[2014] JMSC Civ 166

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2013 HCV 00215

BETWEEN	MISTELLE CORINE BROWN-WEST	CLAIMANT
AND	BERESFORD ELISHA WEST	DEFENDANT

Mrs. Yvonne Ridguard for the Claimant

Mr. Garth McBean Q.C. instructed by Green & Moodie for the Defendant

Heard: July 3 and October 29, 2014

Matrimonial Property/Sections 2, 6 and 7 of the Property [Rights of Spouses] Act/definition of the 'family home'/ Sections 12 [1], 13, 14 - lump sum payment/division of other property

Straw J

[1] The Claimant, Mistelle Brown West is seeking a declaration that the house in which she lived with her former husband, the defendant, Beresford West, in Boston, Portland on lands registered at Volume 1194, Folio 536 of the Register Book of Titles, is the family home of the parties pursuant to section 2 [1] of the Property [Rights of Spouses] Act [PROSA].

[2] She is also seeking a declaration that both parties are equally beneficially entitled to the said 'family home' pursuant to section 6 [1] [a] of PROSA. The parties have

peacefully settled the claim in relation to items of furniture and fixtures so that issue will not form part of the court's deliberations.

[3] Mr. West has attacked Mrs. West's claim on two fronts. Firstly, he has submitted that the house in question does not satisfy the requirements as laid out in the definition of the family home at section [2] 1 of PROSA. Secondly, even if it did, she is not entitled to an equal share as mandated by section 6. He has asked that the court vary that presumption and declare that she is entitled to either no share or at the most, a minimal one.

[4] The relevant sections of PROSA are sections 2 [1] which defines the family home, section 6 [1] [a] which speaks to the entitlement of both spouses to a half share of the family home on separation, divorce or termination of cohabitation and section 7 which empowers the court to vary the equal share rule if it is of the opinion that it would be unreasonable or unjust to apply that rule. It also sets out relevant factors that are to be included in the court's consideration in order to come to a determination on the point:

Section [2] [1]

> *"family home" means the dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one spouse by a donor who intended that spouse alone to benefit.*

Section 6 [1]

> *"Subject to subsection (2) of this section and share of the family home - each spouse shall be entitled to one-half:*
>
> (a) *on the grant of a decree of dissolution of a marriage or the termination of cohabitation*;

(b) on the grant of a decree of nullity of marriage;

(c) where a husband and wife have separated and there is no likelihood of reconciliation."

Section 7 [1]

"Where in the circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half the family home, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant including the following-

(a) that the family home was inherited by one spouse;

(b) that the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;

(c) that the marriage is of short duration."

[5] Section 13 [1] and [2] are also relevant as they mandate the time period when the application may be made for the division of property between the parties. This would be within twelve months of the grant of decree of dissolution of the marriage. Any application after that time limit would require the leave of the court. The parties were married on the 20th day of November1999 and divorced on the 12th day of December 2012. The Fixed Date Claim Form was filed by Mrs. West on the 15th day of January 2013, so she is well within the 12 month limit required by section 13 [2] of the PROSA.

Is the house the 'family home'?

[6] The first issue for the court to consider is whether the house in Boston is indeed the family house of the parties. They have agreed on certain salient facts:

1. After the marriage, they lived in the relevant house which consisted of 3 bedrooms, 2 bathrooms, living, dining room, kitchen and 2 verandas. This house was built by Mr. West in 1988. It is built on lands registered at Volume 1194, Folio 536 in the names of the defendant, his brother, Alphanso West and his sister, Millicent West as tenants in common. Millicent West is deceased. The house was built solely from the defendant's resources. After the marriage, the dwelling house became the parties' principal place of abode.

2. When Mrs. West joined Mr. West in the house, she knew that Mr. West was one of three (3) tenants in common registered on the title. There is a second dwelling house on the premises that was owned by the defendant's mother. Between 1990 and 2000, Mr. West changed this structure from wood to concrete. His daughter, Dorothy West, now lives there. Up to the hearing of the claim, Alphanso [who is apparently in his 80's] has only stayed at the premises once when he visited from abroad. Mr. West states that it is Alphanso's wish to be buried on the property. Alphanso, however, has two (2) daughters, grand and great grand children. There is no evidence in relation to offspring of Millicent. Mr West has children from a previous marriage or relationship.

3. Mrs. West contributed nothing to the acquisition or development of the house except that she maintains that she built a garage on the house sometime in 1999 to house her car. Mr. West, however, states that he was the one responsible for erecting the said garage with his own funds.

