

GRENADA

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

SUIT NO. GDAHMT1999/0112

BETWEEN

MARIA HARFORD

Respondent/Petitioner

and

GABRIEL HARFORD

Applicant/Respondent

Appearances:

Mr. Reynold C. Benjamin for the Applicant/Respondent

Mrs. Celia Edwards, Q.C. and with her Ms. K. Johnson for the Respondent/Petitioner

2010: November 30

DECISION

[1] **HENRY, J.:** The applicant, Gabriel Harford (hereinafter 'the husband') makes application for a property adjustment order as follows:

- (a) An order that the Respondent do transfer to him all that lot piece or parcel of land situate at Soubise in the parish of St. Andrew in the state of Grenada containing by admeasurement one Rood and abutted and bounded as the same is delineated and described in the plan or diagram marked "B" annexed to the indenture of conveyance made the 8th day of May 1965 between Walter Lawrence Prince of the one part and Eldica Belfon of the other part and recorded in the Deeds and Land Registry in Liber S10 at page 727 together with the building thereon and appurtenances thereto belonging and which said comprises the matrimonial home situate at Soubise, St. Andrew.

(b) An order that the property situate at Post Royal, St. Andrew contained and described in the Indenture of Conveyance made the 9th day of June 1995 between Denis Walker of the one part and the Respondent of the other part and recorded in the Deeds and Land Registry in Liber 12-95 at page 530 remain the sole property of the Respondent.

(c) Costs.

[2] The parties were married in October 1969. The marriage produced 7 children all of whom are now adults. In November 1999, the Respondent Maria Harford (hereinafter "the wife") commenced divorced proceedings. A Decree Nisi was granted on 11th February, 2000 and made final on 24th March, 2000. Although in her Petition the wife prayed for a property adjustment order, following the final decree no application for ancillary relief was filed by her. In May 2007, the husband filed this application.

[3] The notice of Application is supported by an affidavit of even date. The wife responded by affidavit filed on June 28, 2008 in addition to an affidavit sworn by Lisa Mc Donald. Reply affidavits by the husband were filed in September 29, 2008 and January 14, 2009.

[4] In his affidavit in support of the application, the husband deposed that after the marriage in 1969 the parties lived in rented premises; at the time the wife, he states, worked as a teacher earning \$75.00 monthly. In 1973, he built a wooden house in Mt. Carmel on rented land and there the parties lived until 1986. He further states that in 1985 he purchased a ¼ acre parcel of land in Soubise at a total cost of \$14,000.00. \$10,000.00 of the purchase price he says, he contributed from his personal savings. The balance was financed by a loan from the Grenada Co-op Bank made to both parties. The deed however, is registered in the wife's name only. In 1986, they moved the wooden house from the rented land unto the Soubise land and the wooden house was extended to include a concrete structure. It is here at Soubise that the parties lived for the next 13 years until the marriage broke down. It is this property which is the subject of the first part of the application and which the husband is asking the Court to transfer to him outright.

[5] Of the second parcel of land the subject of this application the husband says that they purchased it at a cost of \$10,000.00. It is located in Post Royal, St. Andrew and consists of 1 acre 1 Rood 9 pls. It has no structure on it. The monies used to purchase the said land, according to the husband,

came from his savings accumulated from operating a bus. However, he says that he agreed for the deed to be made out in the name of the wife only.

[6] He deposes that due to the breakdown in the marital relationship he left the matrimonial home to live elsewhere and has never resided there again. He asserts that at that time the wife had also left the matrimonial home with the children and was residing out of the state. He later found out that she had moved to the United States.

[7] As to his present condition he states that he has no comfortable place to stay and that he is now living in a little shop owned by his daughter. His position is that although both properties are in the name of the wife, she has not contributed any substantial amounts towards their purchase. In light of the foregoing he believes that it would be just and prays that the Court grants his application.

[8] The affidavit of the wife presents an entirely different picture. In her affidavit she states that she was a teacher for 30 years from 1968 to 1998; that she left the system as a Principal with a pension of \$13,902.00 per annum. According to her, the husband was a bus driver from 1969 to 1976 and a shop keeper from 1989. However, in 1995 he returned to being a bus driver. With regard to the shop, the wife asserts that she built and stocked the shop for the husband to run, but that he ran it into the ground; that when he went back to being a bus driver, it was she who purchased the bus with a loan taken from Grenada Union of Teachers.

