

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

HIGH COURT OF JUSTICE (DIVORCE)

CLAIM NO. GDAHMT 2013/0028

BETWEEN:

CLAUDETTE PAULA BARTHOLOMEW

Petitioner

and

JOSEPH BARTHOLOMEW

Respondent

Appearances:

Ms. Karen Samuel for the Petitioner

Ms. Deborah Mitchell of Ciboney Chambers for the Respondent

2014: April 14; June 10

JUDGMENT

[1] **MOHAMMED, J.:** The parties were friends from childhood who commenced a serious relationship in 1996 which resulted in marriage on 3rd October 1998. The marriage broke down with the Petitioner ("the Wife") instituting divorce proceedings on 7th March 2013. The decree nisi was granted on the 17th April 2013 which was made absolute on 29th May 2013. The ancillary matters with respect the child of the family Jarel Glen Bartholomew ("Jarel") were resolved at mediation and the only outstanding matter is the matrimonial asset which is the matrimonial home situate at Vendomme, St George ("the matrimonial home").

[2] The Husband has applied to the Court for a 50% share in the matrimonial home ("the application"). He contends that although the land on which the matrimonial home was built ("the land") is vested solely in the name of the Wife, it was given to

both of them by the Wife's mother in contemplation of their marriage and as such forms part of the matrimonial assets. He also claims that he contributed in labour and financially to the construction of the matrimonial home.

[3] The Wife has asked the Court to dismiss the Husband's application on the basis that the land was a gift to her from her mother and not in contemplation of her marriage to the Husband, the contributions both financially and non-financially by the Husband have been insignificant compared to the Wife's contribution, and the Husband has not made full and frank disclosure of his financial position and as such adverse inferences ought to be made against him. She also contends that even if the Court finds that the Husband is entitled to a share in the matrimonial home she is unable to pay the Husband for such share due to her limited means due to the Husband's inconsistency in providing maintenance for Jarel for which she continues to be burdened with, and for whom she has to continue providing housing.

[4] Although the Husband alleged that the matrimonial home was valued at well over \$300,000.00 he did not provide any valuation to support his assessment. Instead, a valuation in October 2009 provided by the Wife stated the value of the land to be \$25,600.00, the building \$269,100.00 and external works \$4,500.00, the total sum being \$304,700.00¹. I therefore accept the sums stated in the valuation. The outstanding sum on the mortgage as at September 2013 was \$168,955.45².

[5] The issues which arise for determination are:

- (a) Was the land given to the Wife in contemplation of her marriage to the Husband?
- (b) Should the Court make an adverse finding against the Husband for non-disclosure of his finances?
- (c) Is the Husband entitled to a 50% share of the matrimonial home?

¹ Exhibit PB-17 of the affidavit of the Wife filed on 30th September, 2013

² Exhibit PB-20 of the affidavit of the Wife filed on 30th September, 2013

Was the land given to the Wife in contemplation of her marriage to the Husband?

- [6] The land comprises of 2,173 square feet and it was acquired by the Wife as a conveyance from her mother for the token sum of \$1,000.00³. The Husband contends that when the Wife's mother gave her the land in 1997 the mother knew that he and the Wife were planning to get married. He stated that they started a relationship in January 1996 and by June 1996 they were living together in the Wife's mother's house. They wanted to build a house somewhere but neither of them had land and it was on this basis the Wife's mother gave her the land to build the matrimonial home. He acknowledged that although they were never engaged before they were married, they spoke about getting married in 1996 since he wanted a child and the Wife stated that she would not have a child if they were not married. He stated the only reason his name was not included in the deed was because he was working on a cruise ship outside of Grenada at that time and he trusted his Wife.
- [7] The Wife's position is her mother gave her the land in 1997 to provide for her grandchildren. Her mother also gave land to her sister on the same basis to provide for her other grandchildren⁴. She denied that they were living together since June 1996. Instead, she said that she lived in her mother's house and he lived in his grandmother's house and for most of 1997 the Husband was out of Grenada.
- [8] I have concluded that the Wife's mother conveyed the land to the Wife to provide for her grandchildren and not in contemplation of the marriage between the Husband and the Wife for the following reasons. Both parties agreed that they were not engaged to be married at the time the land was given to the Wife. There was no evidence that the mother who lives in the USA knew that the Wife was in a

³ Exhibit PB-1 of the Wife's affidavit filed 30th September, 2013.

