer and therefore the marriage today is viewed as a partnership. The Court endorsed the view that a husband and wife are for all practical purposes equal partners in marriage and therefore when the partnership ends, each is entitled to an equal share of the assets of the partnership unless there is a good reason to the contrary.
- [11] The respondent urges the Court to depart from the 'equal sharing' principle and award the petitioner only a 15% interest in the matrimonial home. He asserts that the land on which their home was built ought not to be considered matrimonial property since he inherited same from his father's estate. He also asserts that he has made a greater contribution in building and maintaining same.
- [12] Although by section 25(2)(a) of the Matrimonial Causes Act 1973 the Court is to have regard generally to the property and financial resources each party has or is likely to have in the foreseeable future, in exercising its discretion the Courts do not treat all property in the same way. As noted by Lord Nicholls in the **Miller** case one of the differences the Court is required to have regard to is that there is a real difference, a difference of source, between (1) property acquired during the marriage otherwise than by inheritance or gift, usually called the matrimonial property and (2) other property. The former, the Court acknowledged as the financial product of the parties' common endeavour, the latter is not.

[13] The Court then related this to matters where the issue involved the matrimonial home. The Court stated at paragraph 22:

"The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been."

[14] The Court of Appeal in **Charman v Charman** EWHC 1879 [2006] All ER 32 reaffirmed equal sharing of all assets from the outset as a principle. The principle applies to all the parties property. The court noted:

"The thrust of the decisions in *White* and certainly in *Miller* itself is that the court should apply the sharing principle not just to part but to all of the property."

The Court recognized that to the extent that the property is non-matrimonial, there is likely to be better reason for departure from equality. Where however the principle of sharing conflicted with those of need, fairness would dictate which prevailed.

[15] Here it is true that the land was inherited by the respondent from his father's estate. However, the matrimonial home was built on it and which said home played a central place in the marriage. It was the only home, other than their parents' home in which they lived during the marriage.

[16] Furthermore, there is a real need on the part of the wife and child of the family for housing now that the parties are divorced. Since the divorce the parties have continued to live in the matrimonial home, though leading separate lives. This speaks more than any other fact to the need on the part of the wife for adequate housing.

[17] With regard to the respondent's claim that he made a greater contribution, which should result in a greater share to him, the words of Lord Nicholls in the **Miller** case are appropriate:

"A point of similar nature concerns the approach to be adopted when evaluating the contributions each party made to the welfare of the family. Apparently, in this post-*White* era there is a growing tendency for parties and their advisers to enter into the minute detail of the parties' married life, with a view to lauding their own contribution and denigrating that of the other party. In the words of Thorpe LJ, the excesses formerly seen in the litigation concerning the claimant's reasonable requirements have been 'transposed into disputed, and often futile, evaluations of

the contributions of both of the parties': **Lambert v Lambert** [2002] EWCA Civ. 1685; [2003] Fam 103, 117, para 27.

[18] Lord Nicholls went on to state:

On this I echo the powerful observations of Coleridge J in **G v G (Financial Provision: Equal Division)** [2002] EWHC 1339 (Fam); [2002] 2FLR 1143, 1154-1155, paras 33-34. Parties should not seek to promote a case of 'special contribution' unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from the equality is not to be found in the minutiae of married life."

[19] There are several critical factors in deciding whether to depart from the equal sharing principle in respect of the matrimonial property:

1. The intention of the parties: even though the land was transferred to the respondent and placed in his name only, the respondent proposed in 1999 that the matrimonial home be built on the land. The parties separated in 2000. But he nonetheless enticed her back to the marriage by the prospect of participating with him in acquiring the matrimonial home. He invited her to join in the mortgage with him, which she did. She then thereafter made real contributions to building the home. In the Court's view it shows an intention on the part of the parties that they both share in the property.
2. The fact that the property served as the matrimonial home means that it occupied a central place in the marriage.
3. Although the mortgage payments were made exclusively by deductions from respondent's salary, the Court finds that the house was built by their joint endeavour. I accept the evidence of the petitioner of the contributions she made. In addition the Court finds that she worked throughout and made a contribution to the maintaining the home.
4. The need of both wife and child for proper housing post divorce period. There has been no disclosure of the accumulation of substantial savings by either party; the matrimonial property remains the only asset. Therefore, the wife will need a substantial portion of the only asset in order to have a reasonable prospect of obtaining adequate housing for herself and the child.