4. In 2010, Mr. West demolished this garage in order to erect a bigger garage to hold cars belonging to both Mrs. West and his son Peter, who presently lives in England. Mrs. West stated that she was happy with this development and she made no contribution to this improvement. Peter also started construction of a dwelling house on top of the disputed family home in 2010. Mr. West states that he told his son that he could not build the house on the land as it is owned by him as a tenant in common with his brother, but he would allow him to build on top of his [Mr. West's]

house. The land is over half acre in size consisting of 2 roods and 11.2 perches.

5. The parties have occupied separate bedrooms since 2005 when all intimacy ceased. Certain common household activities continued to the extent that Mrs. West continued to cook and do certain chores, namely washing his clothes. However, this activity ceased in 2010 [according to Mrs. West] or 2011 [according to Mr. West], when he told her to discontinue doing any such domestic activities on his behalf.

[7] The marriage would have lasted, at the least, 10 years before separation took place. This is an important aspect of the court's deliberations in determining a spouse's share in property by virtue of section 12 [2] of PROSA.

[8] In order for the court to grant Mrs. West an equal half share of the property in Boston, it must fall within the definition of the 'family home.' According to section [2] as set out above, the family home must be a dwelling house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence. It is clear that the house in question conforms to this aspect of the definition. In fact, they are both still occupying the house although separated. They have not lived at any other location as man and wife. It is also clear that the house was built solely by Mr. West and he would be the sole beneficial owner of the dwelling house.

[9] The major issue is whether it meets the requirement as set out in the penultimate aspect of the definition which speaks to land 'appurtenant' to the dwelling house and 'used wholly or mainly for the purposes of the household'.

[10] Mr. Garth McBean, QC, attorney for Mr. West, has submitted that in the circumstances of this case, there is no family home as the house, while owned solely by Mr. West, is on land owned by Mr. West and his two siblings. He referred the court to the judgment of Brooks JA in ***Patsy Powell V Courtney Powell*** SCCA No. 33/2010 delivered on the 21st February 2014. In that case, the trial judge had ruled that Mr.

Powell had obtained no interest in the land but was entitled to a fifty percent share in the family home. Brooks JA, who delivered the judgment of the Court of Appeal, referred to this finding in the following terms at paragraph 21:

> *"The learned trial judge found, as an issue of fact that both parties had contributed to the construction of a concrete structure on land in which Mrs. Powell held the sole legal interest. If a concrete structure which cannot be removed as a whole is placed on land wholly owned by Mrs. Powell, then according to the principle stated in* ***Minshall v Lloyd****, the structure becomes Mrs. Powell's property as well. It follows therefore that the learned trial judge was in error in finding that the structure was wholly owned by Mr. and Mrs. Powell, whilst being located on land wholly owned by Mrs. Powell."*

[11] At paragraph 22, Brooks JA found, however, that the error was not fatal to the judgment:

> *"The evidence of the sole ownership of the land by Mrs. Powell and the parties 'use of the premises, including the dwelling house, was sufficient for the learned judge to find that this was the family home for the purposes of the PROSA. That finding allowed her to allocate entitlement thereto between the parties, according to sections 6 and 7 of the PROSA."*

[12] Mrs. Yvonne Ridguard, counsel for the claimant has submitted that this is a narrow approach to the understanding of what constitutes the family home and has urged me to follow the reasoning of my sister, McDonald Bishop in ***Cunningham v Cunningham,*** Claim No. 2009 HCV 02358 delivered on the 16th September 2011. In that case, my sister had to determine whether the property in question could be deemed the family home in circumstances where it is built on land not belonging to either of the parties but belonging to the family members of the defendant. McDonald Bishop J, having thoroughly analyzed the evidence did come to the conclusion that the dwelling house could still be considered the family home [paragraph 62]:

> *"------- what the undisputed evidence does prove is that the land has been used wholly by the parties and their family for the purposes of the household for well over two decades. This would therefore satisfy the requirements in law for the land, together with the house, to be taken as the family home. There is nothing in the Act to say that the land must be owned by either party or both of them, it only states the dwelling house should be."*

[13] It should be noted that my sister delivered this judgment on 16th September 2011 and would not have had the assistance of the decision in **Powell**. However, she did go on to consider the claim within the context of section 14 [1] [b] of PROSA in the event that she was erroneous in her conclusion that the house was the family home [paragraph 74]. She referred to the fact that the claimant did not aver that she was claiming fifty percent on the basis that the house was the family home but requested that the court declare their respective interest, or in the alternative, to declare that she was entitled to fifty percent interest in the house [paragraph 30].