⁴ Exhibit PB-2 of the Wife's affidavit filed 30th September, 2013

serious relationship with the Husband and that they were planning to get married. The Husband failed to provide any evidence to demonstrate that the Wife's mother knew and approved of the relationship. The Wife already had two sons and I accept that it was not unreasonable that her mother wanted to provide for them since at that time the Wife was a single parent. The evidence from the Wife throughout these proceedings is her mother always provided financial assistance in assisting her and her children including when she had to provide alternative accommodation for first son in Grenville after an incident between the Husband and the first son. The provision of the land to the Wife was not unique since the mother also provided a lot to the Wife's sister at the same time for the sister's children to benefit. It was the Wife's mother who determined who got the land as a gift and the omission of the Husband's name on the deed, in my view, is a clear indication that it was not the Wife's mother's intention to give the land to the Husband.

[9] I therefore find that the land does not form part of the matrimonial asset.

Should the Court make an adverse finding against the Husband for non-disclosure of his finances?

[10] The Wife has submitted that she has made full and frank disclosure to the Court on her income and assets and that the Husband, who has made the application, has failed to reciprocate in the disclosure of his income and assets. She has asked the Court to make the adverse inference that the Husband is hiding his assets.

[11] The Husband's evidence of his income and assets are as follows. He does not own any property and the unfinished house in which he presently lives is owned by his sister, which leaks when it rains. In November 2013 when he swore to his affidavit in reply, he was employed with Quinns Construction, earning an average of \$1,000.00 per fortnight (\$105.00/ day). He worked on a cruise ship with Royal Caribbean International for seven years between 1996 to 2003. He failed to state

how much he earned during that period. He admitted that he has not always worked during the marriage and he had difficulties with alcoholism.

[12] Under cross-examination, the Husband admitted that he has been growing short crops since he was a boy to supplement his income. He makes about \$500.00 every two months and he sells his produce to Foodland and Foodfair groceries, but he did not think it was necessary to provide any evidence to the Court to support his contention. He admitted he worked at Sandals in August 2013 but he did not disclose his income to the Court. He acknowledged that he failed to provide any letter of employment or payslip and that the Wife had disclosed her income to the Court. He stated that he had no objection in disclosing this information but he was not advised by his attorney to disclose anything he earned from his employment at Sandals. He said that while he was employed on the cruise ship he was paid while on vacation but due to the lack of communication the Wife was unaware of this vacation pay. At the time of the trial he stated that he was earning an income of \$80.00 per day as a carpenter and the balance in his account at the Grenada Co-operative Bank in January 2014 was \$150.00.

[13] The approach the Court is to adopt in making a finding of failure to make full and frank disclosure by a party in matrimonial proceedings was described in **NG v SG**⁵:

“Where the court was satisfied that the disclosure given by one party had been materially deficient, the court was duty bound to consider, by the process of drawing adverse inferences, whether funds had been hidden. However, such inferences had to be properly drawn and reasonable. It would be wrong to draw inferences that a party had assets which, on an assessment of the evidence, the court was satisfied he had not. If the court concluded that the funds had been hidden then it should attempt a realistic and reasonable quantification of those funds, even in the broadest terms. In making its judgment as to quantification the court would first look to direct evidence such as documentation and observations made by the other party. The court would look at the scale of business activities and at lifestyle. Vague evidence of reputation or the opinions or beliefs of third parties was inadmissible in the exercise. The technique of concluding that the non-discloser had to have assets of at least twice what the claimant was seeking should not be used as the sole metric quantification. The court must be astute to ensure that a non-

⁵ [2011] EWHC 3270 at paragraph 16

disclosure should not be able to procure a result from his non-disclosure better than that which would be ordered if the truth was told".