[20] I therefore find that fairness dictates that both parties share equally in the matrimonial property.

[21] There are instances where the husband's share in the matrimonial home is transferred to the wife for the benefit of the children. This is especially so in cases where the wife has remained at home and taken care of the children and their needs require that they continue to live in the matrimonial home. However, the Court is reluctant to make such an order where the only asset is the matrimonial home and both parties would need their share in order to make a new start.

[22] The Court has already noted that this is not a "big money" case, the only asset being a modest matrimonial home. The wife worked throughout the marriage and continues so to do. There is little difference between their respective salaries. Each party would need their share to make a new start. The Court must balance this against the need of the wife and child for proper housing after the divorce. As noted, since the divorce, both parties have continued to reside in the former matrimonial home, while leading separate lives. The husband has requested that he be allowed to pay the wife for her share in the matrimonial home. Counsel for the wife has indicated that it would be difficult for the wife to raise the funds to pay the husband for his share. No submission has been made that the wife, armed with her share of the matrimonial home, together with her present salary, could not afford housing for herself and the child. Since both parties would need their share in the matrimonial home in order to make a new start the Court declines to make the order requested that the husband's share be transferred to the wife for the benefit of the child but will order periodic payments to be made by the husband for the maintenance of the child.

CUSTODY AND MAINTENANCE OF THE CHILD

[23] The respondent requests joint custody of the child and that he pays maintenance in the sum of \$550.00 monthly in addition to purchasing half of her school books and uniforms. Petitioner requests sole custody and maintenance in the sum of \$1,000.00 per month.

[24] On the issue of custody, joint custody would require a spirit of cooperation and a level of maturity that neither party to date has demonstrated to the Court. The Court therefore awards custody to the petitioner with generous visitation to the respondent.

[25] With regard to the maintenance, the Court has considered the salaries and expenses of both parties, in addition to the age and needs of Keitisha. I award the sum of \$700 per month to be paid by the respondent as maintenance.

[26] One other matter requires comment. Both parties have made allegations of bad conduct on the part of the other. In most divorce cases, both parties have contributed to the breakdown of the marriage. The law is clear. In ancillary matters of this nature, it is only where the conduct of a party has been so obvious and gross that it is repugnant to justice that the Court ought to consider conduct in making financial provisions (see **Wachtel v Wachtel** [1973] 1 All ER 829). Accordingly the Court has not considered the conduct of either party in coming to a decision in this matter.

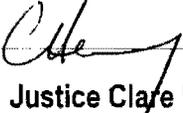
[27] Judgment is therefore entered as follows:

1. A declaration that the petitioner herein is entitled to a one-half share in the matrimonial home.

A valuation of the property shall be obtained and the cost borne equally by the parties. Parties agree Phillip Alexander as the valuator.

2. Petitioner's request that the respondent's share be transferred to her for the benefit of the child and herself is denied. The respondent's request that he be allowed to pay the petitioner for her share and that on so doing she be released from the mortgage is granted on condition that payment be made within 60 days of receipt of the valuation. In default of such payment petitioner shall be at liberty to pay the respondent for his share and to release him from the mortgage within 60 days thereafter. In the event that either party is unable to purchase the interest of the other, the property shall be sold and the proceeds divided equally between the parties after satisfaction of the mortgage and fees.

3. Custody of the child of the family, Keitisha Olive is awarded to the petitioner with liberal visitation to the respondent;
4. Respondent shall pay to the petitioner as maintenance for the said Keitisha the sum of \$700.00 per month.
5. Respondent to refund the petitioner the sum of \$649.46 on account of outstanding utility bills;
6. Each party to bear their own cost.
7. Liberty to apply.


Justice Clare Henry
HIGH COURT JUDGE