

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. M552 OF 2001

**FAREEDA KERRY TURCOTTE
PETITIONER**

AND

**MICHAEL TURCOTTE
RESPONDENT**

BEFORE THE HONOURABLE MADAM JUSTICE JUDITH JONES

Appearances:

Ms. Carol Gobin and Mrs. Joan Byrne for the Petitioner

Ms. Leandra Ramcharan for the Respondent

JUDGEMENT

The parties herein (hereinafter called “the Wife” and “the Husband”) are, either jointly or separately or together with the Petitioner’s son, the owners of the following property:

1. Two parcels of land situate at Naparima Mayaro Road Mayaro, more specifically described in deeds of conveyance No 13645 of 1989 and No. 22193 of 1998 (hereinafter called “the first Mayaro property” and “the second Mayaro property” respectively). These two parcels of land together with the house thereon have been jointly valued at \$430,000.00.

2. Three lots of land situate at El Toco Estate Mission (hereinafter individually called “lot 48”, “lot 49” and “lot 50” respectively and collectively called “the Toco lands”) jointly valued at \$900,000.00.
3. Premises situate at No. 35, Picton Street Newtown Port of Spain (hereinafter called “the Picton Street premises”). This property houses a business downstairs and a residence upstairs and has been valued at \$1,100,000.00.
4. Shares in Picton Place Limited (hereinafter called “the company”). The company runs a grocery located in the downstairs of the Picton Street premises. There has been no valuation done of the company or of the business.
5. Premises situate at No 8 Warner Street Newtown Port of Spain (hereinafter called “the Warner Street premises”). This property comprises a ground floor apartment unit valued at \$ 350,000.00 and
6. Two motor vehicles PBA 4946 and PBG 24 (hereinafter called “ PBA 4946” and “PBG 24” respectively). These vehicles are in the name of the company. There has been no valuation of these motor vehicles.

Before the Court are cross applications by which each party seeks the transfer of one or the other of the above mentioned assets and a lump sum payment. The Husband also seeks an account of all the assets and dealings of the company from the year 1998 to present; the payment of dividends of the company from February 1998 to date; the transfer of one half of the furniture, chattels and things

purchased by the parties during the marriage and an order that the Wife return to him all of the family heirlooms from the matrimonial home. Save for blanket statements in his affidavits there has been no real attempt by the Husband to pursue his claim for the furniture etc. or the heirlooms. Neither has there been any challenge to or examination of the accounts of the company provided by the Wife in these proceedings. The Wife has however, conceded that both motor vehicles, albeit in the company's name, were purchased by the Husband.

HISTORY OF THE RELATIONSHIP

The parties were married on the 16th May 1994. A decree nisi was granted the Petitioner on the 6th of February 2002 based on the fact of the Husband's adultery, which she alleges commenced in February 1997. The petition was uncontested. At the time of the marriage the Wife was 53 years and the Husband 50 years. It was neither of the parties' first marriage. The Husband, now a Trinidadian citizen, was at the time of the marriage a Canadian citizen, the Wife a Trinidadian citizen. It would seem that the Husband obtained Trinidadian citizenship sometime in or after 1994 after the marriage.

According to the Wife, after a courtship of two years, she and the Husband shared a "visiting relationship" for 10 years prior to their marriage. The Husband, it is agreed, was at the time employed with an American company involved in equipping the Mount Hope complex and he traveled between Trinidad and Miami. The Husband maintained a separate residence in Miami but when in Trinidad he lived at the Wife's rented apartment at No. 8 Warner Street Newtown. According

to her during that period, while in Trinidad, he would buy groceries from time to time and helped to renovate the kitchen of her rented apartment. The Wife avers that the marriage broke down in the year 1999 when she discovered the Husband's adultery.

According to the Husband the relationship lasted some 17 years until their separation in 1999. He states that the parties had a visiting relationship for the first two years i.e. from 1982 to 1984. Thereafter, despite the fact that he was required by the nature of his employment to visit Miami from time to time and maintained an apartment there for that purpose, he and the Wife began to live together as Husband and Wife from 1984 in her rented apartment. According to him from that time, save for her personal expenses and that of her son and her rent, which she paid, he paid all other expenses for the family.

During the period 1982 to 1991 the Wife was employed as a public servant at a gross monthly salary ranging between \$3,400.00 in 1982 to \$3,795.00 in 1990. She retired in the year 1991 and received the sum of approximately \$80,000.00 as her gratuity. The Husband was employed throughout the period of the parties' cohabitation as an equipment consultant for health care and earned an average of \$3,300.00 US to \$5,000.00 US a month throughout that period. Between the years 1987 to 1990, prior to the marriage, the parties occupied separate apartments but the relationship continued.

