

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(Matrimonial)**

No. M-214 of 1999

BETWEEN

ROSANNA

DOPSON

Petitioner

AND

WAYNE

DOPSON

Respondent

Before the Honorable Madam Justice Maureen Rajnauth-Lee

APPEARANCES:

Mr. Andre des Vignes for the Petitioner instructed by Miss Marcelle Ferdinand.
Mrs. Eudora Van Lare for the Respondent.

J U D G M E N T

The Application:

By her Notice dated and filed on the 21st October, 1999, the Wife sought the following ancillary relief, that is to say, a lump sum and/or settlement of property order in respect of the matrimonial home situate at No. 17 O'Connor Street, Woodbrook.

The Wife filed an affidavit in support of her application on the 21st January, 2000 while the Husband filed two affidavits, one on the 31st March, 2000 (“**the Husband’s first affidavit**”) and the other on the 1st February, 2001 (“**the Husband’s second affidavit**”).

Both the Husband and the Wife were cross-examined.

The Background:

The parties were married on the 24th July, 1971 and lived separate and apart, albeit in the same household, from the year 1988. On the 16th June, 1999 the decree nisi was granted. The following month, in July, 1999, the Wife left the matrimonial home.

There are two (2) children born to the parties during the marriage, both are over the age of eighteen and are unemployed. The child Christian has lived with the Wife since she moved out of the matrimonial home, while the other child Mark resided with the Husband for some time, but no longer lives with him.

The Husband and the Wife resided after their marriage with the Husband’s parents at 17 O’Connor Street, Woodbrook until the year 1973, when the parties constructed a two-bedroom annexe at 17 O’Connor Street, Woodbrook. The annexe was occupied as the matrimonial home of the parties. The Husband’s father obtained a loan from British Guyana Insurance Company Limited in the sum of \$20,000.00 which was used in the construction of the annexe. The loan was paid off.

The Husband commissioned a valuation of the annexe and the Report of Brent Augustus and Associates Limited, Valuers, has placed a value of \$67,000.00 on the annexe as at the 18th November, 1999.

The parties have both worked throughout the marriage. The Wife is now 49 years of age while the Husband is 50.

Since the Wife moved out of the matrimonial home, she has been residing in rented accommodation. She now resides with a boyfriend and they share the cost of the rental, the Wife paying \$1,800.00 per month with the boyfriend paying \$800.00 per month.

The Husband has continued to reside in the matrimonial home and will continue to reside there, perhaps until he can do better. Neither party has legal title to the annexe. It is owned by the Husband's father.

Attorneys for both parties have agreed that a lump sum is the appropriate order to be made in these circumstances.

The factors to be taken into account:

In deciding what order is to be made in this case, the Court has regard to the factors set out in section 27 (1) of the Matrimonial Proceedings and Property Act Chapter 45:51 as follows:

“It shall be the duty of the Court in deciding whether to exercise its powers under section 24 or 26 in relation to a party to the marriage and, if so, in what manner, to have regard to all the circumstances of the case including the following matters, that is to

say –

- (a) *the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;*
- (b) *the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*
- (c) *the standard of living enjoyed by the family before the breakdown of the marriage;*
- (d) *the age of each party to the marriage and the duration of the marriage;*
- (e) *any physical or mental disability of either of the parties to the marriage;*
- (f) *contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;*
- (g) *any order made under section 53;*
- (h) *in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension)*

which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;

and so to exercise those powers as 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.”

The contributions of the parties:

The Wife in her affidavit deposed that she and the Husband repaid most of the mortgage loan and that towards the end of the period of the loan, the Husband's parents paid off the balance of the loan. In cross-examination, however, the Wife was unclear whether the mortgage installments were paid from the Husband's resources only or from the resources of both the Husband and herself.

Further, the parties were cross-examined at some length about their contributions to the maintenance of the home and to the maintenance of the children. The Wife has deposed that throughout the marriage she was responsible for paying the utilities such as electricity and telephone bills and that she solely maintained and looked after the children, paying their school fees, buying school books and school uniforms and providing them with pocket money. She further deposed that she also paid for them to attend Daniell's Educational Community and Elder's after they left secondary school. She also deposed that the Husband

assisted from time to time with their medical and dental expenses while she paid for all their optical expenses and extra-curricular activities, clothes, shoes and other personal items.

