

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHMT2012/0016

BETWEEN

JOSETTE CORRINE MARSHALL NÉE BROWNE

PETITIONER

and

JUNIOR MALCOLM MARSHALL

RESPONDENT

Appearances:

Ms. Samantha Robertson of counsel for the petitioner.

Mr. Grant Connell of counsel for the respondent.

2017: Mar. 21

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** Mr. Junior Marshall and Mrs. Josette Marshall were married in 2003¹. They have two children Jamar aged 12 and Jaron aged 6.² Unhappy differences led to a breakdown of their union and Mrs. Marshall obtained a decree nisi of divorce in 2012. She has made an application³ for custody and

¹ On 29th November.

² They were born respectively on 14th April, 2004 and 15th February, 2011.

³ Filed on 25th March, 2013.

maintenance of the children, lump sum payment for her and the children, a property adjustment order in respect of the matrimonial home and costs.

[2] Mr. Marshall contends that Mrs. Marshall did not assist him with the construction of the matrimonial home. He alleged that she has instructed him not to have anything to do with Jaron. He accepted that he has an obligation to contribute to the maintenance of the minor children and indicated that he has faithfully done so. He resisted the application for Mrs. Marshall to have sole custody and for the property adjustment order.

[3] Mr. Marshall asked that the court award him sole custody of one of the children with custody of the other to Mrs. Marshall. He maintained that the matrimonial home was constructed largely with resources he received from his friends for his benefit and from the proceeds of a loan he obtained from a joint account with Mrs. Marshall.

[4] Mr. and Mrs. Marshall are granted joint custody of the minor children. Mrs. Marshall's application for maintenance is granted. She is entitled to a share in the matrimonial home. Her application for a lump sum payment is denied.

ISSUES

[5] The issues are:-

1. What order should be made for Jamar's and Jaron's custody, care, control and maintenance?
2. Whether an order for lump sum and periodical payments should be made in Mrs. Marshall's favour?
3. Whether a property adjustment order should be made in respect of the matrimonial home?

ANALYSIS

Issue 1 – What order should be made for Jamar's and Jaron's custody, care, control and maintenance?

[6] Before pronouncing a decree absolute of divorce, the court is required to satisfy itself that satisfactory arrangements have been made for the welfare of any minor children of the family.⁴ The orders it makes

⁴ Matrimonial Causes Act, Cap. 239 of the Revised Laws of Saint Vincent and the Grenadines, 2009 ('the Act'), sections 64 and 65, the Law of Minors Act, Cap. 232, of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 12 (1).

embody those arrangements and are expected to address all of the child's needs including physical, financial, social, religious and educational.

- [7] The court's principle consideration is always the child's best interest.⁵ When deciding what is best, the court takes into account the child's financial needs; his income, property, other financial resources and earning capacity; any physical or mental disability; the manner in which he was being or was expected to be educated or trained by the parents; and the standard of living the family enjoyed before the breakdown of the marriage.⁶
- [8] The court also assesses the parties' respective ages, any physical or mental disabilities of either; their incomes, earning capacities, properties and other financial resources, needs, obligations and responsibilities and the length of the marriage. It also looks at their contributions to the family's welfare and the value of any benefit which either party will lose as a result of the dissolution of the marriage.⁶
- [9] The court seeks to ensure as much as reasonably practicable and just, that the child is placed in the position he or she would have been if the marriage had not broken down, and each party had properly discharged his or her financial obligation towards him.⁶ Neither parent has a superior right or authority to custody of the child or his upbringing⁷. The court must examine the circumstances of the case including the parties' behavior towards the child and decide what arrangements would best cater to the child's needs. The resultant order would set out each party's obligations towards the child.

Custody

- [10] Jamar Junior Marshall and Jaron Jonathan Marshall live with their mother at Rillan Hill and have done so for the past seven and six years respectively. Jamar is in Form 2 at the Buccament Bay Secondary School, while Jaron attends C.W. Prescott Primary School and is in Grade 1. There is no evidence that they or their parents suffer from any mental or physical disability. Neither parent voiced any concerns about the boys' development or conduct. I infer that all is well.

