

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

COMMONWEALTH OF DOMINICA
DOMHCV2005/0002

BETWEEN:

HURON VIDAL

Appellant

and

MERLE VIDAL

Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Duncan Stowe for Petitioner

Mr. D. Yearwood Stewart for Respondent

JUDGMENT

[2009: December; 14th]

[2010: March 9th]

[2010 September 3rd]

[2011 January 25th]

- [1] **COTTLE J:** This is an application by the respondent for ancillary relief. The parties were married on 14th July 1990. The union was dissolved in 2005. At the time of the marriage the petitioner husband was 41 years old. The respondent wife was 24. The union produced one child, a daughter born on 13th January 1996.

[2] The petitioner worked in Bermuda as a police officer until retirement when he returned to reside in Dominica at the beginning of 2004. He now engages in fishing to generate income. The respondent worked at intervals during the marriage. She also used the opportunity to acquire a qualification in accounting. Immediately before her return to Dominica she worked at a bank in Bermuda for a period of few months. She is unemployed at present and has not worked since her return to Dominica.

[3] The wife's application for ancillary relief sought several things. Some items have been settled by the parties and a consent order reflects the settled items. The relief which now remain for consideration are

- I. A transfer of property order with respect to the matrimonial home situate at Paradise Hill, Bioche.
- II. A share in a portion of land at Tebay
- III. A share in a fishing boat
- IV. A share in a motor vehicle PJ348
- V. A share in a bank account held at First Caribbean Bank
- VI. A share in an account held at Roseau Co-Operative Credit Union.

By a subsequent application the petitioner wife also sought

- VII. Lump sum payment
- VIII. Part of proceeds of the respondents pension
- IX. Part of proceeds of rent of the matrimonial home
- X. A share in a portion of land at Bioche.

[4] Obviously these additional matters fall to be considered under the general heading of the assets available to the husband to which the court should have regard in making the order for ancillary relief if any.

The Law

- [5] The 1973 Matrimonial Causes Act sets out the factors which the court is enjoined to consider when making an order on the granting of the divorce. The court must consider all of the circumstances of the case including those matters enumerated in section 25 of the Act. The objective is to strive to put the parties in the position they would have enjoyed had the union subsisted and each had discharged his or her financial obligations towards the other.

The Evidence

- [6] In her Affidavit in Support the petitioner says that during the subsistence of the union, she worked various odd jobs such as domestic work in homes and baby sitting. She also worked at McDonalds as a cashier and accounts clerk. She does not indicate what her income from the odd jobs was. She obtained a qualification in Accounting from the Bermuda College in 1993 but never practiced accounting. In cross-examination she explained that as a non-belonger, she could not work in Bermuda in the accounting field.
- [7] The land on which the Matrimonial home stands was purchased by the husband in 1993. The wife did not contribute to the purchase price of the land. The matrimonial home was built in 2000. As the parties were then still resident in Bermuda the newly built house was rented out. During the union, the wife says that she enjoyed a comfortable standard of living with annual overseas vacations in England, the United States and Dominica and St. Maarten. She had access to accounts, credit cards and overseas telephone calls all paid for by the husband.
- [8] Any income she earned she says she used to provide necessities for the matrimonial home and child of the family. This allowed the husband to use his income to buy land and service loans such as the mortgage loan. At present the wife lives on the upper floor of the matrimonial home with the child of the union. The husband resides rent free at the home of his aunt.
- [9] The husband owns a fishing boat. He says it last worked in January 2008 and he has not fished since then. The reason why the vessel has not been operated is disputed but the husband values it at \$70,000 to \$80,000. He owns a motor vehicle worth \$58,000. He is the owner of two parcels of land at Bioche for which he has certificates of title. He has an interest in lands at Te bay. He has paid most of purchase price for that property but will not receive the certificate of title until he pays the balance of the purchase price (\$5,000).

[10] The available pool of "family assets" thus reads

Real property:

- | | |
|-----------------------------|-------------|
| 1) Matrimonial home | - \$660,000 |
| 2) Parcel of land at Bioche | \$ 50,000 |
| 3) Land at Te bay | \$ 21,000 |

Motor vehicles:

- | | |
|------------------------|-------------------|
| 4) Suzuki Grand Vitara | \$58,000 |
| 5) Fishing boat | \$70,000-\$80,000 |

[11] The husband is in receipt of a pension from the Bermuda police of US \$1,900 per month. He rents out the lower storey of the matrimonial home for \$1,200 US. He admits that he is due to begin receiving a second pension from the Government of Bermuda from age 65, that is next year, but he has not disclosed the amount he expects to receive. From his income he pays the monthly mortgage loan payment. The amount of these monthly payments is not revealed but it seems that the loan is not in arrears. The court was not provided with a statement of the mortgage account or a recent valuation. I am thus in no position to determine what the present equity stands at.

[12] It is settled that the parties in ancillary relief proceedings owe the court a duty of full and frank disclosure their respective financial positions. In this case the wife has no income or property. The husband has a present income from his pension and the rental of the apartment at the matrimonial home. Those amounts he has disclosed. He also has an old age pension expected immediately but he has not disclosed the amount. He has not provided valuations for the fishing vessel or his vehicle apart from his own unsupported estimation. I note however that he has been able to service his mortgage commitments.

[13] Faced with this unsatisfactory state of evidence the court is constrained to do the best it can. Taking all of the available family assets as a whole and bearing in mind the factors enumerated in section 25 of the Matrimonial Cause Act, especially the relative ages of the parties, the duration of the marriage and the respective contributions of both I consider that the wife should be awarded $\frac{1}{4}$ of the family assets.

[14] To achieve this end a lump sum payment to the wife of \$216,000 will suffice given the values I have found for the available family assets above. The husband is ordered to pay this sum to the wife in satisfaction of the outstanding matters of ancillary relief. The respondent wife will remain living

at the matrimonial home and the petitioner husband will continue to service the mortgage until the lump sum payment is made. Upon payment of the lump sum the wife will vacate within two months. She is still relatively young and I see no reason why she should not be able to obtain employment to supplement her income. Until the lump sum payment is made the husband will continue to maintain the wife at the present rate of \$500.00.

High Court Judge
Justice Brian Cottle