

cont

IN THE SUPREME COURT OF JUDICATURE OF  
JAMAICA

IN EQUITY

SUIT NO. E 172 of 1978

BETWEEN	HAYE ALINTHIA RICHARDS	PLAINTIFF
A N D	WILLIAM GEORGE RICHARDS	DEFENDANT

NORMAN SAMUELS FOR PLAINTIFF

MISS PHILLIS DYER FOR DEFENDANT

MAY 31, 1979

Wright J.

The plaintiff by Originating summons seek the following Orders:-

1. That property situated at Lot 73 Woodmere Avenue Inglewood May Pen in the Parish of Clarendon and registered at Volume 1064 Folio 440 jointly owned by the plaintiff and the defendant be sold (the plaintiff being given first choice to purchase) and the proceeds of such sale be divided equally between the plaintiff and the defendant
2. That the defendant do account to the plaintiff for all rents and profits received and receivable by virtue of his sole possession of the said premises from and since the 26th May, 1977

3. That the defendant to declare to the plaintiff all the rents and profits received and receivable by virtue of his sole possession of the premises from and since the 26th May, 1977.
4. The court was asked to declare whether the disclosed rental was the best obtainable and if not that the defendant be ordered to compensate the plaintiff for any resultant loss.

However in view of the fact that the disclosed rental of \$200 per month was thought by the plaintiff not to be altogether unreasonable there was no need for the court to make any findings on this latter remedy.

The plaintiff's application for sale of the premises with first preference being given her

was not contested.  
was

Neither there any opposition to her prayer that the proceeds of sale be divided equally between the plaintiff and defendant. Indeed, her application in this regard seems rather generous.

What was hotly contested was the plaintiff's claim for the return of certain articles of the value of \$2,760 said to be her sole property which had been taken over by the defendant and which he has refused to deliver to the plaintiff.

So far from being in possession of these articles or any of them the defendant denies any knowledge of the existence of some and of the whereabouts of the others. Indeed such of them as may exist are, in his opinion in the plaintiff's possession.

The parties were married in 1972 but are now divorced on the plaintiff's undefended Petition alleging adultery committed in the matrimonial home on 26th May, 1977, custody of the relevant children being given to the plaintiff. The defendant's stated reason for not defending the Petition is not that he admitted the allegation but because of his concern for the children. This factor will be of relevance in considering the defendant's credit which is crucial in this case.

The picture created by the plaintiff's evidence which was obviously painful to relate was of a husband who was not diligent in providing for the family. Indeed had she heeded the early warning she would have to be spared the agony in which she appeared to have lived with him.

When she first met him she was quite young and did not know that he was then living with a woman in Spanish Town. She became pregnant for him and, as she put it, when she told him "he ran away" and it was not until some time later she saw him again when she went to work in Kingston. She had to seek the assistance of the court in securing maintenance for the child. They resumed relationship and when they were married that child was three years of age.

At the outset of their marriage and for sometime thereafter the defendant did not provide the family with a home. They lived in a portion of the plaintiff's parents house. The defendant contends that that portion of the house had been built by the plaintiff onto her parents' house. This pattern of not providing persisted throughout the marriage and even after the divorce, she had to get maintenance Order in the Supreme Court in respect of the two children.

The defendant, of course, denies this charge of lack of support on his part. He admits the Supreme Court Order for Maintenance but denies the intervention of any court on behalf of the first child's maintenance prior to the Supreme Court Order.

The plaintiff is employed at the Jamaica National Building Society May Pen as a Supervisor of Mortgages, the defendant is employed by the Department of Statistics. In August, 1976 they contracted to purchase the premises at Woodmere Avenue for \$30,000. Financing was by means of a first mortgage of \$27,00 granted by the plaintiff's employers

at a reduced rate of interest and a second mortgage of \$3,000 for which the plaintiff became solely responsible and towards which the defendant contributed nothing. In addition to meeting the second mortgage alone the plaintiff also contributed to paying the first mortgage equally with the defendant. According to the plaintiff, the closing cost of \$1,800 was met by a gift of \$1,200 from her mother and \$600 contributed by her. The defendant contends that he paid \$900 towards the closing costs. I believe the plaintiff. Hence it will be seen that the defendant contributed absolutely nothing to the acquisition of the premises apart from his signature on the relevant documents. 73 Woodmere Avenue became the matrimonial home.

