

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

HIGH COURT OF JUSTICE (DIVORCE)

CLAIM NO. GDAHMT 2013/0006

BETWEEN:

JULIE BROWN nee MCQUEEN

Petitioner

and

ANDREW GARVIN BROWN  
(Executor of the Estate of Malcolm Brown, Deceased, Substituted by Order  
of the Court dated the 29<sup>th</sup> January 2014)

Respondent

Appearances:

Mr. Derick Sylvester for the Petitioner  
Mr. Alban John and Ms. Thandiwe Lyle for the Respondent

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2014: September 30; October 27.  
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JUDGMENT

[1] **MOHAMMED, J.:** The Petitioner ("the Wife") has applied to the Court for a property adjustment order with respect to the property situated at Confer, St. George, Grenada ("the Confer property") and a joint account number 8007526 formerly at Scotiabank ("the joint account"). The Confer property is solely owned by the Husband and it was valued in July 2014 at EC \$864,000.00. The Wife contends that due to her financial and non-financial contribution during the marriage she is entitled to a 50% share in the Confer property and 50% of the proceeds of the joint account as at the date prior to its closure. She also seeks costs of the application.

[2] The Respondent ("the Husband") has denied that the Confer property is part of the matrimonial property. He has also denied that the Wife made any financial contribution to it, and while he has admitted that they both did work on the Confer property he is of the view that this does not afford the Wife any share. He also denies that she is entitled to any share in the joint account and he has requested the Court to find that he made substantial contributions to the improvements of the Wife's property at Marian ("the Marian property") and to award him such sum which the Court finds that he invested in it. The Wife has denied the Husband's claim to any contributions to the Marian property.

[3] The issues for determination by the Court are:

- (a) Did the parties intend for the Confer property to be matrimonial property?
- (b) Is the Wife entitled to any share of the Confer property?
- (c) What share, if any, of the joint account is the Wife entitled to?
- (d) Did the Husband invest substantial sums in the Marian property, and if so, should he be reimbursed?

[4] The evidence to determine the aforesaid issues came from the Wife, Trevor Bruno and Gary Louison. Affidavits were filed by the Husband, however he passed away in December 2013 leaving the Court without the benefit of having his evidence tested in cross-examination. At the hearing Counsel for both parties indicated that although they had filed affidavits for other persons, they were not relying on them.

**Did the parties intend for the Confer property to be matrimonial property?**

[5] It was not in dispute that the Confer property was not the matrimonial home; that the Husband purchased the land for the Confer property for \$120,000.00 using his own funds (\$75,000.00) and a small loan (\$45,000.00); he alone financed the construction of the house from the proceeds of the sale of his house at Mt. Moritz ("the Mt. Moritz property") which was \$623,000.00; the construction commenced before they were married; and that the rent collected from the Confer property was deposited into the parties' joint account.

- [6] The Husband's position is the Confer property is not matrimonial property since the Wife refused to join in with him when he was purchasing the land and she did not treat with the Confer property as a joint effort by both of them. The Wife does not share this view and instead is firmly of the opinion that the Confer property was treated as matrimonial property.
- [7] In **Geary v Rankine**<sup>1</sup> Lord Lewison described the approach the Court should take in determining how to treat with property, which is not the matrimonial home, acquired by a party during cohabitation with another person prior to the marriage. In that case while the parties were cohabiting the Husband purchased a property for business purposes using his own funds. They were married after the purchase and subsequently the Wife who worked in the property without a salary made a claim for her non-financial contribution. While it appears that the Wife's action was grounded in trust, the principles set out by Lord Lewison who referred to the learning in **Jones v Kernott**<sup>2</sup> are useful in determining whether the Confer property should be treated as matrimonial property. Lord Lewison surmised that the Court is to examine the parties conduct to determine if they had a common intention to treat the property as matrimonial property.
- [8] In the instant matter, at the time when the Husband purchased the land he stated that the house he intended to build on the Confer property was to be the matrimonial home. He first stated at paragraph 5 of his affidavit filed 2<sup>nd</sup> May 2013 that when he was contemplating purchasing the land at Confer in 2007 the parties were not married. Then he stated at paragraph 7 of his affidavit filed on 22<sup>nd</sup> July 2013 that while he was staying at the Wife's residence, the Marian property, he planned to build the residence at the Confer property for the purpose of the matrimonial home after they married. He also stated that his plan for a joint endeavor between both of them was rejected by the Wife and he thereafter purchased the land and constructed the house with his own finances. In the absence of his evidence being tested in cross-examination, in my view the Husband proceeded to construct the house knowing that the Wife was not

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<sup>1</sup> [2012] EWCA Civ 555

<sup>2</sup> [2011] UKSC 53

prepared to assist him financially but it was still his intention that it was to be the matrimonial home.

