

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 4/2008

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MISS JUSTICE SMITH, J.A. (Ag.)**

**BETWEEN: AUDLEY HUGHAN DEIDRICK APPELLANT
AND DONNA ANNMARIE DEIDRICK RESPONDENT**

**Mrs. Georgia Gibson-Henlin & Ms. Taneisha Brown, instructed by
Nunes, Scholefield, Deleon & Co. for the Appellant.**

**Gordon Steer & Ms. Deborah Dowding, instructed by Chambers, Bunny
& Steer for the Respondent.**

15th July 2008

Oral Judgment

COOKE, J.A.

1. The parties were married in July 1986 and the matrimonial home was in Portmore. In 1999, the family moved to 2 Close Haven Walk, Belgrade Heights, Kingston 19. They moved for two main reasons:

- (i) it was less commuting time to go to their respective places of employment; and
- (ii) to ferry the children to school.

2. It would seem incontestable that this was a stormy relationship and there was separation from time to time. The significant separation took place in February 2003 and that separation lasted for approximately eighteen months.

During this separation, on 16th June 2004, there was a transfer of the property at Close Haven into the name of the husband. There was a resumption of cohabitation in about August 2004 and this lasted until September 2006 when it seems that the wife finally separated from him.

3. The issue before the court pertains to the interest in property at Close Haven. The legal title to this property was in the sole name of the husband. The wife filed a Fixed Date Claim Form on 30th July 2007 in which she sought an entitlement to 50% interest in that property and it was, according to the Claim Form, for determination under The Property (Rights of Spouses) Act 2004.

4. The first attack by the husband is that the Claim Form did not sufficiently designate the particular section of the Act under which this application was being made. Counsel led us on an excursion through the Act: section 6 which is the remedy section; 7 which pertains to an adjustment of the 50:50 division and section 14 which deals with property other than that which is declared to be the family home.

5. It is indeed true that the Claim Form did not, with any specificity, nominate section 6 as the remedy which was being sought. It is also true that Rule 8 of the Civil Procedure Rules 2002 requires that the statement of claim must be specific. The reason for this is quite obvious — that parties would know what the issues at stake are.

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 in her judgment set out the contending positions which were essentially, that the claimant was seeking a division on the basis that it was the family home. She set 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 .

7. It would seem to us that no prejudice was occasioned by any lack of specificity and the issues were squarely and jointly debated. All the parties in the court, the Judge, Counsel and no doubt Mr. and Mrs. Deidrick recognized what was the issue that was being debated.

8. It would seem to us that there was more than ample evidence to say that the premises at Close Haven was the family home. This is where the family (the wife, the husband and the children) resided between August 2004 and September 2006. The wife undertook the responsibilities which this Court considered to be the usual, normal and natural incidents of living in a family home. These include payments to the helper, payments of the telephone bills, the buying of groceries, the choosing of the tiles and the painting of the rooms from time to time. Those incidents which have just being recited are not controversial in any way as the husband himself agreed.

9. Accordingly, once it is decided that it was the family home, section 6 now falls into place and it would appear that the judge did consider the provisions of section 7, as to whether the 50:50 share set out in section 6 should be varied. She considered that there was no good reason to do so.

10. It is therefore only left to be said that this court can find no reason despite the valiant effort of counsel to disturb the order of the court below which was that the order was granted in terms of paragraphs (a), (b), (c), (d), (e) and (f) of the Fixed Date Claim Form dated 3rd July 2007. These are:

- “(a.) That the Claimant is entitled to the fifty percent (50%) interest and the Defendant entitled to fifty (50%) in the property located at 2 Close Haven Walk, Belgrade Heights, Kingston 19, in the parish of St. Andrew, registered at Volume 1057, Folio 480 of the Register Book of Titles.
- (b.) That a valuation agreed upon by the Claimant and the Respondent be taken and that costs of same be shared proportionally by the parties.
- (c.) That if no valuator can be agreed upon then one shall be appointed by the Registrar of the Supreme Court.
- (d.) That the Defendant be given the first option to buy the said property, within 30 days of the receipt of the valuation.
- (e.) That should the Defendant be unable or unwilling to exercise his first option to purchase then the said property be put on sale on the open market by public auction or by private treaty.

- (f.) That the Registrar of the Supreme Court be empowered to sign any and all documents to make effective any and all orders of this Honourable Court if either party is unable or unwilling so to do."

11. The appeal is dismissed and the order of the court below is affirmed.

