

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. M 622 of 2001**

**BETWEEN**

**NATASHA DOVE**

**PETITIONER**

**AND**

**ERIC DOVE**

**RESPONDENT**

**BEFORE THE HONORABLE MADAM JUSTICE J. JONES**

**Appearances:**

**Mrs. Hyacinth Griffith for the Petitioner**

**Mrs. Lynette Seebaran-Suite for the Respondent**

**JUDGMENT**

This is an application by the Petitioner/Wife (hereinafter called “the Wife”) by way of a Notice dated the 28<sup>th</sup> February 2002 for periodical and lump sum payments for her support and a property adjustment order with respect to premises situate at No. 83 Mountain View Drive Maracas, St. Joseph (hereinafter called “the Matrimonial Home”).

The affidavits in this matter are voluminous and in the main deal with the issue of conduct. From the outset it was clear that both Attorneys were of the view that conduct was of great relevance in these proceedings.

It is undisputed that the parties were married in July 1993. At the time of the marriage the Wife was 25 years and the Husband/Respondent (hereinafter called “the Husband”) 41 years. It was the first marriage for the Wife and the second for

the Husband. The Wife left the Matrimonial Home on the 8<sup>th</sup> March 1999 and filed a petition for divorce on the 27<sup>th</sup> June 2001 based on the fact of two years separation with the Husband's consent. There are no children of the family.

At the time of the marriage ceremony the Husband was employed as a pilot with B.W.I.A. and the Wife with Carlisle Laboratories Ltd. Throughout the marriage the Husband continued in his employment with B.W.I.A while the Wife changed employment from time to time. At the time of the proceedings she was employed as a medical representative of a drug company, Medimpex West Indies Limited (hereinafter called "the company"), a subsidiary of Medimpex Hungarian Trading Company of Budapest and which operated out of Kingston, Jamaica.

It is not in dispute that the land upon which the Matrimonial Home was constructed was purchased by the Husband before the marriage and that the Wife made no direct contribution to its purchase or to the repayment of the mortgage taken to fund the construction. Indeed on the evidence, although it was necessary to have the Wife's name placed on the mortgage taken for the purpose of bridging finance, at the Wife's request, on the conversion of the bridging finance loan to a loan for a longer term her name was removed from the mortgage deed and she was specifically released from her personal covenants.

According to the Wife due to the nature of his job the Husband was required to be out of the country regularly and in his absence she supervised the construction of the home and paid the workmen, in some instances out of her own money. She also claims to have made suggestions as to changes with respect to the layout of the house and to the design. The Husband admits that the Wife assisted in the supervision of the construction and agrees that she made two suggestions to the design of the house which suggestions were accepted. That apart, the Wife's contribution to the setting up of the home was in respect of the purchase of what her Attorney termed "decorative accents".

It is not in dispute that throughout the marriage the Husband was the greater wage earner. According to him the Wife, though always in receipt of a salary, was very

“selfish” with her income and he was left to pay most of their expenses. He did accept however that the Wife paid for the maid and purchased groceries. The Wife accepts that the Husband also gave her money for the purchase of groceries.

The main factual issues to be determined by the Court in these proceedings were directed to the question of conduct and the financial resources of the parties.

The issue of conduct and its relevance in applications for ancillary relief continues to be a vexed and troubled one. In an attempt to deal comprehensively with this issue I propose therefore to examine the facts raised by each side as evidence of conduct to which the Court ought to have regard (hereinafter called “relevant conduct”) consider the law and then, if necessary, make findings of fact with respect to the conduct alleged.

Attorney for the Wife submitted that there were two areas of relevant conduct

- (i) The refusal of the Husband to continue his participation in the conception of a child and
- (ii) His improper association with another woman.