[14] Section 14 [1] [b] of PROSA provides for division of property that is not the family home. Section 14 [2] sets out the factors that the court ought to take into consideration in coming to a decision. McDonald Bishop J, considered all those relevant factors and stated that she would still have concluded that the claimant would be entitled to a fifty percent share in the house.

[15] In ***Camille Greenland v Glenford Greenland et al,*** Claim No. 2007, HCV 02805, delivered on the 9th of February 2011, Brooks J, as he then was, considered an application brought by the wife seeking a declaration that she was entitled to an interest in real property that had been the matrimonial home. The property was registered in the names of the husband, Mr. Greenland and his two children by a former marriage. Brooks J found on an analysis of the evidence, that Mr. Greenland was never the sole owner of the property either at law or in equity. As a result, he concluded that the property did not qualify to be treated as the family home [per page 16].

[16] In **Dalfel Weir and Beverly Tree** SCCA No 37/2011 delivered on the 17th March 2014, the Court of Appeal did consider the issue of land being 'appurtenant' to the dwelling house and whether it qualified as the 'family home.' In that case, the trial judge had awarded the appellant the sum of $1,300,000.00 as the value of half of the dwelling house that he found was built on lands owned solely by the respondent. The trial judge had concluded that the only property which could have been said to have been acquired by the couple during the marriage was the house built on the land.

[17] The appellant was of the view that the trial judge did not properly consider, *inter alia*, whether the land was appurtenant to the dwelling house in order to award him an interest in the land as well. Phillips JA, who delivered the judgment of the court, considered cases from the jurisdiction of New Zealand concerning the **Property Relationships Act** where the definition of the family home is analogous to that in Jamaica. She referred to the case of ***Vessey v Vessey*** *[2001] NZHC 320* where Williams J had to determine whether property located at 9 Wharf Road could be regarded along with property adjoining it at 11 Wharf Road as part of the matrimonial property. Williams J referred to **Fisher on Matrimonial Property 3rd Edition** where it is stated that the question whether land and buildings are appurtenant to the dwelling house used as the matrimonial home and have been used, at least principally, for household purposes is a question of fact.

[18] Phillips JA quoted Williams J in his application of the definition of 'appurtenant in **Fisher**:

> "'*Appurtenant' does not seem to lend itself to rigid definition but instead seems to involve a value judgment based on a number of factors. These factors include the extent to which there is an absence of any physical division such as a fence or wall between the dwelling house and the extras in question, whether the dwelling house and the extras were acquired at the same time and for the same general purposes, whether they are physically contiguous or at least in close proximity, whether they are laid out in a manner suggesting a physical relationship with each other, the previous history of the two properties as separate or combined, the general attitude of the parties to the two*

properties as separate or combined, whether the extras have had any use for any purposes other than that of the household and whether the extras are on the same certificate of title."

[19] Phillips JA, in examining the definition section [section 2 of the PROSA] in **Weir**, stated that the structure would have satisfied the meaning of dwelling house within the definition and concluded as follows [paragraph 44]:

"Pursuant to section 6 of PROSA each spouse would be entitled to one –half share of the family home. The appellant was therefore, at least entitled to a one-half share in the house. The learned trial judge made such an order-----but there was no indication that he was making the order pursuant to section 2 and 6 of PROSA. As a consequence, that is not the end of the matter, as in section 2, the definition of family home envisages the dwelling house together with any land-- ---. The learned judge did not address that at all in his judgment."

[20] Phillips JA, then considered the issue of what lands are appurtenant to the dwelling house and came to the conclusion as follows [per paragraphs 46, 51]:

"From these authorities, it can be seen that the determination of whether the land comprising Lot 9 was appurtenant to the dwelling house and used wholly or mainly for the household must include an examination of the principal or physical use to which the land was put up to the date of separation."

[21] Phillips JA did not adjudicate directly on the issue facing this court as in **Weir,** the appellant was seeking a beneficial interest in the land (Lot 9) or alternatively pursuant to section 6 of PROSA, that he was beneficially entitled to equal shares of the land and the dwelling house thereon as being the family home. The circumstances of that case involved sole ownership of the land in question by one spouse and Phillips JA came to the conclusion that the appellant was not only entitled to his half share in the dwelling house but also half share of lot 9 as land appurtenant to the dwelling house and used 'wholly or mainly for the purposes of the household.'