[9] The timeline of the relationship between the parties also supports the contention that the Husband intended for it to be treated as matrimonial property. The Husband admitted that the parties met in April 2006 and started their relationship. In 2007 when he sold the Mt. Moritz property he moved in to live with the Wife, which coincided with the acquisition of the land by the Husband, and they were still living together when the Husband commenced the construction of the house in 2008 and thereafter they were married in 2009.

[10] However, this intention by the Husband to treat with the Confer property as matrimonial property did not change even with his knowledge that the Wife was not committed financially to the project, as confirmed by his actions. He knew that he was the sole owner of the Confer property yet he allowed the real estate agent to prepare a "nonexclusive listing agreement: rental", which was prepared *after* the parties were married, referring to the Husband and Wife as the owners of the Confer property<sup>3</sup>. He admitted that they both had keys for the Confer property and even the rent of the Confer property was used by both parties during the marriage as income. It was not paid directly to the Husband nor was there any evidence that he had the exclusive use of it. If he intended otherwise, then he would have made such arrangements to specifically exclude the Wife. However, he failed to do so. The evidence was that the rent was paid into the joint account of the parties and they both had access to and used funds from this said account. Indeed it is the Husband who said that the Wife used the funds from the joint account for her general maintenance and upkeep, to which he had no objection.

[11] Although it is reasonable to conclude that from the Wife's conduct early in the relationship when the land was purchased that she did not show any interest in the Confer property, it appears to me that her position subsequently changed by her conduct. The Husband did not dispute that the Wife assisted him in the clearing of

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<sup>3</sup> Exhibit F to the affidavit of Julie Brown nee Mc Queen filed 17<sup>th</sup> May 2013

the lot, the breaking up and clearing of boulders on the land, the purchasing and planting of the lawn and choosing the paint colour. In my view such actions demonstrate a change of intention by the Wife as the relationship progressed.

[12] For the aforesaid reasons, I have concluded that the parties intended and treated the Confer property as matrimonial property.

### **Is the Wife entitled to any share of the Confer property?**

[13] To determine if the Wife is entitled to any share of the Confer property 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.

- [14] From the evidence presented in this matter, only the following factors are relevant to the determination of the issue.

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.

- [15] The Wife was and is still the owner of the Marian property. She lives there and she earns income from rent in the total sum of \$1,100.00 per month. In 2013 when she filed the instant application, she stated that she was a retiree in receipt of pension but she did not state the sum. Although both parties were under a duty to make full and frank disclosure of all relevant circumstances<sup>4</sup> to the Court the Wife failed to disclose her pension and her accounts. The Husband was the owner of the Confer property and at the time of the filing of the application he too was a retiree receiving an undisclosed pension. I find that the Wife's income earning capacity is limited to her collection of rent from the Marian property and her pension.

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

- [16] At present the only financial needs of the Wife is to look after herself since she is not financially responsible for anyone and there was no evidence of her monthly financial needs.

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

- [17] The evidence on the standard of living enjoyed by the family before the breakdown of the marriage was limited. Based on the evidence that they were retirees in receipt of their own pension, the Wife received rent in the sum of \$1,100.00 per month from the Marian property which she owned and they received rent from the Confer property in the sum of \$3,500.00 per month, I assess them to have enjoyed a middle class lifestyle before the breakdown of the marriage.

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<sup>4</sup> Livesey (Formerly Jenkins) v Jenkins [1985] AC 424

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

- [18] It was not in dispute that when both parties met in April 2006 they were mature since the Husband was 64 and the Wife was 62. At present the Wife is 70 years old and the Husband passed away in December 2013. Shortly after they met they started living together in late 2006, and when they married in February 2009 the Husband was 67 years and the Wife was 65 years. The Wife filed for divorce in January 2013 and it was pronounced absolute in April 2013. Neither the relationship nor the marriage lasted long since the period between cohabitation and the decree absolute was seven years and the period between the marriage and the absolute was four years. In brief this was a short marriage.

