

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. M455 of 2000

BETWEEN

LANCELOT REDHEAD

PETITIONER

AND

VALENTINE LUCY REDHEAD

RESPONDENT

Before the Honourable Madam Justice J. Jones

Appearances:

Ms. Kathy Gonzales for the Petitioner

Dr. Charles Seepersad for the Respondent

JUDGEMENT

This is an application brought by way of a notice dated the 17th May 2001 in which the Respondent/Wife (hereinafter called “the Wife”) seeks:

1. A lump sum payment
2. Maintenance for herself and the child of the family born on the 25th August 1978 and
3. A Settlement of Property order in respect of premises situate at 194 Gardinia Circular Road La Florissant D’abadie (hereinafter called “the Matrimonial Home”)

The evidence in this matter is limited.

The Wife filed one affidavit in support of her application on the 14th December 2001 and was not cross examined on same. The Husband filed three affidavits and was at the hearing subjected to some cross-examination. By the time this application was heard the child of the family, a daughter was 25 years old, employed and living with the Husband.

It would seem therefore that the issue of her support was not a live one. In his affidavit the Husband indicated that it was the intention of the daughter to go to the University of the West Indies and he intended to assist in her support.

Although there was no valuation of the Matrimonial Home the parties at the hearing agreed the value of the house to be \$450,000.00. The parties were married on the 9th March 1992 and the petition for divorce filed in May 2000. It is also not in dispute that the wife made no financial contribution to the acquisition of the Matrimonial Home, this admission being made by Attorney for the Wife in his opening address.

One of the major issues to be determined was the length and nature of the parties' relationship prior to the marriage. According to the Wife the parties developed an intimate relationship while in Canada and lived as husband and wife sharing one apartment. During this period their daughter was conceived. According to the Husband while in Canada the Wife worked as a live-in domestic and only spent her weekends and some public holidays at his apartment in Canada. She contributed nothing to the expenses nor according to him did she move her personal belongings into his apartment. Whatever the nature of the relationship at that time it is not in dispute that this period, which according to the Wife started in 1976, ended in December 1977 when the Wife returned to Trinidad. The Husband returned to Trinidad in June 1978.

According to the Husband on the Wife's return to Trinidad she took up residence with her mother at her mother's home at Celestine Trace, Morne Coco Road, Maraval where she continued to live after the birth of their daughter in August 1978. On his return to Trinidad he lived with his mother in Barataria. The Husband claims that the Wife was unemployed during this period and he paid for their daughter's expenses. According to him in 1982 the Wife decided to recommence traveling abroad and "working for 6 months to earn an income". He states that as a result during the period 1982 to 1991 the child lived with him and he was solely responsible for her support. According to him when the Wife was in Trinidad the child would spend weekends with her. He further claims that during this period the Wife built a house near to that of her mother's at Celestine Trace.

In her affidavit in support of her application the wife merely states that during the period 1978 to 1991 the parties although living in separate households continued to see each other until they decided to get married. With respect to the support of the daughter she states that whereas the Husband paid the school fees and bought the schoolbooks and uniforms she provided everything else. The Wife does not depose to the living arrangements for the child during this period. She claims to have worked in the "health care department taking care of the aged for over 10 years" this she claims was in Canada and the United States of America.

The parties got married in March 1992 and according to the Wife the Husband purchased the Matrimonial Home for her as a wedding gift. In fact the Matrimonial Home was purchased in January 1992 and is in the Husband's name only. The Husband denies that the house was purchased as a wedding gift for the Wife.

According to the Husband the parties lived together for some three to four years before the Wife moved out of the Matrimonial home and returned to her house at Celestine Street. Nowhere in her affidavit does the Wife deal with the date of separation nor was there any challenge to the Husband's evidence in that regard in cross-examination. The Wife in her affidavit however claims that she has no home of her own and lives at her mother's home moving between that home and the Matrimonial Home. At the hearing the Wife, for the first time, through the cross-examination of the Husband sought to suggest that the house she lived and identified by Husband as hers was in fact her brother's house. This was denied by the Husband.

