

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHMT2014/0142

BETWEEN:

CAULDRIC BROWNE also known as CALDRICK BROWNE

PETITIONER

AND

MARIA MONICA BROWNE NEE SHALLOW

RESPONDENT

Appearances:

Ms. Paula David for the Petitioner

Mrs. Zhing Horne-Edwards for the Respondent

2019: April 03
May 17

ORAL DECISION

Byer, J.:

- [1] According to the words of Mohammed J in the case *Philomena La Qua v Justin La Qua*¹ at paragraph 1 thereof “*divorce creates many problems. One question always arises. It concerns how the property of the husband and wife should be divided and whether one of them should continue to support the other. Stated 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 fair as is possible in all the circumstances. But everyone’s life is different. Features which are important when assessing fairness differs in each*

¹ GDAHMT2010/0006

case and sometimes different minds can reach different conclusions on what fairness requires. Then fairness, like beauty is in the eye of the beholder”.

[2] This application filed by the Petitioner was quite simple. The Petitioner by his application for ancillary relief filed on 4 April 2017 sought the following orders:

a. That the 1 acre of land at Fair Hall given to the Respondent by her mother Geraldine Shepherd and registered in the sole name of the Respondent shall remain in the sole ownership of the Respondent.

b. That the house and land at Belmont given to the Respondent by her father Godfred Simmons, deceased, shall remain in the sole ownership of the Respondent.

c. That the Respondent shall keep all the furniture and household appliances in the matrimonial home.

d. That the Petitioner shall retain his entire interest in the real property at Calder the subject matter of Deed Number 1437 of 2001.

e. That the property at La Croix be conveyed to the Respondent for her absolute use and enjoyment².

[3] This application was supported by affidavits of the Petitioner filed on 6 October 2017 and 12 November 2018.

[4] In response the Respondent filed affidavits on 26 October 2018 and 14 February 2019. By her affidavit of 26 October 2018 (the October affidavit) the Respondent made a counter proposal to the reliefs claimed by the Petitioner which were as follows:

***(a)** That the Petitioner pays[her] monthly the sum of \$2, 000.00 in respect of maintenance;*

(b) That the Calder property, the La Croix Property and the Belmont Property be taken together as matrimonial property and their equity be determined for 50% division on either side.

***(c)** That each party be given the opportunity to purchase each other's interest in each matrimonial property.*

(d) That the Fair Hall property be excluded from the determination of matrimonial property.

² Added by way of Affidavit filed 6/10/17

(e) That the Petitioner pays [her] half share of the value of motor vehicle PR797.

(f) That the Petitioner pays [her] half share of the funds received from the sale of the North Union Property.

(g) That the Petitioner pays [her] such share of his gratuity as the Court deems just.”

- [5] This matter although not a lengthy one or one that could not be determined amicably between the parties went to trial on 3 April 2019 at which time the parties were cross examined on their affidavits as filed. Both the Petitioner and the Respondent made comprehensive submissions to the court on the law relative to the respective divisions and this court wishes to thank both counsel for their diligence in that regard.
- [6] The nub of the variance at which the parties find themselves is as to what is to be considered matrimonial property and what is not. Once that has been determined then the troublesome issue of the distribution must be ascertained.
- [7] From the evidence given to this court on affidavit and in oral evidence I wish to deal with the property/assets that are not in dispute. The motor vehicle PR767 that the Respondent made a claim to, was conceded to by the Petitioner and therefore this court orders that the Respondent is entitled to a one half interest in the value of the same. It appears that neither party thought it may have been prudent to produce a valuation of this vehicle for the court and therefore I further order that that value is to be taken as of the date of this judgment and the Respondent is to be paid half the value so determined within 30 days of the receipt of the valuation.
- [8] Also in the evidence the Petitioner made no claim to two properties acquired by the Respondent by inheritance from her parents. These were Fair Hall in which she is entitled to a 1/3 interest as beneficiary of the estate of her mother and the Belmont property which was given to her solely by her father. The Fair Hall property for the purposes for the administration of the estate of her mother was valued at \$100,625.00. The **Respondent's share would in theory therefore amount** to approximately \$34,000.00. The Belmont property is stated by the Respondent to be unmarketable³ however the valuation report that she exhibited to her affidavit stated quite the opposite. In fact, the valuator in that report gave the distinct indication that the site advantage given to this parcel of land was that **“the location of the property next to the public road with access to public utilities and transportation”**⁴ was what gave the property its value. The value ascribed to this parcel is \$61,000.00. The Petitioner has made no claim and this court makes no order with regard to this even in light of the suggestion of the Respondent that he be entitled to a 50% share of the same. This court will however take this into consideration in the final disposition of the assets.

