

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division

2018
FAM/div/00404/

BETWEEN

GERMAL ROLLE

Petitioner

V

LISA MARIE ROLLE (nee Carey)

Respondent

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

APPEARANCES: - Bridgett Ward - Counsel for the Petitioner

**Mrs. Braynen Symonette- Counsel for the
Respondent**

**HEARING DATES: 28th March 2023, 5th July 2023, 27th February
2024, 13th March 2024**

DECISION: 27th February 2025

*Divorce - Ancillary Relief - Property Adjustment - Whether
boat is matrimonial asset - Whether Husband should reimburse Wife
for her expenses in boat that sank – Division of Debt - Whether
Husband should indemnify the Wife for dockage fees - Matrimonial
Causes Act- Section 29 considerations.*

RULING

NEWTON J:

1. The original ancillary relief application commenced five years ago and was set before two previous judges both of who has demitted office. The instant application was filed in March 2023.
2. The Parties in this matter have had a very short marriage. They were married in December 2015, and three years later, in June 2018 the Petition was filed. A Decree Nisi was granted in March, 2019 and made Absolute in July 2019. There are no children of the marriage. The Petitioner (Husband), a dock master, was 44 years at the date of the application and the Respondent (Wife), a banker who is 11 years older than the Husband, was 55 years old.
3. Throughout the duration of the marriage, the parties never co-habited as the Husband resided in Black Point, Exuma and the Wife resided in Garden Hills, New Providence.

FACTS

4. The evidence shows that after the Parties were married, the Husband assured the Wife that he would relocate to Nassau to live with her once they purchased a boat (a 39ft 2001 Midnight Express Powerboat) and start a Charter Fishing business "*L & R Boat Charters*".
5. The Parties agreed to purchase the boat and to establish the Fishing business. Following this agreement a secondary discussion commenced in relation to the financing of the boat. According to the evidence provided, the Parties agreed that the Wife would allow her home to be used as collateral to procure a loan for the purchase of the boat, while the Husband will be solely responsible for the repayment of the mortgage loan and all ancillary expenses related to the boat;

6. The boat was purchased from Allied Marine Inc. (in the United States) at a cost of \$123,000. The Wife, from her personal savings, paid a deposit of \$12,350. Thereafter, she pledged her home as collateral obtaining a loan in the amount of \$150,000.
7. That the Husband travelled to the United States to collect the boat, where he arranged for the title deeds to the boat to be issued solely in his name. He then sailed the vessel from the United States to Nassau and then to Exuma where it remained until it allegedly sank.
8. That in May 2017, he obtained a Business License Certificate, in his sole name, “Mr. Germal Rolle trading as L & R Boat Charters”.

EVIDENCE

The evidence was contained in the affidavits of the Parties and their evidence during cross examination on their affidavits. The evidence shows that the Husband never relocated to Nassau as agreed.

9. The Wife gave evidence that she encourage her son to pursue a course in marine engineering in order that he will be able to assist on the boat. She said that once he completed the course, which she financed, the Husband’s father denied the son access to his Marina where the vessel was docked.
10. That the Husband made the requisite mortgage payments from January 2017 to August 2018 totaling sum \$30,977.45. However, from September 2018 he ceased all mortgage payments while maintaining possession of the boat. He said he ceased payments on the mortgage when the Wife claimed that the boat belongs to her and she brought an action against him. As a result, the Wife was then forced to take on the remaining payments, as she said **“to save her house”**. From September 2018 to the 5th of June 2023 she paid \$112,000 in loan repayments. As of June 14th 2023, the remaining outstanding principal sum totals \$62,527.16.

11. The Wife claimed that she was not receiving any benefit from the boat despite her requests to the Husband. Further she claimed that the Husband had secretly attempted to sell the vessel to his father. As a result she obtained an injunction restraining him and his father from selling or disposing of the boat.
12. Shortly after the restraining order, the Husband advised the Wife that the boat sank and unfortunately it was not insured. Prior to the sinking, he offered to transfer the vessel to the Wife.
13. After the alleged sinking the Husband's father, Tucker Rolle, claimed against the Wife, dockage fees of \$232,774.65 plus interest for the vessel, stating that it was docked at his Marina, "Compass Cay", in Exuma prior to it sinking. The Wife refused to pay this and subsequently Mr. Rolle commenced litigation against her.

ISSUES

14. The issues that arise in this matter are:
 - i. Whether the Husband should be made to reimburse the Wife for the amount she paid for the vessel (\$200,720); and
 - ii. Whether the Wife should be indemnified against all claims made by Compass Cay for any alleged dockage fees incurred on behalf of the boat.

THE LAW

15. The authority to make orders for financial provision and property adjustment is conferred under **Sections 27 of the Matrimonial Causes Act, Chapter 125 of The Statute Laws of The Bahamas ("MCA")**, respectively.
16. In exercise of the jurisdiction conferred by Section 27, regard must be had 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

17. Matrimonial assets (also called “family assets”) was defined by Lord Denning in the case of *Wachtel v Wachtel* [1973] 1 All ER 829 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.