In the year 1989 the business now known as Picton Place Ltd, a grocery, was acquired and run by the parties although the extent of their respective

contributions to the running of this business is in dispute. The Wife now lives upstairs the Picton Street premises and the Husband lives in premises not owned by him in Champs Fleur.

ACQUISITION OF THE ASSETS

1. THE MAYARO PROPERTIES

According to the Wife the parties purchased the first Mayaro property in 1989 for the sum of \$70,000.00. She states that the property was paid for by them both, by way of installments. This property was vested in her name alone because the Husband, not being a resident, was unable to hold land in Trinidad in his name. She claims that in 1990 she took a loan of \$60,000.00 to renovate the property which loan she paid off. In the year 2001 she repaired the property after it had been burglarized. She claims to have paid all the outgoings on this property.

According to her the only contribution made by the Husband other than to the purchase price was to spend approximately \$12,000.00 to fence the premises and to install burglar proofing and tile a part of the house. She admits that the Husband paid for the second Mayaro property but says that it was as a result of her efforts in securing same that he was able to purchase the property. She states that she has paid the taxes on this property from 1998 to 2002. The second Mayaro property was put in both names.

According to the Husband he purchased both Mayaro properties. The first Mayaro property was purchased by him by paying the sum of \$45,000.00 to the purchaser and the sum of \$25,000.00 to Republic Bank to liquidate two mortgages on the

property. With respect to the money paid to the purchaser he says that he gave the Wife the money to pay the installments. The second Mayaro property, purchased in 1998, was paid for by him with a certified cheque drawn on his bank at UWI campus. According to him, contrary to that stated by the Wife, the only renovations done to the Mayaro properties were paid for by him or by the insurance. He states that the loan taken on the first Mayaro property rather than being used to renovate the premises, as claimed by the Wife, was used to assist with the Wife's son's school fees abroad. He admits, however, that the Wife has paid \$68.00 in land taxes on the second Mayaro property.

Both of these properties are free from encumbrances.

2. TOCO PROPERTIES

According to the Wife she purchased Lot 48 and Lot 50 in 1989 for \$65,000.00. She says that the sum of \$45,000.00 was raised by way of a mortgage loan from Republic Bank which loan was repaid by her solely. The balance of the purchase price was paid by the Husband. Both these properties are in her name. She says that she has paid down the sum of \$28,000.00 on lot No. 49 but has not as yet received the deed of conveyance as there is some problem with the title.

According to the Husband it is he who purchased the Toco lands. He states that he paid the sum of \$65,000.00 to the vendor, Republic Bank, for each of lots 48 and 50 giving the Wife the money to pay the monthly installments on the mortgages. For the same reason as with the first Mayaro property these two lots were placed in the Wife's name. With respect to lot 49 he says that in 1987 he paid to the

vendor the sum of \$65,000.00 for that lot but up to the time of the breakup the land had not as yet been transferred into their names.

These properties are also free from encumbrances

3. THE WARNER STREET PREMISES

At the commencement of the relationship the Wife was renting and living in the Warner Street premises. In the year 2002, after the breakup, she and her son purchased the Warner Street premises for the sum of \$200,000.00. According to the Wife she took a loan from her insurance company for the down payment of \$20,000.00 and the balance of \$180,000.00 was borrowed by her son and herself from the First Citizen Bank. She claims that her son has since spent approximately \$30,000.00 on the renovation of the premises. According to the Husband while the parties lived together he made substantial renovations to this property. Further he alleges that the Wife has purchased these premises out of funds from the business. There is still a mortgage on this property.

4. THE PICTON STREET PREMISES

These premises comprise a business downstairs run by the company and a two bed-roomed apartment upstairs now in the occupation of the Wife. According to the Wife in the year 1989 while she was still employed with the government she leased a grocery business on these premises for a monthly sum of \$3,000.00. According to her, the Husband was at that time no longer working in Trinidad but would visit from time to time. Although admitting that the Husband helped her to

pay the rent on three occasions she says that she ran the grocery both before and after work and employed persons to work there during the day. According to her she earned approximately \$40,000.00 a year at this time from the business. After her retirement in 1991 she worked full time in the business. In 1992, she states, she was given the option to purchase the building. The purchase price, including the sum of \$28,000.00 for fixtures and chattels, was \$400,000.00. According to her the fixtures and fittings she paid for by way of installments and the purchase price by using her gratuity of \$80,000.00, her matured government bonds of \$30,000.00, savings at the Republic Bank and the sum of \$40,000.00 from her father. She states that she also borrowed by way of a mortgage loan the sum of \$248,000.00. This mortgage together with all the outgoings for the business has always been paid and is still being paid by her by way of monthly installments in the sum of \$ 3,470.99.