The Husband disputes the Wife's evidence and claims to have contributed to the expenses of the children including school fees, school books and uniforms, pocket money, clothes and personal items. Having heard both parties being cross-examined on this issue, I accept the evidence of the Wife that it was she who bore the lion's share of the children's expenses.

There was also some dispute between the parties as to the extent of the Wife's contributions to the maintenance of the annexe. The Wife deposed that she paid to have carpets and furniture cleaned and had the annexe repainted annually, sometimes with the assistance of the Husband, whilst in cross-examination, she admitted that it was the living room which was painted every year and the bedrooms "touched up". As for the electricity bill, the Wife admitted in cross-examination, that she paid one-half while the Husband's mother paid the other half. The parties are agreed that the Husband purchased the groceries for the home and that the home was always amply supplied with food.

Having seen and heard the evidence as to the contribution of the parties to the maintenance of the children and the home, the Court has formed the view that during their marriage, both parties diligently contributed to the expenses of the family from their resources which were not substantial. In my judgment, the Husband was responsible by and large for the payment of the mortgage

installments and the purchase of groceries, while the Wife by and large maintained the children and the home and paid the utility bills.

The income of the Parties/Non-Disclosure:

The Husband was cross-examined at length as to his income for the years 1999 and 2000. In the Husband's first affidavit he had deposed that his gross salary was \$3,400.00 and, after deductions, his net monthly salary was \$2,604.00.

Cross-examination of the Husband has revealed that the Husband failed to disclose to the Court the following matters:

- (a) that he is paid commissions on a monthly basis; for the year 1999 he earned substantial commissions, and, for some months of that year, his commissions far exceeded his gross salary.
- (b) that he is paid a tax-free travelling allowance of \$1,600.00 per month to which he is entitled, whether or not he is on vacation.
- (c) that whenever he travels abroad on company business, he is paid a subsistence of between U.S. \$300.00 – U.S. \$500.00 per trip. He travels on an average twice per month for 3 – 4 days at a time. He must supply bills for the monies he spends abroad, but once the bills are supplied, his personal expenses for each trip are paid by his employer.
- (d) that whenever he travels abroad on company business, he is entitled to utilise a company Visa Credit Card with a limit of U.S. \$1,500.00 from which he could spend to cover his hotel and other living expenses.

When the full evidence of the Husband's income is examined, it is clear that for the year 1999, he earned a gross income of \$89,054.40, together with tax-free travelling allowances of \$19,200.00, amounting to \$108,254.40. For the year 2000, the Husband earned a gross income of \$56,663.87 together with tax-free travelling allowances of \$19,200.00 amounting to \$75,863.87.

Accordingly, the Husband's gross income for these years is a far cry from the \$3,400.00 gross monthly income deposed to by the Husband amounting to a gross yearly income of \$40,800.00. I agree with Attorney for the Wife that the Husband sought to perpetrate a deception on this Court and to give the Court the impression that his net annual salary was a mere \$31,248.00 and could not cover his living and personal expenses, which the Husband put at \$3,592.00 per month.

Attorney for the Wife has accordingly submitted that the Court is entitled to draw robust inferences against the Husband since he has not been candid with the Court. Attorney for the Wife has further submitted that the Court ought not to accept the Husband's evidence that for the year 2000 he suffered a drop in income because of a change in his Company's policy with respect to the payment of commissions.

Attorney for the Husband on the other hand has urged me not to have a strong regard for this aspect of the case. She has submitted that the change in the Company's policy with respect to commissions was not challenged in cross-examination. She also submitted that should the Court agree with the submissions of Attorney for the Wife as to the Husband's evidence of a drop in income for the

year 2000, the Court would have necessarily to infer some kind of subterfuge on the part of the Company.

Whilst the Court will not infer any subterfuge on the part of the Company, the Court is entitled to draw robust inferences against the Husband and to come to the conclusion that the Husband is in a much better financial position than he has disclosed to the Court. In my judgment, the Husband's lack of candour necessitated a detailed cross-examination of his income.