Because of the matrimonial misconduct on the ground of which the plaintiff's petition for divorce was granted the plaintiff left the home on the 26th May, 1977 leaving everything in the house. She returned on the 30th May 1977 and removed some items of furniture but the smaller items could not be conveniently removed that day and so they were left. Indeed she claims that between May 26th and 30th the defendant had changed all the locks on the house except a combination lock on a back grill and it was by this grill door she managed to gain entrance to the house in the defendant's absence. But he returned before she had left the premises on the 30th May and proceeded to smash certain articles including 25 figurines valued as follows:-

20 @ \$20 each	\$400
5 @ \$10 "	50
6 vases	
3 valued @ \$15.00 each	45
3 - \$40	<u>120</u>
	\$165

With her own money she had purchased some of the figurines before they set up house and the others afterwards. Defendant gave no money for the house contending that she was working so she should use her money. Her uncle had given her the more expensive vases and she had bought the others in May Pen with her own money. The defendant's version is that he knew nothing of the figurines being smashed and the only 2 vases he knew to be in the house were to his knowledge not smashed.

I accept the plaintiff's version of the destruction of these articles. It is just possible that the defendant did not know what was destroyed.

According to the plaintiff the articles were already packed for removal when the defendant came and smashed them in the container.

The plaintiff's version of the loss of her gold chain valued @ \$200 which she had purchased before she was married. I also accept despite the defendant's denial. The discovery of the act of adultery on the 26th May 1977 resulted in an altercation during which the defendant grabbed the chain from her neck and threw it away.

The other items claimed are:-

1. Bicycle valued @ \$250.00

plaintiff had bought this at Elite Haberdashery for the older child and had left it in the home. Defendant states it may still be in the premises in an outroom where articles not in use are kept

but he has not seen it though it was in use.

1. Ice chest (ingloo) valued at \$137.00

The plaintiff had bought it at a  
Lions Club Bingo Party.

1. 18 quart Prestige Pressure Cooker purchase  
for plaintiff for \$110.00

plaintiff had bought this out of her salary.

1. Bone China tea set bought by plaintiff before  
marriage \$150.00

1. 4 slice toaster given to plaintiff by her aunt  
Mrs. Pearl Clarke - value \$80.00

12 pots purchased by plaintiff after marriage with  
her own money \$300.00

These were purchased to meet the need of  
a function in order to avoid borrowing for the  
occasion.

1. Electric Juicer valued @ \$55.00

This was a gift to the plaintiff from the  
4-H Club while she was employed there.

1. Meat mincer valued at \$45.00

purchased by the plaintiff with her own money.

50 Drinking glasses valued \$80.00

Some were purchased by plaintiff before marriage and  
some with her own money.

Tea pots cups and saucers bought from plaintiff's  
salary at different times valued \$50.00

1. Cutlery set valued \$100.00

a present from the vendor of the house to whom she had been helpful.

A number of Fischer Toys for the children bought by plaintiff from time to time out of her own salary-valued

at \$80.00

1. Robart Mixer valued \$220.00

The plaintiff had won this through a staff promotion scheme at Jamaica National Building Society

2. suit cases valued \$85.00

the plaintiff had borrowed one which she has had to replace and she had the other before marriage.

2. Bedspreads valued at \$50.00 each \$100.00

plaintiff had bought these with her own money.

1 Pouch Bowl set valued at \$65.00

This had been purchased by plaintiff with her own money.

She also claims a length of hose(250 feet) valued at \$43.00

This she had purchased at a time when they were establishing a lawn at their newly-acquired premises.

The defendant admitted that a length of hose was acquired but cannot say the plaintiff alone acquired it. He does not say that he acquired it or contributed to its acquisition.

Be it noted that the defendant does not contend that he purchased any of the items claimed nor has he given any credible evidence from which it could be inferred that he



had contributed to the acquisition of any of them. Indeed it is difficult to apprehend his position vis-a-vis this claim. To demonstrate I will list some of his response. He agrees that "the plaintiff removed items which had been acquired prior to marriage- a refrigerator, a gas-stove a bed and a 3 piece living room suite. Everything else was normal. Bicycle, Ice chest, Pressure Cooker and other items she said were left in the house I did not find in the house. Household items like pots were left and hardly anything else" .

Then- " I dont know where the items are but I believe the things are with her". Also he admits that the child did have a bicycle bought by the plaintiff.

That was his evidence in chief. In cross-examination he appears to have forgotten his denials as he stated- "Yes, the items claimed were at the house on the 29th May.

