

**TRINIDAD AND TOBAGO**

**HCA M 985 of 2002**

**IN THE HIGH COURT OF JUSTICE**

**BETWEEN**

**PETER O'NEIL**

**PETITIONER**

**AND**

**PEARLY O'NEIL**

**RESPONDENT**

**Before the Hon. Madam Justice C. Gobin**

**Appearances:**

**Mr. Lamont instructed by Mr. De Peza for Petitioner**

**Ms. Suite for Respondent**

**REASONS**

1. The parties to this marriage enjoyed a cohabitational relationship since 1991 or thereabouts for a period of some 8 years until they formalized their status by getting married on 22<sup>nd</sup> December 1999. Regrettably the relationship broke down soon thereafter. The parties separated in or about July 2001. The marriage is therefore a fairly short one.

2. In situations such as these, I am entitled to take into account as one of the relevant circumstances, the period of the cohabitation which preceded the marriage. As to how that factor influences the outcome of the application really depends on the peculiar facts of each case. In certain circumstances a court might be inclined to treat the entire period of the cohabitational relationship as significant enough to enhance the applicant's share of the respondent's property, the short period of the marriage

notwithstanding. But that does not always happen. Each case must be decided on its own facts. For reasons which I will explain, I do not consider this case to be one where the period of the cohabitation significantly and favourably affects the applicant's claim.

3. By her notice dated 21<sup>st</sup> April 2004 the Respondent claimed –

“periodical and lump sum payments for her support and such property adjustment as the Court deem fit in relation to:

- (a) No. 20 Nigella Drive, La Florisante, D'Abadie
- (b) Agricultural Estate at Tabaquite
- (c) Nissan B Sentra PBJ 2138
- (d) Benefit of agreement for sale in joint names of parcel at Providence Estate, Tobago.

4. At the end of the trial I ordered the payment to the wife of a lump sum of \$65,000.00 and the delivery of vacant possession of the Husband's home on or before three months after the date of payment. I did so for the following reasons.

5. The parties entered their relationship at a stage when they were fairly mature adults who had been by then reasonably settled in their individual careers in the Public and Teaching Services respectively.

6. They both had children of their own and with that there would have been obvious separate financial commitments which were bound to continue during the minority of

their respective children and so long as the children's education continued. In the case of Mr. O'Neil he had just emerged from a divorce. I accept as he stated in his affidavit and from my assessment of him that he would have made it clear from the inception that his financial responsibilities were firstly to the children of his marriage. Indeed, given the unhappy relationship he described with Mrs. O'Neil's son, Nicholas, one can well imagine that he would have been even less inclined to approach the relationship differently.

7. Although Mrs. O'Neil disputed that there was an understanding about their separate financial arrangements, she had this to say – “when the Petitioner moved into the home he never provided me with any support per say and I never demanded it of him. The Petitioner made his position clear to me and I never questioned him about it”.

8. The parties entered into their cohabitational relationship each owning a home. Mrs. Aparicio holds the legal interest in a property situate at NUGFW Development, Curepe together with her sister. I have found that she is the sole beneficial owner of the property. She has always solely paid the mortgage. Her sister has had no dealings with the property. The sister has not been involved with the tenants. The decisions regarding the rentals or occupation of the premises have been made solely by Mrs. O'Neil. The sister has not been concerned about the state of the property, even when the wife complained about vandalism.

9. Mrs. O'Neil volunteered on affidavit that she thought at some point that it in their best interest to have a transfer of the property effected to herself and her husband in the

light of their impending marriage. I do not believe that this was going to be an act of generosity on the part of the sister. It seems more likely that for the purposes of satisfying the mortgagee as to her qualification for the mortgage Ms. Aparicio would have preferred to have had a husband as co-owner rather than her sister. I do not believe the sister paid anything towards the down payment of the property.

10. I prefer the evidence of Mr. O'Neil that the Respondent told him that the sister's name had been included on the property in order to obtain the mortgage. Indeed my assessment of the general credibility of these parties is that Mr. O'Neil is a far more reliable witness than Mrs. O'Neil. While he appeared to be forthright and straightforward with the court, the petitioner was evasive and appeared to be less than truthful.

11. Mr. O'Neil also entered the relationship with his own home. He continues to pay a substantial mortgage. Both parties made their homes available for use as the family home. During the period 1991 to 1996 Mr. O'Neil occupied the applicant's home. Sometime in 1996, in anticipation of the marriage, they moved into Mr. O'Neil's home. Mrs. O'Neil remained there until the date of judgment herein. From sometime since towards the latter half of 2001 Mr. O'Neil has not lived at his home.

12. While each party occupied the other's home, the other property was rented or at least available for rental by the owner. The wife sought to give the impression that for the past seven years or so her home has been uninhabitable because of the state of

disrepair and vandalism into which it fell after her last tenants left. I do not accept her evidence on this. I have said I found her to be untruthful and evasive. Her explanations as to how the property was allowed to fall into disrepair and her lack of explanation as to why she did not simply repair it and continue to take tenants so as to earn obviously needed income, is not credible. I believe that the Petitioner continued to rent her home throughout. On a balance of probabilities I do not accept that she would simply leave an asset in respect of which she continued to pay a mortgage, to fall into disrepair, while she spent money, even as limited sums, as she claimed on the Petitioner's home, and to invest cash in other projects with him.