With respect to direct financial contribution to the household the Wife claims that she furnished the house spending over \$10,000.00 U.S. to do so, which money she had accumulated while working abroad. In his affidavit and under cross-examination the Husband admits that the Wife did purchase some items of furniture but denies that these items could have cost anywhere near the sum claimed by the Wife. Both parties admit that these items are still at the Matrimonial Home. According to the Husband the Wife was unemployed during the period of cohabitation during the marriage and he solely supported the family.

Save that the Wife was at that time unemployed there is no evidence from her as to her contributions to the family's welfare by way of care and attention. Under cross-examination however the Husband claims that her contributions in this regard were minimal.

The Husband aged 59 years is at present employed with the Ministry of Works and Transport as a Director of Mechanical Services at a monthly salary of approximately \$9,000.00. He has two bank accounts the balances on which total approximately \$11,000.00 and approximately \$10,000.00 in units with the Unit Trust Corporation. Apart from the Matrimonial Home he owns a Cressida Motor Vehicle, which is 19 years old.

The Matrimonial Home in which he and the child of the family reside is subject to a mortgage loan on which there is owed approximately \$60,000.00. The Husband is due to retire in May 2004. While he accepts that he will receive a gratuity there is no evidence as to the quantum of that gratuity. The Husband also has a share in family land at 5th company in Princess Town. There is evidence from the Husband that it is the intention of the daughter to attend the University of the West Indies and that it is his intention to assist in her support.

The Wife is unemployed and according to her has been unemployed since 1998. She is 56 years old. According to the Husband after the Wife moved out of the Matrimonial Home he gave to her the sum of \$500.00 to \$700.00 a month to assist in her expenses up to and until the month of July 1999. Thereafter in the year 2001 he gave to her sums amounting to \$1,600.00. The Wife admits receipt of the sum of \$1,300.00 for the year 2001.

In coming to my decision I have, as I am required to do, in considering all the circumstances of the case considered the requirements of section 27 of the Matrimonial Property and Proceedings Act and in particular have taken the following facts into consideration:

1. The age of the parties;
2. The length of the marriage which I accept to be not more than 4 years;
3. The nature and the length of the premarital cohabitation. In this regard given the evidence I am of the opinion that the premarital cohabitation is limited to the period of time that the parties spent together in Canada;
4. The admission by the Wife that she did not contribute to the acquisition of the Matrimonial Home;
5. The role of the parties in the care and support of the child of the family and in this regard I accept the evidence of the Husband as being the more credible;
6. The paucity of the evidence of the Wife with respect to any contributions made to the running of the household whether by way of financial contribution or by way of services rendered;
7. The fact that no reason has been given by the Wife as to her inability to earn an income;
8. The failure of the Wife to respond to specific allegations made by the Husband as for example the construction by her of a home for herself. In this regard I find as a fact that the Wife is the owner of her own home and
9. The fact that with respect to the items of furniture purchased by the Wife the Husband has indicated that these items are in the home and available to her.

I have also taken into consideration the fact that the Wife did not work during the marriage, her age and the fact that the Husband thought it appropriate to provide the Wife with some means of financial assistance until, as he states, he realized that she was taking him to Court and was of the opinion that the money provided was being used to fuel proceedings against him. I have also taken into consideration the fact that the Husband is due to retire in May of this year and to receive a lump sum payment representing his retirement gratuity and would thereafter be in receipt of a reduced income.

In all the circumstances I am of the opinion that a transfer of property order is not appropriate in this case and I dismiss the Wife's claim for same. Nor am I of the view that this is an appropriate case for the award of periodical payments for the Wife rather I am of the view that the justice of the case and the need to achieve a clean break can be achieved by the award of a lump sum payment to the Wife.

Accordingly in the absence of the consent of the wife to the dismissal of her claim for maintenance I will adjourn her application for maintenance generally and I award to the Wife the sum of \$20,000.00 to be paid in two equal monthly installments the first of which is to be paid on or before the 15th April 2004 and the second of which to be paid on or before the 15th July 2004.

I now invite the parties to address me on the question of costs.

Dated this 19th day of March, 2004.

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