In the case of **Helena Sammy –v- Noel Sammy High Court Action No. M-570 of 1986**, Justice Sealey at page 6 observed the following:

“When an application for property settlement is made, the parties are duty bound to disclose all their assets and the court can make robust inferences of a party's shortcomings when he fails to disclose all”. See Desai v Desai (1983) 13 Family Law 46. Here the Respondent's husband had failed to disclose to the Court that after the wife left he had sold the matrimonial home and the shop, bought a business with the financial assistance of the other woman and when asked had given an inadequate explanation that the proceeds of sale had been used to discharge debts. In his affidavit of means he had intentionally chosen to make his financial position obscure and the court found that he was highly devious both in the conduct of the business and during the proceedings.

‘In those circumstances’ says Anthony Lincoln J. ‘the court was

entitled to look behind the veil that had been drawn by the husband to hide his true situation.’ Applying this, the Judge in Chambers took the view that the husband’s submission that the company was doing badly was not to be believed and that he could afford to maintain his wife and children adequately and appropriate orders for lump sum payments were made.”

The propositions of law set out in the case of **Desai –v- Desai** (supra) have been followed in a number of authorities cited to the Court by Attorney for the Wife:

- H.C.A. No. M-123 of 1997 - Shirley Rajkumar –v- Godfrey Rajkumar
- H.C.A. No. M-113 of 1992 - Anjanie Dial-Howie –v- Michael Howie.
- H.C.A. No. SM-235 of 1997 - Ramsawak Boodoo –v- Ruby Boodoo
- H.C.A. No. 350 of 1995 - Ingrid Kunjal –v- Raymond Kunjal

Attorney for the Husband, on the other hand, has asked the Court to consider that the Wife has failed to disclose to the Court that she receives a bonus at the end of each year amounting to one (1) month’s salary, and that for the year 2000, the Wife received a bonus of approximately \$3,000.00 which she did not disclose to the Court. In my judgment this evidence is of little significance and the Court will draw no robust inferences against the Wife because of it.

The Court has examined the monthly expenses of the Husband against his gross income for the years 1999 and 2000, and is of the view that even having regard to the Husband's statutory deductions, there were sufficient excess monies available to the Husband which the Husband could have save or invested for the future. Instead, the Husband's bank statements reveal that as he deposited monies so he withdrew them. The Husband has not explained what has been done with the monies so withdrawn.

Equality:

Attorney for the Wife has submitted that the Court should apply the principles set out by the House of Lords in the case of **White –v White [2000] 3 W.L.R. 1571.**

Although Lord Nicholls of Birkenhead in the leading judgment stated that the appeal raised questions about how the courts should exercise its powers in so called "big money" cases, Lord Nicholls went on to set out general principles applicable in all cases of ancillary relief:

He stated at page 1578, letter C:

“Self-evidently, fairness requires the court to take into account all the circumstances of the case. Indeed, the statute so provides. It is also self-evident that the circumstances in which the statutory powers have to be exercised vary widely. As Butler-Sloss LJ said in Dart v Dart [1996] 2 F.L.R 286, 303, the statutory jurisdiction provides for all applications for ancillary

financial relief, from the poverty stricken to the multi-millionaire. But there is one principle of universal application which can be stated with confidence. In seeking to achieve a fair outcome, there is no place for discrimination between husband and wife and their respective roles.”

and then at page 1578, letter H:

*“A practical consideration follows from this. Sometimes, having carried out the statutory exercise, the judge’s conclusion involves a more or less equal division of the available assets. More often, this is not so. More often, having looked at all the circumstances, the judge’s decision means that one party will receive a bigger share than the other. Before reaching a firm conclusion and making an order along these lines, **a judge would always be well advised to check his tentative views against the yardstick of equality of division. As a general guide, equality should be departed from only if, and to the extent that, there is good reason for doing so.** The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination.”*

[emphasis mine]

But Lord Nicholls warned at page 1579 letter A:

