

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Law Division

2021/FAM/div/FP/00129

B E T W E E N

EA

Petitioner

AND

LGA

Respondent

Before: The Honourable Madam Justice Constance Delancy

Appearances: Wendell Smith for the Petitioner
Cassietta McIntosh-Pelecanos for the Respondent

Hearing date(s): 13 March, 2024 and 25 April, 2024

DECISION

DELANCY, J.

[1.] This is the Petitioner's application for an order for property adjustment of the matrimonial assets. The parties filed Affidavits and were both invited to cross-examine on the contents thereof.

Background

[2.] The parties were married on 12 April, 2009 in Freeport, Grand Bahama and, at the time of the granting of the Decree Nisi on 23 February, 2022, have been married for approximately 12 years. There are no children of the marriage or family.

[3.] The current assets held by the parties consist of the following:-

- i. Lot 21 Block 31 Chesapeake Bay, Grand Bahama, the matrimonial home (subject to a mortgage);
- ii. Lot 16 Block 8 Windermere Subdivision, Grand Bahama (subject to a mortgage); and
- iii. Property situate in Bootle Bay, Grand Bahama;
- iv. 1999 Ford F-150 Truck (Ford Truck);
- v. 2008 Nissan Titan Truck (Nissan Truck); and
- vi. 2014 Chevrolet Impala motor car.

[4.] The parties agreed to the re-adjustment of the assets which the Counsel undertook to reduce to a Consent to be initialed by the parties and forwarded to the Court as follows:-

1. *The Petitioner shall transfer his interest in the Bootle Bay property to the Respondent;*

2. *The Respondent shall transfer her interest in the Windermere property to the Petitioner and the Petitioner use all efforts to remove the Respondent's name from the Mortgage and indemnify her with reference to the repayment of the same;*

3. *The Petitioner shall pay the sum of \$100 to the Respondent being costs awarded in the Magistrate Court;*

4. *The Respondent shall purchase the Petitioner's interest in the matrimonial home being Lot 21 Block 31 Chesapeake Bay and in the event she is unable to do so that the Petitioner purchase the Respondent's interest in the same. In the event that parties are unable to purchase the other's interest the matrimonial home be sold and the net proceeds thereof be divided equally between the parties.*

Issue

[5.] The remaining issue to be determined by the Court is the ownership of vehicles and the value of the Ford Truck.

Evidence

[6.] Both parties filed Affidavits in which they identified properties and assets which they regard as the matrimonial assets. The Court invited that parties to be cross-examined by Counsel for the respective parties and the parties opted to stand on their respective Affidavits.

[7.] The Petitioner's evidence is found in his Affidavit of Means sworn and filed 12 March 2024; Supplemental Affidavit sworn 20 March, 2024 and filed 26 March, 2024; Second Affidavit sworn and filed 22 April, 2024.

[8.] The Respondent's evidence is found in her Affidavit of Means sworn 4 March 2024 and Supplemental Affidavit of Means sworn 11 March, 2024 and unfiled.

[9.] The parties are unable to arrive at an agreement with reference to two (2) vehicles, 1999 Ford Truck and 2008 Nissan Titan. The Court ordered the production copies of the registration for both vehicles and an appraisal of the Ford Truck. A copy of the Road Traffic Registration Certificates for the disputed vehicles were produced and exhibited to the Petitioner's Supplemental Affidavit. The Respondent sworn a Supplemental Affidavit and not filed averring that the Nissan Truck was originally purchased in the parties joint names.

[10.] The Court notes that at paragraph 12 of the Petitioner's Affidavit of Means he averred that he purchased 2014 Chevrolet Impala for the Respondent which was registered in her name. The Respondent did not dispute this claim.

[11.] The Petitioner also contends the Nissan Truck is his primary means of transportation. It was not disputed that the Nissan Truck was purchased during the marriage. It is, according to the Road Traffic Certificate, which the Court accepts, currently registered in the Petitioner's name.

[12.] The Respondent contends that she has been deprived of access to and use of the Ford Truck since 2021 the Petitioner does not dispute this claim. Further the Respondent does not accept the value of the Kelly Book, \$2,003 as asserted by the Petitioner in his Affidavit. The Respondent estimated the value of the Ford Truck to be \$5,000. The estimated cost of the value based on the appraisal report of the Ford Truck is \$4,500 to \$5,000.

Law

[13.] Section 25 (2) of the Matrimonial Causes Act (MCA) provides that the Court has the power to make property adjustment orders:-

(2) The property adjustment orders for the purposes of this Act are the orders dealing with property rights available (subject to the provisions of this Act) **under section 28 for the purpose of adjusting the financial position of the parties to a marriage and any children of the family on or after the grant of a decree of divorce, nullity of marriage or judicial separation, that is to say** —

- (a) any order under subsection (1)(a) of that section for a transfer of property;
- (b) any order under subsection (1)(b) of that section for a settlement of property; and
- (c) any order under subsection (1)(c) or (d) of that section for a variation of settlement.

(3) **Where the court makes under section 27 or 28** a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then on making that order or at any time thereafter, the court may make a **further order for the sale of such property as may be specified in the order**, being property in which or in the proceeds of sale in which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

(4) Any order made under subsection (3) may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include —

- (a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates, and
- (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order.

