

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
FAMILY DIVISION
BETWEEN**

2017/Fam/div/00571

C. C

Petitioner

AND

D. A. C

Respondent

Before: The Hon. Madam Justice G. Diane Stewart

**Appearances: Petitioner Pro Se
 BandeLe LaFleur for the Respondent**

Ruling Date: February 3rd, 2023

RULING

Background Facts

1. The Petitioner, C.C and the Respondent D.A.C were married on 28th February 2006. There are no children of the marriage. Both parties are employed with The Royal Bahamas Defence Force.
2. The Petitioner filed a Petition on 17th October 2017 seeking dissolution of the marriage on the ground that since the dissolution of the marriage the Respondent had deserted the Petitioner for a period in excess of two years.

3. The Decree Nisi was granted on 10th September 2019. Ancillary matters were adjourned to Chambers.
4. The Petitioner prays that the Court make an Order for the following:-
 - i. The Petitioner be granted a 70% equity in the matrimonial home and the Respondent a 30% equity;
 - ii. The Petitioner shall purchase the Respondent's 30% share of \$41,700.00 in the matrimonial home within six months or failing which the matrimonial home is to be listed with a licensed real estate agent and sold with the profits being divided in proportion to the equity between the Petitioner and the Respondent;
 - iii. Upon payment of the 30% share of \$41,700.00 the Respondent is to relinquish any and all interest that the Respondent has in the matrimonial home;
 - iv. The Respondent shall transfer all interest, ownership, right, title or interest in the matrimonial home within seven days from the receipt of the above funds and will not make any claim of ownership, right, title or interest in the matrimonial home; and
 - v. The vacant property located at Winton Meadows in the Respondent's name be divided equally between the Petitioner and the Respondent
5. The Respondent prays that:-
 - i. The Respondent be granted a 70% interest in the matrimonial home and the Petitioner a 30% interest;
 - ii. The Petitioner purchase the Respondent's 70% interest in the home and the payment be by one lump sum payment;
 - iii. The property in Winton Meadows is declared not to be a marital property and remain in the sole possession of the Respondent
6. On 9th August, 2017 it was ordered that the Petitioner and Respondent deliver to RBC (Finco), no later than 29th September 2017, vacant possession of the property located in Winton Meadows Estate and the matrimonial home located in Sir Lynden Pindling Estates.

Petitioner's Evidence

7. The Petitioner alleged that her monthly salary is \$3,287.50 and after deduction her take home salary is \$2,025.14.
8. The Petitioner's monthly expenses are:-

Mortgage	\$1,050.00
-----------------	-------------------

Bahamas Power & Light	\$ 342.00
Water & Sewage	\$100.00
Fidelity Bank Loan	\$1,510.00
Grocery	\$250.00
Cable & Internet	\$116.48
Teacher's Credit Union	\$250.00
Prepaid Phone	\$60.00
Gas (Vehicle)	\$100.00
Yard Maintenance	\$60.00
Vehicle Ins. & License (\$545.00 yearly)	\$46.00
Personal Grooming	\$150.00
<u>TOTAL</u>	<u>\$4,034.48</u>

9. She does not hold any legal title to any property, shares or other fixed assets.
10. The legal title to the matrimonial home is in the sole name of the Respondent and is mortgaged to RBC Finco. The Petitioner maintains that she made mortgage payments at RBC Finco. As of June 2020, the outstanding balance on the loan was \$168,775.39 with outstanding loan arrears in the sum of \$60,036.40.
11. The Petitioner has presented documentary evidence to support a claim that the property which she purchased located at Marshall Road was officially acquired in 2008. The property is valued at \$72,000.00.
12. The Petitioner maintains that she was not informed by the Respondent that after he left the matrimonial home that she would have to continue paying the mortgage. The marital agreement was that the Respondent would pay the mortgage and the Petitioner pay all other bills and expenses. The Petitioner further stated that had she been informed that the Respondent would discontinue paying the mortgage and then she should take over the responsibility. She was unaware of the overdue balance on the mortgage until Royal Bank (FINCO) made an application before the Court for vacant possession.
13. The Petitioner agrees that the property located at Winton Meadows is owned solely by the Respondent and should not be considered a matrimonial asset. It was purchased in or about 1998, almost ten years before the parties met or married. The land is vacant and there has been no contribution made by the Petitioner.
14. The Petitioner said that the agreement to purchase the Marshall Road property was signed in 2005 but the conveyance was dated 2008. She submitted that this property was for her daughter and that the Respondent was aware that she was paying on it for her daughter and hence it is not a marital asset.

