THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

CIVIL CLAIM NO. 128 OF 2009

BETWEEN:

GREGORY BOWMAN

Petitioner

V

MARLESE BOWMAN

Respondent

Appearances:

Ms. Paula David for the Petitioner.
Mr. Olin Dennie for the Respondent.

2011: July 11, 12
2011: October 4

DECISION

BACKGROUND

[1] **JOSEPH, Monica J**: This is an ancillary relief application by the Petitioner. The parties, who were married on 15th December 1992, have two children: Macgregor Anthony, born on 31st March 1993, and Mikaila Leisa born on 6th May 1995. There was a decree nisi on 5th March 2010, to be followed by a decree absolute when satisfactory arrangements are made for the children.

[2] The Petitioner filed an Affidavit of Means on 26th November 2010 and the Respondent filed an Affidavit in Response on 7th December 2010. There was a further Affidavit of the Petitioner filed on 11th February 2011.

RELIEF SOUGHT

[3] The Petitioner claims: That he is entitled to a half share of the equity of the matrimonial home. The Respondent to pay the Petitioner a sum equivalent to his half share and in default the property to be sold and proceeds distributed equally. The Respondent to pay the Petitioner half of the profit from the sale of the house at Glen, that is, $15,000.00. The parties to keep their respective vehicles. The Petitioner to pay $800.00 per month as maintenance for the children of the marriage.

WRITTEN SUBMISSIONS - 26th July 2011 - Issues submitted by the Respondent

[4] (a) Should the parcel of land at La Croix given to the Petitioner by his father on the occasion of his decision to get married be regarded as matrimonial asset

.(b) Should the property at Beachmont which the Respondent inherited from her father be regarded as matrimonial asset?

Counsel for the Petitioner's submissions

[5] The evidence taken as a whole, is that each party contributed equally, financially and otherwise to the welfare of the family over the years. Each party is entitled to half a share in the major matrimonial assets, the Beachmont property, the La Croix property and the $30,000.00 profit earned from the sale of the Glen property.

[6] As the Petitioner wishes to keep the La Croix property, counsel's submission was that the best way to achieve this is to set off the Respondent's interest in the La Croix property against the Petitioner's interest in the Beachmont property. In that way, each party will be able to receive a fair portion of the major assets while still retaining an appreciable interest in the gifts which each of them received from their respective families.

[7] Counsel then specified a number of ways in which setting off can be achieved, including the calculation of mortgage interest outstanding, (no evidence was led on the mortgage balance) and deductions made from the value of properties. Counsel cited a number of cases including ***Stonich v Stonich*** BVI Civil Appeal 17 of 2002; ***White v White*** (2001) 1 AC 596; ***Hughes v Hughes*** (1993) 45 WIR 149.

Counsel for the Respondent's submissions

[8] Counsel invited the Court to dismiss the Petitioner's application to transfer half share in the Beachmont property to him. The Respondent inherited a quarter share in that property valued at $238,972.00, her share is now $59,743.00. The Petitioner, since March 2008, has paid $771.00 per month toward the mortgage on this property and the Respondent's salary maintained the home.

[9] Taken at its highest, submitted counsel, the Petitioner's share in the property can only be assessed at $30,556.00, which is the approximate amount he would have paid towards the mortgage. The Petitioner cannot justify his claim for a half share of the property, inasmuch as the Respondent argues that she also made contributions towards mortgage payments by utilizing her salary to maintain the home. Counsel for the Respondent cited a number of authorities, some cited by Counsel for the Petitioner, and ***Lawrence Wheatley v Raishauna Wheatley*** 301 Civil Appeal 6 of 2007.

RELIABILITY

[10] I rely on the evidence of the Petitioner in some instances, in other instances, on the Respondent, as I assess the witnesses, the manner of the giving of evidence coupled with the evidence they have given.