The Wife’s case is that prior to the marriage the parties spoke of having children. As proof of this the Wife produced a card written to her by the Husband during the first year of marriage in which he makes mention of their “boys”. After some two years of trying to conceive, actively encouraged by the Husband, the Wife began to investigate her failure to become pregnant. To this end the Wife submitted herself “to a battery of tests” aimed at investigating the problem, which at that time, according to her, was assumed to lie with her. Some of these tests she claimed were painful, intrusive and caused her uncomfortable side effects. At the end of the day she was given a clean bill of health and it became the Husband’s turn to subject himself to testing. Upon his being investigated she discovered that the Husband produced antibodies in his sperm, which was the likely cause of their inability to have a child. She claims that it was only at this time that the Husband revealed to her that this condition had been diagnosed during his first marriage. In order that this situation be corrected the Husband, according to the Wife, was

required to undergo a simple office procedure, which involved centrifuging a sperm sample and artificial insemination. The Husband refused to undergo the procedure, which he deemed unnatural and the marriage went into decline.

According to the Wife the constant enquiries of family and friends put an additional burden on her and she became distressed and emotionally distraught. She began to suffer headaches, back pain and sleeplessness and was forced to consult a psychiatrist.

In support of her case the Wife produced a report from the psychiatrist which revealed that the Wife had first been seen by her on the 29<sup>th</sup> July 1997 and had requested assistance in resolving on going conflicts with her husband with respect to his continued participation in the medical process aimed at her becoming pregnant. The psychiatrist saw the Wife alone on three occasions and with the Husband on two occasions. The psychiatrist's conclusions were as follows:

“Natasha is a very determined young woman. She had fallen in love with and married her husband whose age and life experiences gave her the security she had felt in her marriage. His lack of support in her efforts to bear a child had her in a state of total disbelief. However, once the denial was broken she accepted her situation and resolved to take time to decide her future.”

According to the psychiatrist the Wife's last visit to her was on the 17<sup>th</sup> of September 1997.

The Wife's complaint with respect to the Husband's conduct is that he actively participated and encouraged her to undergo these many and varied tests while knowing that the problem lay with him and that upon her discovering same refused to engage in a simple procedure which would have solved the problem.

With respect to the improper association it is this according to the Wife that really caused the breakdown of the marriage. According to the Wife some time towards the end of February 1999 she discovered a card sent to the Husband by another woman. The card, put into evidence, was a Christmas card signed by the woman dated 1998 and expressed to be from Miami. The card made reference to the hope

of a future for the parties in the year 1999. It also contained expressions of love both printed and in handwriting. On finding this card the Wife indicated that she sought the assistance of her psychiatrist who had in the past counseled the parties and began to make preparations to leave the marriage. She sought a meeting with the Husband and the psychiatrist and at that meeting confronted the Husband with her knowledge. According to her she did not decide finally to leave the marriage until after the meeting with the psychiatrist when upon speaking to the “other woman” on the telephone she was told by her that “her husband should be man enough to tell her herself” or words to that effect. This, it would seem, the Wife took as confirmation of the affair and she made the final decision to leave the Matrimonial Home.

It is this behavior, which the Wife seeks to have the Court deem relevant conduct on the part of the Husband, a consideration of which should go to enhance any award made to her in these proceedings.

The Husband, on the other hand, proffers the following behavior on behalf of the Wife as conduct to which the Court ought to have regard:

- (i) The Wife’s dishonesty with regard to financial dealings and
- (ii) Her improper association with a previous boyfriend

According to the Attorney for the Husband the Court is required to consider the “thread of dishonesty” which runs through the evidence with respect to the Wife. The Husband asks the Court to accept that the Wife found the card, referred to above, in the month of January 1999 and immediately thereafter formed the intention to leave the Husband. Pursuant to that intention according to the Husband the Wife embarked upon a plan to furnish her new home at the Husband’s expense while leading him to believe that all was well in the marriage. The Wife thereupon embarked upon a shopping spree financed by the Husband’s credit card. This shopping spree included two trips to Miami. In all, according to the Husband’s evidence, the Wife spent some \$1124.06 U.S. and some \$17,555.00 T.T. during the period 26<sup>th</sup> January and 6<sup>th</sup> March 1999 on items for her new home. These sums, not denied by the Wife, were charged to the

