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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHMT2012/0148

BETWEEN:

SHERON SHIRLEY THERESA HARRIS NEE STEWART

Petitioner

AND

RUDOLPH LERRY HARRIS

Respondent

Appearances:
Mr. Deloni Edwards for the Petitioner
Ms. Claudette Joseph for the Respondent

2016: June 13
July 4

Divorce – Financial Provision - Factors to be considered – Financial relief in divorce proceedings - Ancillary relief – Property Adjustment Order – Division of Matrimonial Assets - Principles governing exercise of court's discretion – s.25 Matrimonial Causes Act 1973.

JUDGMENT

Introduction

[1] AZIZ, J.: The parties in this matter were married on the 29th December 1989 and a petition for divorce was filed on the 6th November 2012 and finally divorced when a decree absolute was declared on the 9th April 2013. The marriage was one which lasted some 24 years. As a result of the parties union two (2) children were born. There was never any application for maintenance and no such claim is made. It is a common and regular

occurrence that where marriages have been dissolved, the parties to such a divorce would approach the court to ask for a division of assets.

On the 23rd April 2014 the petitioner (wife) applied for a property adjustment order, in which an affidavit was filed in support of same. The petitioner was seeking to have:

1. The respondent convey absolutely his share or interest in a parcel of land situate in Calivigny, which was 15,253 sq. ft.
2. The respondent's interest in the former matrimonial home, as a reflection of her contribution to the family unit over the years.
3. Motor Vehicle registration PAW 846, conveyed to the respondent, in lieu of his interest in the matrimonial home.
4. Such further order as the court thinks fit.
5. Liberty to apply

[2] Several Affidavits were filed on behalf of both parties, but there was a hearing on the 3rd June 2015, in which the court did hear some evidence from the petitioner, as Counsel for the respondent chose to cross-examine her on the contents of her affidavits. Learned Queens Counsel did not wish to call any evidence and neither was the Respondent cross examined.

[3] The issues to be determined were set out in written submissions filed on behalf of both parties. Both parties also filed replies to each other's submissions on the 2nd July 2015(respondent) and the 16th July 2015 (petitioner).

The Petitioner

[4] The petitioner disputes what the respondent has said about his contributions towards the property (including the vehicle) and family upkeep. The petitioner says that she is living with her children (one of whom is mentally challenged) in cramped conditions in a smaller house

as the respondent would not move out of the matrimonial home and if he did he would not pay anything towards the mortgage. She says that she paid the deposit on their first vehicle, as for land, the petitioner wife says she made all of the arrangements and under cross-examination on the 3rd June 2015, the petitioner said that on the day that the bank decided to give her the mortgage she took the respondent and that's how his name ended up on the deed.

[5] The petitioner also says that as far as the property was concerned the respondent was not paying towards the mortgage, and the bank contacted her and she at that stage insisted on bank deductions from him to cover the mortgage. In addition to this the petitioner says that after hurricane Ivan, she collected insurance monies and used this on the family, whilst the respondent makes complaint that the monies were collected, despite him never wanting to pay for the insurance. In short the petitioner says that all the financial responsibilities fell onto her. It is also clear by way of a valuation being done, and inspection of the property taking place on the 12th May 2015, that the matrimonial home is valued at a sum of $460,000.00 (land $120,000.00 and building $340,000.00)

[6] The petitioner wife therefore asks that the respondent's interest in the matrimonial property be transferred to her and the vehicle be conveyed to the respondent husband.

The Respondent

[7] The respondent filed closing submissions on the 26th June 2015, setting out the background to the relationship, but set out that there is no dispute that both parties earned "about equal income", but this is very much disputed by the petitioner, in addition to disputing the fact that both parties contributed equally to the upkeep of the family and acquisition and maintenance of the matrimonial properties.