⁵ J. v. C. [1970] A.C. 686. The Law of Minors Act Cap. 232 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

⁶ Ibid. at section 34(2) of the Act.

⁷ Ibid. at section 4 of the Law of Minors Act.

- [11] Mr. Marshall testified that he currently contributes \$200.00 each to Jamar's and Jaron's maintenance by giving them cash each month. He claimed that he purchases all of their school uniforms and school books and assists with their medical expenses. This was neither put to Mrs. Marshall nor disclosed in Mr. Marshall's affidavit. He provided this testimony after Mrs. Marshall had testified. Mrs. Marshall denied receiving any assistance from Mr. Marshall towards the children's care. She claimed that she was responsible for all household bills and family expenses.
- [12] Mr. Marshall was being economical with the truth on this subject. I do not believe that he gives the children cash in the amounts that he claimed. It would be remarkable for him to give Jaron, a six year old, or even Jamar such large sums of money; or that he did so without bringing it to their mother's attention. Mrs. Marshall's account is more credible. I prefer it to Mr. Marshall's and accept it.
- [13] Mrs. Marshall indicated that the children rarely spend time with Mr. Marshall. Mr. Marshall admitted that although he sees the boys almost daily, they have not spent time with him at home for more than a few hours at one time. He expressed a desire to interact with them more and have them at his home during the vacations and every other weekend except when he is engaged in Calypso competitions, between 27th March and 14th July each year. His wish to spend more time with Jamar and Jaron is commendable and should be fostered as it would be in the children's best interest to develop a closer relationship with their father.
- [14] Mr. Marshall gave no compelling or other reason why he should have sole custody of either child. custody Mrs. Marshall submitted that Mr. Marshall has had no extended interaction with the children, any visitation or sleep over and the court should be hesitant to grant sole custody of either to Mr. Marshall. I agree with her. The evidence disclosed that Jamar and Jaron have spent most of their lives with their mother. In fact, Jaron has never lived with his father. To separate the children at this juncture or remove either of them from their established environment could in my opinion cause some upheavals in their lives which might not be all positive.
- [15] Regrettably, the parties were very scant in the nature and extent of the information supplied to the court regarding the family's lifestyle and related matters. However, I am satisfied from the available evidence that Mrs. Marshall has shouldered most of the responsibility for the children's care, upbringing and control. She did not quite receive the full support from her husband. A change in supervisory control of

either child is unlikely to be in that child's interest. It is my considered opinion that it would be in their best interest for Jamar and Jaron to remain with their mother under a shared custody arrangement.

- [16] It is accordingly ordered that Mr. Junior Marshall and Mrs. Josette Marshall shall have joint custody of the minor children Jamar and Jaron with primary care and control to Mrs. Marshall. Reasonable access is granted to Mr. Junior Marshall to include visitation every other weekend between 1st January and 31st March and 14th July and 31st December each year; alternate public holidays and half of Christmas, Easter and summer school holidays, the dates for each school holiday to be varied and agreed between the parties as necessary. Mr. Marshall's access to each child is to continue until that child attains 18 years of age.

Maintenance

- [17] There is no evidence that either Jamar or Jaron earns income, owns property, savings or other financial resources. Their present earning capacity is nil. Like most parents Mr. and Mrs. Marshall probably aspire to see each young man complete secondary education and go on to pursue tertiary education. Although they did not indicate what goals they have for their sons in this regard, I think it is reasonable to presume that they have realistic expectations for them to complete some type of tertiary education or training.
- [18] The Marshalls present themselves as a typical working class family. From the two accounts, they have all settled into a stable lifestyle in their respective communities. Jaron never experienced living in a home with both parents. Jamar's memories would span a period of his childhood from birth to age 6. They are likely to have acclimatized to the current living arrangements.
- [19] Mrs. Marshall said that she left the matrimonial home in 2010 for her safety and that of the children because of Mr. Marshall's threats and conduct. Mr. Marshall denied threatening her. Mrs. Marshall occupies rented accommodation at Rillan Hill. No evidence was provided of the facilities. I take it that they are adequate. Mr. Marshall lives alone in the matrimonial home at Rillan Hill. It is a three bedroom concrete structure.
- [20] Mrs. Marshall is a supervisor at a bakery. She has been in steady employment with that institution from the inception of the marriage. Mr. Marshall is employed as a driver in the public service. When he first

married, he drove a passenger bus and a truck. He alleged that he earned \$200.00 as a bus driver at that time, but did not mention how much was received for truck driving. It is not clear whether those earnings were weekly or monthly. Mr. and Mrs. Marshall acknowledged that Mrs. Marshall was the main wage earner at that time. Mr. Marshall admitted that during the first years of their union he paid the rent and Mrs. Marshall bought food.