Husband's credit card without his knowledge. As well, the items purchased in Miami were shipped to Trinidad at a cost to the Husband of some \$8,226.00.T.T. The Husband's evidence is that some time in the month of January 1999 he placed the sum of \$1,000.00 U.S. cash in a drawer in the matrimonial bedroom, which sums went missing. He claims that the Wife assisted him in the search for the money and deliberately allowed him to suspect the maid, only admitting to taking the said money after she, the Wife, left the Matrimonial Home. As well, the Husband also points to the fact that the Wife on her removal from the Matrimonial Home took with her items of furniture without his permission, which items cost him some \$54,000.00 T.T. and had been purchased by him in Miami four years earlier for the Matrimonial Home. The final bit of financial impropriety raised by the Husband is the fact that some time in or around the month of September 2002, some three years after the breakdown of the marriage, the Wife withdrew all the funds, amounting to \$1,279.60 U.S., from two accounts held in their joint names in Miami. According to the Husband these funds, although in a joint account, had during the marriage been treated as his funds and arose from his earnings.

With respect to the allegation of improper association the Husband claims that during the marriage Wife engaged in an affair with a previous boyfriend, he claims that the boyfriend would telephone both the Matrimonial Home and the Wife's cellular telephone regularly and that the Wife would be the recipient of both flowers and gifts on her birthday from him. He claims that on one occasion while he was out of the country his mother reported that while she was at the Matrimonial Home the Wife, dressed in her underwear, invited the boyfriend into the bedroom and closed the door. He also claimed that several of his friends reported that the boyfriend's car had been seen parked outside of the Matrimonial Home at "irregular" hours of the night on occasions when the Husband was out of the country.

It is this evidence that the Husband wishes the Court to consider as evidence of relevant conduct which would go to reduce the award to the Wife.

After enumerating some of the circumstances that the Court is mandated to take into consideration in determining applications for financial relief **section 27 of The Matrimonial Proceedings and Property Act** (hereinafter called “the Act”) identifies the duty of the Court as being “to place the parties, so far as it is practicable and, having regard to their conduct, just to do so in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other”. It is to this phrase “having regard to their conduct” that the Court’s assistance is sought.

In the case of **Watchel v Watchel [1973] 1 A.E.R. 829 Lord Denning M.R** in dealing with what was at that time a new and revolutionary statute, when dealing with conduct made famous the phrase “obvious and gross”. **The Matrimonial Proceedings and Property Act 1970 U.K.**, which together with the **Divorce Reform Act 1969 U.K.** sought to move away from the concept of matrimonial offence or fault in divorce proceedings introduced the concept of “irretrievable breakdown”. **Watchel v Watchel** was the first opportunity in which, after full argument, the Court of Appeal had to consider the principles to be applied when granting ancillary relief under the “new” legislation. It is in this context that in considering a section on all fours with **section 27 of the Act** that the phrase “both obvious and gross” was introduced. According to Lord Denning:

“It has been suggested that there should be a “discount” or “reduction” in what the wife is receive because of her supposed misconduct, guilt or blame (whatever word is used). We cannot accept this argument. In the vast majority of cases it is repugnant to the principles underlying the new legislation, and in particular the Act of 1969. There will be many cases in which a wife (though once considered guilty or blameworthy) would have cared for the home and looked after the family for very many years. Is she

to be deprived of the benefit otherwise to be accorded to her by section 5 (1) (f) because she may share responsibility for the breakdown with her husband? There will no doubt be a residue of cases where the conduct of one of the parties is in the judge's words .... ' both obvious and gross,' so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice. In such a case the court remains free to decline to afford financial support or to reduce the support, which it would otherwise have ordered. But, short of cases falling into this category, the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehavior in the course of an unhappy married life.....”

Following on the words of Lord Denning in **Watchel's** case for sometime thereafter conduct, save financial conduct, was considered to be irrelevant in the determination of ancillary relief unless it was “obvious and gross in the sense that the party concerned must be plainly seen to have willfully persisted in conduct or a course of conduct, calculated to destroy the marriage in circumstances in which the other party is substantially blameless.”