[22] It is certainly not clear whether the Court of Appeal in **Weir** came to the conclusion that the dwelling house by itself could be treated as the family home. In that case as well as ***Powell***, the land 'appurtenant' was owned wholly by one spouse. In the present case, the dwelling house is on land owned by one spouse and two other tenants in common. In **Vessey**, the issue was whether property number 11 Wharf Road which was left to the husband by way of a gift of testacy could be said to be intermingled with the matrimonial home at number 9.

The issue of tenancy in common

[23] Mrs. Ridguard has submitted that I could consider that the tenancy in common means that Mr. West has a distinct and separate share in the land and he is able to claim such a share. She has therefore urged that I grant Mrs. West a monetary interest as my sister allocated in ***Cunningham*** since Mr. West has the sole beneficial interest in the house. He has also been the sole occupier of the land for years. Between 1999 and up to 2010, the year of separation, his brother had only visited the premises once and his sister, Millicent West is dead.

[24] Her submission on the point of a monetary award is attractive as this approach has been adopted by this court as well as others on previous occasions. In fact, section 23 [1] of the PROSA empowers the court to make various and sundry orders relating to disposition of property including the payment of a sum of money by one spouse to the other. However, Brooks JA's judgment in **Powell** has challenged the practice of treating the dwelling house as distinct from the land for the purposes of division by virtue of section 6. I am therefore guided and restrained by this judgment.

[25] It would appear therefore, that even if I came to the conclusion that Mrs. West had any beneficial interest in the dwelling house, I could not make such a determination pursuant to section 6 of PROSA, because the land appurtenant to the dwelling house is legally owned by the defendant and two others as tenants in common. There is no basis on which I could draw the conclusion that Mr. West is solely entitled to the beneficial interest in the land.

[26] Based on the definition in section 2, Mrs. West would also have to meet the challenge as to whether it could be said that the land appurtenant to the said dwelling house was used 'wholly or mainly for the purposes of the household.' The evidence on the point is sparse but it is unchallenged that there is a second dwelling house on the land that is occupied by the daughter of Mr. West. This house is about nine feet away from the house where the parties reside. Mr. West's son, Peter is in the process of building his residence as a top floor to the structure occupied by the parties. The evidence from Mr. West is that he has a son buried on the land and that Alphanso will also be buried there.

[27] Mr. West also operates a bar and shop at the front of the premises. Although he stated that a lot of what was ate in the house came out of this shop, Mrs. West has said she made purchases from the shop if they ran out of food. Based on financial returns in relation to the shop, it is clear that it is a commercial enterprise, although alleged not to be very profitable. I could not make a determination therefore that the shop and bar were being used mainly for the purposes of the household. There is also evidence from both parties that Mr. West operates a farm from which some food is provided for the household. However, there is no evidence as to whether the farm is located on the said property. In **Weir**, Phillips JA found on the evidence provided, that the land appurtenant to the dwelling house was used wholly or mainly for the purposes of the household. I cannot come to such a conclusion based on the existing circumstances of this case.

Does Section 14 of PROSA apply?

[28] Mrs. West made her application for the division of property pursuant to section 6 of PROSA. Is this the end of the road for her and does this mean that parties whose domestic circumstances are ordered in a similar vein will lose the advantage of the equal share rule subject to the discretion of the court to order a variation pursuant to section 7 [1]?

[29] As was stated previously, section 13 1[a] and [2] of the PROSA, allow a spouse to apply for division of property on the grant of a decree of dissolution of the marriage

within 12 months of the dissolution or such longer period as the court may allow. In essence, this is what Mrs. West has done. However, she made a specific application as it relates to section 6. Section 14 [1] is, however, instructive as it states that when an application is made under section 13, the court may:

> *[a] make an order for the division of the family home in accordance with section 6 or 7, as the case may require; or*
>
> *[b] subject to section 17 [2], divide such property, other than the family home, as it thinks fit, taking into account the factors specified in subsection [2] which are set out below:*

Section 14 [2]