[8] The respondent states the there are two assets for consideration:

1. Matrimonial home valued at $460,000.00
2. Motor Vehicle valued at $23,000.00

He (the respondent) also set out the various areas of the evidence that he says are in stark conflict to what is stated on previously filed affidavits such as, the petitioner alone purchased the land for $38,000.00, the property being in both names, the petitioner took out the mortgage in 1998 to build the house and since leaving the matrimonial home, she has been paying half the mortgage, under cross examination the petitioner said that they took out a joint mortgage and their salaries were both assigned to the bank and still is so assigned, that the petitioner could not show where there was ever $7000.00 in arrears on the mortgage, there is a credit union account in the petitioner's name solely of which $5000.00 from the insurance monies were paid into.

[9] The respondent sets out that they had both agreed to buy the land, and furthermore that he would continue to pay for the car, and his wife would pay for the land. The respondent further states that it was the intention that they would jointly own the land and that is why the deed was made out in joint names, and that he has been making half of the mortgage payments by deduction from his salary as well as paying for various bills for the welfare of the family such as phone, lights, water, groceries, school fees and other related expenses for the children.

[10] The respondent therefore asks:

1. That the petitioner pays him for his half interest in the matrimonial property at Calivigny,

2. That the said property be sold and the mortgage paid off and the remainder divided evenly between himself and the petitioner.
3. That the respondent keep the Toyota Motor Vehicle.

Held: 1. That the matrimonial assets consisted of (a) Matrimonial home (including land), and (b) Motor Vehicle.

2. The respondent is to transfer his share and interest in the matrimonial property to the petitioner upon the petitioner paying him 45% of the net value of the matrimonial property.

3. If the petitioner is not able to pay the respondent for his share and interest in the matrimonial home within 6 months of the date of this judgment, then the matrimonial home is to be offered for sale by the Registrar by way of auction with a reserve price being 85% of the valuation done on 12th May 2015 by Corporate Real Estate Services and once the mortgage is paid off the parties shall divide the balance 55% to the petitioner and 45% to the respondent.

The Matrimonial Assets

[11] Under this head assets are recognized as coming from two sources. There is a category of matrimonial assets[1] which is property acquired during the marriage otherwise than by inheritance or gift, which is considered to be the matrimonial assets and secondly, there are other assets or other property. As also stated in the case of Michael McIntyre and Margery Anne McIntyre[2] "*It is the aforementioned two sources of property that the courts look to in considering section 25(2)(f) of the Matrimonial Causes Act 1973. This section provides for the court to consider '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 by looking after the home or caring for the family'.*

[1] See Miller v Miller [2006] UKHL 24 at para. 22.
[2] GDAHMTAP2013/0024 21 at para. 38

Matrimonial Home

[12] The petitioner states in her affidavit[3] that she purchased a portion of property at Calivigny upon which the matrimonial house now stands. The petitioner in the same affidavit states that the respondent never gave her any money towards the purchase of the land and his name was placed on the deed without informing her. The deed of indenture made on the 5th November 1993 has both Rudolph and Sheron Harris recorded as the purchasers and that the purchasers have paid $38,133.00 to hold the land as joint tenants. She states that the respondent was not working, and only when she put her foot down that he took a job that she arranged for him as they had bills to pay.

[13] The petitioner sets out that she took a mortgage with the National Commercial Bank ("NCB") as it then was to build the matrimonial house, and furthermore that she pays half of the mortgage. The petitioner has indicated that she has also built a smaller property with two bedrooms, for the purpose of renting but due to several issues between the petitioner and respondent, she (petitioner) decided to move into that property with the children and the respondent has exclusive use of the matrimonial home.