**Per Bagnell J. in Harnett v Harnett [1973] Fam.156 at page 165.**

With respect to financial conduct, however, it would seem that this has always been considered relevant perhaps because it is a factor properly to be considered under the head of contributions to the welfare of the family. Also considered relevant by the court was the conduct of a party in the course of the litigation and in particular with respect to nondisclosure. The court's abhorrence of same was reflected in the **Desai v Desai [1983] 13 Family Law Reports 46 lines of cases**

Financial conduct and conduct in the face of the court apart therefore, the question is what has been the approach of the court with respect to the conduct of the parties in the course of the marriage. In the case of **West v West [1978] Family 1**

at page 8 in dealing with the phrase “gross and obvious” Sir John Pennycuik V.C.said;

“I suspect that the word gross has given rise to some misunderstanding in this connection, and that [it] has been given an imputation of moral blame. In fact I do not think that the word gross really carries any sort of moral judgment. It means no more than “of the greatest importance.”

In the case of **Robinson v Robinson (1981) 2 F.L.R.1**. The Court of Appeal considered an appeal from the High Court where the Judge in an application for financial provision had regard to the wife’s conduct which, though not forming the basis for the divorce, in the trial judge’s opinion significantly contributed to the breakdown of the marriage. In reviewing the trial judge’s judgment Lord Scarman quoted the trial judge in the following manner:

“I accept the guidance given by the Court of Appeal in **Wachtel v Wachtel**. I think that there is considerable danger in treating any given passage in that judgment as if the words of Lords Justices were themselves the words of the statute. And I can see a danger that the phrase ‘obvious and gross misconduct’ may, unless care is taken, become a kind of formula treated almost as if the words were themselves in the section”

Lord Scarman in the Court of Appeal in agreeing with the above statement had this to say:

“If therefore a judge has regard to conduct in proceedings for financial provision, he is doing that which the statute enjoins him to do. The guidance that one finds in **Wachtel v Wachtel** is as to the weight of the conduct and as to its assessment. It is just the sort of guidance that the court can give, which the statute cannot give. The statute tells the court that conduct is relevant. The Court of Appeal, in **Wachtel v Wachtel** has given guidance as to the weight, relevance and value to be attached to the conduct, which the statute has said is relevant. In my opinion therefore,

the learned judge cannot be faulted for having had regard to conduct in this case.

Did he therefore fall into error in making the assessment of the conduct in this case that he did? He took the view, which cannot be challenged in this Court that the wife's conduct significantly contributed to the breakdown of the marriage. When the law, as it has done, since the passage of the **Divorce Reform Act 1969**, declares that the one ground for divorce is irretrievable breakdown, a finding that one party has significantly contributed to that breakdown clearly must be relevant on the issue of financial provision. But that does not mean that the party whose conduct is so described loses her right to provision, or indeed even loses her right to ample provision; that must depend upon all circumstances of the case. If there is misconduct of an obvious and gross character, such as was mentioned in the **Wachtel v Wachtel** the conclusion is pretty clear; if it is less than that, then a difficult value judgment is required of the Court but that of course is the sort of judgment that the court exists to make."

In that case the trial judge took the wife's conduct with respect to the marriage into consideration but also took into consideration her position as mother of children and the necessity of her having to maintain a standard of life reasonably comparable to that of her husband in the circumstances. In other words the issue of conduct was only one of the circumstances the Court had regard to in determining the financial relief sought. An approach approved by the Court of Appeal.

In the other English Court of Appeal decision of **Robinson v Robinson [1983] 1 A.E.R 391** a case which dealt with the provisions of the **Domestic Proceedings and Magistrates Courts' Act 1978** it was conceded that **section 3(1)(g) of that Act** although worded differently was of the same effect as **section 25(1) of the Matrimonial Causes Act 1973 (U.K.)**. In that case reviewing the post **Wachtel**

cases the Court held that in considering an application for financial provision, the past conduct of a party, in this case the wife, was only to be taken into consideration in exceptional cases where it would offend a reasonable person's sense of justice to disregard such conduct. According to Lord Justice Waller:

“ The words ‘gross and obvious misconduct’ can be somewhat misleading, but as I understand it, they were referring to the fact that this was an unusual case far removed from those where much blame could be put on both sides and it was a case where it would have been unjust to give the financial support which would normally be given. In answer to the question would it offend a reasonable man's sense of justice that this wife's conduct should be left out of account in deciding the financial provision which the husband should make, the magistrates were answering ‘Yes it would when they said: ‘[Her desertion] he not having committed any misconduct was a matter of gravest importance in relation to this marriage’”

The test by this time therefore was whether it would offend a reasonable man's sense of justice if the conduct in question were left out of account when deciding the financial provision to be awarded. By 1984 however the U.K. had amended its legislation and by section 25 (2)(g) of the Matrimonial Causes Act 1973 as amended specifically enacted a provision requiring the Court to take into account the conduct of the parties if that conduct is such that it would in the opinion of the Court be inequitable to disregard it. This is not the position in our jurisdiction.