EQUALITY

[11] In exercising a discretion in the distribution of matrimonial property, the principle to be followed is that there should be equality, if equality is fair. No equality if unfair. In deciding on what is fair and on the parties' contributions to the welfare of the family, the factors set out in section 34(1) of the Matrimonial Causes Act (Cap 239) (the Act) are to be taken into account

[12] In the fairness concept: I consider any situation that may displace the equality principle. These are: the claim made by the Respondent (denied by the Petitioner) that the Petitioner's father made a wedding gift of Glen property to the parties; and the fact that the parties bought the interest of the Respondent's brothers in the Beachmont property. I am

required to check my views against the yardstick of equality before departing from that concept. In ***Stonich v Stonich*** BVI Civil App.17 of 2002 Saunders J.A. said:

> "As Lord Nicholls states, (White v White) each in their different spheres contributed equally to the family and, as a general rule, equality in the distribution of matrimonial assets should be departed from only if, and to the extent that, there is a good reason for it."

[13] The factors set out in section 34 (1) of the Act are:

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.

Earning capacity

[14] The Petitioner holds the pensionable post of a Town Planner holding a Master's degree, employed with the Government of Saint Vincent and the Grenadines, earning a monthly income after taxes of $5,751.67. His monthly expenses are $5,406.41. The Respondent is a Graduate Teacher, holding a Master's degree, employed by the Government of Saint Vincent and the Grenadines, earning a monthly salary of $4,035.15 after taxes. Her monthly expenditure is $4,407.56. She has been unemployed since December 2010, when she left for Canada.

[15] Both parties are highly educated and the future is promising for them both. Although the Respondent is unemployed at the moment, this is likely to change with an improvement in the economic situation.

Property

[16] There are three properties: the Glen property was acquired during the marriage and sold in 2008, with the parties making a profit of $30,000.00, which is to be divided equally.

[17] The La Croix property: the Petitioner's first affidavit evidence was that his father gave him La Croix property (which he does not consider to be a matrimonial asset) by deed of gift which was conveyed shortly after the marriage. Since the breakdown of the marriage, his father has asked him to restore title to him, which he has done by deed of gift. His oral

testimony was that he has not produced a copy of the deed, but that a copy is at the High Court. The Petitioner also said, in cross examination:

> "That parcel of land wasn't given to me as wedding gift. Since I was a child my father had promised me that parcel of land. When I became a man he said that's now yours. He gave me when I became a man. I don't know when I became a man. He transferred it to me when I told him Marlese was pregnant. I was born in 1963. In 1992 I got married. I was 29. Don't know age of majority here. My father didn't transfer it to me at age 18 nor at age 21. On occasion of my marriage he transferred it to me."

> "I commence a chattel house on that land to have some place to stay. I bought it for $7,000.00. I commenced improvements about nine months ago. Am still working on it. House and property ....This is house given by my father ...am still making improvements on it.....Land is very land chattel house is on. I have restored title to him. I did so by deed of gift. I knew I was coming to give evidence. I do not have it with me but it is available at the court house."

[18] Deed 1480/1993 conveying La Croix property was made on 17th January 1992 between donor Augustine Anton Bowman and donee Gregory Keith Anthony Bowman and the parties were married in December 1992. Although the land is conveyed only to the Petitioner, the Petitioner's evidence does not convince me that La Croix was a gift to him. I believe the Respondent's version that the Petitioner's father gave them the land as a marriage gift. I hold that this property is a gift to both parties and they share equally.

[19] The Beachmont property: described by the valuator as 3,775 sq ft Urban Residential, valued at $238,972.00. The Petitioner seeks one half share of the Beachmont property. The Respondent deposed in her affidavit that the property had a value of $228,000.00 and her share at the time, $57,000.00 (now valued $59,743.00) and her brothers' shares $171,000.00 (now valued $179,229.00). The Petitioner's oral evidence, "...I am entitled it depends on how the other properties go including land at La Croix..."

[20] Where property is inherited, decided cases show that a court holds that property is not a matrimonial asset, and the party who received the gift, keeps it. $57,000.00, being the Respondent's inherited share, belongs to her. She therefore has a $57,000.00 (now $59,743.00) interest in the value of the property. A court takes that inherited share into account in considering the contribution she has made to the welfare of the family.