[14] The respondent in his affidavit[4] states that the property was always meant to be joint, hence the reason it is in joint names, and the agreement was that the respondent pay for the car and the petitioner pay for the land. He says that in 1998 when the matrimonial home was built that they took out a joint mortgage of $257,308.00 for construction and he still pays half of the mortgage payments which amount to just over $1200.00 monthly, and this is deducted directly from his salary. The respondent at paragraph 12 states that they both still pay half of the mortgage. It would seem that the matrimonial home is the only place

[3] Affidavit of Petitioner sworn to on 15th April 2014 and filed on 23rd April 2014 at paragraph 9.
[4] Affidavit sworn to and filed on the 11th July 2014, paragraphs 9 - 12

that the petitioner has to live and also she is retired and has no regular source of income, whilst the respondent is to retire in about one year's time, so still has a source of income for at least that period of time.

Motor Car

[15] The petitioner states that during the course of the marriage, she put down $8000.00 for a vehicle for both her and the respondent's use. This car was traded in for another car called a "Charade". This car was an additional expense, but the petitioner contributed towards this expense which leads the court to inescapable inference that the respondent would have also contributed towards the expense of this car. It was to be used for the family unit. The Charade was then traded in for a $65,000.00 Daewoo car, and both parties contributed towards this car. The respondent in his affidavit[5] agrees that the petitioner paid the initial $8000.00, and that he paid the balance. He denies trading that car in without the knowledge of the petitioner, and states that she suggested trading that car in for a new one, after the car broke down in the town. The new car was traded in and both names put on the new Daihatsu Charade at Jonas Browne & Hubbard in 1999.

[16] The respondent indicates that the petitioner had issues with this new car (it being too low), and therefore this was traded in and a new Daewoo car bought and placed in both names. In 2001 this car was burnt and deemed a total loss. He says that the petitioner received all the insurance money.

Bus

[17] There was also a bus that was purchased for the respondent, but there is no evidence as to when this bus was purchased, other than to say during the period of the marriage and (one year after the burning of the

[5] See Affidavit filed on 11th July 2014, at Paragraph 18

Daewoo car) which was eventually sold. The Petitioner states that she expended monies on this bus but does not know what became of the proceeds of sale. The respondent says that the bus was purchased in both names, and he considered it to be a joint venture. The respondent says that she controlled the proceeds of the bus operation. The court is not now asked to deal with the bus, although it was a matrimonial asset having being acquired during the course of the marriage and for the financial benefit of the family and may be taken into account under the heading (f) below when considering s.25(2) of the MCA 1973.

[18] As stated by Blenman JA[6] *"It is the law than an inquiry on an application for ancillary relief is always in two stages, namely, computation and distribution"*. I therefore consider for the reasons set out above, that despite dispute, it is clear to the court, that (1) those assets stated above at [8] were acquired during the period of the marriage and (2) it was for the use and benefit of the family, and (3) that both parties made contributions towards these assets; (4) For clarity I repeat that the land in Calivigny, which the house was built and motor vehicle (car) are considered to be the matrimonial assets for the purposes of a property adjustment order.

Property Valuation

[19] A valuation report for the property in Calivigny, St George was prepared by Order of the court. The date of the inspection was the 12th May 2015. The purpose of the valuation was stated as *"to determine the current market value"*. The valuators have indicated that if the property is offered for sale on the open market that it would fetch a capital value of Four hundred and Sixty Thousand Eastern Caribbean Dollars ($460,000.00). This is broken down into land valued at $120,000.00 and Building valued at $340,000.00.

[6] In the case of Michael McIntyre and Margery Anne McIntyre, GDAHMTAP2013/0024 at page 4 at [4]

Matrimonial Causes Act 1973

[20] Divorce creates many problems, and one of the many questions that arises, relates to property. As far as property is concerned, there is always the question of how any property that belongs to the husband and wife ought to be shared between themselves, so that one does not have to continue to support the other, or alternatively, whether one party may have to continue to support the other. As stated[7] "*in the most general terms, the answer is obvious. Everyone would accept that the outcome on these matters, whether by agreement or court order, should be fair. More realistically, the outcome ought to be as fair as possible in all the circumstances. But everyone's life is different. Features which are important when assessing fairness differ in each case. And, sometimes, different minds can reach different conclusions on what fairness requires. Then fairness, like beauty, lies in the eye of the beholder*".

