

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

CLAIM NO: AXA HMT 2007/0022

BETWEEN:

ALICE FRANCISCA GUMBS

Applicant

and

LAWRENCE OTHNEL GUMBS

Respondent

Appearances:

Ms. Paulette Harrigan for the Applicant

Ms. Charlie-Ann Albert for the Respondent

2008: September 26;

2009: November 23.

JUDGMENT

[1] **GEORGE-CREQUE, J.:** The parties, who had been married for some 15 years, were granted a decree nisi on 4th January 2008. It was agreed, by consent, that the respondent would pay maintenance for the child of the marriage in the sum of \$1300 per month until determination of the suit.¹ By application for ancillary relief made on 28th July 2008, the applicant sought:

- (i) custody and maintenance of the child of the marriage (then below the age of majority);
- (ii) determination of the applicant's beneficial interest in the matrimonial home;
- (iii) a sum of money equivalent to the applicant's beneficial interest in the matrimonial home or alternatively such lump sum as the court deems just;

¹ The payments were made retrospectively from the 14th January, 2007.

- (iv) liberty to remain in the matrimonial home pending the payment of any such lump sum;
- (v) determination of the ownership of the chattels contained in the matrimonial home.

[2] The child of the marriage having reached the age of majority on 27th February 2009 and being gainfully employed, it is not proposed to make any further order for maintenance. The respondent has not disputed the applicant's entitlement to certain chattels as requested at paragraph 38 of the applicant's affidavit dated 28th July 2008 so that this issue need not occupy me further. The primary issue for determination therefore is the disposition of the matrimonial home.

Factual Background

[3] The applicant is a domestic cleaner who earns approximately US\$400 - \$600 per month.² She has one child (a son) with the respondent and six children from a previous relationship, one of whom lived with the parties for a period of time. The applicant inherited a 100ft x 100ft lot in Dominica and has approximately US\$500 in savings.

[4] The respondent is a mason and is employed with Gumbs Construction Company Ltd. and undertakes part time gardening and general maintenance for Palm Shore Villas and The Boat House. The respondent earns approximately US\$1855 per month and engages in recreational or subsistence fishing. Some US\$40 is made through the sale of produce. The respondent has two savings accounts with an average balance of approximately US\$6000.

[5] For the first five years of their marriage, the parties lived in a wooden house for which the applicant paid EC\$80 in rent. The applicant states that she continually sought to convince the respondent to construct a home for their family. The respondent submits however that he needed no such encouragement as it was always his intention to build a home.

² Inclusive of service charges, when paid.

- [6] Following Hurricane Luis in 1997 which damaged the wooden house, the parties moved into the respondent's sister's house for which the respondent made periodic payments. At or about this time, the respondent received permission from his father to construct the matrimonial home on a part or portions of land registered in his father's name. Over the next two years, the parties undertook construction of the home for which no financing was obtained.
- [7] By affidavit dated 28th July 2008, the applicant states that she assisted in clearing the site, piling up rocks which were used in the construction of the foundation, digging the foundation with a pick, mixing concrete for the flooring, carrying blocks and installing windows. Her two children also allegedly undertook certain work on the site, as directed by the respondent. She states further that she arranged and financed a "jollification" for persons who assisted in pouring the roof and also purchased groceries and cooked for the respondent, his brothers and father when the interior and some of the exterior of the house was plastered. The applicant also notes that she made financial contributions to the matrimonial home having purchased tiles on account at Watkins Hodge, bought furnishings for the home³, regularly applied her salary towards maintaining the family by buying food and clothes and assisted in paying merchant/household bills when so requested by the respondent. The applicant contends also that she assisted the respondent in paying off a bank loan on a truck which he owned, but she ceased making these payments when she discovered that he had committed adultery and conceived a child. The applicant contends that in addition to these responsibilities, she also regularly sent groceries to her family in Dominica.
- [8] The respondent in large measure concedes that the applicant provided assistance during the construction phase of the matrimonial home although he disputes the extent of her contribution. He notes in particular that the applicant did not mix concrete for the flooring or assist in installing windows and denies that the petitioner's sons regularly assisted on site. The respondent states that he designed the home, purchased materials for construction of the house (with the exception of tiles purchased by the applicant) and undertook, with the assistance of his father and brothers, most of the construction. The respondent contends

³ A wall unit, 3 beds, wares, television, freezer, dressing tables, sheets, towels and kitchen appliances

that he bought a stove and also purchased lumbar which was used to make furniture for the home. He also paid the household bills including the petitioner's telephone bill, provided money for her to support her children in Dominica and shipped groceries to them. He submits that he only ceased paying her telephone bills when he discovered that calls were being made to the father of her other children. He submits further that the applicant only sometimes purchased food.

[9] The parties ceased living as husband and wife in August 2005⁴ or July 2006⁵ although they continue to reside at the matrimonial home. The applicant, who presently sleeps in the second bedroom with her son, states that, at present, she cannot afford to rent appropriate accommodation. She seeks a half share of the matrimonial home so that she can have "a clean break from the Respondent" and start her life again.⁶ The respondent however requests that the applicant be granted no more than a ¼ share in the matrimonial home which interest is to be transferred to the applicant. He further requests that the applicant vacate the matrimonial home within a month of the court's judgment

[10] The parties jointly paid for a valuation of the matrimonial home which estimated its value at between US\$60,000 - US\$67,000.