It would see therefore that in financial relief applications in this jurisdiction the test to be applied in determining whether the conduct alleged is relevant conduct, or conduct to which some weight should be attached financial relief applications is, whether the conduct of either party to the marriage is such that it would offend a reasonable person's sense of justice to disregard same when dealing with the question of financial relief.

It is therefore with this in mind that I have to assess the evidence led in this regard by asking the question would it offend a reasonable person's sense of justice if

when considering what award to make the conduct of the Husband/Wife was not taken into account? If it would so offend then it is necessary that the conduct be taken into consideration in either increasing or decreasing the award appropriately. In doing so I must also bear in mind the fact that even if the conduct is relevant conduct it is but one of the factors to be taken into consideration.

Counsel on both sides has referred me to various authorities on the type of conduct that has been considered relevant by other courts. From the authorities there seems to be one common thread that runs through the cases and it is that each case depends on its own facts. I am of the opinion that in this case the allegations made by both sides do not amount to relevant conduct. The only conduct in this case which approaches the level of conduct of relevant conduct is in my opinion the Husband's behavior with regard to conception. In assessing this conduct, even if I believe the evidence of the Wife in its totality, after taking the circumstances of the marriage into consideration including the report from the psychiatrist and the relative age of the parties I am of the view that this conduct does not achieve the level of relevant conduct in all the circumstances.

The other factual issue to be determined by the Court was the question of the financial resources of both parties. Neither party was very forthcoming about their financial affairs. Save as to deposing that he was employed as a pilot with BWIA and for the evidence with respect to the Matrimonial Home the Husband made absolutely no reference to his income or assets in his affidavits. With respect to disclosure on her affidavits the Wife is marginally better. In her first affidavit she makes reference to an income of \$10,000.00 TT from her employment and to the fact of her purchase of a town house, which is subject to a mortgage with Royal Bank. That is the extent of the parties' disclosure of their assets on their affidavits.

Attorney for the Wife placed before the Court by way of subpoenaed evidence the Husband's salary and pension benefits from his employer. According to the

evidence the Husband's pay period is 28 days. He therefore is paid 13 times for the year. For each pay period he receives a salary in Trinidad and Tobago currency and allowances in United States currency to the tune of approximately \$37,000.00 T.T.gross. After deductions his take home pay amounts to approximately \$7131.19 TT and the sum of \$18,602.03 TT, being the Trinidad and Tobago equivalent of his US dollar salary. The Husband claims monthly expenses after his deductions at source of some additional \$12,059.00 TT leaving a balance of some \$13,674.22 each month. Of equal significance is the fact that in July 2002 the Husband received a net payment of \$299,267.75 representing a surplus on a pension fund to which the Husband had contributed up to the year 1996 and in respect of which he was expected to receive another tax-free lump sum of \$248,173.99 plus a monthly pension at aged 60 years. Of this sum under cross-examination the Husband claimed to have some \$88,000.00 left, the sum of \$50,000.00 in the Unit Trust Corporation and some \$38,000.00 in a Roytrin account. The balance he claimed was spent on replacing the engine on his Audi motor vehicle in the sum of \$80,000.00; \$7000.00 US on his mother's illness; \$8,000.00 US as his contribution to a home for his mother and \$25,000.00 in repairs to the Matrimonial Home. His present asset base was according to him as follows: the sum of \$88,000.00 TT identified above; approximately \$1,800.00 US in a US account; \$7000.00 TT in Aeroservices Credit Union and a savings account into which his salary was deposited.

With respect to the mortgage on the Matrimonial Home his evidence was that it would be paid off in 2004. There was also put before the court by way of consent information with respect to additional pension benefits receivable by the Husband at aged 60 years. It was agreed by consent that the Husband would receive the sum of between \$1.6 to \$2.2 million as a lump sum payment and the sum of between \$6,000.00 to \$9083.34 as a monthly payment.