[21] Section 24 of the **Matrimonial Causes Act ("the MCA 1973")** sets out the powers that the court has to make an order dealing with property adjustment. It states:

> "24 Property adjustment orders in connection with divorce proceedings, etc.
>
> (1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —
>
> (a) …
>
> (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of

[7] Lord Nicholas of Birkenhead in White v White [2001] 1 All ER 1 at 3

the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;

(c) …"

[22] Section 25 of the Matrimonial Causes Act 1973 ("the MCA 1973"), sets out a list of matters to which the court is to have regard in deciding how to exercise its powers concerning making financial provision orders and property adjustment orders.

[23] Section 25(1) of the MCA 1973 provides that it is the duty of the court in deciding whether and how, to exercise these powers having regard to all of the circumstances of the case. In the circumstances where there are children of a minority age, then it would seem that the first consideration should be the welfare of any such child or children under the age of 18. As I have already stated in this case there are no such considerations.

[24] Section 25(2) of the MCA 1973 suggests, that the court shall have particular regard to the following considerations:

(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 by looking after the 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) The value to each of the parties to the marriage of any benefit … which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

[25] The legislation it seems does not state explicitly what the aim of the courts is to be, when exercising its wide powers, but it must be that the overriding objective is fairness and to have a fair outcome. Lord Birkenhead stated:

"*The purpose of these powers is to enable the court to make fair financial arrangements on or after divorce in the absence of agreement between the former spouses. The powers must always be exercised with this objective in view giving first consideration to the welfare of the children.*

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

[26] The petitioner is now 62 years old and retired. She served as a nurse from 1974 to 2011 when she retired and is highly qualified as stated in submissions on her behalf, so that she was able to make advances in her profession. Although the evidence is limited as far as her current income[8] and expenditure, there is no evidence to suggest that there is any opportunity for viable and full time employment. There is also no evidence of the petitioner's savings if any other than moneys placed into the Credit Union which was a balance from the Insurance money[9].

[27] The respondent is now 59 years old, and will be retiring in about one year's time. He is a qualified teacher in electrical installation at Presentation Brother's College, St George's for the last 9 years. In his affidavit[10] he sets out that his monthly net salary is $2921.60, evidenced by a salary slip[11] and also sets out his monthly expenditure to be in the sum of $2745.00. The respondent has a property that was left to him and which was rented up to May 2013 for the sum of $150.00 but states that currently there are no tenants. He has loans to repay and still has to pay his contribution towards the mortgage. The respondent I would allow for a future earning capacity bearing in mind his age, working experience and qualifications.

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

[28] In this case the petitioner is residing in a smaller property with two bedrooms, which was initially built for rental. This it is said is as cramped, as the petitioner resides there with the two children of the

---

[8] On being cross-examined the Petitioner indicated that in 1998 her salary was approximately $3000.00 plus

[9] Affidavit filed by the Petitioner on 18th August 2014, paragraph 18, where it is stated *"Of the $15,000.00 received from the Insurance I gave the respondent $500.00, I bought a dinning set for the home for $800.00, I bought two pairs of shoes for the children and spent the rest on the home; not one cent on myself, the rest I put in the Credit Union"*.

[10] Filed on the 11th July 2014, at paragraph 31

[11] Exhibited as "RH11" filed on the 11th July 2014

marriage, both of whom are over 18. The respondent resides in the matrimonial home and has access to the car. The petitioner was not well and it is foreseeable that there will be medical expenses for all the parties concerned.

[29] Both parties are in their mature years and as mentioned above one has retired and another about to retire, whilst both still have to provide for their children, possibly to a lesser extent, the children one of whom it is said has some learning difficulties resides with the petitioner. Both petitioner and respondent still have to pay equally for their share of the mortgage which stands at approximately $100,000.00. They will both need to have income to pay for the everyday bills such as food and other incidentals. The respondent also has an additional loan payment which is on a bed for $520.00 at the Credit Union although there is no evidence what the length of the term is for that loan.