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

- [19] The crux of the Wife's claim for her financial contribution to the Confer property lies with a contribution of \$70,000.00. She stated that she sold a parcel of land at Morne Jaloux on 29<sup>th</sup> May 2009 and gave the Husband \$70,000.00 to finish the construction of the house since he was in financial difficulty. She stated that she deposited \$60,000.00 in the joint account and she gave him \$10,000.00 in cash to pay the builder. Under cross-examination, she admitted that the agreement for the construction of the building was \$479,666.00 and if the proceeds of the Mt. Moritz property was \$623,000.00, there was a surplus. However, she still insisted that the costs had changed but she was unable to indicate where that was stated.
- [20] The Wife's witness Trevor Bruno, the contractor who built the house on the Confer property, stated that by the end of April 2009 the Husband was in a financial crisis and that \$70,000.00 was required to complete the house. The Wife had indicated to him that she had a piece of land at Morne Jaloux which she sold and the proceeds of which were used to complete the project. I find that Mr. Bruno's evidence was vague and lacking in substance. Mr. Bruno was the builder. He would have known how much money he had received based on the agreement up

until the time when both he and the Wife said that the Husband was short of funds. However, he gave no evidence on where the construction had reached at that stage, what was completed and what was still required to be done which would have costed \$70,000.00. In the absence of such details I find that his evidence on this matter to be unconvincing as to its truth.

- [21] The Husband's version was he financed the Confer property alone without any money from the Wife. The agreement to construct the house was not signed by the Wife as a party but merely as a witness. He admitted that sometime in 2009 when the Confer property was nearing completion and they were still residing at the Marian property, the Wife sold a piece of land she inherited from her father and the Wife informed him that she placed \$70,000.00 into the joint account from the sale of the land. From that time in 2009 until they separated, the Wife used funds from the joint account for many things including shopping and furnishing the Marian property.
- [22] While the Court did not have the benefit of cross-examination to test the veracity of the Husband's evidence, I was not convinced that the Wife made any financial contribution to the Confer property for the following reasons. The Husband was in receipt of pensions and the surplus between the proceeds from the sale of the Mt. Moritz property and the contracted sum to construct the house on the Confer property was \$143,573.25.
- [23] While the Wife alluded to increased costs she failed to detail the items where the costs increased and by how much. In my view, if the Wife was as involved in the supervision of the construction of the house as she alleged then such details would have been within her knowledge and information. Both the Wife and Trevor Bruno referred to the Husband suffering a financial crisis and could not finish the house but neither of them stated in their affidavits the nature of the financial crisis and the circumstances which caused it to arise.

- [24] In my view all the bank records showed was only \$60,000.00 was deposited into the joint account but there was no evidence from the bank records that the \$60,000.00 was used solely for the construction of the Confer property.
- [25] The Wife's evidence of her non-financial contribution to the Confer property were: she cleared the lot at the Confer property with the Husband assisting. She cut the bushes, the grass and burnt the debris after. Under cross-examination she admitted that they paid a person to cut three trees which they could not cut with a cutlass. She was on site supervising construction of the house. She chose the colour of the paint and tiles and made most of the decisions during construction. She made the arrangements to concrete the yard. She spent weeks building fire at the bottom of the boulders and applying cold water to have them crumbled and she moved the furniture into the house and decorated it. She also stated she planted and maintained the lawn and that after the tenant left she cleaned the house, she got the chairs re-upholstered and she made arrangements to have repairs done to the yard.
- [26] Mr. Gary Louison did not present himself for cross-examination. He was the architect who prepared the plans for the house on the Confer property. He stated that the Wife contacted him about the project and she gave him a sketch and newspaper clippings. He also stated that during the construction when he visited the Confer property he met both the Husband and the Wife. In my view his evidence confirms that the Wife made a minimum contribution to the project and that the Husband did show interest since he was on the site.
- [27] Mr. Trevor Bruno stated that he dealt with the Wife most of the time since she supervised the construction. According to him, the Wife prepared the cheques which needed to be issued. He stated that he saw the Wife spearheading the clearing of the land by cutting down trees and plants since he was working on another lot in close proximity. He assisted in power washing the back and deck of the house and repairs to the tank after the tenant left. The Husband disputed Mr. Bruno's evidence and instead stated that he dealt with Mr. Bruno and made payments to him. While it was clear to me that Mr. Bruno's intention was to support

the Wife's position, I accept his evidence that the Wife assisted the Husband in the clearing of the lot of land and her role in the breaking down of the boulders.