[21] Another factor to be considered is that the parties purchased the brothers' shares of $171,000.00. Part of the purchase price of $171,000.00 to pay for those shares came from loans obtained by the parties: $140,000.00 by means of bank Mortgage Deed 993/2008 for $100,000.00 and by Mortgage Deed No. 996/2008, a further loan of $40,000.00, using the La Croix property as security. Deed of Assent 811/2008 vested Beachmont in the Respondent's name. What about the difference of $31,000.00? The Respondent's oral evidence was:

> "Money to purchase brothers' share how Mr. Bowman explained it to me. We took $100,000.00 also which I took out of insurance policy at British American. Mr. Bowman made arrangements with Scotia and I was just made to show up to do the signing. Mr. Bowman made financial arrangements for paying off my brothers. My brothers were paid. Each received $57,000.00 total $171,000.00 to brothers. I don't think Mr. Bowman is entitled to a share of the property given the financial arrangements he made. As a matter of fact we agreed that both places would go for the benefit of our children. Reasonable to conclude that given that both regarded properties as family properties."

[22] The Respondent's evidence was that the Petitioner made the financial arrangements and her brothers were paid $171,000.00. I conclude from that evidence that the difference of $31,000.00 ($171,000.00 - $140,000.00) was put up by the Petitioner. The purchase of the brothers' shares by the parties brought ownership of part of the value of the property within the ambit of a matrimonial asset.

[23] ***Lawrence Wheatley v Raishauna Wheatley*** Civil Appeal No. 6 of 2007, Thomas, JA (Ag.) referred to ***White v White*** (2001) 1 AER 1, where Lord Nicholls of Birkenhead had this to say:

> "Property owned by one spouse before the marriage, and inherited property whenever acquired, stand on a different footing from what may be loosely called matrimonial property... Property acquired before marriage and inherited property acquired during marriage come from a source wholly external to the marriage. In fairness, where this property still exists, the spouse to whom it was given should be allowed to keep it. Conversely, the other spouse has a weaker claim to such property than he or she may have regarding matrimonial property.
>
> Plainly, when present, this factor is one of the circumstances of the case. It represents a contribution made to the welfare of the family by one of the parties to the marriage. The judge should take it into account. He should decide how important it is in the particular case. The nature and value of the property, and the

time when and circumstances in which the property was acquired, are among the relevant matters to be considered. However, in the ordinary course, this factor can be expected to carry little weight, if any, in a case where the claimant's financial needs cannot be met without recourse to this property."

Finances:

[24] The Petitioner did not disclose (until cross-examination) that he has two fixed deposits at General Employees Cooperative Credit Union (GECCU): one $24,380.00 plus, the other $12,259.80. His evidence was that he obtained a loan of $23,000.00 from the Bank and placed that sum in a fixed deposit which now totals $24,000.00, at GECCU. The Petitioner stated that there was no particular reason for not mentioning the fixed deposits in his affidavits. His oral evidence: "...$23,000.00 is security against a loan I had at Scotia ... same $23,000.00 I removed from Scotia. It was loan from Scotia and I took it to GECCU to pay the loan at Scotia and then left $23,000.00 as security against itself."

[25] I find it difficult to believe the Petitioner's evidence that he was not attempting to gain some advantage by not disclosing the existence of the fixed deposits. The Respondent's oral evidence was that she should be awarded an interest in the fixed deposits. I hold that both parties are to share equally, the fixed deposits and the repayment of the loan related to the fixed deposit. The second deposit of $12,000.00 to be divided equally.

Relocation Expenses:

[31] The Petitioner's evidence was that he had not agreed with the Respondent that half of $30,000.00 be used by her for relocation expenses. He admitted that all relocation expenses were met by the Respondent and acknowledged that it is his duty to make a contribution towards the relocation of his children. The Respondent made differing statements: In her affidavit evidence she stated, with the knowledge and approval of the Petitioner she used the profit of $30,000.00 for relocation expenses including settling, transportation, housing and education of the minor children of the marriage.

[27] Her oral evidence was that at the meeting with their counsel, the Petitioner had agreed she should use $15,000.00 to cover the children's relocation costs. In cross-examination, she stated that she removed $30,000.00 from their joint bank account after she learnt from an e-mail that the Petitioner was planning to reunite with his girlfriend.

[28] As I understand it, figures were mentioned during negotiations between the parties, but not agreed. The Respondent admitted that she has a bank savings account in the sum of $6,000.00, which she had taken from $30,000.00 for use by her in relocation expenses. I have held that the $30,000.00 is to be divided equally between the parties. (She has already removed $6,000.00 of her $15,000.00 share, the balance being $9,000.00). I also hold that the parties are to meet relocation expenses equally.

[29] The Respondent admitted in cross-examination that she has an annuity at British American Insurance Company (insurance company) inherited from her mother who died in 2006. She did not disclose this in her affidavit as she considered it a loss. Her counsel invited the Court to take judicial notice of the financial difficulties of the insurance company as contained in the Report of the Manager of Saint Vincent and the Grenadines branch of the insurance company dated 9th October 2009.

[30] The Respondent ought to have disclosed the annuity, with an explanation to the court of how she regarded that amount. It is not clear whether the monthly premium payment of $150.00 she has claimed as an expense relates to that annuity. The Respondent claims this is an inheritance. If this is so then it is not included as a matrimonial asset. In the absence of sufficient evidence I do not make an order.

The financial needs, obligations and responsibilities which each of the parties of the marriage has, or is likely to have, in the foreseeable future.

[31] The parties are starting new lives and fundamental needs would have to be met by both: food, clothing, accommodation for themselves and for their children.

[32] The Respondent claimed by affidavit that the Petitioner has not maintained the minor children of the family since November 2009, the date he left the house. Some time after

the meeting with their counsel, the Petitioner forwarded two cheques for $800.00 as interim payments to the Respondent through her lawyer, which the Respondent returned. At the hearing her explanation was that the she did not understand the expression 'interim payments'.

[33] The Respondent's letter: "However bearing in mind that we have not agreed on the monthly maintenance to be paid by your client to my client I have been instructed to return the cheques to you."

[34] I do find the action of returning the cheques a little strange: the Respondent, a graduate teacher with a Masters degree, informing the court that she did not understand what 'interim payment' means. Could she not have kept the cheques, informing the Petitioner that she regarded that as part payment? What she seems to be saying to the Petitioner is: "You may keep your money ($1,600.00 for the children) - until I get what I want". Her letter gives the impression of an uncompromising stand.

[35] The Respondent's expenses total $4,407.56 including monthly expenses for child MacGregor - $495.00 and Mikalia - $750.00; and premium $150.00 for British American Life Insurance. I accept the Petitioner's questioning the claimed monthly expenses of the children, bearing in mind the other expenses claimed from which the Respondent and the children benefit.

[36] The petitioner's expenses total $5,406.41. I note that the Petitioner claims $800.00 for children and $700.00 for gas. With respect to the latter, is not the Petitioner a "traveling" Town Planner? I comment but go no further.

[37] The Petitioner is employed and the Respondent has been unemployed from the time she arrived in Canada. The Respondent claims that from December 2010 she paid rent for herself and the children CAN$1,055.00 monthly up to July 2011 totaling some CAN$7,371.00: she also paid for groceries CAN$153.00 to $200.00 per week, in addition to transportation expenses (no figure given) for them to attend school. I hold that the petitioner is to pay maintenance for both children at $.....per month. Although

McGregor is eighteen I accept that he needs special attention and the order with respect of him will be made until he is twenty at which time it should be reviewed.

[38] The Decree Absolute can be made only if the Court is satisfied that adequate arrangements are made for children of the marriage. The Court will grant custody of the children to the Respondent with reasonable access to the children by the Petitioner.

The standard of living enjoyed by the family before the breakdown of the marriage

[39] Counsel for the Petitioner's submission was that prior to the breakdown of the marriage, the parties enjoyed a comfortable middle class lifestyle. They are highly skilled professionals with excellent employment prospects. The parties are obligated to maintain themselves and the minor child of the family. The wife is unemployed from December 2010 but from viva voce evidence it does not appear that she is financially destitute. She was also sufficiently confident in her ability to discharge her financial obligations from her own resources in that she returned two cheques of $800.00 which the Petitioner had sent her. I accept counsel's submission.

The age of each party to the marriage and the duration of the marriage.

[40] The parties were twenty-one at the date of marriage and would now be about forty-eight years. The marriage lasted some seventeen years, from 15th December 1992 until the marriage was dissolved by decree nisi on 5th March 2010.

Any physical or mental disability of either of the parties to the marriage.

[41] There is no evidence of any such disability.

The value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution of the marriage, that party shall lose the chance of acquiring -

[42] The Petitioner holds a pensionable office. There is no evidence as to value and I do not take this factor into consideration.

The contribution 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.

[43] Both parties have contributed to the welfare of the family, financially and emotionally. The Respondent's evidence was that the Petitioner assisted MacGregor who needs special attention.

CONCLUSION

[44] I am not required to conduct a detailed investigation into the finances of the parties and try to asses and apportion what the parties are entitled to. That is a process which is better accomplished by the parties as they hold peculiar knowledge of their day-to-day family financial dealings. In some situations a benefit to the welfare of the family by the parties cannot be precisely valued or accounted for.

[45] In the equality method (which has not been displaced) I look at the overall picture. I acknowledge the sums of money that both parties have contributed to the welfare of the family: some $59,000.00 by the Respondent (part inherited value of Beachmont): some $31,000.00 by the Petitioner (shortfall on the sum required to pay for the Respondent's brothers' share) both sums not being precisely valued in the overall welfare of the family.

[49] Vehicles: The parties to keep the vehicles in their possession at date to this hearing.

Legal Expenses:

[50] The Respondent's evidence was that she met the legal expenses of $11,000.00, that is, 5% of the value of the Beachmont estate, after a failed attempt for the brothers to meet their share. She stated that the Petitioner did not make any contribution to that expense. I hold that it was no responsibility of the Petitioner, either as a purchaser of Beachmont property, or as the husband of a wife who received a gift from her father, to make a contribution towards the legal expenses of administration of the estate.

BEHAVIOUR

[51] I comment on the parties' behaviour in so far as the children are concerned. I received the impression that the children were being used 'to spite' one the other. If that is so, I trust that the parties would revise their thinking and use their education and commonsense towards ensuring that their children are given the opportunity of becoming useful members of any community of which they are a part.

ORDER

[51] 1. Custody of the minor child (disability of one) to the Respondent with reasonable access to the Petitioner.

2. The Petitioner is to pay $1,500.00 monthly maintenance from January 2011 for the children to be reviewed when MacGregor attains twenty years of age.

3. Relocation expenses to Canada of the children to be met equally by the parties. The Respondent to present a statement of those expenses in Chambers on 16th November 2011.

4. One party to purchase the other's share of Beachmont property on or before 31st December 2011. If there is no such sale, the property to be sold by public auction by the Registrar and the proceeds be divided equally between the parties.

5. As the Petitioner is making improvements to the house on La Croix property with the intention of living in it, the Petitioner to pay the Respondent's share of $37,666.00 to her, on or before 31st December, 2011.

6. The two fixed deposits ($23,000.00 plus and $12,000.00) and loan repayment related to the fixed deposits are to be shared equally.

7. The sum of $30,000.00 (profit on sale of the Glen property) is divided equally between the parties.

8. Liberty to apply.

9. No order as to costs.

Monica Joseph
High Court Judge (Acting)
12th September 2011.