

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**2016/FAM/div/00146(A)**

**BETWEEN**

**LR**

**Petitioner**

**and**

**MR**

**Respondent**

**BEFORE: The Honourable Mr Justice Bernard Turner**

**APPEARANCES: Messrs Sidney Campbell & Cyril Ebong for the  
Petitioner**

**Mr Nathaniel Dean for the Respondent**

**HEARING DATES: 16 January & 8 March 2019**

**RULING**

## **Turner J**

The parties to this action were married in May 1992 and have from their union one child, presently fifteen (15) years of age. The Petitioner obtained a Decree Nisi on the ground of living separate and apart for a period of five (5) years, in November 2018, the Petition having initially been filed in March 2016.

2. In respect of ancillary issues, there remains one outstanding matter, which is the interest of the parties in respect of the matrimonial home. The parties had agreed, and communicated to the court of 16 January 2019, their agreement on the following:

- a) The Petitioner to pay the sum of \$250.00 per month to the Respondent for maintenance of the child of the marriage.
- b) The Petitioner to pay half of all educational, medical, dental and optical expenses, as well as half of any health insurance, for the child of the marriage until she attains the age of 18 or completes tertiary education.

3. Besides the matrimonial property, I resolved the remaining issues on 8 March 2019 by ordering as follows:

- c) Custody of the child of the marriage to the Respondent (the wife) with reasonable access to the Petitioner, including staying access for a portion of the Christmas and summer school holidays.

- d) The Petitioner to pay the Respondent by 15<sup>th</sup> December each year, until the child of the marriage attains the age of eighteen years, \$300.00 towards a Christmas gift for the said child.
- e) The Petitioner to pay the Respondent by 31<sup>st</sup> May each year, until the child of the marriage attains the age of eighteen years, \$250.00 towards the cost of an annual holiday for the said child.

4. In respect of the matrimonial property, the Respondent, in her Notice to proceed with ancillary relief, filed 9 November 2018, indicated that that property, which she describes as the matrimonial home, is located at Fire Road, Lowe Sound Andros. She sought to have that home conveyed to her as a residence for her and the minor child of the family.

5. In her affidavit of means, filed 9 November 2018, the Respondent refers to this property as being jointly owned. A portion of an appraisal report is attached to this affidavit and makes the following assessment, as at 20 April 2018:

|                    |                    |
|--------------------|--------------------|
| Building valued at | \$75,480.00        |
| Contents valued at | \$ 4,500.00        |
| Property valued at | \$16,500.00        |
| <b>Total value</b> | <b>\$96,480.00</b> |

6. The full appraisal report indicates that the property surveyed at the instance of the Respondent was **“all that piece parcel or lot of land being lots 43 situated in the Fire Road Subdivision, in the Settlement**

**of Lowe Sound, North Andros..”**. Further, that property is identified on a diagram attached to the report which shows lot no. 43 as being a lot adjacent to a corner lot in an apparent subdivision of property off of the Queen’s Highway. Further photographs of the house on that identified property are attached to the report and are accepted as being the matrimonial home of the parties.

7. These matters are mentioned because the Petitioner, in his submissions in respect of this issue, indicates, through a letter from the Department of Lands and Surveys, that the said Department was prepared to offer to him, the purchase of land said to be occupied by him, for the sum of \$2,411.00. There is no evidence before the court that this offer was acted upon and no documents have been produced to demonstrate that either party has any legal title to any real property.

8. The letter from the Department of Lands and Surveys is dated February 2002 and indicates that the offer for the purchase of this land was valid for a period of three months only. It is further somewhat confusingly addressed as a “Crown Grant of Lot No. 51” in what is described as the Lowe Sound Extension in Andros, which that letter indicates the Petitioner occupied. The plan attached to that letter physically shows lot 51 as being physically and geographically dissimilar to lot no. 43, as described by the appraiser, on which the house identified as the matrimonial home sits. Even that letter, dated 8 February 2002, has not yet, according to the parties, been acted upon in the sense of any grant actually being given.