[9] With regard to the purchase of the land at Soubise, she denies that the purchase price was \$14,000.00, although the deed so indicates. She asserts that the land cost \$4,000.00 and that she paid the entire sum from a loan she obtained. In support of this contention she exhibits a receipt in the name of both parties. According to her, both names appear on the receipt, because she gave him the money to pay for the land after she had obtained a loan from Grenada Co-op Bank. She insists that the husband paid nothing towards the price of the land. The Receipt dated 8th February, 1985 reads:

“Received from Gabriel and Maria Harford the sum of four thousand dollars (\$4,000.00) for a lot of land (1Rood) situated at Soubise in the parish of St. Andrews in the island of Grenada. Sold and delivered to them.”

It is signed by Eldica Belfon, the vendor and witnessed by one Michael Duncan with the proper stamps affixed thereto. The wife asserts in her affidavit that the husband is inherently dishonest and it was he who instructed that the deed be made showing a purchase price of \$14,000.00, because according to him this would increase the value of the property.

[10] With regard to the wooden house that the husband says he placed on the land and which served as the matrimonial home for some time, the wife asserts that that house is no more; that it fell into utter disrepair because the husband refused to repair it or to allow her to do so; that it was after the husband left the matrimonial home that she replaced the wooden house with a concrete structure with the aid of a loan from the bank and which was co-signed by her son. She states that she is still repaying the mortgage up to today. The husband, she declares, made no contribution to this undertaking. Her evidence is that she gave her sons permission to reside in the house when in 2003 she went to the United States to assist her daughter.

[11] With regard to the land at Post Royal, again she asserts that she provided all of the purchase price from her savings from the Grenada Co-op Bank. Exhibited to her affidavit are the deed and receipt.

[12] So according to the wife she purchased these two parcels of land without any contribution from her husband; that when the wooden house became unlivable it was she and her son who obtained a loan and converted the dilapidated wooden house into a concrete structure.

[13] It is the wife's further evidence that the husband has acquired other properties in his name and in respect of which she has made no claim. They include:

1. A lot of land at Hope measuring 5002 sq. ft. purchased in 2000 for the sum of \$18,000.00. The deed to the land was exhibited.
2. A house which he built in Marquis, St. Andrew and into which he moved with another woman when he left the matrimonial home. No documents were exhibited.

[14] According to the wife, when he left the matrimonial home in August 1999, he broke the shelves from the shop she had built and stocked. He took the scale, the deep fridge, standing fridge, cooking gas and the welding gas. He took furniture to include bed, washing machine mattress and the pots and pans. Of the husband she says that he has not supported the home, she has had to

work hard to provide for herself and the children; further he has not put money into the land, he has built a house and has land elsewhere. She therefore prays that the application be denied.

[15] On an application for a property adjustment order pursuant to the Matrimonial Causes Rules as amended, the Court must consider all the circumstances of the case including;

- (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) The contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family.

[16] Accordingly, the parties are under an obligation to make a full, frank and clear disclosure of all relevant circumstances, including income, property and other financial resources. I must point out that the affidavit of the applicant provides little or no information on the relevant factors to be considered. While he states that he left the matrimonial home to live elsewhere, he has not divulged the source or level of his income since 1999. He states he lives behind a shop. He did not disclose who actually operates the shop. If he does what income is derived therefrom. The Court has not been informed how he has maintained himself since 1999 or even if he has indeed maintained himself.

[17] Furthermore, he stated in his affidavit of 29th September, 2008 that he had inherited 3 acres of land jointly with his brother. He purchased his brother's interest in 1967 before his marriage. He also asserted that before the marriage he owned 2 buses. However in 1971 he sold the lands and purchased a bus H4386 cash. He also sold one of the 2 buses and had the other converted to a truck. Still later he purchased another bus. He omits to disclose the amount realized on the sale of the lands or the cost of any of the buses. Furthermore, he fails to give any further information on any of the 3 vehicles.

[18] The wife alleged in her affidavit that in 1995 he went back to being a bus driver and that he is still a bus driver. Absolutely no information is given on his income whether from shopkeeping or as a bus driver. This is potentially fatal since his application is based partly on need.

[19] The House of Lords in **Miller v Miller** [2006] UKHL 24 has endorsed what has become known as the equality principle. 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 depart from the principle. Furthermore where the property involved is the matrimonial home, because of the central place in the marriage that such property occupies, it is normally treated as matrimonial property and in principle each party's entitlement to a share of the matrimonial property is the same however long or short the marriage may have been.

[20] The wife herein however, submits that the Court ought to depart from the equality principle for several reasons. She asserts that the land on which the matrimonial house was placed was purchased solely by her; that the wooden house in which the parties resided during the marriage no longer exists and that the concrete structure presently on the land was built solely by her.

