



[2025] JMSC Civ 17

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION – VIA ZOOM

CLAIM NO. SU2019CV01616

BETWEEN	PAULETTE DACRES	CLAIMANT
AND	ONEIL DACRES	DEFENDANT

IN CHAMBERS

The Claimant is unrepresented.

Mrs. Claudia Forsyth instructed by Forsyth and Forsyth attorneys at Law for the defendant.

Heard: November 19, 2024 and February 14, 2025

Property Rights of Spouses - Division of Property – Variation of Half Share Rule.

Oral Judgment

CORAM: J.PUSEY,J.

- [1]** This is an application for division of property between the parties whose marriage ended in divorce.
- [2]** The parties met in 1994 and got married on June 8, 1997. The union produced one child, Akeem Oneil Dacres, born on January 3, 2001.
- [3]** The parties assumed coverture in one bedroom, one-bathroom section of an unfinished house being constructed by the respondent on lands in Mount

Ogle, St. Andrew belonging to the respondent. There is no evidence that the land was obtained in circumstances where he was solely to benefit from it.

- [4] During the marriage the property was improved and now consists of four bedrooms and bathrooms and is a substantial structure.
- [5] There is no disagreement that this house is the family home within the meaning of section 2 of the Property Rights of Spouses Act (PROSA).
- [6] The applicant worked professionally as a dressmaker from 1988 to 2011 and also sewed at home to supplement her income; while the respondent, who is a carpenter, operated a taxi company which he started during the marriage.
- [7] The applicant is seeking 50% share in the family home; the respondent disputes her claim citing that the land was gifted to him by his mother and the applicant made little or no contribution to the construction of the house except approximately \$100,000.00.
- [8] Section 6 of PROSA provides that both parties are entitled to half share in the family home on the dissolution of a marriage or separation. This entitlement is circumscribed by section 7, if in the circumstances of the matter, the court feels it is unjust or unreasonable for an equal share division to be made.
- [9] Section 7(1)(a) (b) and (c) sets out factors that may cause a court to dispense with the equal share rule. These factors include,
 - That the property was solely owned by one party before the marriage,
 - That the marriage is of short duration,
 - And such factors the court think is relevant to determine the issue.
- [10] The test in determining whether the half share rule should be dispensed with is whether it is unjust or unreasonable to apportion half share. Guidance is given at paragraph 34 of the judgement in **Stewart v Stewart** [2013] JMCA Civ 47 by Brooks JA (as he then was) as to how to approach these section 7 factors,

*The third point to be noted is that the existence of one of those factors listed in section 7 does not lead automatically to the entire interest being allocated to one or other of the spouses. What may be gleaned from the section is that each of these three factors provides a gateway whereby the court may consider other elements of the relationship between the spouses in order to decide whether to adjust the equal share rule. **It is at the stage of assessing one or other of those factors, but not otherwise, that matters such as the level of contribution by each party to the matrimonial home, their respective ages, behaviour and other property holdings become relevant for consideration.***

(Emphasis mine)

[11] In the instant case the land was owned by the respondent before the marriage and he had commenced construction of a home thereon into which the applicant moved upon marriage, which provides a gate way to consider the variation of the half share rule.

[12] I considered:

- The improvements to the home are not insubstantial and therefore required the expenditure of substantial funds.
- The applicant was consistently employed for the duration of the marriage, except when ill-health prevented her from working. In addition, I accept that she worked at home as a dressmaker to earn additional income to assist her family and that she earned consistently and more than the respondent
- The respondent was engaged in a taxi business into which he invested the earnings from it, and eventually abandoned the business as it was not viable.
- The respondent alleges that he supported the family and paid all the household expenses, acquired vehicles for the business, paid medical bills for his wife's pregnancy, paid for all the improvements to the house from the taxi operations while reinvesting what he earned from the business back into the business, which his wife failed to invest in.

- I find that it is inconceivable that it was possible to derive so much income from the business. There is no evidence of the size of the fleet of cars, the operating cost and outgoings or the profit margin. Additionally, if it was such a thriving business why abandon it?
- I accept the applicant's evidence that she purchased building materials other than tiles and even paid workmen.
- I also accept that even after she had left the family home to work overseas she contributed regularly to the maintenance of her son and to the completion of his room in the family home.
- I find that despite the respondent being the sole owner of the fee simple, the applicant's contribution to its improvement entitles her to a share in the family home. In the affidavit evidence of the respondent, he supports the notion that she is entitled to an interest, albeit in the form of repayment of whatever she spent.
- In all the circumstances of this case it is would be unjust and unreasonable to vary the 50% share rule.
- One of the alternative orders sought in this application, which is unopposed` that the land be registered at the expense of both parties equally in the names of the respondent and his son Akeem Oneil Dacres as tenants in common in equal share. And I so order.

ORDER

1. That the family home situates at Mount Ogle, Lawrence Tavern in the parish of Saint Andrew be brought under the operation of the Registration of Titles Act within 18 months of the date hereof in the names of Oneil Dacres and Akeem Oneil Dacres as tenant in commons in equal share, the cost whereof is to be borne by the applicant and the respondents equally.
2. That should either party fail and or refuse and or neglect to take any steps required to carry out the orders herein, then the Registrar of the Supreme is empowered to execute any document in furtherance of the said order.

3. That there is no order as to cost for this application.

Judith Pusey

Puisne Judge