> *The factors referred to in subsection (1) are –*
>
> *(a) The contribution, financial or otherwise, directly or indirectly made by or on behalf of a spouse to the acquisition, conservation or improvement of any property, whether or not such a property has, since the making of the financial contribution, ceased to be property of the spouses or either of them;*
>
> *(b) That there is no family home;*
>
> *(c) The duration of the marriage or the period of cohabitation;*
>
> *(d) That there is an agreement with the respect of the ownership and division of property;*
>
> *(e) Such other fact or circumstance which, in the opinion of the Court, the justice of the case requires to be taken into account.*

Section 17 [2] referred to above is not relevant to the determination of this case. Section 2 also provides the definition of 'property':

> *"Property means any real or personal property, any estate or interest in real or personal property, any*

> *money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled."*

[30] It could be argued that since the court could not consider the application for division by virtue of section 6, it could go on to consider the dwelling house as property other than the family home and come to a decision whether it should be divided within the context of section 14[1] [b]. The dwelling house would fall within the ambit of the definition of 'other property'. However, it would first have to be determined whether there would be a bar to any such consideration. In **Audley Deidrick v Donna Annmarie Deidrick**, SCCA No. 4/2008, in an oral judgment delivered on 15th July 2008, Cooke JA, considered whether the claimant could succeed with a Fixed Date Claim Form that did not specify that she was seeking her remedy by virtue of section 6 of PROSA. In the said Claim Form, the applicant stated that she sought an entitlement to fifty percent interest in the property under the Act.

[31] Cooke JA explained his rejection of the submission that the Claim Form should fail as it did not sufficiently designate the particular section of the Act, i.e., it did not with any specificity nominate section 6 as the remedy which was being sought. While accepting that Rule 8 of the Civil Procedure Rules 2002 required that the statement of claim be specific so that the parties would be clear on the issues at stake, he accepted that all the parties recognized what was the issue being debated [paragraph 6]:

> *"In this particular case, there is no doubt that the case was conducted on the basis that 50% was being sought because of the assertion that Close Haven was the family home. The learned trial judge ---- set out the contending positions which were ---- that the claimant was seeking a division on the basis that it was the family home. She sets out the contention of the husband that the remedy provided by section 6 is rebutted principally on the basis that 2 Close Haven Walk was not within the provision of section 6 of the Act."*

[32] In **Carol Stewart v Lauriston Stewart** SCCA No.15/2011, delivered on the 6th December 2013, Brooks JA, in delivering the judgment of the Court of Appeal, referred to **Deidrick** and reiterated a similar position at paragraph 45:

> *"The next relevant section of the Act is section 13. It provides for applications for division of property in which either or both spouses are interested, including the family home. It is important to note that such applications will not be defeated only for lack of the proper form."*

[33] My sister, McDonald Bishop J in **Cunningham** considered the issue in circumstances where the claimant's statement of case made no mention of a particular section of PROSA. She also considered this to a breach of the Civil Procedure Rules [section 8.8] and made the point that the rules required the claim to state, *inter alia,* the enactment under which a claim is made. McDonald Bishop J opined that the term enactment would include the statute as well as the particular provision that allows for the claim. She thought that this was of some importance as 'oftentimes different sections may require different things to be established -----' [paragraph 9].

[34] McDonald Bishop J, stated that the omission would not be treated as fatal as the statute was identified in the claim and it was clear that the claimant was asking the court to determine the parties' respective interest in the property [paragraph 10]. It is in light of these circumstances that she considered the claim within the context of section 6 [application for family home] and section 14 [1] [b] [property other than family home].

[35] In **Weir**, the appellant had brought the claim requesting a declaration that he was solely beneficially entitled to a parcel of land registered at Volume 899, Folio 23. However, he had included an alternative declaration that both he and the respondent were beneficially entitled pursuant to section 6 of PROSA to equal shares of the land and dwelling house as being the family home. Counsel for the appellant complained that the trial judge had trawled through PROSA to apply section 14. Phillips JA had identified that as an issue for consideration but the point was never decided as she found that the trial judge had determined the issues within the context of section 6.

[36] In **Greenland**, Brooks J, [as he then was], considered the claim pursuant to section 13 on the basis that Mrs. Greenland had filed her claim within 12 months of the dissolution of the marriage. He then went on to consider the relevant factors under section 14 for division of property other than the 'family home'.

[37] The abovementioned cases are mostly distinguishable as the Fixed Date Claim Form in the present case has specifically requested a declaration that the parties were equally beneficially entitled to the family home pursuant to section 6 [1] of PROSA. It is not clear from the judgment in **Greenland** if there was specificity in relation to a particular section. It could be argued therefore, that in the present case, Mr West would only have been responding to a specific set of issues raised in relation to sections 6 and 7 of the PROSA.