Respondent's Evidence

15. The Respondent maintains that his monthly income is \$3,695.83. After deductions his take home salary is \$1,093.69.

16. The Respondent's monthly expenses are:-

NIB	\$120.00
Colina Insurance	\$101.63
Royal Bank	\$629.23
Household Expenses (utilities, rent, groceries)	\$750.00
Gas (Car)	\$160.00
Cell Phone	\$50.00
Commonwealth Bank	\$873.00
Medical expense from neck fracture	\$914.00
<u>TOTAL</u>	<u>\$3,597.86</u>

17. The Respondent's yearly expenses are:-

Insurance (Vehicle License & Inspection)	\$545.00
Vehicle Maintenance	\$600.00
<u>TOTAL</u>	<u>\$1,145.00</u>

18. He maintains that the mortgage on the matrimonial home was current when he left the home. He also paid the mortgage for two years after he left the home. Thereafter no payments were made on the mortgage as the Petitioner refused to pay the same. The Petitioner's failure to make mortgage payments resulted in the banks' application for vacant possession and taking possession of the property that the Respondent had mortgaged as collateral for the loan. Further the matrimonial home was in the process of being sold.

19. The Respondent states that the Petitioner was the only party residing in the matrimonial home, and he should be entitled to a 70% interest and the Petitioner be awarded a 30% interest..

20. The Winton Meadows property is in his sole name and should not be considered a marital asset. It was purchased in or about 1998 which was ten years prior to the parties marrying. The land is vacant and therefore no contribution was made by the Petitioner.

21. The Petitioner purchased property on Malcom Road, while the parties were living together as husband and wife. It is the Respondent's position that this property

should be included as a marital asset, and he is entitled to a 50% interest in the property.

22. The Respondent produced documentation from the bank confirming that the sale price of the matrimonial home is \$128,000.00, and the total debt owing to the bank is \$192,329.19. The bank would only be prepared to release the Winton Property if the entire debt is paid after the sale of the matrimonial home.
23. The Respondent laid over submissions in support of his position on property adjustment.

DECISION

24. There are no children of this marriage.
25. **Section 28 of the Matrimonial Causes Act (MCA)** enables the Court to make property adjustment orders in divorce proceedings. The matrimonial home is in the sole name of the Respondent, and additionally, the Respondent's Winton Meadows Estate property was used as collateral to secure the mortgage. The matrimonial property is mortgaged and in default. The mortgagee has advised the court that the matrimonial home will be sold and that the collateral property will only be released upon settlement of the outstanding debt.
26. The court must decide whether the Winton Meadows and the Marshall Road properties are matrimonial property so as to be considered when making a property adjustment order. The matrimonial home is being sold and is no longer available to the parties.
27. The Respondent maintains that the Petitioner must pay 70% of the outstanding debt and that he should share 50% of the interest in the Marshall Road property.
28. The Petitioner states that the Marshall Road property was acquired prior to the marriage and that the Respondent knew of the property and did not contribute to the acquisition of the same and that it was not used for the benefit of the marriage.
29. The Court's starting approach in proceedings which seek property adjustment orders, is the equal sharing principle unless there exists a compelling enough reason to depart from the same. The Court must also consider the mandatory guidelines established in **Section 29 of the MCA** when making these orders.
30. Section 29 states:-

(1) It shall be the duty of the court in deciding whether to exercise its powers under section 25(3) or 27(1)(a), (b) or (c) or 28 in relation to a party to a marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters that is to say —

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contribution made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) in the case of proceedings for divorce or nullity of marriage, the value to either 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;

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other.