[Emphasis added]

[14.] Section 28 of the MCA provides:

(1) On granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter (whether, in the case of a decree of divorce or of nullity of marriage, before or after the decree is made absolute), the court may make any one or more of the following orders, that is to say —

- (a) an order that a party to the marriage shall transfer to the other party, to any child of the family or to such person as may be specified in the order for the benefit of such a child such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion;

- (b) an order that a settlement of such property as may be so specified, being property to which a party to the marriage is so entitled, be made to the satisfaction of the court for the benefit of the other party to the marriage and of the children of the family or either or any of them;
- (c) an order varying for the benefit of the parties to the marriage and of the children of the family or either or any of them any ante-nuptial or postnuptial settlement (including such a settlement made by will or codicil) made on the parties to the marriage;
- (d) an order extinguishing or reducing the interest of either of the parties to the marriage under any such settlement;

[15.] Section 29 of the MCA provides the guidelines that the Court must follow when making property adjustment orders:

- (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 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 towards the other....**”

[Emphasis added]

Analysis

[16.] The Court must determine which properties are matrimonial assets. Matrimonial assets or family assets were described in the case of **Wachtel v. Wachtel** [1973] 1 All ER 829 per *Lord Denning MR* at page 836:

...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.

[17.] In the Court of Appeal case of **Collie v. Collie** SCCivApp. No. 19 of 2015 as per *Crane-Scott, JA* at paras. 58, 59 and 65-67 thereof:

58. It now appears from the decision of the English Court of Appeal in **Charman v. Charman** [2007] 1 FLR 1246 that where a court elects to adopt the “*yardstick of equality of division*” first identified in **White v. White** [2001] 1 AC 596 or the “*equitable sharing principle*” coined by *Lord Nicholls of Birkenhead* in **Miller v. Miller; McFarlane v. McFarlane** [2006] UKHL 24, the equal sharing principle is not restricted only to matrimonial assets, but applies to all the parties’ property unless there is good reason to depart from those proportions.

59. Delivering the Court’s decision in **Charman**, *Sir Mark Potter P* explained the approach to the statutory exercise required by section 25(2)(a) of the English Act [corresponding to our section 29(1)(a)] in the following terms:

[65]...It is clear that the court’s consideration of the sharing principle is no longer to be postponed until the end of the statutory exercise. We should add that, since we take ‘the sharing principle’ to mean that property should be shared in equal proportions unless there is good reason to depart from such proportions, departure is not from the principle but takes place within the principle.

[66] **To what property does the sharing principle apply?**...We consider...the answer to be that, subject to the exceptions identified in **Miller** to which we turn in para [83]-[86], below, **the principle applies to all the parties’ property** but, to the extent that their property is non-matrimonial, there is likely to be better reason for departure from equality. It is clear that both in **White**, at 605 F-G and 989 respectively, and in **Miller**, at paras [24] and [26], *Lord Nicholls of Birkenhead* approached the matter in that way; and there was no express suggestion in **Miller**, even on the part of *Baroness Hale of Richmond*, that in **White** the House had set too widely the general application of what was then a yardstick.

[67] Even if, however, **a court elects to adopt the sharing principle as its ‘starting point’, it is important to put that phrase in context. For it cannot strictly, be its starting point at all...The inquiry is always in two stages, namely computation and distribution; logically the former precedes the latter.**

Although it may well be convenient for the court to consider some of the matters set out in s. 25(2)(a)...a court should first consider, with whatever degree of detail is apt to the case, the matters set out in s. 25(2)(a), namely the property, income (including earning capacity) and other financial resources which the parties have and are likely to have in the foreseeable future....” [Emphasis added]

[18.] The Court adopts the equitable sharing principle approach of **Miller v. Miller; McFarlane v. McFarlane** to the division of matrimonial property. The Respondent contends that she was deprived of access to and use of the Ford Truck since the parties separated in 2021. The Petitioner has not disputed this claim.

[19.] The Court when exercising its powers under Section 28 must consider the factors in Section 29 of the MCA. In the instant case the Court considered:

- i. That the Petitioner 40 years of age and Respondent 47 years of age and were married for over 12 years prior to the granting of the Decree Nisi and is therefore not a short marriage;
- ii. That is no evidence to suggest that either party suffers from any physical or mental disability;
- iii. That both parties contributed to the acquisition of the disputed assets;
- iv. That evidence is, which has not been disputed, the Petitioner earns a higher salary than the Respondent and parties have outstanding debts;
- v. That the family enjoyed a modest standard of living during the marriage;

Conclusion

[20.] The Court having reviewed the evidence and the submissions of the parties' Counsel finds that the value of the Ford Truck be set at \$4,500. The Petitioner is to retain ownership of the Nissan Truck. The ownership of the Ford Truck to be adjusted 45% interest to the Petitioner and 55% interest to the Respondent.

[21.] The Court hereby orders that:

1. The Respondent shall transfer her interest in the Nissan Truck to the Petitioner;
2. The Ford Truck shall be sold and the proceeds thereof to be divided between the parties in accordance with the Court's adjustment in the ownership thereof.
3. The Ford Truck to be produced within 7 working days hereof and the parties to agree a broker for the sale thereof.

[22.] In light of the fact that the majority of the assets were adjusted by agreement between the parties each party shall bear their own costs.

Dated the 11th day of February, 2025

[Original signed and sealed]

Constance A. Delancy
Justice