

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE (DIVORCE)

CLAIM NO. GDAHMT 2011/0004

BETWEEN:

ERIC PRIME

Petitioner

and

JOSEPHINE PRIME nee LEWIS

Respondent

Appearances:

Mrs. Celia Edwards, Q.C and Mr. Deloni Edwards for the Petitioner
Mr. Derick Sylvester for the Respondent

2014: February 5, April 16

JUDGMENT

[1] **MOHAMMED, J.:** The Respondent (“the Wife”) has applied to the Court for a property adjustment order with respect to the property situated at Mt. Gay, St. George’s, Grenada (“the Mt. Gay property”) and a Kia car registration No. PG 500 (“the car”). It is her view that based on her financial and non-financial contribution during the marriage she is entitled to a 50% share in both the Mt. Gay property and the car. She also seeks her costs of the application. The Petitioner (“the Husband”) has not denied the Wife’s financial and non-financial contribution to the Mt. Gay property but he is of the view that she is only entitled to a 10% net share. He denies that she is entitled to any interest in the car and he also asserts an interest in the property situated at Beausejour (“the Beausejour property”) which is

for the benefit of the Wife. The Wife is of the view that the Beausejour property does not form part of the matrimonial assets.

- [2] The three issues for determination by the Court are:
- (a) Is the Wife entitled to a one-half share of the Mt. Gay property?
 - (b) What share, if any, of the car is the Wife entitled to?
 - (c) Does the Beausejour property form part of the matrimonial assets, and if so, what share is the Husband entitled to?

Is the Wife entitled to a one-half share of the Mt. Gay property?

- [3] Both parties agreed that the Mt. Gay property was the matrimonial home. To determine the division of matrimonial assets the Court is guided by the following factors as set out in Section 25 of the Matrimonial Causes Act 1973:
- (a) 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, including in the case of earning capacity, any increase in that capacity which it would, in the opinion of the court, be reasonable to expect a party to the marriage to take steps to acquire.
 - (b) The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future.
 - (c) The standard of living enjoyed by the family before the breakdown of the marriage.
 - (d) The age of each party to the marriage and the duration of the marriage.
 - (e) Any physical or mental disability of either of the parties to the marriage.
 - (f) The contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family including any contribution made by looking after their home or caring for the family.
 - (g) The conduct of each of the parties, if that conduct is such that it would in the opinion of the Court be inequitable to disregard it.
 - (h) In the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit (for example, a pension)

which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

- [4] In my view, from the evidence presented in this matter, only the following factors are relevant to the determination of the share of the Mt. Gay property to be awarded to the Wife.

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.

- [5] The Wife was and is still the owner of the Beausejour property where there is a house. In 2011 when she filed the instant application she stated that she was a Security Officer by profession since 1986. Under cross-examination she said that during the marriage her salary was \$1,600.00 per month. There was no evidence of her present or any reasonably foreseeable income. The Husband is the owner of the Mt. Gay property and he is employed as a Customs Officer. He did not provide any evidence on his present income and any future income. In terms of real property each party owns his/her house and while they may be employed at present, based on their ages I find that any income earning capacity which they would have in the future would be very limited.

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

- [6] The marriage produced no children but each party had children before the marriage. At present the only financial needs of the Wife is to look after herself since she has already paid off for the Beausejour property and she is not financially responsible for her children. The Husband too is not financially obligated to his offspring but he is still paying a mortgage on the Mt. Gay property where he resides. He too is responsible for his own financial needs. There was no evidence from neither the Husband nor the Wife on the monthly financial needs of each party. The only difference in the financial needs of the parties is the Husband has an additional financial responsibility to pay off the mortgage.

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

- [7] The evidence on the standard of living enjoyed by the family before the breakdown of the marriage was bare. Based on their employment, the Husband is a Customs Officer and the Wife a Security Officer, I assess them to have enjoyed a lower middle class lifestyle before the breakdown of the marriage.

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

- [8] Both parties are presently 60 years old. They were married in 1995 at the age of 41 and the marriage lasted for 16 years, a medium term marriage.

The contributions which each of the parties has made or is likely in the foreseeable future to the welfare of the family.

- [9] Most of the evidence from both parties surrounded the financial and non-financial contributions by each party during the marriage. The Husband stated that when he got married he owned the Mt. Gay property. At that time, the house consisted of three bedrooms, bathroom, kitchen and living room. He denies that the house was unfinished as claimed by the Wife but he acknowledges that during the marriage improvements were made to the house and the Wife contributed to it. He states that he had an account with LA Purcell and LL Ramdhanny Hardware and he gave the Wife money to purchase materials for the improvements. Under cross-examination he conceded that although the house was tiled before the marriage, they purchased tiles and thinset during the marriage for additional tiling work. He also said that when the Wife moved into the Mt. Gay property the only furniture she brought were a bed and a three-piece living room set, which was not disputed by the Wife.