On my return on 30/5/77 nothing appeared missing" He maintains he missed the items on 31.5.77 and that he knew who took them though he did not see them being taken. But this is in stark contrast to another statement under cross-examination-"The items she mentioned I did not see any of them in the house up to the time she left".

This must be the product of a confused or a scheming mind or both. Except where the defendant agrees with the plaintiff it would be an intolerable strain on one's credulity to believe him. By contrast the plaintiff, while testifying under obvious strain gave a credible account the acceptance of which presented no difficulty.

I believe the plaintiff's version of the acquisition of the various articles. The defendant did not contribute. The plaintiff is entitled to their return or their value. At this point of time it is obvious that some cannot be returned- those destroyed- and the others even if they can will not be returned, so the plaintiff is entitled to their value which I make to be \$2,765.

The defendant filed no affidavit in answer to the plaintiff's and although he knew from the plaintiff's affidavit what her contentions are. He came to court without even the rent receipt book which would show what rental he received for the premises during the period when he was in sole possession i.e from and since the 26th day of May 1977 to the time of the hearing of the summons. If this is not suggestive of an uncaring attitude its significance eludes me.

According to the plaintiff she had been offered a rental of \$250 per month. However in order to save time she would not seek to compel the production of such records as the defendant admits he has and would let his evidence that the rental received was \$200 per month stand.

It is agreed that before and during the marriage the plaintiff was gainfully employed and that while she lived in the home the mortgage of \$272.15 per month was paid equally by both parties. The amount of mortgage due between May 1977 and May 1979 is \$6,531.60 and the amount of rent received is said to be \$2,200. Even since the plaintiff

has been out of possession she had paid \$836.15 towards this mortgage and at the date of hearing arrears due amounted to \$1210.41.

What is manifest is that any financial returns to the defendant will be by way of an un-earned dividend. He never had a cent at stake. Such mortgage as he paid might even be less than what he would have had to pay as rental to provide himself with shelter. So far as the family interest were concerned his improvidence is amply demonstrated. It is the plaintiff who before and after marriage both provided and took the initiative to provide a home.

It is in the interest of the children that the plaintiff secures the premises as a home for her and them. The children reside with the plaintiff at their grand-mother's home at Sandy Bay. The home in question is in May Pen. The Plaintiff works in May Pen. The children attend school in May Pen and after school have to wait at the plaintiff's office for up to 4 hours before they can get home. The location of the home is eminently suited to relieve the children of the pressure to which at their tender ages of 10 years and 5 years respectively, they are unfortunately subjected. The defendant would have somewhat redeemed himself if he had agreed to cede any interest he has in the property in the favour of the children.

The manner in which the case was presented in conjunction with the lack of co-operation of the defendant

has resulted in the court not having as much information as it is considered desirable it should have in relation to the defendant's handling of the property from and since the 26th May, 1977.

Nevertheless the best must be made of the material supplied and the orders that follow are such as in the opinion of the court will do justice to the situation as disclosed.

It is ordered:

1. That the property situated

Lot 73 Woodmere Avenue, Inglewood

in the parish of Clarendon and registred

at Volume 1064 Folio 440 jointly owned

by the plaintiff and the defendant be

sold at a price mutually agreed between

them, failing which agreement, then at a

price to be determined by a valuator agreed

upon both parties and that the plaintiff

shall have first preference to purchase.

The defendant shall perform all such acts

as are required of him to effectuate the

sale and transfer of the property.

2. That the proceeds of sale shall be disbursed

as follows:-

(a) Satisfying the balance due on the first mortgage

(b) Satisfying the balance due on the 2nd mortgage.

(c) Paying to the plaintiff the amount paid by her on the 2nd mortgage.

- (d) Paying to the plaintiff the amount of closing costs of \$1,800 paid by her for  $\angle$  costs
  - (e) Paying all rates and taxes due
  - (f) The balance to be divided equally between the parties and from the defendants one-half share there be deducted and paid to the plaintiff-
  - (i) The amount of \$836.15 paid by the plaintiff towards arrears accumulated in respect of the 1st mortgage during the period when the defendant was in sole possession of the property.  
  
In addition any further amount paid by the plaintiff in respect of such arrears shall be deducted and paid to her.
  - (ii) The award of \$2,765 in respect of the articles destroyed and or detained by the defendant unless the same be sooner paid.
3. Costs to the plaintiff to be taxed or agreed.
  4. Liberty to apply.