

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2016/FAM/div/00667

BETWEEN

MW

Petitioner

and

DW

Respondent

BEFORE: The Honourable Mr Justice Bernard Turner

APPEARANCES: Ms Kendolyn Cartwright & Mr Keith Seymour for
the Petitioner

Messrs Sidney Campbell & Cyril Ebong for the
Respondent

HEARING DATES: 1 May, 5 June & 11 July 2018

RULING

Turner J

The parties to this action were married in June of 2005 and had no children. By a Petition filed in December 2016, the Petitioner obtained a Decree Nisi on the ground of the Respondent's cruelty, on an uncontested application, in June of 2017.

2. The Petitioner filed a Notice of Intention to Proceed with Ancillary Matters on 28 November 2017 in which it was indicated that the Petitioner was seeking property adjustment.

3. The affidavit of means, also filed on that date indicated that the Petitioner, had a salary of \$1,837.00 per month, rental income of \$750.00 per month and income from a business of \$600.00 per month. Her expenses, inclusive of a mortgage loan on the matrimonial home in the amount of \$2,702.00 per month and other home related expenses of approximately \$1,000.00 per month, is asserted to be \$4,976.08 monthly.

4. The Respondent's affidavit of means, filed 28 March 2018, asserts that he is a self employed carpenter with a monthly income of \$2,200.00 and expenses of \$1,540.00, inclusive of electricity of \$500.00, yard maintenance of \$60.00 and groceries of \$600.00. It also indicated that he was residing at the matrimonial home, which is described as being a three bedroom home with an efficiency/apartment attached. This affidavit also asserts that the matrimonial home in Coral Heights and a piece of vacant property off of Carmichael Road are jointly owned by the parties. He also stated, beginning at paragraph 6 of his affidavit:

“6. That since we married.....I gave\$700.00 per month to assist with the mortgage of the matrimonial home.

7. That in a spirit of compromise, I am prepared to offer my interest to the Petitioner for 45% of the appraised value of the matrimonial home and 10% of the appraised value of the vacant property.”

5. By an affidavit filed 26 April 2016, the Petitioner disputed the quantum of the Respondent’s payments for electricity, yard cleaning and groceries. She also stated that the Respondent moved out since October of 2017. In respect of the properties, she stated that she was the sole owner of the matrimonial home property and that the parties jointly owned the vacant land, both of which were mortgaged. The Petitioner provided a back sheet of the conveyance indicating a purchase by the Petitioner in her maiden name a year before the marriage of property for the sum of \$44,000.00.

6. The Petitioner also indicated that the Respondent contributed a sum of \$400.00 monthly towards the mortgages for the properties from July 2005 to April 2008 and \$600.00 monthly from April 2008 to July 2014, but asserted that the sum was applied towards \$7,000.00 which the Respondent received for the purchase of a truck from a loan in the name of the Petitioner.

7. From July 2014, upon the purchase of the vacant property, the Petitioner indicated that the Respondent contributed \$1,000.00 monthly

towards the mortgage, stopping in October 2016, although the mortgage was then in arrears in excess of \$9,000.00.

8. By a further affidavit filed 25 May 2018, the Petitioner adjusted the amount of the money which she had asserted the Respondent had received for the purchase of a truck down to \$4,000.00 and exhibited the entirety of the conveyance of the property purchase in 2004 and a letter from the mortgagee dated September 2016 indicating the extent of the arrears as earlier asserted.

9. The Petitioner proposed the release of her interest in the vacant land as a property adjustment, provided the Respondent secured a release of the property from the mortgage.

10. By a final affidavit filed by the Respondent 4 June 2018, he disputed the Petitioner's accounting and asserted that he made contributions to the matrimonial home in both cash and 'sweat equity', beyond his mortgage contributions, in the form of \$18,000.00 cash and his installation of kitchen cabinets, counter tops and bathroom vanities. He further upped his proposal for property adjustment, asserting that he was entitled to a 50% interest in the family assets, as he contributed 'greatly' to their acquisition. He also exhibited an estimate of the respective parties contributions and a plethora of cancelled cheques in purported proof of these contributions. He did not dispute the Petitioner's assertion that she was the sole legal owner of the property housing the matrimonial home.

11. This affidavit was responded to by the Petitioner on 11 June 2018 in which she disputed the Respondent's assertion that he contributed \$18,000.00, asserting that the actual contribution was approximately \$3,200.00, and providing documentation disputing the assertion of 'sweat equity' in the kitchen cabinet installation.

12. Counsel for each of the parties provided written submissions, repeating the assertions in the affidavits as to the suggested distribution of the matrimonial assets. Counsel on behalf of the Petitioner, relying on **Burns v Burns 1983 EWCA Civ 4** and **Gissing v Gissing 1971 AC 995** submitted that the Respondent had no interest in the matrimonial home property, in the name of the Petitioner only, since there was no common intention of the parties to create a legal estate upon trust for the Respondent.