According to the Husband he purchased the business. He states that he identified the business as a good prospect, paid \$ 45,000.00 cash for the fixed assets and inventory and entered into a contract in writing for the rent of the premises at \$3,000.00 for three years with an option to purchase at a price to be agreed.

According to him he paid the rent for the first two years as the shop did not make a profit during that period. He claims to have invested the sum of \$90,000.00 during this period. According to him the business did not begin to make a profit until the year 1990. He states that while the Wife was employed with the government he ran the business. In 1990 he resigned from his job and worked in the business full time for a short while. In 1994 he states that they purchased the

building. According to him the sum of \$98,000.00 was paid by him in cash towards the purchase price. The Wife, he states, paid the sum of approximately \$53,000.00 which she obtained from her bank account in the United States of America. According to him the Wife had placed her gratuity and other sums of money obtained from her father in a bank account held with her sister in the United States of America. In 1995, he states, he did further renovations to the upstairs of the said building in which they were living. According to him by February 1999 the turnover of the business was about \$4,500,000.00 a year of which the sum of approximately \$800,000.00 was profit. The deed for this property was made in the year 1993 and is in fact in the name of the Wife and her son.

5. PICTON PLACE LIMITED

The company was incorporated in the year 1994 for the purpose of running the business. The incorporators and shareholders are the Wife 50% shares, the Husband 30% shares and the Wife's son Christopher 20% shares. According to the Husband the intention was that the parties hold 50% each of the shares in the company. He claims that although he knew that the Wife's son held 20% of the shares he always assumed that the Wife had given him these shares out of her 50% share holding.

6. MOTOR VEHICLES

Both motor vehicles are in the name of the company. The Wife claims that the motor vehicle registration No.PBA 4946 was brought by the company and used in the business. The Wife claims to have spent 'thousands of dollars' to repair it. She indicates that she is prepared to transfer this motor vehicle to the Husband. She accepts that motor vehicle registration No PBG 24 was paid for by the Husband. The Husband claims that both vehicles were paid for by him and only put in the company's name for tax purposes.

According to the Wife in the year 1999 she succumbed to the constant harassment and pressure placed on her by the Husband and transferred the first Mayaro property and the Toco property, that is, lots 48 and 50 to them jointly. She claims that this was done by her under duress. Although not referred to in her affidavit there is also annexed to the Wife's affidavit a deed of conveyance dated the 30th July 1999 whereby the Wife transfers to the Husband all her share and interest in the Picton Street property the legal effect of which is to make the Husband and the Wife's son the owners of Picton Street as tenants in common in equal shares. The Husband denies forcing the Wife to transfer the property to him and avers that this was a voluntary transfer and only reflects the intention of the parties at the time of acquisition. He claims that at all times the intention was that they would hold all the assets jointly and that the Wife, in fact, held half of all the properties in trust for him.

Attorney for the Wife submits that pursuant to the provisions of the **Foreign Investment Act 1990** a trust cannot arise since the legislation specifically restricts the holding of land in trust for a foreign investor. While it is accepted that at the time of the acquisition of the first Mayaro property and lots 48 and 50 the Husband was a foreign investor as defined by the legislation I am of the view that the provisions of the Act have no application to these proceedings. This Court is not called upon to determine if a trust exists but rather to ascertain whether the parties, both citizens of Trinidad and Tobago, in all the circumstances of the case including those enumerated in s.27 of the **Matrimonial Proceedings and Property Act** have a share in the assets and if so, in what shares.

Attorney for the Wife submits that in arriving at a decision the Court ought to take the Husband's conduct into consideration. The conduct specifically referred to being the Husband's adultery with the co-respondent. As I understand the law, when dealing with a question of financial relief the Court may take conduct into consideration in circumstances where to ignore same would offend a reasonable person's sense of justice. If the conduct is indeed relevant it may go either to enhance or to reduce a parties' entitlement.