Albeit that all of the Husband's evidence with respect to his finances was obtained by way of cross-examination and the evidence of his expending the sum of \$80,000.00 on an engine for his Audi motor car a little incredulous I found that

the Husband's evidence was by and large given in a straightforward manner and believable.

With respect to her financial resources the Wife was not as credible. Throughout when dealing with finances she gave the impression of not telling the whole truth and of hiding things from the Court. In her first affidavit filed on the 26<sup>th</sup> April 2002 the Wife deposed to the following:

1. Her gross monthly salary was \$10,000.00;
2. Both she and the Husband were the mortgagors of the Matrimonial Home and to that end she annexed a copy of a mortgage deed in both names;
3. The said mortgage loan and both of their cash savings went towards the construction of the Matrimonial Home;
4. In order to purchase her townhouse she liquidated her entire savings and she has not been able to acquire any savings since that time and
5. She did not own a car nor could she afford to maintain or purchase one.

In giving reading this affidavit the Court was left with the impression that:

1. Her net income after the usual statutory deductions was less than the \$10,000.00 revealed;
2. She was a party to the mortgage;
3. She contributed all her savings to the construction of the Matrimonial Home;
4. As a result of her need to find suitable housing she liquidated her savings of \$40,000.00 and as a result no longer had any savings and
5. She had no car for her use.

As a result of evidence given by the Husband in subsequent affidavits and by way of subpoenaed evidence and the Wife's cross-examination it was revealed that:

1. In an application for a loan in 2003 the Wife claimed that her salary was \$12,000.00 a month and that she was in receipt of a monthly allowance of \$ 3,000.00.

2. In January 2000 when applying for a mortgage loan she claimed that her salary was \$1,900.00 US;
3. No money was deducted from her salary for the payment of tax or any other deductions, statutory or otherwise;
4. The mortgage deed exhibited by her was the deed for the bridging finance and that on her request she had been removed from the mortgage;
5. At the time of the construction of the Matrimonial Home she had claimed to have had no savings and contributed none to its construction;
6. At the time of her purchase of the townhouse in December 1999 she in fact paid the sum of \$83,000.00 out of her personal resources towards its purchase price;
7. In the year 2000 she purchased from account No: 02-L13-9118-5 with Republic Bank Valpark, units in Republic Global Equity Fund to the tune of \$2,000.00 US and Republic Caribbean Equity Fund to the tune of \$2,024.68 TT;
8. She was provided with a car by her employer for which all expenses were paid and which she had the option of purchasing at book value after four years and
9. In the year 1999 she had the opportunity of purchasing a car under similar conditions, which she refused.

Even more telling was the fact that up to and until leave was sought and obtained from the Court to subpoena her accounts from Republic Bank the Wife's evidence was that she was the holder of two accounts with Republic Bank Valpark branch, a T&T chequing account and a US account. According to her she had no idea of the amount standing to her credit in those accounts as it varied depending on how she transferred money from her US account for her use. She claimed that apart from those two accounts she also had a few hundred dollars in the La Joya Credit Union and a few hundred dollars in a joint account with her brother at Scotia Bank St. Augustine. On the 6<sup>th</sup> February 2004 leave was granted to the Husband to issue two subpoenas one to the Republic Bank Valpark Branch to produce information and documents with respect to a loan taken by the Wife in November

2003 and the other to RBTT to produce the loan application form and particulars relating to the mortgage loan taken by the Wife. These documents although not put into evidence until the 3<sup>rd</sup> March 2004 were provided to the Attorneys by the 12<sup>th</sup> February 2004. As a result of the information produced by the bank on the 12<sup>th</sup> February 2004 leave was sought and obtained by the Husband to subpoena further evidence from the Bank with respect to, among other things, all accounts held by the Wife. At that time, as well, leave was sought by the Wife to file and serve two further affidavits with respect to monies held to the credit of the Wife in her account No. 26000494801. It was only then that the Wife by her affidavit filed on the 26<sup>th</sup> February 2004 revealed that she held an account No. 02-L13-09118-5 with Republic Bank Valpark and claimed that the money in that account was in fact not her money but money belonging to her employer. She also revealed that there was also in existence a US chequing account #0026-090-2605-003-8260 which she held jointly with the only other employee of the company in T&T and into which the company's money was also remitted. According to the Wife her salary other monies to pay for the company's expenses are deposited into her US savings account. From that account she claims she transfers her monthly salary and sufficient funds monthly to reimburse herself for expenses incurred on behalf of the Company. The Wife claims therefore that the sums of money standing to her credit in the said account, that is account No. 02-L13-09118-5, save in so far as they represent her monthly salary, do not belong to her beneficially and are held on trust for the company.