[28] To the Husband's credit, he did not deny many aspects of the Wife's non-financial contribution but instead his position was they both worked together and that she overstated her role. The Husband admitted that both he and the Wife cleared the shrubs on the land with the assistance of Emmanuel Hypolite. He stated that he paid Sydney Binda \$150.00 to use his chain saw to clear the land. He stated that he showed interest in the construction of the house since it was his money financing the project. He stated that all other decorative materials and furnishings were chosen jointly by both the Husband and Wife but he paid for everything. He admitted that it was the Wife's idea to light the fires on the boulders followed by applying cold water but he stated that they did so together and when the stones broke up he alone carted it away. He also admitted that he and the Wife bought and planted grass but he stated that Mr. Emmanuel Hypolite maintained it and he paid him. He denies that the Wife arranged and paid for paving the yard to the Confer property. He stated that the Confer property was furnished with furniture from the Mt. Moritz property but he purchased a new stove, refrigerator and microwave oven.

[29] Based on the aforesaid admissions made by the Husband, I accept that the Wife made a non-financial contribution to the Confer property. In my view, both parties worked together in clearing the lot as far as it was possible to, but where they were unable to, the Husband paid someone to complete the job. They both worked on the breaking up of the boulders but the Husband was the person who moved the crushed stone. They were both on the construction site, they were both involved in the selection of paint and in other activities concerning the house after it was rented.

[30] The leading authorities on the division of matrimonial property are **White v White**<sup>5</sup> and **Miller v Miller**<sup>6</sup>. In both cases the Court stated that the factors in section 25

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<sup>5</sup> [2001] 1AC 596

<sup>6</sup> [2006] UKHL 24

are to be examined in order for the Court to arrive at a fair award based on the particular case. In *Miller* Lord Nicholls described how the Court seeks to determine what is fair to the parties. He stated at paragraph 9:

“The starting point is surely not controversial. In the search for a fair outcome it is pertinent to have in mind that fairness generates obligations as well as rights. The financial provision made on divorce by one party for the other, still typically the wife, is not in the nature of largess. It is not a case of ‘taking away’ from one party and ‘giving’ to the other property which ‘belongs’ to the former. The claimant is not a supplicant. Each party to a marriage is entitled to a fair share of the available property. The search is always for what are the requirements of fairness in the particular case.”

[31] Lord Nicholls continued by setting out the three guiding principles of fairness, compensation and sharing. On the principle of sharing, he stated:

“A third strand is sharing. This ‘equal sharing’ principle derives from the basic concept of equality permeating a marriage as understood today. Marriage, it is often said, is a partnership of equals. In 1992 Lord Keith of Kinkel approved Lord Emslie’s observation that ‘husband and wife were now for all practical purposes equal partners in marriage’: *R v R* [1992] 1 AC 599, 617. This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: ‘unless there is good reason to the contrary’. The yardstick is to be applied as an aid, not as a rule.

[32] I have been satisfied that there are ample reasons to depart from awarding an equal share of the Confer property to the Wife. My reasons for this departure are: This was a short marriage. The Husband was the sole financial contributor since he purchased the land and financed the construction of the house. The source of the monies to purchase the land was from the Husband’s personal finances and to construct the house on the Confer property was from the sale of the Mt. Mortiz property. All the Husband’s personal finances which he used for the Confer property were acquired by him before he met the Wife. There was no financial contribution by the Wife since she failed to prove that she contributed \$70,000.00 towards the construction of the house. Both parties entered into the marriage with assets such as each owned a house and they were both in receipt of pension. The Wife failed to disclose her pension, her bank accounts, but she had additional income from rent which she received from the Marian property. The non-financial

contribution the Wife made to the construction of the house on the Confer property was small when compared to the Husband's financial and non-financial contribution.

[33] I also find that this is an appropriate case to order a lump sum payment to compensate the Wife. There were no children from the relationship between the parties and the Husband has already passed on and, therefore, it will be administratively easier to pay the Wife the sum due to her from the Husband's estate. In assessing the sum to be paid to the Wife I took into account that the value of the Confer property was EC \$864,000.00, and considering the Wife's future needs, she is to be compensated for her non-financial contribution, and there are adequate reasons to depart from the equal sharing principle, I am of the view that a fair sum is \$43,200.00 which is 5% of the value of the Confer property.

**What share, if any, of the joint account is the Wife entitled to?**

[34] The Wife has asked for 50% of the proceeds of the joint account prior to its closure. She stated that when the Husband closed the account in January 2013 he did not inform her about its closure neither did he indicate the balance. The Husband first stated that at the time of the closure of the joint account it had maximum \$6,000.00. He subsequently changed his position to \$3,598.49.