The Wife's submission seems to be that the Husband's conduct disentitles him to a share in any of the properties and in support of this submission the case of **Cuzner (formerly Underdown) v Underdown [1974] 2 AER 351** is relied upon. Let me say from the outset that this case is a case of peculiar facts and one which, in my opinion, a modern Court should be hesitant to follow without examining the

facts closely. In any event the facts are distinguishable to those of this case. In that case not only did the wife not contribute to the acquisition of the home but she accepted a conveyance in her name at the very time when she was committing the matrimonial offence of which the Court was so disapproving. I find that the **Cuzner** case is not applicable to these proceedings. There is in the Wife's evidence allegations against the Husband of associations with other women. These associations seem to have preceded the marriage and are not to my mind at all relevant in the circumstances. In any event I am not of the opinion that conduct, save of course conduct in relation to the family's finances, is relevant here.

As stated earlier in coming to its decision the Court is required to take all the circumstances including those identified in **section 27 of the Act** into consideration. The object being to place the parties as far as practicable in the same 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 each other.

SECTION 27 CONSIDERATIONS

1. The Wife has given no information as to her income. Nor has she disclosed any bank accounts or investments held by her. What little information that has been presented to the Court can be gleaned from the financial statements of the company for the years 1999 to 2001 prepared by the company's accountant, presumably for income tax purposes and

the documents exhibited by her with respect to her liabilities. There has been no cross-examination on the accounts as presented. They show that in the year 1999 the gross profit of the company was \$308,734.00 and the net profit after tax and the payment of all expenses, including salaries, was \$8,547.00; in the year 2000 the gross profit was \$383,132.00 and the net profit after tax and expenses was minus \$302.00; in the year 2001 the gross profit was \$385,285.00 and the net profit after tax and expenses was \$20,298.00. From the list of expenses given in the statement of accounts it can be assumed that salaries apart there is some element of personal expenses of the Wife and son contained there. It is clear from the evidence that the company has since the separation been in the control of the Wife and her son who make their living from it.

The evidence of the Husband is that he is employed with the Ministry of Health on contract as a procurement specialist. His evidence is that at the end of this contract he does not intend to renew. During the period December 2001 to March 2002 he was employed in the same capacity at a gross monthly salary of \$37,800.00, \$26,700.00 net. According to him he has the sum of \$72,000.00 TT and the sum of \$3,600.00 US in various banks in the country and the sum of \$2,000.00 US in a bank in Switzerland.

There is no evidence that either party owns any other property other than those identified earlier.

2. Save that there is evidence that there are still outstanding mortgages on both Picton Street and Warner Street, there is no evidence of any financial needs and obligations that either party has other than those necessary for their day to day existence.
3. There is not much evidence as to the standard of living enjoyed by the parties prior to the breakdown of the marriage. It is clear that the parties lived in apartments throughout the marriage and had the benefit of the use of a modest beach house for relaxation purposes. Money, it would seem, was spent on acquiring property and building up the business rather than on luxury items.
4. The Wife at 63 years is some three years older than the Husband.
5. Despite the fact that the petition proceeded on the fact of the Husband's adultery from the year 1997 the Wife's evidence is that she only discovered the adultery in the year 1999. The Husband alleges that the parties separated in February 1999 when he left the matrimonial home. The marriage itself therefore only lasted some 5 years. With respect to the pre-marriage cohabitation I do not accept the Wife's evidence that the parties shared merely a visiting relationship for 10 years. I find that despite the fact that the Husband maintained a separate establishment in the United States of America this was merely for work purposes and the parties lived together while in Trinidad and certainly acquired property together during that period. Whereas I accept that the authorities seem not to put a period of pre-marital cohabitation on all fours with that of

marital cohabitation I bear in mind that the **Cohabitation Relationships Act** seeks to recognize such 'bona fide' relationships after five years and gives the parties a right to a share in property acquired during the relationship. While I am not prepared to go as far as the Husband and claim that the parties cohabitated for 17 years. I am prepared to find that, taking the pre-marital cohabitation into consideration, the marriage was not a short one.