No credible story has been given to the Court as to the reason for the existence of both the joint US chequing account with her co-worker and the US savings account in her name. According to her both of these accounts contain the company's money and both if she is to be believed seem to have been set up for the same purpose. I am of the opinion that the Wife has not provided to the Court with any valid or credible reason to presume a trust in favour of the company with respect to the sums of money standing to her credit in the said account and from the evidence before the court, as can be seen from the creation of the globalequity

accounts in her name, it is clear that she treated the said money as though it was her own. I therefore reject the Wife's evidence that the money standing to her credit in account no.02-L13-0911-85 belongs to her employer and find as a fact that the money in the said account is that of the Wife and represents savings and /or some other benefit of her employment not disclosed by her. At the date of admission of the evidence there was the sum of \$19,940.48 US standing to the Wife's credit in the said account.

Further I am not prepared to accept the letter exhibited by the Wife from her employer as evidence of her income for the simple reason that there are two such letters before the court. One, presumably done for the purpose of these proceedings, is dated the 4<sup>th</sup> December 2002 in which one Basil Wright Marketing Manager "certifies" that she has been employed with the company since the 1<sup>st</sup> June 1996 and is in receipt of a salary of \$1,650.00 US per month and one of the 7<sup>th</sup> December 1999 in which one Endre Pokomandi Technical Advisor certifies that she has been employed with the company since the 17<sup>th</sup> June 1996 and is in receipt of a salary of \$1,900.00 US a month. Neither of these letters, which are in themselves contradictory, refers to the allowance of \$3,000.00 claimed by the Wife to the bank nor to the fact that she has the benefit of a motor vehicle with all expenses paid or of medical insurance. It is difficult to accept that both of these documents are true since it is hardly likely that the employer would have changed, and the Wife accepted, terms and conditions of employment to her detriment and even if true the said letters certainly do not reveal the full benefits received by the Wife from her employment. In the circumstances I find that the Wife has not been truthful with the Court with respect to the benefits received from her employment and am prepared to find that the Wife receives at least the sum of \$15,000.00 a month, the use of an all expense paid motor vehicle, medical insurance plus other undisclosed benefits which have allowed her to amass savings in the excess of the sum of \$125,000.00 TT since the separation.

During the course of the hearing and at the close of the evidence it was by consent agreed that information as to the Husband's pension benefits be obtained from the Trinidad and Tobago Airline Pilots Association and that this evidence would be put before the court by way of an agreed document. The matter was accordingly adjourned for this purpose. At the adjourned hearing a document was put before the Court by consent. This document was marked "O" and purported to be an actuarial report on the division of pension benefits on the marriage breakdown. On hindsight Counsel for the Husband withdrew her consent to the document on the grounds that this was not what had been agreed by the parties and, that save for the admission of a document containing only the requested information, the evidence on this case was already closed. As a result the parties subsequently agreed certain facts, which were put before the Court by way of an agreed statement. After inviting the parties to address me on whether the Court could of its own volition admit information both pertinent and relevant I determined that the interest of justice demanded that the Court have before it all relevant information and where such evidence is available the Court must have regard to same. In the circumstances I admitted the said document and accorded it the status of a court document and gave the parties the opportunity of addressing me on the effect of the said document. In considering the report I have used the termination method in assessing that portion of the benefits attributable to the period of the marriage that is the sum of \$650,000.00 to \$900,000.00. In order to arrive at a workable figure I have split the difference and arrived at a sum of \$775,000.00 representing the Husband's relevant pension entitlement from the existing pension scheme.