[35] It was not in dispute that the Wife had her own account at Scotiabank #8013619 ("the Wife's account") to which she did not add the Husband's name. The joint account was initially the Husband's account which he added the Wife's name before they got married. There was another account at Scotiabank which the parties used, a chequing account # 3001952 ("the chequing account"). After the Husband closed the joint account he opened his own account #3006076 ("the Husband's account"). The Husband produced bank records for certain periods of the joint account, the chequing account and the Husband's account.

[36] Both parties agreed that the rent from the Confer property was deposited into the joint account. At first the Wife stated that the utility bills and groceries were paid

from the joint account. However, under cross-examination she stated that the bills were paid from the chequing account and that the pension from both parties were deposited into the chequing account. She denied that while they were living together at the Marian property money was transferred from the joint account into the chequing account. She stated that the chequing account only had sufficient funds to pay the bills.

[37] The Husband stated that sometime in 2009 the Wife told him that she deposited \$70,000.00 into the joint account. He alleged that the Wife used funds from the joint account for shopping and furnishing the Marian property. He denied that the Wife ever relied on the joint account for her general care and maintenance. The Husband confirmed that his pension was deposited into the chequing account and that the funds from the chequing account were used to defray the household and shopping expenses while they lived together at the Marian property. His position was funds were regularly transferred from the joint account to the chequing account to meet the expenses for the Marian property.

[38] An examination of the bank records for the chequing account exhibited by the Husband indicated the following<sup>7</sup>. During the period February 2012 to September 2012 around the 16-18<sup>th</sup> of each month there was a deposit of approximately \$2,600.00 into the chequing account. Each month the consistent pattern of payments made from this account was for groceries such as Real Value Supermarket, Food Fair Supermarket and Andalls and Associates. The other noticeable payments made from this account were to Independence Agencies, Geo F Huggins, Westerhall Health and Car and Bryden & Minors. The withdrawals were often and deposits were at most twice per month, and the balance in the account was usually around \$5,000.00. This snapshot of the chequing account activity confirms the Husband's position that the bills and household expenses were paid from this account and the Wife's position that they only kept enough funds in the chequing account to cover their expenses. Further, since they were living at the Marian property during this time it is reasonable to accept that the

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<sup>7</sup> Exhibit B2 of the affidavit of Malcolm Brown filed 18th June 2013

expenses which were being met were for the Marian property. However, due to the infrequency of the deposits into this account I do not accept the Husband's evidence that money was transferred on a regular basis from the joint account to the chequing account.

[39] The records provided for the Husband's account was for the period 22<sup>nd</sup> January 2013 to May 2013<sup>8</sup>. The opening balance was \$3,598.49. The activity for the expenses was almost the same as in the chequing account and the monthly deposit of approximately \$2,600.00 around the middle of the month was the same as in the chequing account. Based on this information, it appears that the deposit of \$2,600.00 into the chequing account and subsequently the Husband's account was the Husband's pension.

[40] The records provided for the joint account was from 4<sup>th</sup> December 2006 to 23<sup>rd</sup> November 2010<sup>9</sup>. Unlike the information from the chequing account, there was nothing stating where the withdrawals went. There were frequent deposits and withdrawals in this account. The Husband deposited the proceeds of the sale from the Mt. Moritz property into this account. The balance in this account was far more substantial than the chequing account. The \$60,000.00 was deposited on 5<sup>th</sup> June 2009 into this account. There was a monthly deposit of \$3,531.97 from December 2009 to November 2010, which appeared to me to coincide with the rental of the Confer property. However, with this limited information, it was difficult to determine if and which sums were used by the Wife for her general care and maintenance as alleged by the Husband especially since the Wife had her own personal account. There was also no evidence that the withdrawals from the joint account went into the chequing account.

[41] The Husband stated that the balance of the joint account as at 28<sup>th</sup> September 2012 was \$3,952.59 and that when he closed it in January 2013 he used the balance in the joint account to open the Husband's account. The opening sum in the Husband's account on 22<sup>nd</sup> January 2013 was \$3,598.49, a difference of

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<sup>8</sup> Exhibit B2 of the affidavit of Malcolm Brown filed 18th June 2013

<sup>9</sup> Exhibit B1 of the affidavit of Malcolm Brown filed 18th June 2013

approximately \$350.00. He did not provide any record of the joint account activity for the missing months of October 2012 to early January 2013, and he did not provide any explanation why he was unable to provide such records. He sought to explain this difference by exhibiting particulars of his cheque book, which showed that he wrote cheques for the utilities, FLOW, Food Fair, Bryden & Minors and a few others. The particulars were for the period 27<sup>th</sup> September 2012 to 25<sup>th</sup> February 2013. The total sum spent from 27<sup>th</sup> September 2012 to 7<sup>th</sup> December 2012 (the last entry before the Husband's account was opened) was about \$3,600.00, and the chequing account activity exhibited by the Husband showed that those bills were paid from the chequing account and not from the joint account. If the previous pattern of deposits had continued during the said months there ought to have been at least a monthly deposit of the rent from the Confer property in the sum of \$3,531.97 for October 2012 to December 2012 in the sum of \$10,595.91.

