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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO. 2009 HCV 6127

IN CHAMBERS

BETWEEN	NELSIE ROBINSON	CLAIMANT
AND	BARTLEY ROBINSON	DEFENDANT

Mr Stephen Shelton and Mr Krishna Dessai instructed by Myers Fletcher and Gordon for the Claimant.

Mrs Nesta-Claire Smith-Hunter and Miss Marsha Smith instructed by Ernest A. Smith and Company for the Defendant.

Husband and Wife – Property division - Claim for declaration of interest in family home – Family home acquired in the joint names of the spouses – Wife made no contribution to the cost of acquisition – Dispute as to whether wife contributed to the maintenance or extension of the house - Whether marriage of short duration – Whether circumstances require a departure from the presumption of equal shares – Property (Rights of Spouses) Act ss. 6, 7 and 14

Husband and Wife – Property division - Claim for declaration of interest in motor car – Car registered in names of both spouses – Dispute as to whether car was a gift from husband to wife – Property (Rights of Spouses) Act s. 14

10th December 2010 and 24 February 2011

BROOKS, J.

Mr Bartley Robinson is a Jamaican who emigrated and worked in England for some time. After he retired, he returned to his native country. On 2 August 2004, he married Nelsie Beckford-Wilson who was then a widow. At all material times she worked as a housekeeper at a villa on the North coast. She became Mrs Nelsie Robinson.

The couple eventually moved into premises at Lot 124 Greenwich Park in the parish of Saint Ann. It became their matrimonial home. Regrettably, the marriage broke down. Mrs Robinson left the home on 10 September 2009 and there is no likelihood of reconciliation. She has filed this claim asking for a declaration that she is entitled to a

one-half interest in the jointly owned property. She also claims a similar declaration in respect of a motor car which is registered in both their names. Mr Robinson contests the claims on the basis that Mrs Robinson made no contribution to the cost of acquiring these assets. He asserts that the marriage was of too short a duration to allow for the application of the legal presumption of spouses being equal owners of the matrimonial home.

The questions for determination by the court are, firstly, whether any factor, including the duration of the marriage, should prevent the application of the presumption mentioned above, and secondly, what contribution, if any, did Mrs Robinson make toward the acquisition of the assets in dispute. The issue of credibility is also important in resolving these questions.

I shall outline the relevant law and thereafter assess the evidence in respect of the issues which have been identified.

The law

In any claim involving interests in the matrimonial home, the first provision to be considered is section 13 of the Property (Rights of Spouses) Act ("the Act"). It is this section which grants the court the jurisdiction to declare the respective interests which each party has in property. The application to the court must, however, be made within prescribed periods. The relevant portion of the section states as follows:

"(1) A spouse shall be entitled to apply to the Court for a division of property –

(a) ...

(b) ...

(c) where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or

(d) ...

(2) An application under subsection (1) (a), (b) or (c) shall be made within twelve months of the dissolution of a marriage, termination of cohabitation, annulment of

marriage, or separation or such longer period as the Court may allow after hearing the applicant.”

The next relevant provision is section 6 of the Act. It stipulates that, on the occurrence of certain events, each spouse is presumed to be entitled to a one-half share of the interest in the family home. The provisions of subsection (1) are set out below:

“Entitlement to family home.

6.-(1) Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home-

- (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.”

The presumption established by the section is a rebuttable one. Section 7 is one of the sections allowing for the presumption to be displaced. It states:

“(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.**” (Emphasis supplied)

Subsection 2 stipulates that a spouse is one of the “interested parties” referred to in subsection (1).

The onus of disproving the applicability of the presumption is on the person who alleges that it would be unreasonable or unjust to apply it. My learned sister McDonald-Bishop, J. in *Graham v Graham* 2006 HCV 03158 (delivered 8/4/08), explained the philosophy behind the presumption and pointed out the different approaches utilized in

various jurisdictions. She quoted Lord Cooke of Thorndon in *White, White v White* [2000] 2 F.L.R. 981 where the learned Law Lord opined:

“...as a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so...Widespread opinion within the Commonwealth would appear to accept that this approach is almost inevitable whether the regime be broad or detailed in its statutory provisions.”