³ Affidavit of the respondent filed on the 26/10/18 at paragraph 14

⁴ Appraisal report of Alexander & Alexander dated 24/10/18 exhibit MS 5 to affidavit of 26/10/18

[9] Therefore the only matters in contest are the property at La Croix in the joint names of the parties, the land at Calder in the sole name of the Petitioner, interest in the purchase monies of a property at South Union (wrongly stated as North Union), whether the Respondent is entitled to periodical payments and entitlement of the Respondent to the gratuity of the Petitioner.

[10] **In this court's mind and having heard the evidence of the parties, the court accepts the following** facts with regards to the La Croix, Calder and South Union properties:
(bearing in mind that this court agrees with the submissions by counsel for the Respondent that this court must also consider the course of conduct of the parties to determine what was the intention with regard to how properties should be classified)

1. I find that the La Croix property having been acquired early in the marriage by both parties (as admitted) was to be the matrimonial home. The parties had been residing with the mother and grandmother of the Respondent after marriage and I accept that the acquisition was made with a view to providing themselves with their own space. I also accept that a decision was made to remain in the house at Freeland which was the property of the **Respondent's mother to continue to care for her and** her ailing grandmother.
2. That the Calder property which the Petitioner acquired in his sole name upon the death of the joint tenant, his aunt, was not to be the matrimonial home but despite this the Respondent did make some contribution to its renovations/repairs. On the evidence of the Petitioner himself the Calder home was to be a place for either the Respondent or himself to use for their benefit. Additionally, the fact that the repairs/renovations were financed from monies deposited into the joint account of the parties from the sale of the aunt's **home** in the United Kingdom, the initial donor of the interest to the Petitioner, there was obvious comingling of the funds for the benefit of both parties. In fact, it is the Petitioner who admitted that he had used some of those funds for the benefit of the family in paying off the outstanding mortgage on the La Croix property. There was therefore no dealing with this property to the exclusion of the Respondent or without reference to her and I therefore find that the Calder property is in fact matrimonial property and that the Respondent is therefore entitled to a share in this property.
3. With regard to the South Union property, I find that the Petitioner and his brother entered an agreement for the Petitioner to take over the mortgage payments of the property when **the Petitioner's brother fell into arrears**. I accept and find that the Respondent did not take any active role in the same and that she was in fact not in favour of the acquisition of the land. I additionally do not accept that the Petitioner ever promised the Respondent a share

in the proceeds of sale of the land. As stated in the affidavit of the Petitioner⁵ and a fact not disputed by the Respondent, the parties were in fact divorced at the time of the sale. Additionally, it was accepted by this court that the Petitioner had in fact given his son, \$50,000.00 of the purchase monies to pay towards the outstanding mortgage on the La Croix property. This is also not disputed by the Respondent. Thus, this court accepts that even though the monies for the payment of the mortgage on the South Union property would have come from the joint account of the parties, any benefit that the Respondent may have been entitled to was passed to the son of the parties and ultimately to the property in which the Petitioner agrees to convey his interest. I therefore do not find that the Respondent is entitled to any portion of the monies of the South Union property.

4. I find with regard to the issue of a share in the gratuity of the Petitioner that indeed if the parties had been together at the time of the obtaining of this benefit that the Respondent would have benefited from the same. However very little evidence was given on the same to the court and even though it was advanced in the affidavit of the Respondent, neither counsel submitted to the court on the same. I therefore am not satisfied on a balance of probabilities as to the entitlement of the Respondent to a share in the gratuity of the Petitioner and I so find.

[11] That being said, and in light of the findings that the court has made above the only live issue with regard to the real property is what portion, if any, of the Calder property is the Respondent entitled to.

[12] In considering this evaluation this court must be guided by the provisions of the Matrimonial Causes Act CAP 239 (the Act) Section 34. This section sets out the factors that the court must consider in making a property adjustment order as is sought in these proceedings. These are well known to the parties and the Court.

[13] As my sister in the case of *Euvorn Bibby v Horace Bibby*⁶ stated so succinctly:

“41. The Act empowers the court to make a property adjustment order. Among other things, a property adjustment order is used to settle property owned by one party for the other party’s benefit, or to extinguish or reduce either party’s interest to a settlement. As far as reasonably practicable and just, such an order is aimed at:

1. *Achieving a clean break between the former spouses;*
2. *Placing them in the position they would have been in, had the marriage not broken down and each party had properly discharged his or her financial obligation towards the other; and*

⁵ Paragraphs 28 and 29 of the affidavit of the petitioner filed 12/11/18

⁶ SVGHMT2015/0058

3. *Ensuring that the parties' financial positions after the marriage remains as close as possible as during the marriage.*"

[14] Thus in looking at the issue regarding the interest of the Respondent in Calder, this court considers the following:

1. The contribution made by the Respondent to this property and the family at the time the same was acquired and renovated,
2. The manner in which the financial resources of the family were allocated to the same,
3. The initial source of those funds,
4. The apparent intention of the donor to benefit the Petitioner at the time when he was married to the Respondent,
5. The fact that the Petitioner has forgone all his entitlement to any other property that was acquired during the marriage,
6. The fact that the Petitioner admitted that the Respondent had assisted in the upkeep and establishment of the same,

[15] In all the circumstances of this case and having found that there was some contribution by the Respondent albeit not substance, I find that the Respondent is entitled to a twenty percent share (20%) of the value of this property.