[21] Mr. and Mrs. Marshall are relatively young at 48 years and 40 years old respectively. Their prospects for continuous employment over the next 20 to 30 years are positive. Other than the matrimonial property, there is no evidence that either of them owns any savings, other properties or other financial resources. Their marriage ended after 9 years but they had already gone their separate ways 2 years before. For practical purposes, the union lasted a mere 7 years and can therefore be categorized as a short one.

[22] Their present earnings are roughly equal, with Mr. Marshall's net pay being approximately \$1400.00 each month and Mrs. Marshall grossing \$1200.00 monthly. Mrs. Marshall provided copies of her salary slips. Mr. Marshall did not. I accept their testimonies as to their earnings. Mr. Marshall provided details of his monthly expenses. Mrs. Marshall indicated only those outgoings she incurred for the children. She did not particularize her personal expenses. She provided a few copies of receipts evidencing payment for utilities, medicals and purchase of medication. None were produced by Mr. Marshall.

[23] The referenced obligations and responsibilities are reflected in the following table.

Item	Mrs. Marshall	Mr. Marshall
Rent	\$425.00	---
Food	\$300.00	\$200.00
Clothing and toiletries	\$100.00	---
Water	---	\$31.00
Electricity	\$140.00	---
Transportation	\$54.00	---
Laundry	\$60.00	---
Cooking gas	\$50.00	---
Loan	---	\$159.00 and \$130.00 ⁸

⁸ In respect of facility at First St. Vincent Bank Ltd. and Quick Cash.

[24] Mrs. Marshall averred that the full rent for her accommodation totals \$425.00, half of which she attributed to Jamar and Jaron and which she submitted that Mr. Marshall should pay. It would be unfair to require Mr. Marshall to cover the full cost of the children's accommodation. She alleged that she expends a total of \$300.00 each on Jamar's and Jaron's care monthly. In the absence of contrary information from Mr. Marshall I accept that figure as an accurate representation of each child's reasonable needs. Having regard to the similarity in their incomes, it seems fair that Mr. and Mrs. Marshall equally shoulder responsibility for their children's needs in manner which would be burdensome to neither. In this regard, I am mindful that Mr. Marshall has two other children.

[25] I am satisfied that Mr. and Mrs. Marshall have the capacity to contribute equally to their sons' needs including. It is therefore ordered that Mr. Marshall shall pay to Mrs. Marshall the sum of \$225.00 monthly commencing on 31st March, 2017 towards maintenance for:

(a) Jamar until he completes his studies at Buccament Bay Secondary school or subsequent tertiary education at a local college, or until he attains 18 years, whichever occurs later; and

(b) Jaron until he completes his studies at a secondary school or local college or until he attains 18 years, whichever occurs later;

such payments to commence on 31st March, 2017, and to continue each and every month thereafter on the last Friday of each month.

This figure includes an amount for groceries and rent.

Issue 2 – Should an order for lump sum and periodical payments be made in Mrs. Marshall's favour?

[26] The court may make an order for one party to pay a lump sum or periodical payments for a child of the family or for the benefit of the other party.⁹ However, the applicant must establish an appropriate factual and legal basis for so doing.

[27] No evidence was presented to the court to establish that Mr. Marshall has means which far exceed Mrs. Marshall's or from which he can make a lump sum payment for Jamar, Jaron or her benefit; or periodical payments on her behalf. Similarly, the evidence did not disclose that Mr. Marshall had

⁹ Ibid. at section 31 of the Act.

customarily made periodical payments to Mrs. Marshall for her sole benefit. There is therefore no legal basis on which the court may make a lump sum payment for the children or her benefit or a periodical payment for Mrs. Marshall. Provision has already been made for the children's maintenance. In the premises, Mrs. Marshall's application for lump sum payments and spousal periodical payment is dismissed.