Where property does not fall to be considered as the family home (as is the motor car in this case) it may still be considered for division by the court, pursuant to section 14 (1) (b) of the Act. That provision stipulates that where a spouse applies, pursuant to section 13, for division of property, the court may:

“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)”

Section 17 (2) is not relevant for this aspect of the discussion, as it deals with ascertaining the value of the property. Subsections (2) (3) and (4) of section 14 are, however, very relevant for these purposes. The relevant portions state:

“(2) The factors referred to in subsection [14] (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 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 respect to 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.

(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 dependant 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 of 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.
- (4) **For the avoidance of doubt, there shall be no presumption that a monetary contribution is of greater value than a non-monetary contribution.**" (Emphasis supplied)

Sections 14 and 15 of the Act allow the court, according to its findings, to alter the interests of the respective parties in property, other than the family home and to divide the property accordingly. This is a major departure from the law as it existed before the passage of the Act. Prior to that event, the court was restricted to declaring such interests as it found to have existed. It could not alter those interests (see *Forrest v Forrest* (1995) 48 WIR 221).

The factual issues:

The application of section 6 of the Act

For section 6 of the Act to apply, certain pre-requisites have to be satisfied. I identify the relevant ones in this case as follows:

1. This property was the matrimonial home.

2. It is registered in the names of both parties as joint tenants. No other person has any interest therein.
3. Accusations of physical abuse have been made, although they have been denied. There was, however, an admitted violent confrontation. In light of that evidence, I accept the assessment of the parties, that there is no likelihood of reconciliation.
4. It was only two months after the parties had separated, that Mrs Robinson filed the present claim.

Based on the abovementioned factors, the pre-requisites for section 6 of the Act to apply, have been satisfied. Whether the presumption will actually be applied, will depend on whether any of the provisions of section 7, which serve to rebut that presumption, are applicable.

It is to be noted that the fact that the property was purchased in both names does not raise a presumption of advancement in favour of Mrs Robinson. Section 4 of the Act stipulates that “presumptions of the common law and equity” are replaced by the provisions of the Act “to the extent that [those presumptions] apply to transactions between spouses in respect of property”.

The family home

There is no dispute that the cost of acquisition was borne solely by Mr Robinson. The purchase price is recorded on the certificate of title as being \$1,000,000.00.

The building on the property was, however, extended. According to Mrs Robinson, the cost of the enhancement was in the region of \$2,000,000.00. She testified, in cross examination, that of that sum, she spent about \$500,000.00 of her own money. She also produced a number of bills in respect of the purchase of hardware items. These

were all in her name. She accepted, however, that not all the bills represented the use of her personal funds; they only indicated that it was she who carried out the transaction. She readily agreed that Mr Robinson would give her money to purchase material for the workmen to use.

From the evidence led, Mrs Robinson was earning very small wages from her job. Although she said that she would sometimes earn income from tips, her salary was \$6,500.00 per week. She did not state what she would earn from tips and she did not state the size of a fixed deposit which she said that she had used in making her contribution to the cost of adding to the family home.

Mr Robinson's evidence contradicted Mrs Robinson's. He deposed that Mrs Robinson did not contribute any money toward the expansion of the house. On his account it was he alone who financed the project. Another factor to be considered is that Mr Robinson would give her money to maintain the household. He denied her assertion that she met some of the household expenses from her own resources. Mr Robinson deposed that she spent her money on her personal needs only. He was not cross examined because he is now deaf.

In my view, the probabilities are that her contribution to the cost of constructing the extension to the house would have been very small. In addition, Mrs Robinson was not the most convincing of witnesses. There were at least two occasions when her oral testimony contradicted her affidavit evidence. I find that she was not always a truthful witness. I reject her evidence that she contributed \$500,000.00 to the cost of the extension of the house. I find that her financial contribution, if any, was insignificant.

That is not, however, an end to the matter. As would have been seen from section 14 (2) of the Act, the court also takes into account, matters other than monetary

contributions, in deciding the interest to be awarded to each spouse. As there are no children to be considered in this case, one of these issues is the personal service rendered by one party to the other. This was another area of dispute between the parties.

Mrs Robinson testified that she took care of Mr Robinson. He is much older than she is. He is retired and also suffers from a number of serious ailments. On her account, she “took care of him solely, cooking his food, washing and ironing his clothes, bathing him and attending to all his personal needs up to the date of separation” (paragraph 8 of her affidavit filed on 23 November 2009). She said that these services were also rendered at a time when Mr Robinson was ill.

Mr Robinson denied this testimony.

It is clear, however, that even on his evidence Mrs Robinson cared for him and took care of the household. The question is, how much, if at all, should she benefit from that effort, in terms of an interest in the property.

