

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2020/FAM/div/FP/053

BETWEEN

NE

Petitioner

AND

RE

Respondent

BEFORE: The Honourable Justice Petra M. Hanna-Adderley

APPEARANCES: Mrs. Cassietta McIntosh for the Respondent
Respondent Pro Se

HEARING DATE: June 2, A. D. 2021

DECISION

Hanna-Adderley, J

Introduction

1. The parties were married on October 28, 1989. At the date of the marriage the Petitioner was 20 years old and the Respondent was 25 years old. The parties have 4 children all of whom are sui juris. The last of the said children is attending college abroad. The Decree Nisi was pronounced by me on June 24, 2020 in favour of the Petitioner on the ground of the Respondent's cruelty.
2. A Notice of Intention to Proceed with Ancillary Matters seeking an order settling the matrimonial home and costs was herein by the Petitioner on September 11, 2020. The

Petitioner relies on her Affidavit of Means filed herein on November 30, 2020. The Respondent has not filed an Affidavit of Means and is unrepresented.

Statement of Facts

3. The Petitioner seeks an Order that the Respondent purchases her interest in the matrimonial home within 60 days or that the home be sold and the proceeds of sale be shared equally between the parties, and costs. She is not in a financial position to purchase the Respondent's interest in the matrimonial home. The Respondent is not in a financial position to purchase the Petitioner's interest in the matrimonial home and is not opposed to the sale but he is opposed to an equal division of the proceeds of sale.

The Petitioner

4. The Petitioner's affidavit evidence, in part, is that she is employed as a security guard with a monthly income of \$916.00 per month. Her monthly expenses total \$778.00 and her annual expenses total \$580.00. That she and the Respondent jointly own the matrimonial home and that the home is not encumbered by a mortgage. That she currently resides in the home with the Respondent. Under oath she stated that during the marriage she paid for the groceries, the phone bill, the school related expenses, and the babysitting costs. That the Respondent paid the Mortgage in fact he made a stipulation that he would always take care of the mortgage as he was the provider of the home. She admitted that when the marriage was good, he chipped in with the bills. She has to live in the house because she has nowhere else to go. She wants to stay in the master bedroom and not move into another room because she has the privacy of the master bathroom. That she only occasionally sleeps there now because of the Respondent's constant harassment of her. She is temporarily sleeping at a girlfriend's house. If the Court orders the immediate sale her daughter still in college can live with her whenever she returns home. She would consider staying in the home for the next 12 months to accommodate her daughter but he has to stop harassing her.
5. That she sends her daughter in college \$250.00 per month and if she needs anything else she will send her a little extra, like \$50.00. That she objected to getting the Scotia Line Credit. She went to the bank to sign because he sent her there. He said he would pay it. She outlined her monthly bills as set out in her Affidavit and stated that she cannot even get her hair done as she used to. She objected to him borrowing \$19,000.00 for their daughter's funeral. She was agreeable to \$11,000.00 or

\$12,000.00. She also did all of the beautification in the house, the crown molding, the first furniture that they had, the tiles, and the kitchen cabinets.

The Respondent

6. The Respondent's evidence under oath is, in part, that he should be permitted to move back into the master bedroom because the Petitioner no longer lives in the matrimonial home. She only keeps her clothes there. Once in a while she baths and changes her clothes there. That since hurricane Dorian he alone has been repairing the home. That the Petitioner does not pay any bills there. That he is a Pensioner. That he should be moving back into the master bedroom for his comfort because she is only housing her clothes there. That the Petitioner has somewhere else to live, but he has no where else to live. The home is his investment. That during the marriage he paid the mortgage but he did not really agree to pay it but because he had the government job and because of their ages, it was deducted out of his salary. That he chipped in with paying the phone bill and the groceries. That he chipped in on paying the expenses for the children too. That right now all the bills are on him. That the only thing that the Petitioner buys is some water and dog food and a little bit of groceries for herself.
7. That he earns \$1,400.00 per month as pension, and another on average \$900.00 a month (150 hours) as a Reservist. Bill collectors are calling him every day. That he was duped into paying the Court fees. That he has been paying all the costs to repair the house after the flooding caused by hurricane Dorian. The Petitioner has refused to help with the repairs, to go 50/50 on them. He gave an example of his effort to complete the plastering for \$600.00. She told him she had no money. He is going to leave everything as it is. If the Petitioner will agree to the postponement of the sale for 12 months to provide a home for his daughter when she comes he will not ask to be let into the master bedroom, and the Petitioner can change the lock on the master bedroom. That he promises not to make her uncomfortable and in any event she has her lawyer.
8. That his monthly bills are \$300.00 for a Scotia Line of Credit. The balance is about \$11,000.00 and that was for vacation expenses for the family. They initially borrowed \$15,000.00. The balance of the funeral costs at the Credit Union is about \$8,000.00. That he pays the credit union \$200.00 every month. He has a bill at furniture plus for a fridge and stove as the same got messed up in Dorian. His life insurance is \$97.00 per month. He pays \$550.00 every month toward his daughter's college expenses. He pays