- [10] He denies that the improvements were substantial. He denies that the Wife or her children assisted him in the work done on the house, instead insisting that he did the majority of the work himself. He stated that based on the receipts annexed to the Wife's affidavit her total financial contributions to the improvements to the house is \$7,000.00. He denied that the Wife paid all the utility bills and groceries and that when she failed to pay them he made the payments.
- [11] He admitted that the Mt. Gay property was always mortgaged and when he moved the mortgage from the Public Workers Credit Union to the Bank of Nova Scotia ("the Bank") the Wife was also included on the mortgage to ensure that he would have been able to repay it. Under this loan the monthly mortgage installment was \$1,368.42. Under cross-examination he conceded that after the inclusion of his Wife on the mortgage he knew that her salary was assigned to the Bank. He also admitted that while the Wife's salary was also assigned to the Bank, deductions were made from his account to pay the mortgage and only on seven occasions deductions were made from the Wife's account towards the mortgage, which was a total of \$2,859.02. He also denies that monthly deductions were made from the Wife's salary during the period 2009 – July 2013 towards the mortgage payments. In his view the Wife's total financial contribution to the Mt. Gay property was approximately \$10,000.00 and since 2009 he has pay the mortgage in excess of \$60,000.00.
- [12] The Wife instead stated that when they got married the house at the Mt. Gay property was "an unfinished two bedroom concrete house on a lot of land". Under cross-examination she admitted that when she moved into the house it was liveable. She said that together with the Husband and the children, she worked on the improvements to the house and that at present the house consists of four bedrooms, bathroom, living room, kitchen, dining room, store room and a laundry and that an additional bedroom was constructed solely from her funds in 2000. She was unable to provide any evidence on the sum she expended on the construction of the said bedroom since she said that due to a fire at LA Purcell Hardware she was unable to access such records. In addition, she said in 2009 she used her own funds to purchase materials from LL Ramdhanny Hardware to

install cupboards and to tile a bedroom. She attached receipts to support her contention. She also alleged that she gave the Husband \$500.00 to purchase doors for the cupboards in the kitchen, which the Husband denied.

[13] The Wife asserted that she financially contributed to the mortgage payments and the payment of the household expenses such as the utilities and food. She said that when they got married they agreed that the Husband would pay the mortgage and she would pay for the utilities and purchase groceries. She stated that there were occasions when deductions were made from her account to supplement the monthly payment of the mortgage by the Husband. Although she stated that she paid off a loan which the Husband had with the Public Workers Credit Union in the sum of \$7,000.00 which he took to pay for his first wife's funeral expenses, she did not provide any evidence to support her contention. She said she also took care of the family.

[14] Based on the evidence of the parties on their financial and non-financial contribution to the Mt. Gay property, I find that when the parties were married the house was not unfinished but in an habitable condition. I do not accept that it was an unfinished structure since I equate unfinished with uninhabitable and this was not the case. The Husband was living there when he met the Wife and she moved into the Mt. Gay property from around 1994, shortly before the marriage. In my view, at that time the house consisted of three bedrooms, bathroom, kitchen and living room and during the marriage there were improvements/ renovations done to the house such as the addition of another bedroom to accommodate the Husband, Wife and their children, which the Wife financed. There were also the addition of a storeroom and a laundry room which both parties pooled their resources to construct.

[15] I also find that the Husband was solely responsible for the payment of the mortgage from the time he acquired the Mt. Gay property in 1990. However, the Husband would not have been able to acquire the loan with the Bank when he transferred the mortgage in December 2009 without the Wife being a Co-Borrower resulting in some occasions after December 2009 when the Wife's account was

deducted to supplement the Husband's mortgage payments. The Wife was primarily responsible for paying for the utilities and the purchase of groceries but this too was supplemented by the Husband.

[16] After examining the aforesaid factors with the evidence, if the Court is minded to depart from the equal division of the matrimonial property, Lord Nicholls in **White v White**¹ stated the approach the Court should take is:

“Sometimes, having carried out the statutory exercise, the judge's conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge's decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, a judge will always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so, the need to consider and articulate reasons for departing from equality would help the parties and the court to focus upon the need to ensure the absence of discrimination”.²

[17] In September 2011 the Mt. Gay property was valued for \$396,303.00, a valuation which both parties agreed to be bound by. While the Husband stated under cross-examination that he was still paying a mortgage on the Mt. Gay property there was no evidence at the time of the hearing of the instant application on the outstanding sum for the said mortgage. In any event this information ought not to be difficult to obtain.