6. There is no evidence of any physical or mental disability of the Wife save the usual effects of impending old age. The Husband however identifies various health problems all of which have been challenged by the Wife i.e. a pinched sciatic nerve, high blood pressure and an ailment which has caused him to have knee surgery in the past. In the absence of any medical reports or medical statements I am not prepared to find as a fact any physical disability on the part of the Husband.
7. Apart from the contributions that each party alleges that they made to the acquisition of the property and their day to day living, some issue was also made by the Husband as to his contributions to the support of the Wife's son. While I accept that the Wife's income, supplemented by the benefit received from his father's estate, was the son's main financial support I find that the Husband did assist in the support of the son just as I find that the Wife assisted in the care of the Husband's daughter during the short time that she lived with the parties. Despite the evidence of the son's inheritance from his father it is a bit incredulous to accept that the

Wife's income alone would have supported the child at school, first in England and then at university in the United States, and purchased the assets as claimed by her. Further given the evidence of the income of the business from the years 1999 to 2001 the business could not have been very profitable in those early years. I do not accept her evidence as to the Husband's total lack of financial support in the acquisitions or with respect to their day-to-day living expenses. I find that the properties, save Warner Street, were all acquired by the joint efforts of both parties. With respect to Warner Street I note that this property was acquired after the divorce but I also note the Husband's contributions to its enhancement during the marriage, albeit at a time when the parties were only tenants. These improvements would have gone to enhance the value of the premises. I also find that both parties worked in the business but I accept that after her retirement in 1991 the Wife would have been its mainstay working full time in the business from that time to the present and assisted by the son from 1995 to date.

8. In dealing with cheques made payable to the company by the Husband there was some evidence of a pension plan contributed to by the Husband by way of installments of \$500.00 a month. No further evidence was led of this plan however and as a result I am not in a position to consider same. I note however that the Wife would be in receipt of a small pension arising from her employment with the government. The Husband deposes that being a contract worker he would not be entitled to a

pension and I accept his evidence in this regard. I however note that the Husband has some savings that will assist him in the years to come.

At the end of the day how does the Court distribute the assets so as to place the parties, as far as it is possible, in the same position as they would have been had the marriage not broken down and each party properly discharged their financial responsibility to the other? A daunting task.

With respect to the company I find that both parties contributed to the acquisition of and worked in the business, the Wife to a far greater extent than the Husband. From the accounts supplied, although the business seems to be allowing the Wife and the son to earn a living, the profits are not large. While I accept that the Wife has had the benefit of all the profits from the business since the breakdown. I also note that the Wife has not had the benefit of the Husband's salary to supplement these earnings, a benefit she must have enjoyed while the parties lived together. In all the circumstances I am of the opinion that the 30% shareholding held by the Husband in the company is reasonable. I have not had the assistance of a valuation of the company or of the business run by it however to achieve a clean break between the parties it is necessary for one party to buy out the other's interest in the company. Given the present shareholding therefore the Husband will be required to transfer his shareholding to the Wife upon the payment of an appropriate sum.

To my mind it is not necessary for me to determine whether the Wife was forced by the Husband to transfer the properties to her or not.

With respect to the Picton Street premises, the Wife's evidence is that there still exists a mortgage on the property. Although no direct evidence has been given as to the balance outstanding on the mortgage from her evidence it would seem that the outstanding amount on the mortgage is approximately \$208, 259.40 With respect to the Warner Street premises from a calculation of the information given by the Wife with respect to the mortgage loan there seems to be approximately \$194,652.62 outstanding on this mortgage. I must also bear in mind that the value of this property has been enhanced by the Wife's son who is, himself, a joint owner of the property.

In all the circumstances of the case therefore I am of the view that a transfer to the Husband of the Toco lands together with the payment to him of a lump sum of \$ 70,000.00 meets the justice of the case.

With respect to the motor vehicles I order that the Wife, on behalf of the company, transfer to the Husband both motor vehicles.

I am of the opinion that given all the circumstances of this case it is appropriate that each party bear their own costs.

In the circumstances the order of the court is as follows

1. The Wife to transfer to the Husband all her share and interest in the premises known as lots 48, 49 and 50 El Toco Estate Mission Toco;
2. The Husband to transfer to the Wife all his share and interest in lots 4 and 5 Naparima Mayaro Road Mayaro more particularly described in Deeds of conveyance Nos. 13645 of 1989 and 22193 of 1998;

3. The Husband to transfer to the Wife all his interest in No 35 Picton Street Newtown Port of Spain;
4. The Husband to transfer to the Wife all his shares in Picton Place Ltd.;
5. The Wife, on behalf of the company to transfer to the Husband motor vehicles registration Nos. PBA 4946 and PBG 24;
6. The Wife to pay to the Husband the sum of \$70,000.00 on or before the 30th October 2004;
7. The cost of all transfers and conveyances are for the receiving party and shall be completed on or before the 30th October 2004. In default of execution of the relevant conveyances by either party the Registrar of the Supreme Court is empowered to execute same on behalf of the defaulting party.
8. There will be no order as to costs.

Dated this 30th day of September 2004

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Judith A. D. Jones
Judge