

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

CLAIM NO: AXA HMT 2005/0006

BETWEEN:

DONNA MERCEDES GUMBS

Petitioner

and

VICTOR MACMILLA GUMBS

Respondent

Appearances:

Ms. Navine Fleming for the Petitioner

Mr. Collin R. Meade for the Respondent

2008: September 26;

2009: November 23.

JUDGMENT

- [1] **GEORGE-CREQUE, J.:** The parties were married in August 1987. They have two daughters, both of whom have attained the age of majority and are gainfully employed. A decree nisi was granted in July 1999 and an application for ancillary relief made on 7th February 2007. At the time of the divorce, the respondent was 44 years and the petitioner, 39 years. They are both gainfully employed. The sole issue for determination is the disposition of the matrimonial home, the respondent having conceded that he has an obligation to pay the interest in arrears on the elder daughter's student loan.¹

¹ By virtue of an agreement between the parties

Factual Background

- [2] The petitioner is employed as Accounts Officer at the Social Security Board of Anguilla and earns approximately EC\$6609.00 less social security and pension deductions. The petitioner also pays some \$165 in medical insurance for the two children of the marriage and two bank loans² totaling \$726.00 monthly. The respondent is a Maintenance Officer at Cap Jaluca Hotel and earns approximately US\$8.22 per hour. The respondent works a 40 hour week and earns overtime for additional hours worked. Social security and insurance deductions are made.
- [3] The respondent is the registered owner of the land on which the matrimonial home is situate. The land was transferred to him by his grandmother in or about 1990. He knew that the land would be so transferred when he began construction of a house thereon in 1984. When construction began, the parties had been in a relationship for some four years and had had their first daughter, who was then about 1 year old. The respondent contends however that he never had discussions with the petitioner about building a house.
- [4] No mortgage was taken and construction of the house continued over a number of years. It is agreed that the respondent purchased materials for the house and undertook much of the construction on evenings and weekends with the assistance of friends and family. The respondent concedes that the petitioner's cousins assisted with the construction of the house but argues that their assistance was offered on his behalf and not that of the petitioner, as was stated in her affidavit in response.
- [5] The petitioner states that she assisted by cooking for all the persons who would work on the house as per the custom in Anguilla. She states further that she would move blocks to the various locations on site and would make her car available for water to be carried to the site when the respondent did not have a truck at his disposal. The respondent denies that the petitioner assisted in moving blocks and submits that she did some cooking during construction of the second half of the house only and that her car was used on one occasion to carry water.

² A car loan and a student loan for the elder child of the marriage

- [6] After their marriage in 1987, the parties lived with the petitioner's mother while construction on the house continued. The petitioner contends, which is disputed, that during that time it was agreed that the respondent would take care of the construction costs and the petitioner, the bills.
- [7] It is however agreed that the petitioner made the following contributions to the construction of the house:
- (i) a payment to National Trucking;
 - (ii) tiles for the dining room, living room and kitchen;
 - (iii) three doors;
 - (iv) concrete for small addition to the house; and
 - (v) a monetary contribution for the dining room, living room, kitchen and garage room.
- [8] In 1988, the parties moved into the house, which was then still unfinished. Upon completion of the house, the petitioner continued to pay the bills, with the exception of the cable bill which was paid by the respondent.
- [9] The petitioner contends further that over the years she has been solely responsible for the upkeep and maintenance of the home and children of the family. She noted during cross-examination that she was responsible for replacing a bedroom set which was destroyed during Hurricane Lennie.
- [10] The petitioner contends that the marriage broke down irretrievably on account of the respondent's violent and ungoverned temper and states that the respondent physically abused her on numerous occasions up to the 12th May 1999. The petitioner states that the respondent effectively moved out of the house in 1995 to live with his mistress, but returns to the matrimonial home to bathe and dress. The respondent denies being of a violent temperament and of abusing the petitioner.
- [11] The parties continued to occupy the matrimonial home after the issuance of the decree nisi in 1999. Since about December 2006, the respondent has resided primarily at his mother's home, although his personal belongings remain at the matrimonial home.

The claim

[12] The petitioner claims:

“A determination and valuation of the parties’ right title and interest in the matrimonial property....; that their respective interest therein be transferred to each of them with the Petitioner having a life interest in the Respondent’s share or in the alternative an order that the said house be sold and the Petitioner’s interest therein be transferred to her.”

[13] By affidavit dated 14th March 2007, the respondent states that he would wish to buy out the petitioner’s interest in the matrimonial home as he does not wish the property to be sold having regard to the history of the ownership of the land and his contribution to construction of the house.

The Law

[14] The governing statute is the **Matrimonial Proceedings and Property Act** (“the **MPPA**”).³ The **MPPA** grants the court a wide discretion with respect to ancillary awards which includes the power to vest the matrimonial home in the parties in common, to direct the sale of the matrimonial home or to direct that either party pay to the other such sum as is deemed reasonable.⁴ In so ordering or directing, the court must be satisfied, inter alia, that both parties have made a substantial contribution to the matrimonial home, and indeed the family as a whole.⁵

[15] It is now well established that there should be no discrimination placed on the roles of husband and wife.⁶ In the circumstances of the case, there can be no doubt that both parties have made substantial contributions to the matrimonial home. It is also clear to me that it was the common intention of the parties that the matrimonial home would be for their joint benefit. This is borne out by all the evidence, as summarized above. I so find notwithstanding the fact that there has been no joint registration.

³ Chap. M60 of the Revised Statutes of Anguilla

⁴ See sections 53 and 54

⁵ See section 26(1)(f) of the MPPA

⁶ *White v White* as followed in *Stonich v Stonich*

[16] The crucial matter for determination therefore is the apportionment of the assets, that is, the matrimonial home. Saunders JA confirmed in **Stonich v Stonich**⁷ that the ultimate and overriding objective that the court must strive at is fairness.

[17] The equality principle has been urged upon me in accordance with the learning eschewed in **White v White**⁸, **Miller v Miller and McFarlane v McFarlane**⁹ and similar cases. The cases of **White v White** has settled the principle by which courts are to be guided in such matters. The principle may be stated in this way: Whilst there is no legal presumption of equal division a judge is required, before arriving at a final determination of what is fair and just in all the circumstances, to check his tentative views against the yardstick of equality. And then, as Lord Nicholls of Birkenhead stated in his judgment therein:

“...as a general guide, equality should only be departed from only if, and to the extent that there is good reason for doing so.”

[18] I take cognizance of the fact that the marriage lasted for some 12 years, that there is no significant difference in the ages of the parties and that the parties have each made substantial contributions to the matrimonial home and the welfare of the family within their respective means. I am satisfied that the petitioner maintained the children of the family and the household which gave the respondent the opportunity to provide the home. I note however that, on the evidence available to me, the petitioner has greater earning capacity than the respondent.

[19] On application of the **MPPA** and having regard to all the circumstances, I am satisfied that it is fair and just to award the petitioner a 40% interest in the matrimonial home. I order that the respondent buy out the petitioner’s interest upon a joint valuation being undertaken. The petitioner is at liberty to remain in occupation of the matrimonial home until such payment has been made.¹⁰

⁷ BVI Civil Appeal No. 17 of 2002

⁸ [2001] 1 AC 596 applied by Pemberton J in *Victory v Victory* Saint Vincent and the Grenadines Suit No. 316 of 2000

⁹ [2006] UKHL 24, [2006] 2 AC 618

¹⁰ In accordance with the court’s power under section 52 of the **MPPA**

[20] It is further ordered that each party bear his/her own costs.

Janice George-Creque
High Court Judge