[21] With regard to the land on which the former matrimonial home was located, a certified copy of the deed for the said land was exhibited by the husband. It is an instrument that was duly registered pursuant to the Deeds and Land Registry Act. As such section 24 of the Act provides that such a copy "shall be admissible in all courts as prima facie evidence of the contents of the instrument..." The Deed recites that the vendor contracted for the sale of the land at a price of \$14,000.00 and acknowledged receipt of same. The copy of the receipt exhibited by the wife states that the \$4000.00 was "for a lot of land". It is ambiguous as to whether that sum was the total purchase price. Therefore I accept the contents of the deed as reflecting the purchase price of \$14,000.00. I also accept that the husband made a contribution of \$10,000.00 toward the purchase price.

[22] Nevertheless, there are several factors to be considered in deciding whether to depart from the equal sharing principle in respect of the former matrimonial home.

1. The intention of the parties: even though I have found that the husband contributed \$10,000.00, he decided to put the deed in the name of the wife only. In the Court's view it showed an intention that she be an owner.

2. The wooden house that constituted the matrimonial home no longer exists. I accept the evidence that the concrete structure presently on the land was built after the breakdown of the marriage solely by the wife. The husband has not denied that. It is also accepted that at the time the husband left the matrimonial home, the wooden house was in a state of utter disrepair. The husband does not deny the wife's description of the wooden house or of her assertion that he prevented her from effecting repairs during the marriage. He simply asserts that she was attempting to repair without his permission and he therefore objected. Under these circumstances it is difficult to justify a claim by the husband to the entire property.
3. The husband's need for housing: I find that the husband has not been candid with the court on this point. I also find that the assertions in his affidavit in support of this application are misleading. He stated that he has no comfortable place to stay and that he is now living behind a little shop owned by his daughter. At the same time he failed to disclose his ownership of the other property in his name, thereby giving the impression that he owned nothing save for any share in the two properties the subject of this application. In fact the husband purchased a parcel of land comprising 5002 sq. ft. A copy of the deed was tendered by the wife. Even though I find that the wife's allegation that he built a house in Marquis has not been substantiated, due to the husband's non-disclosure and the paucity of information submitted, I find that he has not demonstrated a need to be housed at the former matrimonial home.
4. Alleged abandonment of the matrimonial home: neither party now reside in the former matrimonial home. The husband left in 1999 and has never resided there again. After the concrete structure was erected, the wife says she went to the U.S to assist her daughter in caring for her children. I find that she left to the United States sometime after the husband left the matrimonial home. She left her two sons residing in the house. She asserts that on her return to Grenada, she intends to live therein. Also that she is still paying the mortgage which was taken in connection with the construction of the current structure. The wife therefore still has an ongoing need for housing.

5. Even though the location of the property may have occupied a central place in the marriage, the fact that the house in which the parties actually resided during the marriage no longer exist means that there can be no finding that the present home (house) was the product of both their endeavour. The most I can find is that the purchase of the land was a product of both their endeavour.
6. I accept the evidence of the wife's contributions. The Court finds that she worked throughout the marriage and made a contribution to maintaining the home. I find however that the husband also made a contribution to the welfare of the family. He undoubtedly worked as a bus driver and a shopkeeper during the marriage and while his contribution may not have been at the level the wife desired, I find that he did make a contribution.

[23] Having considered the above factors, I must conclude that there are factors which justify a departure in this case from the equality principle. Here, it is not even accurate to say that the property in question served as the former matrimonial home since the present house was virtually constructed after the breakdown of the marriage. However I have found that the husband did contribute a part of the purchase price of the land. The husband's decision to place the deed in the wife's name clearly indicated an intention that she be regarded as an owner. Additionally, the wife has demonstrated that she has a continuing need for housing upon her return to Grenada. Accordingly, the husband's request that this property be transferred to him is denied. The most that the justice of this case requires is that he be awarded an amount equal to $\frac{1}{2}$ the value of the land. I therefore order that the land be valued and that the wife pays to the husband $\frac{1}{2}$ the value of the land.

The Post Royal Property

- [24] The documentary evidence presented by the wife supports her assertion that she alone contributed to the purchase of this property. It is in her name and the husband has the parcel of land in Hope. Therefore I order that this property shall remain the property of the wife.
- [25] Accordingly, the husband's application that he be awarded the property at Soubise is denied and the court orders as follows:

1. That a valuation be carried out to ascertain the current value of the land situated at Soubise and on which the former matrimonial home was located. The wife shall pay to the husband $\frac{1}{2}$ the value of the said land only. The property thereafter shall be the property of the wife.
2. The property located at Post Royal is hereby declared to be solely the property of the wife.
3. No order for cost.



Clare Henry
HIGH COURT JUDGE