One of the factors to be considered in answering that question is the duration of the marriage. In two places, the Act refers to the duration of the marriage (see sections 7 and 14 (2)). The Act does not, however, define the term “short duration” as used in section 7. This marriage lasted five years; from August 2004 to September 2009 when she left the matrimonial home. Mrs Robinson testified that the breakdown started about September 2008. Can this marriage be considered to be one of short duration?

Mr Shelton, appearing for Mrs Robinson, submitted that the marriage was not one of short duration. He cited two cases from New Zealand which indicate that a marriage, lasting longer than three years, should not be considered to be of short duration. Those cases were, however, in the context of statutory provisions which stipulated that cohabitation for less than three years was to be considered to be of short duration.

In *Martin v Martin* [1979] 1 NZLR 97 the court considered section 13 of the Matrimonial Property Act 1976. Section 13 (3) stated:

“For the purposes of this section a marriage of short duration means a marriage in which the spouses have lived together as husband and wife for a period of less than 3 years (in the computation of which any period of resumed cohabitation with the motive of reconciliation may be excluded if it lasts for not more than 3 months) or, if the Court having regard to all the circumstances of the marriage considers it just, for a period longer than 3 years.”

The other case did not involve married persons. It is *Lawson v Perkins* CIV 2006-404-007223; a decision of the High Court of New Zealand which was delivered on 10 October 2007. That case considered section 2E of the Property (Relationships) Act 1976. That section stated:

- “(1) In this Act, relationship of short duration means,-
- (b) in relation to a de facto relationship, a de facto relationship in which the de facto partners have lived together as de facto partners-
 - (i) for a period of less than 3 years; or
 - (ii) for a period of 3 years or longer, if the Court, having regard to all the circumstances of the de facto relationship, considers it just to treat the de facto relationship as a relationship of short duration.”

I am prepared to accept that the period of three years is a reasonable benchmark. As the legislation, cited above suggests, however, the figure specified cannot be an absolute factor. There may be aspects of the case where the quality of a longer relationship, leads the court to consider factors other than the duration in terms of just years. In any event, unlike the New Zealand legislation, our legislation specifies that the duration of the marriage is only one of the factors which the court may consider.

In the circumstances of this case, therefore, I find that this marriage was not one of short duration.

Having considered the factual issues, I find that Mrs Robinson has acquired an interest in the family home. I have considered the fact that the property which became the family home was purchased during the marriage and the fact that, although Mr Robinson stood the cost of acquisition and the expansion, she was, nonetheless, actively involved in the extension of the dwelling house. I find also that Mrs Robinson rendered personal services to Mr Robinson, both generally to the household, cooking, cleaning and doing laundry, and specifically to him while he battled some of his illnesses.

I have also considered the following factors:

1. the relative ages of the parties;
2. Mr Robinson is a pensioner and is unwell while Mrs Robinson is still active and employed. He is less likely, at this stage, to be able to recover from the financial blow which the result of this case could present;
3. the marriage lasted only five years.

I have reminded myself that the Act stipulates that financial contributions do not outweigh those of a non-financial nature, but bearing in mind the abovementioned findings and factors, I find that Mrs Robinson's interest should be valued at no more than 25 per centum of the value of the family home. The division should therefore be 75:25 in Mr Robinson's favour.

The motor car

It is Mrs Robinson's testimony that the car was purchased by Mr Robinson as a birthday gift to her. It is not contested that the vehicle was, however, registered and insured in both their names. There is a dispute as to why that is so. Mr Shelton suggests that it was because of motor vehicle insurance considerations. Mrs Robinson had

recently acquired her driver's licence and it for that reason that Mr Robinson was required to be included in the ownership.

It is also not disputed that both used the motor car but that Mrs Robinson stopped using it before she left the matrimonial home. Her affidavit evidence was that it was "only since the separation that [Mr Robinson took] back the car" (paragraph 8 of her affidavit filed on 31 May 2010). In cross-examination, however, she said that she stopped driving it about two months before she left. Her explanation for doing so was that he used some abusive words to her in respect of it.

Mrs Smith-Hunter, on behalf of Mr Robinson submitted that Mrs Robinson should not be believed in respect of the circumstances surrounding the purchase of the motor car. Learned counsel submitted that Mrs Robinson's conduct, of leaving the car when she departed the matrimonial home, did not support her evidence that this car was a gift.