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

[30] The parties, in particular the petitioner, during the marriage were ambitious, and were able to access loans, purchase land and do things to make their lifestyle one of a lower middle income. They were both able to meet all their expenses, despite the petitioner feeling as if she was "carrying" the respondent.

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

[31] As mentioned above the petitioner is now 62 and the respondent is 59. They were married on the 29th December 1989. The petitioner filed for a divorce on the 6th December 2012 after 23 years of marriage, and then the decree absolute was granted in 2014, after 24 years of marriage. This is my view is a long term marriage.

Any physical or mental disability of either of the parties to the marriage.

[32] There is some evidence that the petitioner has developed sciatica about ten to eleven years ago[12]. She says that the respondent attempted to throw her off the verandah of the matrimonial property and has since used a walker. The respondent denies the allegations of attempting to throw the petitioner off the verandah but does accept, that during the marriage the petitioner complained of pain to her knee and back. The respondent also has knowledge of the petitioner's knee cartilage deteriorating and receiving treatment. He says that in the past he has had a serious back injury, but there is no evidence of any physical disability.

[33] There is no evidence by either party of mental illness.

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 by looking after the home or caring for the family

[34] The matrimonial property comprised of land in Calivigny, on which the matrimonial home was built. There was also a smaller structure built comprising of two bedrooms intended for rent, and the petitioner now currently resides in that with the two children. Both parties have acknowledged that the land is held as joint tenants although the petitioner says that she paid for it and on the day the deed was done, she took the respondent and his name was placed on the document. Upon the petitioner being cross-examined she confirmed that she had paid $38,183.00 for the land, and that she paid for the mortgage, and even went as far as to say that she paid the whole mortgage by monthly

[12] At the time of the filing of the Petitioners Affidavit in April 2014, she deposes to developing sciatica 9 years ago. See paragraph 17 and 18.

deduction of her salary. The following passage of cross-examination was instructive, in relation to the house.

Q. A loan was taken out?
A. Yes, a joint loan with Mr. Harris
Q. Both salaries were assigned to the bank to pay the loan?
A. Yes they were.
Q. And each paid ½ of the mortgage?
A. I think so

When cross-examined about the arrears in the sum of $7000.00, the petitioner indicated that she could not find it on the relevant exhibit being the mortgage statement. It was put to the petitioner that from the beginning Mr. Harris salary was assigned to the bank, to which the petitioner agreed. An inspection of the Deed of Indenture shows both parties as purchasers and both hold the same as joint tenants. As indicated earlier I have found that this land and home along with the smaller structure to be considered as the matrimonial property. The petitioner was re-examined about the deed of indenture:

Q. Did you make any attempt to change the deed, you said that you were not pleased?
A. When I agreed to accept the land, the owner and his lawyer made the deed. When I saw it, it was completed and I thought of getting it changed but as we are husband and wife I thought to leave it. I did speak to the owner of the land but didn't want to spend money to change it.

The common intention must have been that the matrimonial home would be built on the land, and the parties build their lives with their children in their home, therefore it has a central place in the marriage.

[35] The petitioner provided $8000.00 towards the initial cost of a car and that was paid for by the respondent. Upon the petitioner being cross

examined she indicated that the respondent paid for the car with her help. Again I have found that there must have been a common intention that the parties use the vehicle for their personal transportation and to be able to move from one place to another as a family whenever needed. Although the first car was traded in, the current car would have been acquired through the value of the initial car and is therefore joint matrimonial property.

