

**EASTERN CARIBBEAN SUPREME COURT**

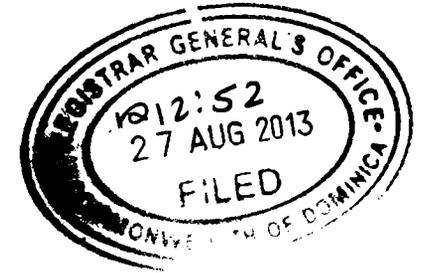
**COMMONWEALTH OF DOMINICA**

**IN THE HIGH COURT OF JUSTICE**

**DOMHMT2009/0055**

**BETWEEN:**

**DERRICKSON CHARLES**



Petitioner

and

**LIANA LEANNE PRINCE CHARLES**

Respondent

**Appearances:**

Mrs. Hazel Johnson for Petitioner

Mrs. Gina Dyer-Munro for the Respondent

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2013: March 19<sup>th</sup>

May 13<sup>th</sup>; 24<sup>th</sup>

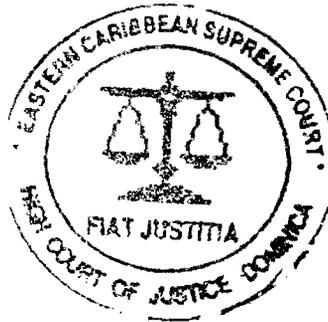
August 27<sup>th</sup>  
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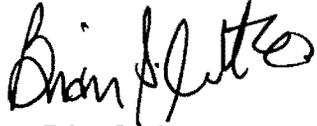
**JUDGMENT**

[1] **Cottle, J:** The parties were married on 1<sup>st</sup> December 2001. The decree dissolving the union was made absolute on 5<sup>th</sup> May 2010. The respondent now applies for ancillary relief. She seeks a property adjustment order transferring to her 70% of the interest in the matrimonial home now registered in the name of the petitioner. She also seeks an order for the custody and maintenance of the minor child Leon.

- [2] The husband is now 49 years old. The wife is 38. They are apparently in good health. The child of the union was born in 1996. In her affidavit of means in support of her application for ancillary relief filed on 23<sup>rd</sup> January 2012 the wife did not disclose that she had any assets or income from any source. On 29<sup>th</sup> October 2012 she filed a supplementary affidavit. She deposed that the matrimonial home, registered in the name of the husband, was valued at \$290,866.00 as at January 2012. She disclosed that she owned and operated a shop from which she earned \$10,790.00 each month. She has been operating that shop since 2003. Before operating her shop, the wife says she was employed at Grand Bazaar. She did not disclose her earnings from that source but says that she used the money to meet the household expenses and to look after the minor child.
- [3] In his affidavit in reply filed on 16<sup>th</sup> November 2012 the husband deposed that he is employed as a stateroom attendant with Royal Caribbean Cruise Lines. Between 1996 and 2001 he says he earned approximately \$2,385.00 per month. He says he would perform extra duties and earn another \$2,700.00 monthly. In 2001 the husband was promoted and his monthly earnings increased to between \$6,750.00 and \$8,100.00. He purchased the land on which the matrimonial home was built in 1997. He took a loan to do so. In July 2000 he took a further loan of \$100,901.47 to finance the construction of the matrimonial home. He says that he has been re-paying the loan. At the time of his affidavit the outstanding balance was \$31,854.53.
- [4] Since the initial construction the husband says he has extended the home by the construction of a lower level. The husband also revealed that the wife purchased a portion of land at Wall House containing 7,070 square feet. The land on which the matrimonial home is built is 2,919 square feet in extent. The husband also informed the court that the wife is the owner of two motor vehicles. It is unfortunate that the wife in her earlier affidavits did not see it fit to reveal the extent of her assets to the court while she was applying for ancillary relief. It was not until a further affidavit by the wife was filed on 14<sup>th</sup> March 2013 that she confirmed the existence of those assets.
- [5] At the end of the day these are the matrimonial assets that the court will consider in the determination of this matter.
- 1) The matrimonial home
  - 2) The land at Wall House
  - 3) The two vehicles
- [6] Section 25 of the Matrimonial Causes Act 1973 UK which is the statute applicable to the Commonwealth of Dominica, requires the court to consider all the circumstances of the case when exercising its powers. The aim is to put the parties so far as is practicable in the financial position they would have enjoyed had the union subsisted. Some of the important factors for consideration are enumerated in the statute. These include the income, earning capacity, property and other financial resources which each party has or is likely to have in the foreseeable future.

- [7] In the present case the wife resides in the lower section of the matrimonial home with the child of the marriage. He is now aged 16. According to the wife she earns more than the husband. She owns more land than the husband. She is younger than the husband and will therefore earn more than he will over the remainder of the respective working lives of the parties. It appears to this court that in striving for a fair distribution of the matrimonial assets that a deprivation of the husband's interest in 70% of the matrimonial home cannot be fair.
- [8] Given the state of financial resources the wife says is available to her, it is clear that she can construct her own home on her land in short order. I therefore decline to make any property adjustment order in favour of the wife as prayed. There remains the issue of the minor child. As noted earlier he will attain age 18 in about one year and four months. He has been residing with the wife. At the time of the filing of the petition for divorce, the son was a student at the Dominica Grammar School. I am content to order that joint custody be awarded to both husband and wife with the wife having primary care.
- [9] The parties will be equally responsible for the maintenance and upkeep of the minor child until he attains the age of majority. The wife and son will continue to reside in the lower section of the matrimonial home until the child attains 18 years of age. This will permit her sufficient time to complete the construction of her own residence.
- [10] I consider the above order is the best I can do to place the parties in the position they would have enjoyed had the marriage not broken down and each party had properly discharged his or her financial obligations and responsibilities to each other. Each party will bear their own costs



  
**Brian Cottle**  
High Court Judge