The Law

[11] The governing statute is the **Matrimonial Proceedings and Property Act** ("the MPPA").⁷ 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.⁸ In so ordering or directing, the court must be satisfied, inter alia, that both parties have made a substantial contribution to the matrimonial home.

⁴ Applicant's Petition dated 14th June, 2007

⁵ Respondent's Answer dated 2nd July, 2007

⁶ Applicant's Affidavit dated 28th July, 2008 at para. 27

⁷ Chap. M60 of the Revised Statutes of Anguilla

⁸ See sections 53 and 54

- [12] It is now well established that there should be no discrimination when assessing the roles of husband and wife.⁹ This principle has been authoritatively stated in **Stonich v Stonich**¹⁰ and followed in **Fusse Durham v Fusse Durham**¹¹ and **Leah Zilpha Richardson v Ovin Whitfield Richardson**¹². Having regard to the foregoing, there can be no doubt that both parties have made substantial contributions to the matrimonial home and the welfare of the family.
- [13] The equality principle has been urged upon me in accordance with the learning eschewed in **Miller v Miller and McFarlane v McFarlane**¹³ and the aforementioned cases. The cases recognize that parties arrange their affairs in such a way that it may work to the detriment of one of the parties to the marriage and enhance the earning capacity of the other, which factor should accordingly be taken into account.
- [14] In the circumstances of this case, it is clear that the contributions made by the applicant to the household enabled the respondent to enhance his earning capacity. It is also patently clear that the respondent will fare better in the future in terms of earnings than the applicant given his trade and the demand for such skills in Anguilla. I take cognizance also of the fact that the marriage lasted for some 15 years and that there is no significant difference in the ages of the parties.
- [15] On application of the **MPPA**¹⁴ and having regard to the respective contributions of the parties and all the circumstances of the case, I am satisfied that it is fair and just to award the petitioner a 50% interest in the matrimonial home, and I so order.
- [16] The applicant has requested a sum of money equivalent to the applicant's beneficial interest in the matrimonial home or alternatively such lump sum as the court deems just. It was held in **Wachtel v Wachtel**¹⁵ that:

⁹ *White v White* [2001] 1 AC 596 as followed in *Stonich v Stonich* BVI Civil Appeal No. 17 of 2002 and *Fusse-Durham v Fusse Durham* Anguilla Civil Appeal No. 21 of 2005 per Creque J.

¹⁰ *ibid*

¹¹ *ibid*

¹² AXA HMT 2005/0006

¹³ [2006] UKHL 24, [2006] 2 AC 618

¹⁴ Particularly sections 23, 26, 53 and 54

¹⁵ [1973] EWCA Civ 10

"No order should be made for a lump sum unless the husband has capital assets out of which to pay it without crippling his earning capacity...When the husband has available capital assets sufficient for the purpose, the court should not hesitate to order a lump sum...the wife should be compensated for the loss of her share by being awarded a lump sum. It should be a sum sufficient to enable her to get settled in a place of her own, such as putting down a deposit on a flat or house."

[17] In determining whether to grant a lump sum payment the court must exercise its powers so as to place the parties, so far as just and practicable, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.¹⁶

[18] Having regard to the respondent's savings and to the fact that he may easily be registered as the proprietor of the land.¹⁷ I am satisfied that the respondent has sufficient capital assets out of which to pay without crippling his earning capacity. I consider that a period of six months would allow the respondent sufficient time to effect registration and to raise a loan thereon if necessary. The respondent is accordingly ordered to pay to the applicant the lump sum payment of US\$32,000.00 within a period of six months. In accordance with the court's power under section 52 of the **MPPA**, the applicant is at liberty to remain in occupation of the matrimonial home until such payment has been made.

The Orders

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

- (1) That the applicant is entitled to a one half share in the matrimonial home;
- (2) It is directed that the respondent pay to the applicant the lump sum of US\$32,000.00 representing the fair value of the applicant's one half share of the matrimonial home to be paid within six months.
- (3) Pending payment of the lump sum, the applicant is hereby granted the right to occupy the matrimonial home.

¹⁶ Section 26(1) of the MPPA.

¹⁷ The land has effectively been given to him by his father, Hezekiah Gumbs

Costs

- [19] The applicant seeks to recover costs in the sum of US\$1500 on the ground that she has had to take legal action to recover her share of the matrimonial home. The respondent contends however that each party should bear his or her own costs.
- [20] I consider that in matters of this kind there is, in reality, no winner or loser given the court's remit to do what is fair and just in providing as far as possible for a clean break between the parties in respect of a failed marriage. One or the other may institute proceedings for this purpose. Unless it can be shown that the other party has behaved unreasonably towards the other, say for example by thwarting all efforts at arriving at an amicable settlement or behaved in a manner intended to oppress the other, the appropriate order should be no order as to costs. No such conduct is alleged in this case. Accordingly, in the exercise of my discretion, I order that there shall be no order as to costs.

Janice George-Creque
High Court Judge