18.The term “matrimonial property” was also defined in the case of **Miller v. Miller; McFarlane v. McFarlane [2006] UKHL 24**, where Lord Nicholls of Birkenhead asserted that:

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

19. Having reviewed the evidence provided, it is clear that the boat was in fact acquired during the marriage by both parties and it was intended for the use and benefit of the family. As a result, I find that the boat does fall within the definition of matrimonial property as outlined in the cases of **Wachtel v Wachtel (supra)** and **Miller v. Miller; McFarlane v. McFarlane (supra)**.

20.Having determined that the boat is matrimonial property it must now be decided how the interest ought to be distributed.

21.When it comes to the division of matrimonial property Sir Michael Barnett asserted in the case of **A v B 2010 2 BHS No.19** that:

“the modern-day 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”

22.In addition to this it has been established that the Court’s overriding objective in these matters is to be fair. In **Miller v Miller, McFarlane v McFarlane 2006 2 AC 618** Lord Nicholls in considering the fairness approach stated:-

“This element of fairness reflects the fact that to a greater or lesser extent every relationship of marriage give rise to a relationship of interdependence. The parties share the role of money-earner, home-

maker and child-carer. Mutual dependence begets mutual obligations of support. When the marriage ends fairness require that the assets of the parties should be divided primarily as to make provision for the parties' housing and financial needs, taking into account a wide range of matter such as the parties' age, their future earning capacity, the family's standard of living and any disability of either party.”

23. Additionally, Sir Charles J, in the case of **H v. H [2007] EWHV 459**, also stated that the yardstick of equality should be applied as an aid, not a rule and that each case should be examined on its merits.

Decision

24. Regarding the issue of whether the Husband should be made to reimburse the has shown that the Wife was solely responsible for funding the purchase of the vessel, she paid the deposit, pledged her home as collateral for the loan to purchase the boat and continued to make the mortgage payments after the Husband ceased paying them. Her evidence is that she received no benefit when the Husband chartered out the boat and collected the payments. That she was informed by the Husband that the boat “**sank**” and that it was “**not insured**”. She stated that she was not provided with any formal document certifying the sinking or a police report on the matter. The Husband explained that he was not able to charter the vessel because he was not able to obtain insurance. The reason he was not able to obtain insurance, he stated, is because the vessel was registered to be used in New Providence and not Exuma.

He explained that the funds he used to pay the mortgage were funds he received as a Dock Master and Tour Guide. Incidentally, he was employed as a Dock Master at his father’s Marina where the boat was docked. Having observed the Husband’s demeanor during cross examination and his reluctance to respond to questions put to him by the Wife’s Counsel, I accept the Wife’s evidence over that of the Husband regarding the use of the vessel.

25. Fairness is not always tantamount to an equal sharing of the asset as was outlined in the **2018 Court of Appeal** decision in **Edward Ira Munroe vs Avis Elouise**

Munroe. The physical asset is no longer available, only a debt incurred by it. It is necessary to determine whether the obligation to repay this debt ought to be divided equally. Exercising my discretion, I shall depart from the equality principle for the following reasons. The Husband's conduct during the short marriage and his dealings with the family asset cannot be ignored. It is worth noting that 18months after the Husband took possession of the boat he filed a Petition for divorce.

26. The purchase of the vessel was contingent on two main factors. Firstly, that the Husband would relocate from Exuma to New Providence to be with the Wife and secondly, that he would be responsible for the mortgage repayments. However, the Husband did not perform his obligations under the agreement. The Wife mortgaged her home, and paid the deposit along with the full price for the boat. Notwithstanding, the Husband registered the boat and the business in his sole name. He did not relocate to New Providence or complete the mortgage repayments as agreed. Instead he took the boat to Exuma where he remained with the boat.

27. The objective of the Court in these matters is to do what is right and just in an effort to achieve a fair outcome for all involved. Fairness in this matter demands that the Husband be made to reimburse the Wife for the funds she expended on the purchase of the boat, as she did not receive equal benefit from the use of boat.

28. This Court finds that the boat and the business were in the sole name of the Husband, coupled with the fact that the boat was operated in Exuma by him. It is noted that the Wife's evidence is that she never authorized the boat's docking at Compass Cay. It follows then, that he should be responsible for the docking fees.. As a result I find that the Husband is to indemnify the Wife against all claims made by Compass Cay for any alleged dockage fees relative to the boat.

Conclusion

29. Having considered the factors outlined in Section 29 in the MCA and all the circumstances of this case, the following order is made.

- a. That the Husband be made to reimburse the Wife all sums paid with the respect to the purchase of the boat less the \$30,977.45 he paid towards the mortgage being \$169,742.55; and
- b. That the Wife should be indemnified by the Husband against all claims made by Compass Cay for any alleged dockage fees regarding the boat.
- c. The Husband is to retain the sunken boat.
- d. The Husband is to pay the Wife fifty percent of her costs (\$10,000).

Dated this 28th day of February 2025

A handwritten signature in black ink, appearing to read 'Donna D. Newton', is written over a horizontal line. The signature is stylized and cursive.

The Honourable Justice Donna D. Newton