13. Following the separation Mrs. O'Neil remained in the matrimonial home to the exclusion of the husband for a period of almost four years. The husband continued to pay the mortgage for that property while, and I have so found, she continued to collect rent for her property. This state of affairs has greatly influenced the quantum of the lump sum that I awarded the applicant. While I do not find it necessary to quantify in money terms the value of the benefit that Mrs. O'Neil would have derived from the above arrangement, I considered it sufficient to substantially reduce the lump sum I would have been inclined to award.

14. I find that the parties both contributed to their joint household expenses while they lived together and prefer the evidence of Mr. O'Neil as to the extent of his financial contribution. Mr. O'Neil was assigned to and resident in Tobago, since sometime in 1996. I accept that contribution to the day-to-day household shopping needs would have

been reduced because he would have his own expenses in Tobago. Given this couple's approach to their finances I do not think Mrs. O'Neil would have expected otherwise.

15. I find that insofar as the 14-acre parcel of land is concerned, prior to the marriage and during the time of their cohabitation, Mr. O'Neil invested in this property with his son. There was no financial contribution by the Respondent. The mere fact of cohabitation or marriage does not entitle parties to a share in each other's property. In this case there was no direct financial contribution, neither was there a pooling of resources. On the contrary there appeared to be an acceptance of independence of each other's financial affairs.

16. While I have taken into account the period of co-habitation prior to the marriage I am not prepared, in the circumstances of this case to treat that period as enhancing the entitlement of the marriage years. As I have said, these mature parties entered into a relationship at a stage when they each had their own homes and separate financial responsibilities. There was not a sufficient degree of pooling resources for their future. There were no children born to them, a factor which generally encourages a greater degree of financial co-operation.

17. I find that the two particular joint investments emphasise that the wife made actual financial contribution for her own separate share. In the case of the Providence Estate land deal, Mrs. O'Neil was one of several family members invited by Mr. O'Neil to invest. By consent of the parties an order was entered in respect of that transaction

which I consider will fairly dispose of that aspect of her claim. I accept Mr. O'Neil's evidence that he has no intention of concluding that transaction after this matter has ended.

18. In so far as the investment in PBJ 2138 is concerned, I find that Mrs. O'Neil is entitled to a return on her investment. She contributed the sum of \$10,000.00 towards the purchase price of \$55,000.00 for this vehicle. I accept Mr. O'Neil's evidence as to the income and expenses in relation to the vehicle. Mrs. O'Neil appears to me to have been over-optimistic about the level of profit this venture would have realised. In any case, I do not think it necessary to award a separate sum in relation to this investment and will take my findings into account in the lump sum award.

19. In determining the amount of the lump sum award I should make, I think it relevant to bear in mind the rights (if any), which would have accrued, to the wife under the Cohabitation Relationships Act. Had this relationship ended before the formalising of the marriage on these facts the wife would not in my view have been entitled to maintenance or to significant adjustment of property order under that statute. The sole fact of the marriage, especially for so short a period, in my view could not change this significantly. One is after all dealing with a period of cohabitation of barely 20 months after the celebration of the marriage. I do not doubt that throughout the period of the cohabitation and until their separation the wife did contribute to the homemaking and the general welfare of the family. But she made no direct financial contribution to the acquisition of the real property in respect of which she claims. Save for the regular

purchase of groceries I find her financial contribution to be limited to the items listed at paragraph 9 of Mr. O'Neil's affidavit of 13<sup>th</sup> July 2004.

20. In all of the circumstances I consider a lump sum payment to be appropriate. I have taken into account the fact that the Respondent has assets which outweigh those of the petitioner's in value, but on the facts of this case I do not consider that to be significant. I did not believe that valuations of the properties would have been helpful.

21. Of most significance is the fact that the husband has provided a home for almost four years while the petitioner has continued to rent her property. This has substantially reduced the figure I would have had in mind. I do not believe that Mrs. O'Neil's home is in such a state of disrepair as she claims but the lump sum should enable her to make it ready for her return.

22. I therefore order as follows:

1. The Petitioner is ordered to pay to the Respondent a lump sum of \$65,000.00 on or before the 1<sup>st</sup> May 2005 in full and final settlement of all her rights, title, share and interest in the property of the petitioner arising out of the marriage celebrated on the 22<sup>nd</sup> December 1999.
2. The Respondent is to vacate the matrimonial home situate at #20 Nigella Drive, La Florisante, D'Abadie within three months thereafter.

3. Time for the transfer of motor vehicle PBC 3617 extended to the 29<sup>th</sup> April 2005.
4. No order as to costs.

**Dated this 7th day of May 2005**

**CAROL GOBIN**

**JUDGE**