I do not accept that the motor vehicle was intended to be a birthday gift to Mrs Robinson. Her lack of candour also spilled over into this aspect of the case. In addition to the credibility issue the car was purchased over a month after her birthday. I bear in mind that there is no presumption of advancement applicable in respect of the motor car. The use of the vehicle by both, the fact that it is Mr Robinson's sole mode of transportation and the fact that she stopped using the vehicle even before she left the matrimonial home, lead me to find that this vehicle belongs solely to Mr Robinson.

Conclusion

The circumstances of this case and in particular the fact that Mr Robinson, on my finding financed almost singlehandedly the purchase and extension of the family home, the fact that the marriage, although not of short duration, only lasted five years and the

fact that Mr Robinson is an elderly, ill man, have led me to find that Mrs Robinson's contribution to the management of the construction of the extension to the house and the personal care she rendered to Mr Robinson does not justify the application of the presumption which section 6 of the Act provides.

I also find that Mrs Robinson does not have any interest in the motor car which Mr Robinson purchased.

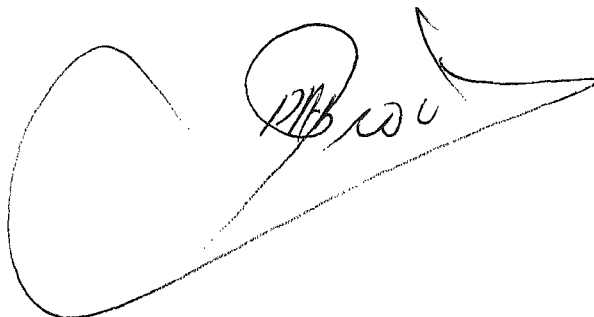
It is declared that:

1. The Claimant Mrs Nelsie Robinson and the Defendant Mr Bartley Robinson are entitled to the beneficial interest in all that parcel of land, with buildings thereon, known as Lot # 124 Greenwich Estate in the parish of Saint Ann, being the land comprised in Certificate of Title registered at Volume 1385 Folio 623 of the Register Book of Titles (hereafter called 'the property'), in the proportions of 75% to the Defendant and 25% to the Claimant;
2. The Defendant is solely entitled to the beneficial interest in a Toyota Fielder motor car with licence number 2228 FE;

It is ordered that:

1. The joint legal interest of the parties in the property is hereby severed;
2. The property shall be sold and the net proceeds of sale divided between the parties in the proportion of 75% to the Defendant and 25% to the Claimant;
3. The Defendant shall have the first option to purchase the interest of the Claimant;
4. The parties shall agree upon and appoint a reputable valuer for the purpose of valuing the property and failing agreement the Registrar of the Supreme Court is hereby empowered to make the appointment. The valuer shall provide his report within twenty-one days of the date of being appointed. The cost of the valuation shall be paid by the Defendant, but shall be borne equally by the parties;
5. The Defendant shall advise the Claimant's attorneys-at-law, within ten days of his receipt of the valuation report, whether he intends to exercise his option to purchase the Claimant's interest in the property;

6. If the Defendant chooses to exercise the said option he shall sign the sale agreement and pay the usual deposit to the Claimant's attorneys-at-law within ten days of the agreement for sale being delivered to him for signing;
7. The Defendant shall complete the purchase of the Claimant's interest within ninety days of the date of the Agreement for Sale being signed;
8. If the Defendant should choose not to exercise the option or fails to comply with the orders at paragraphs 6 or 7 hereof then:
 - a. the property shall be sold by private treaty or failing that, by public auction with the Registrar of the Supreme Court being hereby empowered to fix the reserved price.
 - b. the Claimant's attorneys-at-law shall have carriage of the sale.
 - c. the Defendant shall deliver or cause to be delivered to the Claimant's attorneys-at-law, the duplicate Certificate of Title for the property in order to allow the completion of the sale;
9. The Registrar of this court shall be and is hereby authorised to sign any and all documents required to give effect to this order, should either party fail or refuse to do so within ten days of being required in writing so to do;
10. The Claimant shall, within 30 days of the date hereof, sign an appropriate instrument transferring her interest in the Toyota Fielder motor car with licence number 2228 FE, to the Defendant;
11. Both parties shall have liberty to apply;
12. Costs to the Claimant to be taxed if not agreed.

A large, stylized handwritten signature in black ink, appearing to be 'P. B. 2004', is written over the bottom right portion of the text area.