31. Under the MCA, the objective of the Court in ancillary proceedings is to achieve a fair result between the parties based inter alia on a number of factors. As stated previously, the equality principle as established in this jurisdiction in **A v B #320 of 2008** may be departed from in order to ensure that the matrimonial assets are distributed to each party of the marriage based on need, contributions made and to ensure fairness.

32. Any sharing as set out in **Jupp v Jupp** may only occur after considering Section 29. In **Jupp v Jupp** the Court of Appeal held:-

“It must be remembered that authorities from the United Kingdom cannot trump what the statute law of The Bahamas says. It is only if these cases are consistent with the statute law can they apply. Section 29 is very clear as to what a judge must take into consideration when considering whether to exercise her powers under section 27 or 28 or even section 25 of the Act. Any sharing principle enunciated by case law must be construed in this light. The statute requires you to look at all the circumstances and you make the order which puts the parties in the financial position so far as it is practicable that they would have been in if the marriage had not broken down. The division of the assets must be fair in its entirety. It is not the role of the trial judge to list the assets of the family and to divide them one by one. The trial judge must look at the circumstances on the whole, examine the entire context of the case and make an award accordingly, stating sufficient reasons for the same.

33. Further, in **White v White [2001] 1 AER 1**, Lord Nicholls states:-

“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 of these matters, whether by agreement or by court order, should be fair. More realistically, the outcome ought to be as fair as is 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 eyes of the beholder."

34. Further in **Miller v Miller**; and **McFarlane v McFarlane (2006) 3 All ER 1** the House of Lords stated:-

"This element of fairness reflects the fact that to greater or lesser extent every relationship of marriage gives rise to a relationship of interdependence. The parties share the roles of money-earner, home-maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties housing and financial needs, taking into account wide range of matters such as the parties ages, their future earning capacity, the family's standard of living, and any disability of either party. Most of these needs will have been generated by the marriage, but not all of them. Needs arising from age or disability are instances of the latter."

35. In considering the statutory guidelines, I accept the following:-

- i. The parties were married for twelve years. This was not a short marriage.
- ii. The income of each party is similar and they both work for the Defence Force.
- iii. The bank obtained vacant possession of the matrimonial home situated in Lynden Pindling Estates and which mortgage is also secured by the Respondents Winton Meadows Property.
- iv. The bank has listed the property for sale for \$128,000.00, and as at March 2022 the total debt owing to the bank was \$192,329.19.
- v. Upon the sale of the matrimonial home the balance of the debt will be approximately \$64,329.19 as of March 2022.
- vi. There is no dispute that the matrimonial home was a marital asset even though held in the name of the Respondent.
- vii. The Respondent paid the mortgage for nine years prior to moving out of the home and for two years after. The Respondent's other property was used as collateral to secure the mortgage for the matrimonial home.
- viii. The Petitioner did not pay the mortgage on the matrimonial home but paid the utilities as agreed between them.
- ix. There is no evidence that any party suffers from any physical or mental disability, therefore their earning capacity is not limited or hindered in any way.
- x. The Respondent owned his property in Winton Meadows Estates prior to the marriage.

