

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

COMMONWEALTH OF DOMINICA
DOMHMT2010/0024
BETWEEN:

CATHERINE DEGALLERIE	Petitioner
and	
JOHN BAPTISTE DEGALLERIE	Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Singoalla Blomqvist Williams for the Claimant
Mrs. Dawn Yearwood-Stewart for Defendant

JUDGMENT

[2011: May; 14th, 29th, 30th]
[2012: June 21st]

- [1] **COTTLE J:** The parties were married in 1976. They were divorced in 2010. Both agree that they ceased to cohabit since 1996. There are no minor children with whom the court must now be concerned. The petitioner is now 62 while the respondent is 6 years older.
- [2] This application for ancillary relief consequent upon the dissolution of the marriage is brought by the wife. In her affidavit in support of her application she says that she is gainfully engaged in occupation as a shopkeeper. From this activity she says she generates \$400.00 income each month. From this income she has to meet monthly outgoings which she tallies at \$1,040.00. She explains her deficit financing by saying that she receives assistance from two adult children who reside with her. She has no other property.
- [3] She resides on a parcel of land of which the respondent is the registered owner. On the parcel there are three structures. The first is the former matrimonial home. The petitioner says that she did substantial renovations of that building with no assistance from the respondent. It's now valued

at \$66,360.00. It is part timber, part reinforced concrete. There is a second dwelling house made entirely of timber which is valued at \$9,000.00. This is occupied by the son of the petitioner and was built by him. The third structure is also made of timber and houses the petitioner's shop. This too is valued at \$9,000.00, according to Mr. Vincent Robinson, Licensed Land Surveyor. He values the lot on which these structures sit at \$45,000.00

- [4] The petitioner seeks a property adjustment order to vest this parcel of land and the matrimonial home in her. Apart from the renovations to the matrimonial home, the petitioner also swears that she paid off \$12,778.00, the balance of a loan to a third party secured by the property in 1994.
- [5] The respondent is retired. He has no source of income. Apart from the matrimonial home, he owns no property. He resides with his brother who is a security guard on the verge of retirement. He seeks to be awarded a lump sum representing his interest in the property as well as maintenance from the petitioner who is earning an income. He says that he is infirm and unable to work.

The matrimonial property

- [6] The matrimonial property consists of a single lot at Glanvillia measuring 3,750 square feet. The land was given to the husband in exchange for a parcel he owned at Picard. The Government acquired the Picard property for the establishment of the Ross University School of Medicine and the respondent received the land at Glanvillia. The Ross University constructed the house on the land. That house became the matrimonial property.
- [7] As noted earlier, the wife has done substantial renovations at her own expense but it must be noted that these renovation works were carried out after the husband left the home and the wife has had the entire benefit of residence to the exclusion of the husband since 1996.

Submissions

- [8] Counsel for the wife submits that the court should find that she is entitled to one half share of the matrimonial home but that she be compensated in full for all the "improvements" made to the property since 1996. These include the two timber buildings, one used by the wife as her shop and the other the home of her son. I am unable to understand why the husband should be made to pay for "improvements" he neither asked for nor receives any benefit from.
- [9] Counsel for the petitioner also suggests that the sum of \$12,778.05 representing the debt repaid to the bank by the wife should be reimbursed. She also demands a one half share of the proceeds of sale of a motor vehicle once owned by the husband as well as one half of the \$30,000.00 the husband had as his savings when he left the matrimonial home in 1996.
- [10] Counsel for the husband submits that the court should find that the husband is entitled to 60% of the value of the matrimonial home.
- [11] The Court when exercising its powers must have regard to all of the circumstances of the case. The aim is to put the parties in the position they would have enjoyed financially had the marriage subsisted. The court also must take into account the conduct of the parties in so far as this is just and operate on the assumption that each party would have properly discharged his or her financial obligations and responsibilities towards the other.

- [12] In the present case it may well be that the husband did not manage the resources he had in as prudent a manner as he might have done. That said, it is to be noted that had his management of those resources resulted in a position where he had prospered the wife would have wished to share in that prosperity. I therefore do not place much weight on the alleged fiscal irresponsibility of the husband in the past. I deal with the present position. He is effectively penniless.
- [13] The only asset of the marriage now extant is the matrimonial home. That is valued at \$129,360.00. Disregarding the two timber structures, the land and the matrimonial home is worth \$110,000.00 approximately. As noted earlier, the wife has renovated but she has also had exclusive possession for a long time. I think these two factors cancel each other out. In my attempt to reach fairness between the parties I conclude that an equal division of the remaining asset is the fairest way to go.
- [14] A property adjustment order is accordingly made. The parties are declared entitled to the matrimonial home in equal shares. In order to facilitate this equal division the following order is made:
- [15] The wife shall pay to the husband the sum of \$55,000.00 representing the value of his share of the matrimonial home. Upon payment of this sum the husband shall transfer his entitlement in the property to the wife. I make no order as to costs.

Brian Cottle
High Court Judge