[36] During the marriage the petitioner earned a good salary to be able to save and take out a loan as she says for the purposes of a mortgage. There is no evidence placed before the court on the actual income and expenditure of the petitioner. The respondent has in his affidavit set out what his income and expenditure is and filed a pay slip in support. The bills were all paid between both the petitioner and respondent, but at various points during the marriage one party had earned more than the other but the mortgage contributions were paid by both parties

[37] I therefore find based on the evidence presented to the court that the contributions to the matrimonial home were equal apart from the initial payment of $38,000.00 for the land. I was not impressed by the petitioners attempt to avoid questions about the credit union, and what money or shares she held there. Despite this the contributions made by the petitioner is not to be diminished in any way whatsoever.

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.

[38] The court must be fair in determining such property adjustment taking both parties circumstances into account. It is unfortunate that the petitioner has not provided further information about her financial affairs. There have been no bank accounts or a statement of account to show what income and expenditure she has, and which is highly relevant to this exercise that the court is asked to embark upon, in making a property adjustment order, whilst the respondent has done to a certain

extent. I simply repeat that the court finds that the petitioner seemed to withhold information about the Credit Union account that she says some money was paid into, and what shares if any she has at the Credit Union. Although the petitioner has also made several allegations about the conduct of the respondent during the marriage, I do not think that the allegations are of such gravity that it would be inequitable to disregard it. As stated in Farray v Farray[13], the court made no further orders for disclosure, but the court cannot condone the course adopted by the parties in not providing all of the information. It is in the parties' interest to ensure that full disclosure is provided because it is their property that they are asking the court to rule upon.

[39] The court has to make a determination on the evidence provided to it, whether it be by way of affidavit and supporting documents or by giving live evidence, but it should be full and comprehensive, because inferences could be drawn which could affect the eventual outcome. If a property adjustment order is therefore made, and a party is not happy with the outcome, then the court is not to be blamed and the parties must look to themselves.

Equality and Fairness

[40] In considering the principles of equality and fairness, the court has to look at the objectives to be achieved when determining how to exercise the powers that has been granted to it by statute for the purposes of making a property adjustment order and/or financial provision orders. Lord Nicholls of Birkenhead in the case of White v White[14] set out that the court was to exercise these powers so that "*fair financial arrangements on or after the divorce in the absence of agreement between the former spouses*."[15] Lord Nicholls of Birkenhead went on to

[13] GDAHMT2010/0166, Judgment of Mohammed, J.
[14] [2001] 1 All ER 1
[15] Referred to by Thorpe LJ in Dart v Dart [1997] 1 FCR 21 at 29

say that these powers must always be exercised with this objective in view, giving first consideration to the welfare of the children.

[41] Fairness requires the court to take into account all of the circumstances of the case, and indeed the statute states just as much. The powers must be exercised in a variety of circumstances, and ranges from those in poverty to the multi –millionaires.[16] It has also been stated that there is one principle of universal application which can be stated with confidence and that is that in attempting to achieve a fair outcome, there is no place for any sort of discrimination between husband and wife and of course their respective roles, such as their power of earning money, caring for their children, taking care of the matrimonial home. It was further stated, and I quote it due to its importance in the consideration of fairness and equality:

"*Traditionally, the husband earned the money, and the wife looked after the home and the children. This traditional division of labour is no longer the order of the day. Frequently both parents work. Sometimes it is the wife who is the money-earner, and the husband runs the home and cares for the children during the day. But whatever the division of labour chosen by the husband and the wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering para (f) of s 25(2) of the 1973 Act, relating to contributions. This is implicit in the very language of para (f): '….. the contribution which each of the parties has made or is likely…..to make to the welfare of the family, including any contribution by looking after the home or caring for the family.' If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the homemaker and the child-carer.*"

[16] As per Butler-Sloss LJ – Dart v Dart referred to at footnote 11. See paragraph [39].