- xi. The Petitioner entered into an agreement to purchase the Marshall Road Property before the marriage but the sale was not completed until after the marriage.
36. I am satisfied that both parties were aware of and knew of the use of the Winton Meadows Property and the acquisition of the Marshall Road Property.
37. The court must decide how the outstanding debt is to be resolved and consequently how it would impact what happens to the Winton Meadows property. If the debt is paid off by the parties then the Respondent will benefit solely from the full value of his property. If the Respondent is awarded an interest in the Marshall Road property, there will not be a fair distribution of all of the assets.
38. In order to make a fair property adjustment order, I must decide what properties are matrimonial property and which are not.
39. In order to determine whether a property must be regarded as matrimonial property the Court considers **Charman v Charman (2007) 1 FLR 1246** which defined matrimonial property as **“property of the parties generated during the marriage otherwise than by external donation.”**
40. Further in **Watchel v Watchel 1973 FAM 72** Lord Denning described family assets as **“those things which are acquired by one or other or both of the parties, with the intention that there should be continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole.”**
41. I am satisfied that the Winton Meadows property was used for the benefit of the family. It was used to secure the mortgage over the matrimonial home where the parties lived as husband and wife. Both parties benefitted from it. It is therefore a matrimonial asset which falls to be considered.
42. The Marshall Road Property was acquired during the marriage but I am not satisfied that it was acquired for the benefit of the parties but acquired for the benefit of the Petitioner and her child who was not a child of the marriage. Nevertheless, it still falls to be considered as it was acquired during the marriage.
43. The consideration for the distribution of the matrimonial property begins at the breakdown of the marriage and when mutual support ended. This was enunciated in **Rosemary Edit Burrows v Sylvester John Burrows SCCivApp No. 58 of 2021** where Crane Scott JA held:-

“The legal principle is that the date when the marriage broke down and mutual support ended is the point in time at which the property and financial resources of the parties which are or will be available for equitable distribution is to be assessed. That overarching principle is, in our view, well established and not seriously in dispute.”

The value of the Winton Property is \$110,000.00 and the value of the Marshall Road property is \$62,000.00

44. **In Rossi v. Rossi [2006] EWEC 1482 (Fam)**, Judge Nicholas Mostyn QC provides useful guidance on the distinction between non-matrimonial and matrimonial property:-

“1. the matrimonial property is likely to be divided equally, although there maybe departure if (i) the marriage is short, and (ii) part of the matrimonial property is "non-business partnership, non- family assets' or if the matrimonial property is represented by autonomous funds accumulated by dual earners; and

2. the non-matrimonial property is not in fact quarantined or excluded from the court's powers. It simply represents an unmatched contribution by the party who brings it to the marriage. The court must decide whether it should be shared and, if so, the proportions in which it is to be shared. In reality, the longer the marriage, the more likely the non-matrimonial property will become merged with matrimonial property. By contrast, in a short marriage, non-matrimonial assets are not likely to be shared unless needs dictate.”

45. The debt to the bank is \$64,329.19 after the sale of the matrimonial home. If the court were to uphold the equal sharing principle, then the Petitioner would be responsible for \$32,000.00 of the outstanding debt and the Respondent would likewise be responsible for the equal amount but he would acquire an \$110,000.00 asset if I do not adjust that property to give the Petitioner an interest. Similarly, the Petitioner would retain an asset valued at \$62,000 if I don't give the Respondent an interest.

46. The difference in value of the Winton Meadows and Marshall Road properties is approximately \$48,000.00. The balance owing to the banks is \$64,329.00 after the sale. Accordingly a fair distribution would be to depart from the equal sharing principle and I hereby order that the Petitioner shall be responsible for \$18,000.00 of the debt owed to the bank on the balance outstanding on the mortgage of the matrimonial home and the Respondent shall be responsible for the balance. The Petitioner will then retain her interest in the Marshall Road Property and the Respondent his interest in the Winton Meadows Property.

47. Should the Petitioner fail to pay her portion of the debt within 90 days of the date hereof, the Marshall Road property is to be sold to pay the sum ordered and the net proceeds given to her.
48. If the Respondent fails to pay the balance, then he will lose the full value of the Winton Meadows property and will only stand to benefit from any residual proceeds if the bank were to sell the same.
49. Each party is to bear their own costs.

Dated this 3rd day of February 2023


The Hon. Madam Justice G. Diane Stewart