

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

COMMONWEALTH OF DOMINICA
DOMHMT2009/0048
BETWEEN:

ANNIE WOODMAN	Petitioner
and	
GERALD ISRAEL WOODMAN	Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Dawn Yearwood-Stewart for the Applicant
Mrs. Laurina Vidal-Telemaque for Respondent

JUDGMENT

[2011: November; 18th]
[2012: February 14th]
[July 13th]

- [1] **COTTLE J:** The parties were married in 1984. The union was dissolved 25 years later. Consequent upon that divorce the wife now applies for ancillary relief. She is 52 years old. The husband is 57. Both are employed. The wife earns \$1,326.00 per month. She resides with 2 adult children in the matrimonial home. They contribute towards the household expenses. The husband's income varies. As an employee of the main seaport his income depends on the number of vessels which call at the port. On average he earns about \$1,300.00 per week.
- [2] The sole capital asset is the matrimonial home. Its value is not stated but there is a subsisting mortgage to the Bank of Nova Scotia to the tune of \$216,312.72. The monthly installments are \$974.00. Obviously at that rate the husband will not be able to pay off the mortgage in his working life. In any event, as stated earlier, this court has no evidence by which to arrive at any conclusion as to the equity existing in the matrimonial home, if any.

- [3] The wife urges the court to make an adverse inference to the husband because he has failed to disclose any valuation of the matrimonial home. The husband says that while the property is in his name it is the wife who resides in the house while he is confined to a small shed in the yard. It was open to her to obtain and provide a valuation for the guidance of the court, he says. How is the court to achieve fairness in these circumstances?
- [4] Counsel for the wife urges the court to award the wife 40% of the equity of the house as a lump sum payment. The husband's legal representative submits that having regard to the factors laid out in the Matrimonial Causes Act, the award should be at the rate of 33% of the value of the equity of the matrimonial home to be paid by installments. The suggested award to the wife was meant to cover all aspects of ancillary relief in this matter.
- [5] As can be seen from the foregoing there is not much difference in the position of the parties. The practical difficulty which faces the court is how to achieve this award to the wife calculated as a proportion of the present equity of the matrimonial home where the court has no evidence of the equity value? I would be content to make an award of 40% of the present equity value to the wife. I would also be happy to make an order for that sum to be paid by installments.
- [6] In the circumstances the parties are to select a single valuer to provide the court with an estimate of the present value of the matrimonial home. Upon receipt of such value the court will make an order along the lines indicated above. The cost of the valuation is to be equally shared between the parties. Should the parties fail to agree on a valuer they must submit to the court a short list of three valuers and the court will appoint one from that short list. Each party will bear his or her own costs.

Brian Cottle
High Court Judge