the light bill of \$200.00, the water bill of \$130.00, and the cable bill of \$160.00, groceries now that his daughter is here and the other expenses for the house. His phone bill is \$267.00. His total monthly expenditure is about \$1,800.00.

Submissions

9. Mrs. Cassietta McIntosh-Pelecanos, Counsel for the Petitioner submitted that the Petitioner has not moved out of the matrimonial home. She goes to the house everyday. Because the Respondent questions her about her whereabouts and who she is with there are tensions in the house and for her own sanity she has been forced to sleep by a friend who is away for a few weeks but upon the friends return she will have to sleep at the matrimonial home.
10. That the property is jointly owns and has been for in excess of 31 years and by law she is entitled to a 50% interest in the same. During the 31 year marriage the Petitioner was responsible for buying groceries, paying the phone bill, babysitting charges for the 4 children of the marriage and for most of the expenses for the children of the marriage. One of those children is now deceased but all were raised in this home and the last one is still away at college and returns to this home when returning from college. She has one more year in college. That the Respondent paid the mortgage and the light bill. That he always made more than the Petitioner. The Petitioner is prepared to pay half of the appraisal fee.
11. The Respondent has not paid the Petitioner's legal fees on the divorce. He has paid \$200.00 on the bill since December. Should he not pay it prior to the sale the Petitioner asks that it be deducted from his half of the proceeds of sale.
12. The Respondent did not object to the sale of the matrimonial home but he objected to a 50/50 division of the proceeds of sale of the matrimonial home because he is the caretaker of the house and paying all the bills and making all the repairs to the house.

Issues

13. The Court must determine (1) whether to order the immediate sale of the matrimonial home and (2) what the division of the proceeds of sale should be.

Analysis and Conclusions

The Law

14. Sections 27 and 28, of the Matrimonial Causes Act, Chapter 125 ("**the Act**"), give the Court the power to make orders for the financial provisions for the parties to a marriage and orders for property adjustment. Section 29 of the Act specifically provides what the

Court must look at when determining settlement of property, which would, in summary be, the income of the parties, their financial needs, their obligations and responsibilities, the age of the parties, and their physical and mental disabilities.

15. The case of **Miller v Miller; McFarlene and McFarlene** [2006] UKHL 24 addresses doing what is "fair" as relates to the parties. Lord Nicholls states, in part:

"Fairness is an elusive concept. 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 a 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."

At paragraph 16 His Lordship went on to say that:

"A third strand is sharing. This "equal sharing" principle derives from the basic concept of equality permeating a marriage as understood today. This is now recognized widely, if not universally. The parties commit themselves to sharing their lives. They live and work together. When their partnership ends each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. Fairness requires no less. But I emphasize the qualifying phrase: "unless there is good reason to the contrary". The yardstick of equality is to be applied as an aid, not a rule."

Findings of Fact

16. This was a long marriage that ended after 31 years. The parties had 4 children. The Petitioner is 52 years of age and the Respondent is 57 years of age. There is no evidence before the Court that either suffers from any disability. They were both employed throughout the marriage. There is no dispute as to the joint ownership of the

matrimonial home. There is one child of the parties who is currently attending college abroad and they both contribute to the cost of her education. I find as a fact that the Respondent paid the mortgage over the matrimonial home by way of salary deduction. The mortgage has been paid off. That the Petitioner paid the other household bills, bought furniture, made household improvements and paid expenses for the children. The Respondent chipped in with paying the household bills and the expenses for the children as well. That while the Petitioner was reluctant to accept the Scotia Line of Credit she went into the bank and executed the paperwork and the family went on a family vacation with the funds. I find that this was a family expense and that she should bear some responsibility for this debt. I accept that the sum borrowed by the Respondent for the funeral of the parties' deceased daughter was excessive but I also accept that this was a family expense and that the Petitioner should bear some responsibility for these expenses. The financial positions of the parties have changed in recent years and certainly since the passage of Dorian and Covid 19. The Respondent is a Reservist on pension and the Petitioner's income has decreased. Neither are in a position to buy out the others interest in the matrimonial home. I am also satisfied that the Petitioner's unwillingness to contribute to the repairs to the matrimonial home is due to her reduced earning capacity.

