

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division

2018
FAM/div/00083/

BETWEEN

CAMERON DELYLE DEANE

Petitioner

V

PATRICIA LILLIAN DEANE (nee Lewis)

Respondent

**BEFORE: The Honourable Madam Justice Donna
Newton**

APPEARANCES: Ms. Glenda Roker - Counsel for the Petitioner

T. Stuart- Counsel for the Respondent

HEARING DATES:

DECISION:

***Divorce - Ancillary Relief – Maintenance for Adult Child - Property
Adjustment - Equal Sharing Principle - Division of Assets -
Matrimonial Causes Act- Section 29 considerations.***

RULING

NEWTON J:

1. The Petitioner (Husband) and the Respondent (Wife) were married on the 3rd day of June 1999. There is one minor child of the marriage.

2. A joint decree nisi was granted in January, 2019 on the grounds that both Parties treated each other with cruelty.
3. In November, 2020 the issue of maintenance of the child of the marriage was settled by consent of the parties. The sole issue for the determination of this Court is property adjustment.
4. The property the subject of this application is Lot 400 Golden Gates Subdivision No. 2. It was purchased by the Wife prior to the marriage (in 1995) for \$21,500.
5. In support of the Husband's application for Ancillary Relief, he filed several affidavits namely, "Affidavit of Angela Denise Rolle" on 8th February 2023, "Second Affidavit of Cameron Delyle Deane" on 12th November 2020, and his Affidavit of Means on 3rd April, 2019.
6. In response, the Wife filed a "Second Affidavit of Patricia Lillian Deane (nee Lewis)" on 12th April, 2022, and a second Affidavit of Means on 14th June 2019.

The Husband's Evidence

7. The Husband admitted that the property was purchased by the Wife in 1995. At the time of the acquisition of the property, it was a structure which had significant structural and roof damage as a result of a fire. The premises were not fit for habitation and was purchased with the proceeds of a mortgage from Commonwealth Bank Ltd.
8. He further claimed that the Wife secured additional funding with the Scotiabank Limited to discharge the first mortgage with Commonwealth Bank Limited and obtained additional sums for the repair of the property.
9. He also claimed that the proceeds of these facilities along with the personal financial injections of both Parties were used towards the repair of the home. Additionally, the He stated that he always contributed towards the repayment of the loan facility at Scotiabank Bahamas Limited, as the property was used for the benefit of the family.

10. He also claimed that in or around 2007, the Parties agreed to consolidate their debts, both personal and mutual. They obtained a loan in the amount of \$209,900 from Fidelity Bank. The loan was used to liquidate the Scotiabank Mortgage, a mutual Chattel Mortgage, a BCPOU Loan (Mutual), a Commonwealth Bank Loan (Wife), a Royal Bank of Canada credit card debt and settlement of Homeowners Insurance premiums.
11. The Husband claimed that he continued to pay his portion of the mortgage with the Fidelity Bank by way of monthly salary deductions in the amount of \$942.46 up to March, 2020 when he ceased to be employed by the Bahamas Telecommunications Corporation (BTC).
12. He claimed that the property in question is “*matrimonial property*” as it was used as the matrimonial home from the inception of the marriage in 1999 to the breakdown of the marriage in 2017. Further, that he always assisted financially towards the upkeep and maintenance of the home inclusive of mortgage payments to Scotiabank and Fidelity Bank. He seeks a declaration that he is entitled to one half of the interest in the property or in the alternative that there be an order for the property to be sold and for the proceeds, after payment of the mortgage facility and all other reasonable expenses related to the sale be shared equally between the parties.
13. He is willing to release all of his interest in the matrimonial property on the basis that the Wife indemnifies him against all claims of Fidelity Bank.
14. He also claims that he was solely responsible for the costs of the appraisal of the matrimonial home. That the appraisal report dated November, 2022 provided by Frank Carey Real Estate Limited, valued the property at \$225,000.

The Wife's Evidence

15. The Wife stated that she was a single woman when she purchased the property in October, 1995. She agrees that there was damage to property as a result of a fire, however, her brother, who is a contractor, together with a crew of workmen from Andros undertook the structural repairs as well as the

electrical installation. She avers that she paid all of the travel expenses and gave small stipends to the renovation crew, and that the Husband did not contribute or make any personal injections to the renovation of the home.