[38] It is also to be noted that the relevant factors for consideration of a claim pursuant to section 6 are different than the factors to be considered under the provisions for section14. Under section 6, the presumption of equal division of the matrimonial home is founded on the concept that the marital or common law cohabitation is based upon a partnership of equals. This presumption is only rebutted if certain circumstances exist that make equal sharing repugnant to justice. [See **Brown v Brown** [2010] JMCA Civ 12 per Morrison JA, paragraph 34; **Graham v Graham** Claim No. 2006 HCV03158 [delivered 8th April 2008], per McDonald Bishop J, paragraph 15. Mr. McBean's submissions were focused only on sections 2, 6 and 7 of PROSA.

[39] Brooks JA in **Stewart** analyzed the difference in approach and factors to be considered in dealing with the family home and other property and concluded that the legislature did not wish the family home to be embroiled in argument involving the factors set out in section 14 [2]:

> *"[40] Portions of section 14 [2] have been emphasized above to demonstrate that these are factors which would have readily occurred to the legislature to have been relevant to the consideration of deviation from the equal share rule, and yet the legislature did not*

*use that approach. For this reason, it is fair to say that the legislature did not wish the family home to be embroiled in arguments involving those issues, or to be ordinarily subject to the "value judgments on which judges might differ" [see **Piglowska v Piglowski** [1999] 3 ALL ER 632]."*

Basis of the Court's Determination to Proceed under Section 14

[40] However, it is my opinion that the application should be considered within the context of section 14, for several reasons. The trajectory of the cases referred to above point to a strong inclination that an applicant ought not to be shut out on a basis merely of the lack of proper form. Secondly, the application is being made within the relevant 12 month limit of the dissolution of the marriage and Mrs. West should have an opportunity to exhaust the remedy provided by virtue of section 13 of the PROSA. Under that section, the spouse is entitled to apply for the division of property. Section 14[1] allows the court the option to make a decision by virtue of sections 6 and 7 or by virtue of section 14 or take action under both categories.

[41] Finally, the evidence that would be analysed by the court is essentially the evidence provided by both parties as to circumstances of acquisition, improvement, nonfinancial and financial contribution, the ordering of the affairs of the household, the financial strength of both parties, the presence or absence of children in the household and the financial position of both parties. Both parties were cross examined on their affidavits and the areas of difference were nominal. It is my considered opinion that neither party would be prejudiced by this decision.

Section 14 - Factors

[42] I will therefore analyse the evidence of both parties under the various factors as required by section 14 as laid out above. The relevant sections for the court's consideration is 14 [2] [a] to [c] and [e]. In relation to 14 [2] [a] that speaks to the contribution by the spouses to the acquisition, conservation or improvement of the property, a definition of contribution is expanded by section 14 [3] [a] to [i] as set out below:

Section 14 [3]

"In subsection (2) (a), "contribution" means -

(a) the acquisition or creation of property including the payment of money for that purpose;

(b) the care of any relevant child or any aged or infirm relative or dependent of a spouse;

(c) the giving up of a higher standard of living than would otherwise have been available;

(d) the giving of assistance or support by one spouse to the other, whether or not a material kind, including the giving of assistance or support which –

(i) enables the other spouse to acquire qualifications; or

(ii) aids the other spouse in the carrying on of that spouse's occupation or business;

(e) the management of the household and the performance of household duties;

(f) the payment of money to maintain or increase the value of the property or any part thereof;

(g) the performance of work or services in respect of the property or part thereof;

(h) the provision of money, including the earning of income for the purposes of the marriage or cohabitation;

(i) the effect of any proposed order upon the earning capacity of either spouse."

[43] Section 14 [4] also makes it clear that there is to be no presumption that a monetary contribution is of greater value than a nonmonetary one. I commence my analysis of the factors by acknowledging that there is no family home [per section 14 [2] [b] and that the parties have been married for ten years before separation [per section

14 [2] [c]. As accepted by Brooks, J in **Greenland,** this is not considered to be a marriage of short duration.

The Contribution of the Parties to the Property

[44] I will now analyse the evidence as it relates to the contribution of the parties as required by virtue of section 14 [2] [a].

It is generally accepted and I do make the finding that Mrs. West made no direct financial contribution as previously stated. Mr. West was responsible for building and making any improvements to the house. However, this is not the end of the matter as the nonmonetary contributions are to be considered under several factors as set out in section 14 [3] [a] to [i].