[14] I have not been satisfied that the failure by the Husband to disclose his income, which was eventually disclosed during cross-examination, was materially deficient to enable me to make a negative finding against him. The Husband by his own admission has stated that he did not disclose all his income in his affidavits and that he had no problem doing so if his attorney had told him to do so. There was no evidence adduced by the Wife to persuade the Court that the Husband had hidden assets which enabled him to enjoy a lifestyle or that he was involved in any activities business or otherwise which was opposite to what he represented to the Court.

Is the Husband entitled to a 50% share in the matrimonial home?

[15] To determine the share of the matrimonial home the Husband is entitled to, the Court is guided by Section 25 of the Matrimonial Causes Act 1973 namely:

- (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.
- (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 made by each of the parties 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.

[16] The factors at (e) and (h) aforesaid are irrelevant based on the evidence in this matter and will not be considered in the determination of the instant application and I have already addressed (g). I will now consider the evidence in light of the relevant factors.

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.

[17] The Wife is presently employed with the Government of Grenada as the Court Administrator with the High Court. Her gross monthly salary is \$3,142.00⁶. Her mother who lives in the USA provides irregular financial assistance. It is expected that the Wife will continue to be employed with the Government of Grenada in her present position or some other position. Upon retirement she is expected to be entitled to a pension. She presently owns the land on which the matrimonial home was constructed and she lives in the matrimonial home with her children. The Wife has a source of regular income at present and in the future she has earning capacity.

[18] The Husband presently earns \$80.00 per day or approximately \$2,000.00 per month working in the construction industry. He professed to have carpentry skills and supplements his income from small-scale farming where he earns \$250.00 per month. He received training in Food and Beverage preparation while working on the cruise ship but he did not seek to get employment in Grenada using this training since he thought that he had better opportunities working in construction.

⁶ Exhibit P.B 19 of the Wife's affidavit filed 30th September, 2013

While the Wife has disputed the ownership of the house in which the Husband presently occupies, in the absence of any evidence to the contrary, I accept that it is not owned by the Husband. There was no evidence if the Husband would earn any pension after retirement. In my view, the Husband is a resourceful person with potential to earn income from farming, carpentry and the food and beverage sector. I therefore afford him income earning capacity.

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

[19] The Wife's total monthly expenses are \$3902.59⁷, which was not substantially challenged by the Husband. She remains responsible for the monthly mortgage of \$1,580.00 for the matrimonial home, which will continue until it is liquidated. She has listed her financial obligations as utilities \$306.00; gas \$50.00; transportation for her and the two children \$ 350.00; food \$400.00; clothing and medical \$100.00; house insurance \$ 173.33; life protection insurance \$63.26; loans and hire purchase \$440.00; shares \$50.00; education savings for children \$ 60.00, lessons for youngest child \$30.00 and tithes \$300.00. Although the Husband queried the outstanding sum due on the mortgage, I accept the Wife's evidence since he failed to substantiate his allegation. I also accept the Wife's monthly expenses for the same reason. She also stated that she has had to supplement the maintenance of Jarel when the Husband falls short in his payment, and he has acknowledged falling short during the early part of 2014.

[20] The Husband failed to provide any evidence to the Court on his monthly expenses save and except his obligation to maintain Jarel. This Court's role is not to engage in speculation but can only make findings based on evidence. By the agreement arrived at mediation and entered as an order of the Court the Husband is to pay the sum of \$250.00 per month in addition to groceries from the Husband's sister shop up to the value of \$80.00. The application was made by him, he is

⁷ Paragraph 37 of the Wife's affidavit filed 30th September, 2013

represented by able and competent Counsel and the onus was on him to provide all the relevant evidence to assist the Court to make a fair award. Any failure on his part must be to his detriment. I therefore find that the Husband's only monthly obligation, based on the evidence he has presented, is the sum of \$330.00.

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

[21] During the marriage the parties enjoyed a lower middle-class lifestyle .

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

[22] The Husband is presently 47 years and the Wife is 46 years old. They were married for 14 years of marriage, which is a medium term marriage.

The contributions made by each of the parties to the welfare of the family including any contribution made by looking after their home or caring for the family.