16. As it relates to the Scotiabank mortgage dated November, 1996 and the further charge dated March, 1999, she stated that both facilities were secured before the marriage in June. Further, she explained that, the second charge in April, 2001 and the third charge in October, 2003, were used to facilitate the purchase of two Ford Explorer Jeeps. The Wife denied that the Husband contributed or made any personal injections to the renovation of the home.
17. She also stated that the Husband's "*unreliable, unpredictable nature manifested*" itself in the form of inconsistently contributing to the Mortgage, therefore, she would always ensure that she was in the financial position to service the entire debt.
18. Moreover she said that even after being disengaged from BTC in 2011, she continued to make payments to the Mortgage facility until 2015. However, she stated that she could no longer afford to pay the mortgage as a result of her mounting medical bills that were the result of a past spinal surgery for which the injury became inflamed.
19. The Wife contends that the Husband has not established a half interest in the property, as she acquired the property before the marriage and that the bulk of the borrowing was attributed to the consumer debts of the Husband. Additionally, she explained that she bore the majority of the educational expenses and maintenance of the child of the marriage and that she is still saddled with the debt associated with the Husband's credit card purchases. She is of the view that the loan payments made by him were to satisfy his personal debts and that he has a miniscule, if any, interest in the home.
20. The Wife submits that under the circumstances, the Court should declare that 80 percent interest in the property to her or in the alternative that there be an order that the property be sold and for the proceeds the sale be shared 80/20 in favour of her, after payment of the mortgage and all other related reasonable expenses.

Issue

21. Whether the property in question is a matrimonial asset? If yes, should the matrimonial property be shared equally?

The Law

22. The authority to make orders for financial provision and property adjustment is conferred by **Sections 27 and 28 of the Matrimonial Causes Act, (“MCA”)**, respectively.

23. However, before the Court exercises its jurisdiction, under the mentioned sections, consideration must first be given to the factors outlined in **Section 29 (1) of the MCA**, which states that:-

“29. (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.”

The Matrimonial Property

24. When it comes to defining “matrimonial assets” (sometimes also called “family assets”) Lord Denning in the case of *Wachtel v Wachtel* [1973] 1 All ER 829 described it in the following terms:

“...It refers to 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.”

25. Lord Nicholls of Birkenhead further explained the term Matrimonial Property in the case of *Miller v. Miller; McFarlane v. McFarlane* [2006] UKHL 24, as:

“Matrimonial property means the matrimonial home plus property acquired during the marriage otherwise than by gift or inheritance.”

26. When dividing matrimonial property, it is accepted that there should be no bias in favour of the greater earner if each party contributed equally to the welfare of the family. This view was held in the case of *White v White* 2003 3 WLR 1571 where Lord Nicholls asserted:

“In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles. Typically, a husband and wife share the activities of earning money, running their home and caring for their children...as a

general guide, equality should be departed from only if, and to the extent that there is good reason for doing so. The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination.”

Analysis

27. In reliance on the definition of a matrimonial home in the cases of **Miller v. Miller (supra)** and **McFarlane v. McFarlane (supra)**, I find that the subject property, though acquired prior to the marriage, the home was used for the enjoyment of the family from the inception of the marriage in 1999 to the breakdown in 2017. Thus, it is considered a matrimonial asset.
28. Having determined that the home is a matrimonial asset, I now turn to consider the interest of each party.
29. Even though the property was purchased by the Wife prior to the marriage I accept that the Husband's contributions over the 18 years of the marriage entitles him to some interest.
30. The objective is to do what is right and just in an effort to achieve a fair outcome for all involved. I am guided by the factors outlined in Section 29 of the MCA. From the evidence, I find that there were unequal payments towards the mortgage loan despite the fact that each party earned a salary. The outstanding mortgage loan is predominantly being serviced by the Wife.
31. The Wife requested a deviation from the equal sharing principle on the basis that her contributions to the mortgage and the family were greater than those of the Husband throughout the duration marriage. From the evidence presented and taking into consideration all of the factors mentioned, I am of the view that fairness requires a departure from the equal sharing principle..
32. I find that a fair division of the interest in the matrimonial property is 60/40 in favour of the Wife.

Conclusion

33. After considering the factors laid out in Section 29 and all the circumstances of the case, the order is:

- i. The Husband to receive 40% interest in the matrimonial home and the Wife to receive 60% interest. The Wife to purchase the interest of the Husband less the mortgage balance within 90 days and to indemnify the husband against any charges relative to the mortgage. Costs of the transfer to be borne by the Parties equally.
- ii. Each Party to bear its own costs.

Dated this 17th day of May 2024

A handwritten signature in black ink, appearing to read 'D. Newton', is written above a horizontal line.

Justice Donna D. Newton