“This is not to introduce a presumption of equal division

*under another guise. **Generally accepted standards of fairness** in a field such as this change and develop, sometimes quite radically, over comparatively short periods of time. The discretionary powers, conferred by Parliament 30 years ago, enable the courts to recognise and respond to developments of this sort. These wide powers enable the courts to make financial provision orders in tune with current perceptions of fairness.” [emphasis mine]*

A further warning is recorded at page 1579 letter E:

“Despite these changes, a presumption of equal division would go beyond the permissible bounds of interpretation of section 25. In this regard section 25 differs from the applicable law in Scotland. Section 10 of the Family Law (Scotland) Act 1985 provides that the net value of matrimonial property shall be taken to be shared fairly between the parties to the marriage when it is shared equally or in such other proportions as are justified by special circumstances. Unlike section 10 of the Family Law (Scotland) Act 1985, section 25 of the 1973 Act makes no mention of an equal sharing of the parties’ assets, even their marriage-related assets. A presumption of equal division would be an impermissible judicial gloss on the statutory provision. That would be so, even though the presumption would be rebuttable. Whether there should be such a presumption in England and Wales, and in respect of what

assets, is a matter for Parliament.”

It is largely for this reason that I do not accept Mr. Turner’s invitation to enunciate a principle that in every case the ‘starting point’ in relation to a division of the assets of the husband and wife should be equality. He sought to draw a distinction between a presumption and a starting point. But a starting point principle of general application would carry a risk that in practice it would be treated as a legal presumption, with formal consequences regarding the burden of proof. In contrast, it should be possible to use equality as a form of check for the valuable purpose already described without this being treated as a legal presumption of equal division.”

Attorney for the Husband, on the other hand, has submitted that the Court should adopt the guidelines stated by the English Court of Appeal in the case of **Wachtel –v Wachtel [1973] 1 All E.R. 829** especially at page 839 letter f – g:

“Counsel for the wife criticised the application of the so-called ‘one-third rule’ on the ground that it no longer is applicable to present-day conditions, notwithstanding what was said in Ackerman v Ackerman. But this so-called rule is not a rule and must never be so regarded. In any calculation the court has to have a starting point. If it is not to be one-third, should it be one-half? or one-quarter? A starting point at one-third of the combined

resources of the parties is as good and rational a starting point as any other, remembering that the essence of the legislation is to secure flexibility to meet the justice of particular cases, and not rigidity, forcing particular cases to be fitted into some so-called principle within which they do not easily lie. There may be cases where more than one-third is right. There are likely to be many others where less than one-third is the only practicable solution. But one third as a flexible starting point is in general more likely to lead to the correct final result than a starting point of equality, or a quarter.”

Both these cases make it clear that there is no room for rigidity in matters of ancillary relief. In cases of this nature, flexibility and fairness are key. Broad justice must be the objective. It must be borne in mind that the Court is mandated to look at all the circumstances of the case and to have regard, at all times, to the statutory factors set out in section 27 (1) of the Act. Further, having regard to the guidelines laid down by the House of Lords in **White v White** (supra), the Court ought to check its tentative views against the yardstick of equality of division and should only depart from equality if there is good reason for doing so.

CONCLUSION:

I have considered all the evidence and the submissions of Attorney for the Wife and Attorney for the Husband. I am mindful that the Wife requires a roof

over her head. She is now 49 and no doubt requires the security of her own home. Although the Husband's position was that the sums paid by him towards the loan were in the nature of rent, the Court must have regard to the undisputed facts that the Husband enjoys exclusive possession of the annexe and that it is regarded by his parents and siblings as his own. The Court must therefore bear in mind that the Husband enjoys and will continue to enjoy an asset, that is, the annexe, valued at \$67,000.00 in 1999.

I have also borne in mind that when the Wife left the matrimonial home she took with her the furniture which she had purchased during the marriage. Consequently, the Husband had to furnish the annexe after the Wife's departure therefrom.

ORDER:

The Husband shall pay to the Wife a lump sum of \$35,000.00. The Husband shall also pay to the Wife her costs of this application, certified fit for Counsel, and taxed in default of agreement.

Dated the 2nd day of May, 2001.

MAUREEN RAJNAUTH-LEE
Judge