9. The net effect of these various factors seems to be that the property on which this matrimonial home sits, howsoever described, is not presently legally owned by either of the parties, jointly or otherwise. The home itself, according to the undisputed appraisal report, is worth \$75,000.00 and is of concrete and cinder block construction, and is therefore, by no stretch of the imagination or ingenuity of technology, a chattel or movable home.

10. Although the date of the commencement of construction of this home is in some dispute, it is clear on any reading of the several affidavits on this issue that the commencement of construction took place at some point within a year, before or after, the marriage in 1992.

11. Having regard to these circumstances, I do not see the basis of the apparent expectation that a Crown grant will eventually be given to the Petitioner, indeed, apart from the Department of Lands and Surveys letter dated 2002, no other documentation has been presented which suggests that there is even an extant application for a Crown grant of any property. The parties may have some basis for consideration of a Crown grant, or some other type of application, having regard to their apparently open occupation of the land on which the matrimonial home is constructed, but presently neither party has asserted any legal title to the property on which this home sits.

12. That being said, I am prepared to determine, on the evidence before me, the issue of the parties respective interests in what they each consider

to be a matrimonial asset, this home. Nothing which is decided however can be interpreted as the court purporting to vest any of the parties with any title, beyond whatever equitable interest they may have in this home.

13. The Respondent is seeking the transfer of what she describes as the Petitioner's 50% interest in the home, as a residence for the minor child of the marriage and herself. She presently resides in the home in Andros, and the Petitioner now lives in New Providence.

14. The Petitioner is content for the Respondent to live in the home, together with the child, until the child attains the age of 18 (in November 2021), thereafter he proposes that the home be sold and the proceeds divided 70/30 in his favour.

15. Each of those proposals of course assumes that the parties have some legal title capable of conveying.

16. The Petitioner asserts that due to the (disputed) fact that he commenced construction on the home prior to the parties marriage in 1992, and that since his contributions were disproportionately more than those of the Respondent, that the court would be justified in departing from the modern day approach to the division of matrimonial assets which is that of equal sharing unless there is a compelling reason to depart from that principle.

17. The Respondent asserts that she made financial contributions and at times assisted with manual labour during the construction of the house.

18. I have considered this issue and I am constrained to note that besides the assertions in the affidavits and submissions on behalf of the parties, there is precious little detail in any of the affidavits or submissions, one way or the other, in respect of the issue of the respective parties contributions to the construction of the home.

19 As indicated, the Petitioner seemed to have been the person seeking the Crown Grant in 2002. That would have been well after the marriage however and well before the separation, from the evidence, in 2011. Other than that, all that the Petitioner asserts is that his contribution was disproportionately greater than the Respondent's.

20. I do not agree with the Respondent's submission that she should be given the Petitioner's interest in the home, although I will order that the Respondent be permitted to live in the home, together with the minor child, until that child attains the age of 18.

21. From the facts, I am unable to determine whether the construction started the year before or the year after the marriage, but I find that to be an immaterial detail within the context of this matter.

22. In the circumstances of this case, I see no basis for departure from the principle of equal sharing, especially in respect of a matrimonial home

built during the currency of a marriage which lasted for approximately 20 years before it broke down. Upon the minor child turning 18, either party may buy out the other party's 50% interest in the home, at a value to be determined by agreement at that time.

23. Should neither party be interested or able so to do, then, should the parties by then have some title to the property on which the home sits capable of conveyance, then the home is to be sold and the proceeds divided equally between the parties, after any expenses related to the sale are deducted.

24. Should there not be any title capable of transfer at that time, then rental potential of the property should be assessed and the Respondent, should she wish to continue to reside in the property, pay to the Petitioner an amount equal to that rental potential.

25. Both parties are at liberty to apply.

26. There is no order as to costs.

**Dated this 22 day of March, A.D. 2019**

**Bernard S A Turner  
Justice**