13. In contrast, the Respondent referred to section 29 of the Matrimonial Causes Act and submitted that the 'modern' approach of the court to the issue of matrimonial division of assets is to apply the principle of fairness, as explicated by Barnett CJ (as he then was) in **A v B 2008/FAM/div/132** where he stated that:

"In my judgment, the modern approach to a division of property in a marriage is that fairness is, an equal sharing of property unless there is a compelling reason to depart from that equality...

In my judgment, this should now be the approach in The Bahamas."

I respectfully agree with finding of the Learned former Chief Justice.

14. That however does not necessarily determine the issues at hand, since that decision provides for departure for compelling reasons. Further, in that decision the property had been acquired after the marriage, whereas in the instant matter the Petitioner acquired the matrimonial home property a year prior to the marriage. The home was built during the course of the marriage and I find on the evidence that the Respondent, during the course of this eleven (11) year marriage made contributions to the mortgage and certain of the recurrent expenses. However I also find that the Respondent has sought to increase the value of his contributions by inaccurate and misleading statements, based on the available affidavit evidence, backed by documentary exhibits by the Petitioner.

15. The Respondent incorrectly asserted that he jointly owned this property, whereas in fact it was only the undeveloped land which they jointly owned. He is however listed as the guarantor of the mortgage taken out in 2008 in the sum of some \$226,000.00 plus. This mortgage was presumably at some point increased to cover the recent purchase of the undeveloped land.

16. Having called on the parties to provide the court with an indication of the value and equity in these properties, I received from the Petitioner, with the agreement of the Respondent, appraisals for the developed land with the home and the vacant land in the sums of \$380,000.00 and \$135,000.00 respectively. The appraisal for the developed land is dated 30 May 2012 and the appraisal for the vacant property is dated 1 March 2014.

17. Counsel on behalf of the Petitioner also provided the court with a print out of the mortgage balance, secured by these two properties, in the sum of \$345,446.58 as at 1 September 2018. I accept each of the appraisals as being a current and accurate assessment of the value of the respective properties. From the available evidence, I calculate that the total equity in the respective properties is in the range of \$170,000.00.

18. From the evidence of the respective parties contributions to the developed property I find the following:

a) The Petitioner purchased the property prior to the marriage without any intention to make it a part of any marital assets.

b) During the course of the marriage a home and apartment were built principally through the financial efforts of the Petitioner, with small contributions by the Respondent, inclusive of some mortgage payments, although the majority of those payments were attributable to a loan for a vehicle for his benefit, and the vacant land.

c) The Respondent thereby acquired an interest in this property, but not an equal share since his contributions were small compared to that of the Petitioner, and the property is her name exclusively. I find that the evidence justifies a departure from the principle of equality in respect of this property.

d) The interest of the Respondent in respect of this property I therefore determine to be 10% of the total equity in that property.

19. The parties jointly own the vacant land, which was purchased only four years ago. Having regard to the assessed value of that land and the date of its acquisition, I find that the vast majority of the equity in these two properties in fact is in the developed land, and that no more than 10% of the total equity of these two properties is in the undeveloped property.

20. For the reasons stated above, I find that an equitable distribution of the assets, or more properly, the equity in these mortgaged assets would be as follows:

- i) Total equity equals \$170,000.00,
- ii) Equity in undeveloped property equals to 10% of total equity, or \$17,000.00,
- iii) Equity in developed property equals to 90% of total equity or \$153,000.00
- iv) Petitioner's interest equals to 50% of equity in undeveloped land, or \$8,500.00,
- v) Respondent's interest in developed land equals to 10% of equity or \$15,300.00

21. I therefore find that the Petitioner should keep the developed property already in her name, and should pay to the Respondent his interest in that property, in the sum of \$15,300.00, minus her equity in the undeveloped land, in the sum of \$8,500.00, for a total payment of \$6,800.00, within one year of this order. Further, the Petitioner should relinquish her interest in the undeveloped property by a transfer of her interest, subject to the Respondent being able to secure a mortgage payout of the Petitioner's present mortgage in the sum of \$118,000.00.

22. Alternatively, the Petitioner may purchase the Respondent's interest in the property by the payment of his interest in the said property, in the amount of the said \$8,500.00, in which case her payment to the Respondent would be \$15,300.00 plus \$8,500.00, or \$23,800.00, within two years, if the Petitioner is able to secure a mortgage in her sole name, releasing the Respondent as a guarantor of any loan related to these two properties.

23. Should neither party be able to secure the necessary mortgage as outlined, the undeveloped property is to be sold and a sum up to \$118,000.00 be paid off against the mortgage, and any sum secured above that amount to be paid to the Respondent.

24. There is no order as to costs.

Dated this 13 day of November, A.D. 2018

**Bernard S A Turner
Justice**