17. Section 29 of the Act sets out the factors that the Court should take into account when determining the division of matrimonial property. The matrimonial home is property that is jointly owned by the parties and which I am satisfied was acquired by the joint efforts of the parties, that is, mortgage payments made by the Respondent and household and expenses for the children paid for by the Petitioner. This is a long marriage in which the parties worked together for the welfare of the family, consisting of 4 children. Applying the principles in **Miller v Miller; McFarlene and McFarlene** (supra), the parties in this case shared the roles of money-earner, home-maker and child-carer. Fairness requires that the assets of the parties should be divided primarily so as to make provision for the parties' housing and financial needs and when the marriage comes to an end each is entitled to an equal share of the assets of the partnership, unless there is a good reason to the contrary. In this case I see no reason to depart from the equal sharing principal. Neither party can buy out the others interest and so an order for the sale of the matrimonial home is the only practical order that I can make. Fairness

dictates, in all the circumstances of the case, that the proceeds of sale should be shared equally between the parties.

Disposition

18. Having, therefore reviewed and considered the aforesaid Affidavit, having heard the parties under oath, having heard Counsel on behalf of the Petitioner, having considered the submissions of Counsel for the Petitioner and the Respondent's Submissions, I make the following Orders that:

- (1) The Matrimonial Home situated at #46 Jervis Crescent, Hudson Estate Subdivision, in the City of Freeport, on the Island of Grand Bahama shall be sold and the proceeds of sale divided equally between the parties subject to the deductions set out in paragraph (2) below. The order for the sale of the matrimonial home shall be suspended for 9 months. On the expiration of 9 months the matrimonial home shall be listed for sale jointly by the parties with the following Realtors: Mosko Realty Grand Bahama; Churchill & Jones Real Estate; Keys Bahamas Realty Ltd.; HG Christie Ltd. and any other Real Estate company mutually agreed upon by the parties. Upon the expiration of 9 months the matrimonial homes shall be appraised by Cobert Management and Sales, Freeport, Grand Bahama, the cost of which shall be shared equally by the parties and paid to McIntosh & Co. upon the expiration of 9 months. Any party failing to advance his/her share of the appraisal fee shall pay the same from his or her share of the proceeds of sale upon the sale of the matrimonial home. The costs associated with the sale shall be shared equally by the parties and deducted from the proceeds of sale. Neither party is prohibited from finding a buyer prior to listing the Matrimonial Home for sale with the said Realtors.
- (2) The Petitioner shall pay one half of the balance of the Scotia Gold line as of today's date, such sum to be deducted from her portion of the proceeds of sale. The Petitioner shall pay 1/3rd of the balance of the loan at the Police Credit Union as at today's date associated with the burial costs of RSE such sums to be deducted from her share of the proceeds of sale. The balance of the legal fees due to the Petitioner's Counsel shall be paid from the Respondent's half of the proceeds of sale.
- (3) The Respondent may purchase the Petitioner's interest in the matrimonial home at any time before the matrimonial home is listed for sale and an offer is accepted on the matrimonial home.

- (4) The Petitioner shall have the exclusive use of the master bedroom and master bathroom until the matrimonial home is sold and may install a lock on the door to the master bedroom. The Petitioner shall pay 1/3 of the power bill and the water bill until the home is sold. The parties shall each buy their own groceries. The parties may collaborate on any repairs to be done to the home and once agreed the Petitioner shall pay 1/3 of such costs.
- (5) The Respondent is not to interfere either verbally or physically whatsoever with the Petitioner while she is in occupation of the matrimonial home or with her use and enjoyment of the matrimonial home until it is sold and vacated by the parties. Should the Respondent be found by this Court to have breached this provision of this Order he shall vacate the matrimonial home until it is sold.
- (6) The Respondent shall produce evidence of the balance of the Scotia Credit Line and of the Credit Union loan account together with the complete loan history of each account on or before June 14, 2021. Any charges that do not relate to the family vacation expenses and were incurred by the Respondent shall be borne solely by the Respondent.
- (7) The parties were advised of their right to appeal this decision.
- (8) Each party shall bear their respective costs herein.
- (9) Each party shall have liberty to apply.
- (10) Although this Judgment was delivered in open Court on June 7, 2021, the engrossed Judgment was not circulated to the parties until today. Pursuant to Order 42 Rule 3 (2) of the RSC the Judgment shall be dated today and the time to appeal the said Decision takes effect from today.

Dated this 7th day of July A. D. 2021

Petra M. Hanna-Adderley
Justice