[23] It was not in dispute that the Wife⁸ paid all the monthly mortgage installments of \$1,580.00 from inception to present; the Wife took out the mortgage for the initial sum of \$42,000.00 and additional credit union loans to finance the construction of the matrimonial home⁹ which were later refinanced; the construction of the matrimonial home was a joint effort by both parties; the Husband contributed financially to its construction; both parties purchased groceries, cooked for the family and paid for the utilities and even when the Husband was not working in Grenada he still sent money to the Wife while the matrimonial home was being constructed. The extent of the contributions made by both parties is in dispute.

⁸ Exhibit PB-4 to the Wife's affidavit filed 30th September 2013.

⁹ Exhibit PB-4 to the Wife's affidavit filed 30th September 2013.

[24] The Husband attempted to paint a picture of the Wife's mismanagement of the mortgage and mishandling of the funds obtained after Hurricane Ivan. He alleged that the Wife borrowed several sums of money using the matrimonial home as security to seek medical attention, to travel with her ill mother, to send money to her first son who was studying in Cuba and to build a house for the said son when he had to leave the matrimonial home. He also alleged that after Hurricane Ivan they received \$61,000.00 as insurance of which they used a small sum to change the roof and then he gave the Wife \$40,000.00 to use to liquidate the mortgage, which she failed to do.

[25] However, I was satisfied from the detailed and comprehensive explanations provided by the Wife that the Husband's assertions were simply unsubstantiated allegations. The Husband admitted that he did not know the full estimate of the costs of the damages after Hurricane Ivan, and the Wife stated that the extent of the damage to the matrimonial home, according to a report from Francis Jeremiah, was \$120,445.00¹⁰. She admitted that she received the sum of \$61,000.00 from GTM Insurance Company and she hired a contractor Fitzroy Elcock who did the repairs with the money and then she took small loans at different times to complete further repairs. She denied that the Husband repaired the roof and gave her \$40,000.00 to pay off the loan since the insurance money was not paid to him, and in September 2004 the loan balance was \$112,978.33 so \$40,000.00 could not have paid off the loan.

[26] The Wife also denied that she borrowed money for her personal use with the matrimonial home as security save and except on one occasion in September 2007 when she used it as security to borrow \$700.00. She admitted that in 2011 she took a loan of \$1,000.00 from the Grenada Public Service Co-operative Credit Union for surgery and in 2005 and 2007 she took loans to visit her mother in the USA. She denied that her mother ever visited Grenada, became ill and had to be taken overseas as alleged by the Husband. She maintained that her first son's

¹⁰ Exhibit P.B 10 of the affidavit of the Wife filed 30th September 2013.

studies in Cuba was funded by a full scholarship and she paid a "sou sou" to finance tickets for him to return to Grenada at the end of each school year.

[27] I have also found that the Husband sought to exaggerate his financial contribution to the construction of the matrimonial home. He stated that he paid for the excavation of the land in preparation for construction of the matrimonial home. He alleged that the insurance for the house was in both their names and that he paid half of the annual insurance policy and in support he produced a copy of the insurance policy for 2012¹¹. He sent money for the Wife to survey the land and he did not dispute the receipt being in her name since she was in Grenada and he was working on a cruise ship, but he could not place a money value on the total sum he sent to the Wife during that period since he did not keep a record and he could not retrieve all the Western Union receipts, but he was certain that it was more than the sum alleged by the Wife.

[28] On the other hand, the Wife described their relationship as fairly good. She agreed that the Husband sent money to her during the construction of the matrimonial home but she stated that it was irregular, such as twice a month, once every two months and twice fortnightly. The total sum she said he sent was EC \$4,191.22 based on the Western Union receipts she produced¹². She stated she paid \$1,600.00 to blast stones after receiving the first disbursement from the loan and \$1,200.00 to have the stones crushed. She also paid for the survey and legal fees. I was satisfied from her evidence that the Wife oversaw the construction and was familiar with the details, therefore I accept her evidence on this matter. I have found that the Wife's financial contribution to be more significant.