Issue 3 - Should a property adjustment order be made in respect of the matrimonial home?

[28] In determining whether to make a property adjustment order the court must take into account each party's contribution to the family's welfare including contributions made by looking after the home or caring for the family. The court will also examine the value of any benefit which either party will lose as a result of the dissolution of the marriage. It will endeavour to craft a resolution which places each party, so far as reasonably practicable and just, in the position he or she would have been had the marriage not broken down and each party had properly discharged his or her financial obligation towards the other. Above all, the court seeks to fashion an outcome which is fair to both parties.¹⁰

[29] The matrimonial home was built on property which the Marshalls do not own. Mr. Marshall paid \$1000.00 down payment to a Mr. Bernard Punnett and was granted permission to build the house. Mr. and Mrs. Marshall each claim to have provided the deposit from their individual resources. Mr. Marshall recalled selling a VW Beetle for \$1600.00 from which he made the down payment and with the balance bought materials for construction. Mrs. Marshall testified that she provided the down payment and a further \$3800.00 cash towards the construction. She claimed that she also bought cement and steel.

[30] Mr. Marshall stated that he secured most of the materials from the house through assistance from his friends and acquaintances including:

1. Janice Young who provided all the 6 and 8 inch blocks used in the construction;
2. Rudy Daize who donated conduits and use of machines;
3. Joy Johnson who provided her truck for use in transporting the materials; and
4. Arthur transport and Heavy Equipment that donated 5 cubic yard of stones.

Mrs. Marshall accepted that they received such assistance.

¹⁰ Stonich v Stonich, BVIHCVAP2002/0017.

[31] Mr. Marshall acknowledged that he secured a loan facility which was a joint account between Mrs. Marshall and him. He insisted that he repaid the loan without help from Mrs. Marshall. He indicated that in 2010 when the downstairs apartment was completed, he moved the family into it. Mrs. Marshall left the home within months. No other information was supplied regarding the size, other features of the accommodation or its value. Notwithstanding, it is apparent that Mr. and Mrs. Marshall embarked on a joint exercise of acquiring the home. This is evident from the use of a joint banking facility to source part of the funding. The fact that it contains 3 bedrooms demonstrate that it was intended to be a home for the family.

[32] Moreover, the family arranged their budget in a cooperative way by which certain responsibilities were covered by Mr. Marshall and others by Mrs. Marshall. It strikes me that their intention was to acquire the property and house as a family home by combining their resources and efforts in a mutually beneficial manner. I infer this from all the surrounding circumstances. Mr. Marshall was earning \$935.00 in 2012. There is no way he would have been able to make the loan repayments, cover the rent and supply materials for the building without Mrs. Marshall's assistance in other areas including taking care of the children and the home.

[33] He was adamant that the 'gifts' received from acquaintances towards building materials and equipment were intended for his sole benefit. I reject that assertion. I note that the house contains enough space to accommodate the parents and children in separate bedrooms. I infer therefore that the assistance they received was intended for the entire family's benefit. Mr. Marshall cannot therefore take full credit for the acquisition of the home. Their collaborative approach evinced an intention to jointly own it and I so find.

[34] Mr. Marshall has had the almost exclusive use of the matrimonial home apart from the brief period that Mrs. Marshall and Jamar lived there. He will continue to do so while Mrs. Marshall will have to make other arrangements for her long term accommodation. If the marriage had not broken down, she would not have had such concerns. Unfortunately, the parties have not produced all relevant material to the court.

[35] Mrs. Marshall's contributions consisted of cash as well as kind. In this regard, her income was utilized for some of their needs and she was the primary care-giver for the children. Her indirect contributions must be factored into the entire equation. Based on the picture that has emerged, I am satisfied that Mr. and Mrs. Marshall's investments in acquiring a home were about even. Mrs. Marshall's has thereby acquired a substantial equitable interest in the house. Since the property is still registered in the name of a third party, no legal interests have been created in it for either Mr. or Mrs. Marshall.