The Issue of Indirect and Non-monetary Contribution

[45] The court has to consider under this heading, the management of the household, the performance of household duties, the payment of money to maintain or increase the value of the property, the provision of money for the purposes of the marriage as these are the relevant issues revealed by the evidence. The evidence of each party on the relevant points will be considered and analysed. There is disagreement as it relates to Mrs West's contribution to the household.

Evidence of the Claimant

[46] It is the evidence of Mrs. West that during the marriage, she was financially responsible for the upkeep of the home and purchasing of food. She stated that the defendant gave her $5,000.00 per month towards household expenses for the first three years of the marriage and she was responsible for the rest. She admitted, however, that he also provided food, yam and banana from his farm. In her assessment, she provided three-quarter of their food during the marriage. If they ran out of food, she would make purchases from his shop. He was responsible for paying all the utility bills. However, she cooked, washed and ironed for both of them. When cohabitation ceased in October 2005, she continued to cook and do household chores until he instructed her to cease in May 2010. She admitted that Mr. West paid for the services of a helper who is still responsible to-date for cleaning the common areas used by both parties. In

relation to the upkeep of the yard, she agreed that Mr. West paid for the services of a gardener.

Evidence of the Defendant

[47] Mr. West denies that Mrs. West was financially responsible for the upkeep of the home and purchasing of food. He provided more food than was necessary from his own funds, shop and farm. He also stated that she did not buy food, that he bought the food in bulk. He did admit, however, that she would buy groceries sometime. He also confirmed that he provided the household help and paid the utilities. Mr. West admitted that she did cook and wash for him at times but that she did no ironing. I do accept his testimony in relation to the ironing of clothes as a household helper was employed.

[48] It is clear that while she did some household duties on behalf of the family, he did pay for household assistance. Since he also paid for the utilities, she is not credible when she states that she was responsible for the upkeep of the home especially in light of the fact that she did not specify what she actually did. She earned income as she was employed during the marriage and also received income from two pension plans at different stages. I do accept that that she would have spent some of her own funds on groceries but Mr. West also contributed to this to varying degrees during the course of their life together.

[49] In relation to other issues to be considered under the rubric of 'contribution,' the parties had no children so Mrs. West was never engaged in raising any children of the union. However, at some stage, Mrs. West had two (2) grandchildren living in the house, one for a short period of time and the other for a longer period with his consent. This would be to Mrs. West's advantage as it is not claimed that these were relevant children of the marriage.

The Provision of Money for the Purposes of the Marriage

[50] It is important to note that both parties earned income independent of each other. The evidence in relation to the income of both parties is uncontested except in so far as it relates to whether Mr. West's bar and shop was a profitable concern.

[51] In relation to Mrs. West, she was employed as a principal earning the gross amount of $73,590.00 per month up to 2003 when she retired. Since 2002, she has been receiving pension which is now $35,000.00 per month through the defendant who is a returning resident from England. She currently receives a pension of $58,000.00 monthly from the Government of Jamaica. As noted previously, she would have had income at her disposal during the tenure of the marriage.

[52] In relation to Mr. West, the only income referred to is the sum of £759.10 sterling equivalent to approximately J$112,346.00 at an exchange rate of $148.00. He would also have been operating the bar and shop and also a farm. He has provided the court with some financial returns for the years 2011-2013 in relation to the shop. These figures do not portray profitability. The court, however, cannot say whether the earnings were greater during the actual marriage. However, he has stated that he contributed groceries and food from the shop and farm to the household.

[53] It is clear therefore that both parties would have been in a position to contribute to the household expenses and I have accepted that they both did so as described above. Mr. West has admitted that at some point in time, Mrs. West would have earned more money than he did. However, I do accept that both parties contributed equally to the needs of the household whether in services or provision. For the most part, the food being provided would have been for them both as the members of the household. Based on her assistance with the household chores, I am not of the view that overall, one contribution was greater when compared to the other.

[54] Section 14 [3] [c] requires the court to consider whether any party gave up a higher standard of living than would otherwise have been available. Certainly there is no evidence to suggest that Mr. West did and I am also of the opinion that Mrs. West did not act to her disadvantage after her marriage by moving into that house. Although she lived rent free in a teacher's cottage prior to the marriage, I draw the inference that her position would have changed in 2003 after she retired. I bear in mind also that since the marriage she has been living and is still living rent free in the home in Boston.