I am mandated by s.27 of the Act to consider all the circumstances including those specifically mentioned by the section. In doing so I have noted

- 1 The fact that the marriage was not a long one and the fact of the disparity in ages between the parties.
- 2 Save that the Husband cannot easily have children there is no evidence of any mental or physical disability on the part of

either of the parties. In this regard I disregard the evidence of the Husband as to the Wife's mental instability and accept the evidence of the psychiatrist.

- 3 I find that with respect to the financial contributions to the marriage it was the Husband who bore the brunt of the financial burden. I find to that during the marriage the Husband's income was always way in excess of that of the Wife's but that the Wife's income has improved greatly over the years so that by the time of the separation it was at least four times what it was at the time of the marriage. Despite this the Wife's contribution to the family's finances remained minimal.
- 4 It is clear that the parties enjoyed a relatively high standard of living some of which was as a result of the perquisites received by the Husband by way of his employment that is foreign travel, the easy availability of foreign currency and the opportunity to shop abroad. It must be noted here that by virtue of her employment the Wife now has easy availability of foreign currency and some foreign travel, albeit to Jamaica.
- 5 It is accepted that after paying all of his expenses the Husband has a surplus at the end of each pay period. The Wife's evidence with respect to her expenses is that they amount to some \$13,772.00 per month, this sum includes a provision of \$3,000.00 a month for vacations abroad and the sum of \$500.00 representing her contribution to her mother's maintenance. I find that on the evidence the Wife's income can adequately support her life style and maintain her at a standard of living similar to that she enjoyed during the marriage.
- 6 Both parties have a roof over their heads, of course while the Husband's is practically free of encumbrances the Wife's is

still subject to a mortgage, the outstanding balance on which is not known.

- 7 The Matrimonial Home was valued at \$875,000.00 as of the 1<sup>st</sup> April 2004. There is no evidence of the value of the townhouse owned by the Wife save that at the time of purchase i.e. January 2000 it was valued at \$400,000.00. Both properties are described as middle-income group housing but the townhouse is described as being in an enclosed compound within a predominantly lower-middle income residential area.
- 8 Whereas there is evidence of the Husband's pension entitlement no evidence has been adduced as to whether or not the Wife would be entitled to any pension benefits upon her retirement and, if she is, the quantum of such benefits. It must be noted here however that the Husband would be due to stop working and receive these benefits within 7 years whereas the likelihood is that the Wife has at least another 20 years of working life ahead of her. The evidence with respect to the Husband's pension benefits is that he will receive two lump sums upon retirement. With respect to the surplus from the old BWIA pension fund he will receive a tax free lump sum of \$248,173.99 and with respect to the existing pension assuming that he continues in his employment until retirement age a tax free lump sum of between \$1.6 to \$2.2 million.

In essence this was not a long marriage in which there were no children and where there was a vast disparity in the ages of the parties. With respect to financial resources while those of the Husband's far out weigh those of the Wife while the Wife has the benefit of age in her favour. I note also that the Wife is in a far better position financially now than she was prior to the marriage. I find that the relevant family assets include the Matrimonial Home, the contents, the joint accounts held by the parties at the time and that portion of the Husband's present pension benefits acquired during the marriage. I also find that during the marriage

the Wife, unknown to the Husband, acquired certain savings, which savings included the sum of \$40,000.00, which she admits to have had in Royal Bank at the time of the separation.

Whereas I have considered the authorities presented to me by Attorneys I am mindful of the fact that the court must consider the circumstances of the particular case before it. After having taken into consideration all the circumstances of the case including the items purchased and money taken by the Wife immediately prior to, upon and subsequent to the separation and in the interest of a clean break I am of the view that an award to the Wife in the sum of \$200,000.00 meets the justice of this case. Attorney for the Wife has argued that although there is no evidence before the Court that the Husband has sufficient liquid assets to satisfy a reasonable lump sum order the evidence is that the Husband has the means to borrow the said sum. In the circumstances I order that the Husband do pay to the Wife the sum of \$200,000.00 on or before the 31<sup>st</sup> July 2004 in full and final settlement of all the Wife's claims pursuant to the marriage. I now invite the parties to address me on the question of costs.

Dated this 21<sup>st</sup> day of June, 2004.

.....  
Judith A. D. Jones  
Judge