[36] In ancillary matrimonial proceedings, the court endeavours to facilitate a 'clean break' between the parties. It must be mindful of its duty to ensure that the parties' financial positions after the marriage remain as far as possible as it was during the marriage.¹¹ Fairness in this case can best be realized by making an order for equal division of matrimonial home. I hold that Mr. and Mrs. Marshall is each entitled to an equitable 50% interest in its value.

[37] Property adjustment orders¹² are of four types and may mandate or effect:

1. transfer of property from one party to a child of the family or to someone for the child's benefit;
2. settlement of property for the benefit of a child of the family or the other party;
3. variation of any ante-nuptial or post-nuptial settlement for the benefit of a child of the family or the parties; or
4. extinguishing or reducing the interest of either party to a settlement.

[38] None of those provisions are applicable in the instant case as the kinds of interests described in them do not arise. The court is therefore not at liberty to make a property adjustment order. However, it cannot ignore the injustice which would arise if no order is made to address Mrs. Marshall's entitlement to share in the matrimonial property. The court has a duty to fully and finally resolve all disputes in all cases by granting such remedies to which a party appears to be entitled, whether they arise in equity or at law.¹³

¹¹ Section 34 of the Act.

¹² Section 32 of the Act.

¹³ Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

[39] It is possible to provide such relief to Mrs. Marshall to enable her to access and receive her beneficial entitlement in the matrimonial home. This can be achieved by permitting Mr. Marshall to retain the matrimonial home and pursue finalization of the purchase. It is only fair that he be ordered to pay Mrs. Marshall for her 50% share of the property once a valuation has been obtained. It would be in Mr. Marshall's interest to complete all negotiations leading to the conclusion of the purchase of the land and registration of his interest in due course. Mr. Marshall is accordingly ordered to obtain a valuation of the matrimonial home on or before 31st May, 2017 and pay Mrs. Marshall 50% of the value on or before 30th November, 2017.

ORDER

[40] It is declared and ordered:

1. Mr. Junior Marshall and Mrs. Josette Marshall shall have joint custody of the minor children Jamar and Jaron with primary care and control to Mrs. Marshall. Reasonable access is granted to Mr. Junior Marshall to include visitation every other weekend between 1st January and 31st March, and 14th July and 31st December each year; alternate public holidays and half of Christmas, Easter and summer school holidays, the dates for each school holiday to be varied and agreed between the parties as necessary.
2. Mr. Junior Marshall pay to Mrs. Josette Marshall \$225.00 each month as maintenance for:
 - (a) Jamar until he completes his studies at Buccament Bay Secondary school or subsequent tertiary education at a local college, or until he attains 18 years, whichever occurs later; and
 - (b) Jaron until he completes his studies at a secondary school or local college or until he attains 18 years, whichever occurs later;such payments to commence on 31st March, 2017, and to continue each and every month thereafter on the last Friday of each month.
3. (a) Mr. Marshall is directed to reimburse Mrs. Marshall on a case by case basis, 50% of the expenses associated with Jamar's and Jaron's reasonable future medical and educational needs. Mrs. Marshall shall provide Mr. Marshall with copies of all invoices and/or receipts in respect of such expenses, as the basis for computing such reimbursements.

(b) Mr. Marshall's obligation to pay half of the educational and medical expenses includes all such expenses incurred in respect of both minor children until they respectively attain the age of 18 years.

4. Mrs. Marshall's application for:

- (1) a lump sum payment for her and the two minor children; and
- (2) periodical payments for her;

is dismissed.

5. Mr. Junior Marshall and Mrs. Josette Marshall each owns and is entitled to a half share beneficial interest in the matrimonial home situated at Rillan Hill.

6. Mr. Junior Marshall shall on or before 31st May 2017:

- (1) obtain a valuation of the matrimonial property at Rillan Hill from a licensed valuer agreed by the parties; and
- (2) file copies of the valuation at the court office and serve a copy on Mrs. Marshall.

7. Mr. Junior Marshall shall on or before 30th November, 2017, pay to Mrs. Marshall one half of the value of the matrimonial home after deducting the expenses associated with the valuation report.

8. Mr. Junior Marshall and Mrs. Josette Marshall shall bear his or her own costs.

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Esco L. Henry
HIGH COURT JUDGE