- [42] In the circumstances, I do not accept the Husband's explanation that the joint account only had \$3,598.49 when he closed it. I find, based on his evidence and the bank records, that it ought to have had at least \$10,595.91. I therefore order that 50% of that sum which is \$5,297.95 be paid to the Wife.

**Did the Husband invest substantial sums in the Marian property, and if so, should he be reimbursed?**

- [43] It was not in dispute that the Wife owned the Marian property and that the Husband lived there after he sold the Mt. Moritz property from 2006 until 2013. The Husband asked the Court to find that he made a substantial contribution to the improvement of the Marian property and award him such sums that was invested by him. He has stated that he paid for the replacement of a new picket fence in the sum of \$7,000.00; the construction of a chain-linked fence in the sum of \$14,000.00; the painting of the house on the Marian property where he spent approximately \$9,500.00 for materials and labour; and the retiling of two apartments, a laundry room and a bathroom, replacing the rubber tiles with ceramic tiles in the sum of approximately \$4,400.00. He also stated that he

purchased food twice a week and paid the utility bills on a monthly basis. He did not provide any receipts in support of his evidence.

[44] The Wife admitted that the Husband replaced the picket fence around the Marian property but she was unable to comment on the costs. She also did not dispute the construction of the chain-linked fence and the costs being borne by the Husband. In light of the Wife's position I have no hesitation in finding that the Husband incurred the entire expense for the new picket fence and the chain linked fence and that he is to be reimbursed for these sums.

[45] The Wife denied that the Husband paid in part or full for the painting. Under cross-examination she maintained her position. However, I accept that the Husband incurred the costs for the painting since the Husband was able to provide details surrounding this activity. He stated that he made arrangements with one Andre, who lived not too far from the Marian property, and they agreed that the labour costs were \$4,500.00. He also stated that both he and the Wife went to Sissons Paint shop to purchase the paint, which cost in excess of \$5,000.00 which he paid for. The Wife was unable to give such details, which demonstrated to me that she did not finance any part of this project and her sole role was in the choosing of the paint. In this regard, I find that the Husband expended the sum of approximately \$9,500.00 on the labour and materials for the painting of the house at the Marian property and he is to be reimbursed for this investment.

[46] The Husband stated that he also employed one Andre to tile the laundry room and the stairway leading to the upstairs of the house at Marian at the Wife's request. He said he paid \$1,900.00 for labour. He also engaged Gerry Greer to tile two out of the three apartments and a bathroom, which he could not recall the labour cost but it was included in the labour costs for the fence. The Husband did not state he paid for the purchase of the tiles. The Wife stated she purchased the tiles and the Husband paid for the labour, which is consistent with the Husband's evidence. In this regard, I find that the Husband is to be reimbursed for the costs for labour for the retiling. I have already said that the Husband is to recover the entire sum he paid to Gerry Greer for the fencing so the labour for retiling would have been

subsumed here. The Husband is to be reimbursed for the labour for tiling paid to Andre in the sum of \$1,900.00.

[47] Finally, although the Husband stated that he purchased food and that the monthly utility bills were paid from the joint chequing account where his pension was deposited, I do not find that the purchase of food and the payment of monthly utility bills constitute improvements to the house at the Marian property. In my view these were recurrent costs for the monthly upkeep of the household.

[48] In the circumstances, the Wife is to reimburse the Husband the total sum of \$34,900.00 for his contribution to the improvements to the Marian property.

#### **Order**

[49] The Wife is entitled to a lump sum payment of \$ \$42,300.00.

[50] The Husband is to pay the Wife the sum of \$5,297.95 representing 50% in the joint account as at the date prior to its closure.

[51] The Wife is to reimburse the Husband for the moneys he expended on improvements to the Marian property in the sum of \$34,900.00.

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

**Margaret Y. Mohammed**  
High Court Judge