

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

Claim No. SLUHMT 2006/0097

BETWEEN

ORJAN LINDBERG

Petitioner

AND

SANDRA LINDBERG nee LOUIS

Respondent

Appearances:

Ms. Mary M. Francis for the Petitioner
Mrs. Kim St. Rose for the Respondent

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2009: February 5, 16
March 23
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JUDGMENT

COTTLE J:

1. The parties were married in 1975. In 2006 the Petitioner filed for divorce A decree nisi was granted which was made absolute in 2007. In May 2008 the Respondent applied to this court for ancillary relief. She sought the following orders:

a) *LUMP SUM / MAINTENANCE*

That the Petitioner do pay to the Respondent a lump sum payment of \$100,000.00 or alternatively monthly payments of \$1000.00 for the Maintenance of the Respondent

b) *PROPERTY*

That the Petitioner do pay to the Respondent the sum of \$70,000 being the value of the furniture and personal effects, belonging to her which he has refused to give her upon the dissolution of their marriage

c) *AN INJUNCTION*

That the Petitioner be restrained from trespassing on the access road to the Respondent's land at Parcel 0845B 234 and from interfering in any way with her or anyone on that access road

d) *COSTS*

That the Petitioner shall pay the Respondent's cost in the sum of \$2,500.00

[2] Prior to the nuptials the parties had entered into a marriage contract. Clause 4 of the contract reads:

"The said future husband will bear and pay all household expenses including the necessary personal expenses of the said wife and the maintenance and education of any child or children that may be born to them"

[3] The Respondent now claims that the Petitioner failed to meet her necessary personal expenses during the marriage but that, because she was then trying to make the marriage work, she did not insist that he meet his commitment, but met her necessary personal expenses as best she could. The Petitioner denies this allegation and says that he not only met her expenses, but those of relatives of the Respondent who shared the matrimonial home from time to time. On this point I believe the evidence of the Petitioner. The Respondent was fully aware of the terms of the marriage contract and the obligations it imposed on the Petitioner. She made no complaints during the thirty one (31) years of the marriage. She did not file for divorce. I decline to grant her the lump sum claimed on the basis of failure to meet necessary personal expenses during the marriage. The marriage contract makes no provision for the maintenance of either party in the event of dissolution of the marriage. Counsel for the Respondent submits that the court should apply the provision of the marriage act sections 22 – 25 to provide for the Respondent after the divorce. I note in passing that section 45 of the Divorce Act cannot be of any assistance to the Respondent as she has not made any application for relief under section 45 and the decree of divorce has been made absolute prior to the application for ancillary relief.

[4] Section 25 of the Divorce act requires the court to consider all of the circumstances of the case when exercising its powers under section 22. Some of the factors are laid out:

- (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) 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 and caring for the family...

And so to exercise those powers as to place the parties so far as practicable, and having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each party had properly discharged his or her financial obligations and responsibilities towards other

[5] In this case the Petitioner is now 66. The Respondent is 10 years younger. The Petitioner is retired. The Respondent is employed part time as a nurse. She is also a trained hairdresser. The Petitioner gets an income from his former company \$2,000.00 per month. He says that he engages in private consultancy work but the income therefrom goes towards reducing the indebtedness of Lindberg Engineering Ltd., the company be incorporated to carry on business. He has monthly expenses which approximately equal his income leaving him with no disposal surplus. In his affidavit the Petitioner further swears that the former matrimonial home, which he occupies, is in need of significant and costly structural repair.

[6] The only real property owned by the Petitioner is the portion of land (bought from the respondent!) on which the matrimonial home stands. The area of land is 7,440 square feet. The Respondent owns adjacent land of some two acres in extent. No valuation of this land was submitted. The Petitioner thinks it is worth \$800,000.00 while the Respondent values it at approximately \$7.00 per square foot or more than \$500,000.00 in total.

[7] When I consider all the circumstances of this case I conclude that it would be fair to make no order that the Petitioner pay maintenance to the respondent, whether by way of lump sum or periodical payments.

PROPERTY

[8] The Respondent says that the Petitioner has retained items of furniture and personal property belonging to her. The Petitioner says that he has all her items securely stored and, they are available to be collected whenever the Respondent wants. In fact the respondent agrees that she had the chance to collect her items of property but refused to do so because the Petitioner had packed them into boxes for transport in her absence. Given this admission I cannot say that the Petitioner has unreasonably withheld the Respondent goods. The Respondent could have collected her boxed belongings and thereafter complained to the court if she considered that any items were missing. I decline to make the order sought that the Petitioner pay to the Respondent \$70,000 for the furniture and personal effects. I direct that the Respondent be at liberty to collect all the items of furniture and her personal belongings within seven (7) days of today, upon giving at least 24 hours notice to the Petitioner.

[9] If the Petitioner does not permit the Respondent access to remove the items upon proper notice the Respondent must pay to the Petitioner the value of those items. For the purposes of this case (and despite the poor quality of the evidence as to value) I fix the value at \$50,000.00.

[10] Should the Respondent fail to make arrangements to collect the items within seven (7) days the Petitioner is at liberty to dispose of the items as he sees fit without any compensation to the Respondent.

The Injunction

[11] The Respondent sold a portion of her lands to the Petitioner.

[12] The Petitioner says that she did not reserve any identified right of way over the alienated parcel to get to her remaining lands.

[13] This issue is not strictly incidental to the ancillary relief consequent upon the dissolution of the marriage. However the parties may benefit from my views. Clearly the Respondent will require some means of accessing her remaining land. I note the offer of the Petitioner to provide a right of way over a convenient part of his land. It appears to me that this may well provide the solution to this difficulty between the parties, especially as it appears from the testimony of the Petitioner that it is physically impossible to establish a 27 ft right of way in the area that the Respondent proposes, without demolishing a part of the house that Petitioner occupies.

[14] In any event I make no order for an injunction. This right of the Respondent, if any, is to be established by way of a separate claim rather than by way of application for ancillary relief. Both parties agreed that their respective property would remain separate property. The issue of the existence of the right of way is completely independent of the marriage or dissolution of marriage of the parties. The factors laid out in the divorce act should not be relevant to the determination of this point.

THE ORDER

[15] The respondent's application for ancillary relief is refused. I award costs to Petitioner in the sum of \$2,500.00

BRIAN COTTLE
High Court Judge