Other Relevant Factors

[55] Section 14 [2] [e] allows the court to take other facts or circumstances into account if the court is of the view that it is just to do so. It is my opinion that it is relevant and just to include in my assessment the fact that Mr. West built the house ten years before his marriage to Mrs. West. She would also have appreciated that he was not the only registered owner of the land on which the house is built. It appears to me that this may be a reason why she spent no money to improve the house or land in any way save to build a garage to house her car. Although Mr. West is disputing that it was her funds, I do not find that this is relevant to my assessment as the garage was built for her advantage only.

[56] I consider also that both parties have an interest in other property. Mrs. West has a beneficial interest in a house at St. Mary on lands owned by her father. She stated that between 1987 and 1995, she built a two bedroom concrete house on the land. It is presently rented in the amount of $12,000.00 monthly. However, her two brothers also have a beneficial interest in this property. Although they are deceased, they have children who share in the proceeds from the rent. Mrs. West admits that Mr. West assisted her in fixing up the house to the extent that he came on the site on two occasions with some men and fixed the box eves. Mr. West has insisted that he did more than that, that he bought material, changed the windows and the doors as well as put up the ceiling. Mr. West also owns a separate lot of land in Boston. Mr West therefore has access to another property and also Mrs. West to a limited degree.

[57] It is important to note that Mrs. West also has an additional source of income as she presently works as the Principal at Kids and Kids basic school and receives a net salary of $21,000.00 monthly. This will only continue, however, for the next two years until she reaches the age of retirement. Also, both she and Mr. West have stated that she may not be receiving the pension from the British Government in the future due to their divorce. At present, she is earning a monthly amount of $126,000.00. Mr. West has asked me to come to the conclusion that her standard of living is not likely to be diminished as she is still employed and receives a pension. However, she may be

losing about $50,000.00 of that amount in the near future [i.e. the British pension and her present salary].

[58] In relation to Mr. West, Mrs. Ridguard has submitted that Mr. West has not been truthful to the court about his income as the excerpts from the savings book exhibited by him do not reflect the pension received. She has said that he must therefore have another undisclosed account. While that may be so, there is no dispute that his pension is in the amount of $112,000.00 monthly. Apart from the shop and the farm there is no evidence of any other source of income. He has stated that he does not sell the produce from the farm but supplies the household and gives the rest away. There is no contradictory evidence to challenge his assertion on this issue.

[59] I bear in mind also that both parties are elderly and entering the twilight years. Mrs. West has stated that she intends to remain in Portland and if she were to remove from the home in Boston, she would have to pay the minimum rent of $25.000.00 per month. Mr. West has the monthly pension of $112,000.00 guaranteed till his death and he has the sole beneficial interest in the dwelling house.

Conclusion

[60] Based on all the above circumstances, I am of the view that Mrs. West should be awarded some interest in the dwelling house as a result of her contribution to groceries for the household as well as her domestic duties for a period of ten years. This will be a modest one as Mr. West was financially responsible for the acquisition of the house and also bore the responsibility for the upkeep and maintenance. Her contribution is assessed to be twenty percent interest in the value of the dwelling house at Boston. This assessment is made primarily on the basis of the length of the marriage, the fact that there is no family home and that Mrs. West would have contributed to the household in terms of food supply as well as household activities.

[61] Her contribution is to be compensated by a lump sum payment. The dwelling house at Boston must therefore be valued and the value of her interest paid to her by way of a lump sum. The orders of the court are therefore as follows:

1. Mrs. West is awarded twenty percent beneficial interest in the said dwelling house excluding all additional structures attached for the benefit of Mr. West's son, Peter.

2. The value of the said property is to be ascertained by a valuator who shall be agreed upon by the parties and failing agreement by a valuator who shall be appointed by the Registrar of the Supreme Court.

3. The value to be used is the value of the said dwelling house as at the date of the judgement.

4. Payment of the appraised value shall be made within 90 days of the date of the valuation report being provided to Mr West.

5 Interest at the rate of six percent per annum shall begin to accrue on the appraised sum as at the date stipulated for payment in order # 4 above and shall continue until payment of the sum.

6. The cost of the valuator shall be borne by Mr. West as to eighty percent and Mrs. West as to twenty percent.

7. Mrs. West is granted the option to remain in the said dwelling house until the date of compensation.

8. Mr. West is to pay fifty percent of Mrs. West's costs.

9. Liberty to apply.