[18] I have accepted that the Wife has indeed made a contribution to the improvement to the Mt. Gay property. However, I have not been persuaded by the Wife that the improvement was significant to entitle her to one-half share of the Mt. Gay property. In my view her contribution entitles her to a 20% net share of the Mt. Gay property for the following reasons.

[19] The Husband acquired the Mt. Gay property before the marriage. The Husband's financial contribution for the mortgage was far greater than the Wife's since he was primarily responsible for the mortgage and made a far greater financial contribution

¹ [2000] UKHL 54

² Paragraph 25

to its payment. While the Wife's salary was also assigned to pay the mortgage, only on a few occasions when the Husband's salary was insufficient the Wife's salary was deducted to pay the mortgage. The total sum being deducted was \$2,859.02 as admitted by the Wife.³ In my view the Wife's total contribution to the overall mortgage payment was minimal when compared to the Husband.

[20] I accept that there were improvements and renovations to the Mt. Gay property during the marriage and the Wife contributed financially in the purchase of building materials. The improvements were an additional bedroom, a storeroom, a laundry room. She also used her finances to purchase thinset and tiles. However, having accepted the Wife's evidence that she did contribute financially to the renovations in the Mt. Gay property, there was no evidence of the value of the Mt. Gay property before the renovations to assist the Court to determine the extent the renovations increased the value of the Mt. Gay property. In this regard, while I accept that the value of the Mt. Gay property was increased after the renovations/improvements I was not convinced that it doubled in value in order to enable the Wife to be entitled to one-half share.

What share, if any, of the car is the Wife entitled to?

[21] The evidence presented by both parties with respect to the car was bare. The Wife's basis for requesting a share in the car is "the said car was matrimonial property and was the sole transport used by us during the marriage"⁴. The Husband stated that he purchased the car in 2002 at the cost of \$13,000.00. He denies that the Wife has made any contributions to maintenance, insurance or upkeep of the car. The Licence and Registration is in his name and he also pays the insurance⁵. While the car is an asset acquired by the Husband during the marriage and by extension a matrimonial asset, in the absence of any evidence by the Wife rebutting or even challenging the Husband's evidence on the car, I accept that the Husband bore the sole financial responsibility for the car. I find that the

³ Paragraph 13 of the Wife's affidavit filed 16th November 2011.

⁴ Paragraph 16 of the Wife's affidavit filed 16th November 2011

⁵ Paragraph 14 of the Husband's affidavit filed 20th January 2012.

use of the car to transport the Wife during the marriage is not sufficient to bestow an interest on her.

[22] I therefore do not award any interest in the car to the Wife.

Does the Beausejour property form part of the matrimonial assets, and if so, what share is the Husband entitled to?

[23] In *White v White*⁶ Lord Nicholls described the approach the Court should adopt when dealing with different types of assets acquired before or during the marriage as:

“...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. According to this view, on a breakdown of the marriage these two classes of property should not necessarily be treated the same way. Property acquired before marriage and inherited property acquired during the marriage come from a source wholly external to the marriage. In fairness, where this property still exist, 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 the matrimonial property.

43. 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.”

[24] There is no dispute that the Beausejour property was allotted to the Wife since 1990 by the Government at a purchase price of \$1,300.00 with a monthly installment of \$200.00 which was some 5 years before the parties married. The Husband contends that, since he made two monthly payments, a total of \$400.00 towards the paying off of the purchase price and that the Wife was only able to pay off the purchase price after she contracted a relationship with him, the Beausejour

⁶ [2000]UKHL 54 at paragraph 42

property should form part of the matrimonial assets. He asked that the Beausejour property be valued and a certain portion allocated to him and set off from the share of the matrimonial home that is awarded to the Wife.

[25] However, I was not persuaded that the Husband made any financial or non-financial contribution to the Beausejour property to enable me to find that it forms part of the matrimonial assets for the following reasons. The Husband agreed that when he met the Wife the Beausejour property was already allotted to her. Although he stated that he made two payments in the total sum of \$400.00 I was not convinced since he was unsure where he made the payments. If indeed he had any interest in the Beausejour property he would have known that it was a wooden house and not a concrete house⁷. He even admitted under cross-examination that he had not even visited the Beausejour property since between 1995 -1998. In my view, he had little if any, interest in the Beausejour property and did not treat it as part of the matrimonial property of the parties.

[26] I therefore find that the Beausejour property does not form part of the matrimonial assets and therefore no share is awarded to the Husband.

Order

[27] The Wife is entitled to a net share of 20% in the Mt. Gay property.

[28] The Wife is not entitled to any share of the car.

[29] The Beausejour property does not form part of the matrimonial assets. The Husband is not awarded any share.

[30] Each party to bear his/her costs.

Margaret Y. Mohammed
High Court Judge

⁷ Paragraph 6 of the Husband's affidavit filed 3rd December 2013