[29] I have also found that the Husband's financial contribution to the family during the marriage to be irregular and that it was the Wife who carried the greater burden of this responsibility. It was the Husband's financial responsibility to pay the water

¹¹ Exhibit JB-1 in affidavit of the Husband filed on 21st November 2013

¹² Exhibit PB-7 of the affidavit of the Wife filed 30th September 2013.

and electricity bills and to purchase groceries for the family. However, he did not faithfully honour those commitments since there were arrears of the said utility bills when he was ordered out of the matrimonial home, as evidenced by the bills exhibited to the Wife's affidavit¹³. The Husband admitted that when he met the Wife she already had two minor children yet the Wife had to provide groceries to feed the said children. He admitted that he had a problem with alcoholism during the marriage and he was not always working and when he left the matrimonial home, there were arrears on the electricity bill and he was uncertain on the status of the water bill. This was consistent with the Wife's position, who stated that she always worked during the marriage and the Husband had difficulties keeping a job due to his alcoholism, and that he spent his money to support his addiction causing her to step in and supplement the payment of the utility bills. He did not even assist the Wife with her medical bills when she needed surgery since she had to raise a loan to finance this. He admitted that the Wife did not protest during the marriage that she would cut and make do with her finances and that she did anything for him including caring for him during hospitalization.

[30] Even the Husband's evidence on his non-financial contribution to the construction of the matrimonial home was exaggerated. He wanted to take credit for organizing two "maroon" to assist in the casting of the decking of the house when he was on vacation but she admitted that the Wife was involved. He stated that he built cupboards and painted but he agreed that the Wife's brother-in-law did some painting. The Wife denied the use of "maroon" and stated that she hired a contractor.

[31] Further, the Husband stated that three days after Hurricane Ivan, despite having sustained an injury to his foot, with some assistance he was able to cover most of the roof of the house for his family. He worked on re-installing windows and doors after the hurricane. He denied that a contractor did any work on the house. However the Wife denied that the Husband did any repairs to the roof after Ivan

¹³ Exhibit PB-8 of the Wife's affidavit filed 30th September 2013.

since the injury to his foot required 33 stitches and he took 6 months to recover from the injury. While I have no doubt that after the devastation of Hurricane Ivan the Husband did what was necessary to provide shelter for his family, in light of the nature and extent of his injury I remain unpersuaded that he did the type and extent of physical work which he alleged.

[32] In **White v White**¹⁴ Lord Nicholls suggested the approach a Court should adopt in the division of matrimonial assets in particularly where the Court is satisfied that it has grounds to depart from the equal division of the matrimonial assets. At paragraph 25 he said:

“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”.¹⁵ (Emphasis mine)

[33] I have not been persuaded by the Husband that he is entitled to one-half of the matrimonial home for the following reasons. I have found that the contributions by both parties were so disproportionate that the application of the presumption of equality would be unfair. His financial contribution was far less than the Wife, who worked during the entire marriage, paid the mortgage installments from inception to present and who will continue to be responsible for the payments until liquidation. However, this was not her only contribution since she still supplemented the Husband’s financial responsibilities since she too purchased groceries and paid the telephone bill and paid off the other utilities when the Husband failed to pay the entire bills. Further, the Husband did not compensate for his unequal financial contribution to the matrimonial home and the family by

¹⁴ [2000]UKHL 54

¹⁵ Paragraph 25

making up with his non-financial contributions. In the circumstances, I award the Husband 10% of the net value of the matrimonial home excluding the land. I have assessed this sum to be \$13,574.45.

- [34] Counsel for the Wife submitted that even if the Court finds that the Husband is entitled to a share of the matrimonial home, the Wife is unable to pay the Husband for the said share since she has no means given her evidence in this matter, the Husband's failure to fulfill his financial obligation to pay maintenance for Jarel prejudices the Wife, maintenance is a compromised figure and the Wife has to continue to provide housing for the Jarel for many years. Counsel failed to provide any learning by which the Court is empowered in exercising its discretion under section 25 to make such an order. This position taken by Counsel did not find favour with the Court since the Court's finding on the Husband's share is separate and apart from how the share is to be paid. In my view this matter more is appropriate for enforcement of the order.

Order

- [35] The land does not form part of the matrimonial assets.
- [36] The Husband's share in the matrimonial home is 10% of the net value which I have assessed in the sum of \$13,574.45.
- [37] Each party will bear his/her own costs of the application.
- [38] Liberty to apply.

Margaret Y. Mohammed
High Court Judge