[42] Lord Nicholls continues "*A practical consideration follows from this. 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 that the other. Before reaching a firm conclusion and making an order along those lines, a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should only 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 on the need to ensure the absence of discrimination."*

[43] It is well recognized that today, there is greater awareness of the value of non-financial contributions to the welfare of the family. There is also greater awareness of the extent to which one spouse's business success, achieved by extensive hard work over the years, may have been made possible by the enhanced contribution to the family by the other spouse, a contribution which would have required much hard work over many years. In this case although the petitioner would have made substantial non-financial contributions to the family unit, the respondent has also stated in his affidavit that he took care of the financial and other responsibilities of the family. I therefore do not find that either party's non-financial contribution was de minimis.

[44] There is also increased recognition that, by being at home and having to look after young children, a wife may lose forever the opportunity to acquire and develop her own money-earning qualifications and skills. The court can take into account the human outlook of the period in which they make their decisions.[17]

[17] Sachs LJ in Porter v Porter [1969] 3 All ER 640 at 643-644

[45] The law is a living thing moving with the times and not a creature of dead or moribund ways of thought.

[46] In John Robert Charman v Beverley Anne Charman[18] the English Court of Appeal provided guidance on how a trial judge should approach the distribution stage in matrimonial cases, in addition to considering the need, compensation and sharing principles[19]. It was noted that a judge, after having consideration to the principles of section 25(2), is entitled to consider percentages by which the assets can be apportioned to the parties, and may apply the sharing principle. This sharing principle also takes into account in some cases the needs and compensation factors. As stated by Blenman JA, the trial judge is no longer constrained to provisionally quantify an award and then cross-check their tentative views using the yardstick of equality.

Conclusion

[47] I have taken into account all of the factors as set out within s 25(2) of the 1973 Act, and the principles enunciated in the various cases which counsel for both parties have provided. It is plainly clear to the court that the petitioner was a mover and shaker and wanted to make the best for herself and her family. She arranged for the purchase of land, and provided the money for the land in the sum of $38,000.00. She worked very hard throughout her career as a nurse and earned a decent salary for which she was able to provide and contribute to the family. The petitioner and respondent had children and they in the court's estimation embarked on building a matrimonial home on the land, and the mortgage was contributed to by both parties.

[48] The mortgage payments were deducted from their salaries and the bills paid by both. A car was purchased using an initial $8000.00 from the petitioner and thereafter paid for by the respondent, until the car was

[18] [2007] EWCA Civ 503; Also see para [50] in McIntyre v McIntyre
[19] McIntyre v McIntyre page 26 at para.49

eventually traded in and a new car purchased. The respondent says that he has continually met his financial obligations to the family and has provided his pay slip and list of expenses whilst there is no evidence before the court from the petitioner, including very little known about the account at the Credit Union, despite being cross-examined on that point.

[49] The petitioner and two children have moved into smaller accommodation conceptualized by the petitioner and thereafter built for the purpose of bringing in additional income. This was during the marriage and would have been used for the family unit and their betterment and security. There is one of the two children who has some learning difficulties and would require additional care and attention. Having to move into the smaller accommodation with the children would no doubt have impacted on the petitioner and children's lifestyle and comfort in a significant way.

[50] Having considered the scenario from a wider perspective, the court is of the opinion that the respondent is entitled to a financial contribution from the matrimonial property. There seems to be no issue that the respondent should keep the motor vehicle.

Order

1. The respondent is entitled to share in the matrimonial property.

2. The respondent is to transfer his share and interest in the matrimonial property to the petitioner upon the petitioner paying him 45% of the net value of the matrimonial property. If the petitioner is not able to pay the respondent for his share and interest in the matrimonial home within 6 months of the date of this judgment, then the matrimonial home is to be offered for sale by the Registrar by way of auction with a reserve price being 85% of the valuation done on 12th May 2015 by Corporate Real Estate Services and once the mortgage is paid off the parties shall divide the balance 55% to the petitioner and 45% to the respondent.

3. The respondent is to have and retain full ownership the Toyota Motor Vehicle valued at $23,000.00.

4. Each party to bear their own costs.

Shiraz Aziz
High Court Judge