[16] In coming to this determination I accept that the concept of the **"equal sharing principle"**⁷ is one that has evolved from the modern view of marriage as a **"partnership of equals"**⁸. However, the case law has seen this principle of equality as merely a yardstick for the assessment that is to be undertaken by the court. Having said so, by reason of the matters enumerated above I am satisfied **that there are "ample reasons to depart from awarding an equal share"**⁹.

[17] That being said, I must also consider whether the Respondent should also get the actual benefit of the stated share. By section 32(1)(d) of the Act, the court is empowered to make an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement. In looking at this matter, this court must bear in mind the overriding requirement to

⁷ **Miller v Miller** [2006] UKHL at paragraph 16

⁸ **Miller Op Cit** at paragraph 16

⁹ **Julie Brown v Andrew Brown** GDAHMT 2013/0006 per Mohammed J at paragraph 32

achieve fairness between the parties. As Saunders JA (as he then was) stated in the case of *Stonich v Stonich*¹⁰:

“The ultimate and overriding objective that the court must strive at is fairness. In apportioning the assets, the court must consider the various factors the legislature has asked to take into account and then arrive at a solution that is in all the circumstances fair to the parties. The wide discretion available permits the court the ability to interpret fairness in light of the prevailing societal standards”.

[18] In agreeing with that proposition of the law and in considering the provisions of section 34(1), I am satisfied that I must take into consideration in the distribution of the assets, that the Petitioner has holistically walked away from the majority of the assets acquired during the marriage. Together with her inherited properties, the Respondent is also the recipient of the entirety of the property at La Croix, based on the concession that the Petitioner has made, and which this court accepts. Indeed although this property is not free and clear from all encumbrances, from all reports as appeared before this court, it still holds substantial value and the reason for it being encumbered cannot be laid at the feet of the Petitioner. It may have been different in **this court’s mind**, if the Petitioner had been the one who mortgaged AND got the benefit of the funds. He was not. The benefit went to the child of the family and the obligation to pay is in the name of the child of the family. **The adult child of the family. In this court’s mind**, there was no persuasive argument put forward on behalf of the Respondent, why this property should not be conveyed in the sole name of the Respondent, save the inference that the Petitioner should somehow still be responsible for paying the debts of the adult child of the family. This, in **this court’s mind**, cannot be sanctioned by the court. However in light of the parties lengthy marriage (as accepted by both sides) the finding that the court has made with reference to the entitlement of the share of the Respondent and most importantly that the Petitioner has moved on with his life with a new family, I find that this is an appropriate case to order a lump sum in terms of compensation to the Respondent. I therefore find that the respondent is to be paid 20% of the value of the property as set out in the sole valuation before the court of Mr. Franklyn Browne dated 18 May 2008.

[19] In making this order, I am satisfied that the parties need to move on with their lives. In looking at the evidence of the Respondent with regard to her application for periodical payments, I am further satisfied that she failed to adequately disclose her income. Her expenses were well documented while her income was vague and nebulous, and I accept that this was far from the standard required to prove her financial need for such an order. Certainly, this court is satisfied that the Petitioner at this stage of his life has no steady income and is not in any event in a position to make any such payments to the Respondent. The prayer for periodical payments is therefore dismissed.

¹⁰ Civ App. No 17 of 2002 (BVI) at paragraph 27

The order of the court is therefore as follows:

1. The one third share of the Respondent in the property at Fair Hall shall be the **Respondent's** absolutely.
2. The house and land at Belmont inherited from the father of the Respondent shall be the **Respondent's** absolutely.
3. The Petitioner is to convey his one half interest in the house and land at La Croix to the Respondent absolutely. This share is to be quantified by the parties upon a valuation being undertaken as to the same taking into consideration the outstanding mortgage to the St. Vincent and the Grenadines General Employees Co-operative Credit Union Ltd by virtue of the Deed of Mortgage numbered 2502/2011.
4. It is declared that the Respondent is entitled to a 20% share of the property at Calder; such quantification of the share is to be based upon the valuation of Mr. Franklyn Browne dated the 18/5/08.
5. The Respondent shall be paid for the said share upon there being a set off of the value of the **Petitioner's share in the La Croix property. If there is any deficit upon such calculation being undertaken, the Respondent shall be paid the balance due and owing.**
6. The prayer for periodical payments is dismissed.
7. The prayer for a share in the proceeds of sale of the South Union property is dismissed
8. The prayer for a share in the proceeds of the gratuity of the Petitioner is dismissed
9. Each party to bear their own costs.
10. Liberty to apply.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar