

SUPREME COURT OF JUDICATURE
JAMAICA
KINGSTON

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN EQUITY

SUIT NO. E.132 OF 1995

BETWEEN	DONNA MAE WILLIAMS	APPLICANT
A N D	GEORGE WILLIAMS	RESPONDENT

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Ms. Racquel Ridgard for the Applicant.
Mrs. Jacqueline Samuels- Brown for Respondent.

HEARD: 20th, 22nd, 25th May, 1997,
18th June, 1997 and 23rd
September, 1997.

SMITH, J:

By Originating Summons as amended filed on the 30th March, 1995 the wife Applicant seeks the following:

1. A Declaration that she is entitled to one-half share of the beneficial interest of all that parcel of land situate at Lot 308 Ebony Vale, Oak Avenue, Spanish Town in the parish of Saint Catherine.
2. An Order that the said house be valued and the respondent be paid the financial value of his beneficial interest in the said house.
3. An Order that the Applicant is entitled to one-half the furniture, applicances, equipment and other personal property and chattels contained in the said property.
4. A Declaration that the Applicant is entitled to one-half share of the beneficial interest of all that parcel of land situate at Lot 233 Barry and Lloyd Top Mountain in the parish of Saint Catherine registered at Volume 1091 Folio 50 of the Register Book of Titles.
5. An Order that the applicant is entitled to one-half of the animals namely chicken, goats and pigs in the custody of the Respondent and maintained at the farm in Fairfield, and that the Respondent do render an account of all the said animals that are and have been in his possession.
6. Costs
7. Further and other relief as this court deems fit.

Both parties filed affidavits in support of their contentions and both were cross-examined on their affidavits.

There are in fact four affidavits before me three (3) filed on behalf of the Applicant (two sworn to by her and one by Miss Pansy Jonas) and one filed on behalf of and sworn to by Respondent.

Written submissions were submitted by both counsel for the assistance of the court.

The parties met and began an intimate relationship in 1981. They were married on the 20th December, 1986. This union produced two children born in 1982 and 1988. They finally separated in June 1992 when, after a quarrel the Respondent left the home.

The parties agreed that the properties referred to at paragraphs 3 and 4 of the Summons should be divided equally between them. Therefore the matters in dispute before me now are:

1. The parties' beneficial interests in Lot 308 Ebony Vale - paragraph 1 of Summons.
2. The interests of the parties in the livestock at the farm at Fairfield - paragraph 5 of Summons.

Lot 308 Ebony Vale, St. Catherine is registered at Volume 1216 Folio 79 of the Register Book of Titles. It is registered in the Respondent's name alone. Thus the legal estate is in the respondent and prima facie this carries with it the whole beneficial interest.

In this situation, the relevant law as stated by Lord Diplock in Gissing v. Gissing 1970 3 W.L.R. 255 at 267 is:

"Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based on the proposition that the person in that the person in whom the legal estate is vested holds it as trustee on trust to give effect to the beneficial interest of the claimant as cestui que trust."

There is no evidence of an express trust. Consequently the wife/applicant can only succeed in her claim to a beneficial interest in this property if she can establish on the balance of probabilities the existence of a resulting, implied or constructive trust - Gissing v. Gissing.

To establish such a trust the applicant must show that there was a common intention that both should have beneficial interests and also that she acted to her detriment on the basis of that common

intention and in the belief that by so acting she would acquire a beneficial interest.

The applicant's evidence is that when she met the respondent she was working with her mother at a Day Care Centre. Shortly after they met she stopped working with her mother. She claims that in 1981 they decided to rear livestock in order to supplement their income.

In 1987 the respondent applied for and obtained a house at Lot 308 Ebony Vale, Oak Avenue, through the National Housing Trust. This house became the matrimonial home.

Under cross-examination she said that she did not go to the N.H.T. for purpose of the loan. The mortgage is paid through salary deduction from the respondent's salary. She did not know what the monthly mortgage was.

It is the respondent's contention that there was no understanding between the parties that the applicant would acquire a beneficial interest. That the applicant made no contribution, directly or indirectly to the acquisition of the property at 308 Ebony Vale. That he could have afforded the mortgage payments without the earnings from the farm.

Under cross-examination he agreed that on his salary alone he would not have been able to secure a mortgage from the N.H.T. He also agreed that in August and September, 1990 "it could be that (he) took home \$156 and \$256 respectively after deductions."

Apart from statutory deductions the deductions include sums for credit union, insurance for members of family, N.H.T. mortgage, sports club, repayments for credit facilities.

Documents submitted to N.H.T. in support of application and referred to in the respondent's affidavit were received in evidence during his cross-examination.

In addressing the issue of common intention, Miss Ridgard for the applicant in her written submissions relied on the following statement of Lord Diplock in Gissing v. Gissing (1971) A.C. 886 at 906 B-C:

"the relevant intention of each party is the intention which was reasonably understood by the other party to be

manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party."

Counsel for the applicant urged that certain aspects of the evidence, if accepted, not only support the applicant's contention that there was a common intention but also go to show that the applicant acted to her detriment. She relies on the applicant's evidence that:

- (i) she gave up her job
- (ii) she gave her labour and efforts to the farming venture and that her work on the farm was substantial.
- (iii) she did not earn a direct income as the respondent said she was too young to handle money.
- (iv) the respondent discouraged her from embarking on hairdressing business by telling her that she would earn more in the farming business.
- (v) she was also responsible for the care of the children and the upkeep of the home and in so doing made it easier for the respondent to concentrate on his job and also obviated the necessity of employing household help.

Counsel also places reliance on:

- (a) the respondent's admission that he would not have been able to obtain a mortgage on his salary alone;
- (b) the fact that the parties operated a joint savings account;
- (c) the parties operated a joint taxi business;
- (d) the fact that the parties are joint registered owners of Lot 233 Barry and Lloyd, Top Mountain;
- (e) the respondent's evidence that when the applicant became uncooperative and refused to help on the farm he was forced to make alternative arrangements for outside help to do what he could not attend to himself.

The applicant through her counsel submitted that, "the value of the Plaintiff's contribution is therefore significant for two purposes:

- (1) For vesting in her an interest in the farming enterprise.

- (2) For vesting in her an interest in the matrimonial home to the acquisition of which the profits of the farming venture indirectly contributed."

"The subsequent conduct of the parties," she contended, "is also important to shed light on the manner in which the parties conducted their affairs and as to their intention as a general sharing of assets." Finally relying on Nixon v. Nixon (1969) 3 All E.R. 1133 and Joseph v. Joseph R.M.C.A. No. 13/84 she asks the court to hold that the parties have equal beneficial interests not only in the property at Ebony Vale but also in the livestock at Fairfield.

On the other hand Mrs. Samuels-Brown for the respondent submitted inter alia that:

1. The law makes separate provisions for taking into account any career disadvantage which a wife suffers as a result of concentrating on her wifely/maternal responsibilities. The court will award her maintenance in such a case, she stressed.
2. The court does not adjust property rights it merely seeks to declare what the rights are. The court does not seek to reward a wife for good and faithful service - Pettit v. Pettit (1970) A.C. 777; Button v. Button (1968) 1 W.L.R. 457. She argued that where a wife gave up her job for the sake of raising her children and seeing to the household chores this does not ipso facto gain for her any proprietary interest over her husband's property.
3. On the question of common intention, there is no evidence of any discussion, agreement or plan between the parties for the purchase of the Ebony Vale property. The intention of the applicant alone is not enough. The intention must be common to both parties.
4. The applicant's change of job was not referable to the acquisition of any property.
5. There is no evidence that the property was purchased directly from joint savings.
6. The applicant's evidence that the respondent discouraged her from learning hairdressing on the ground that she would earn more farming is nothing to the point although it may be relevant to any claim for maintenance she may make.

7. The applicant's assertion that she was not paid for her labour is not tenable having regard to the fact that she had access to the joint savings account and even retained the account book and made withdrawals after the separation. Counsel contended that the applicant's evidence that she paid to construct a fence, bought a goat and purchased steel is not consistent with her assertion that she was not paid for her toils. If it were so, where then did the savings come from? Counsel enquired.
8. In sum, Counsel for the respondent submitted that the applicant's evidence taken at its best does not reveal a common intention that they should each acquire a beneficial interest in the property. Even if it did, she argued, the applicant has failed to establish that she agreed to do anything to carry through such a common intention or was induced to alter her conduct to her detriment for the sake of the acquisition. Counsel sought to distinguish Grant v. Edwards; Nixon v. Nixon (supra) and relied on Gissing v. Gissing and Pettitt v. Pettitt.

Wife's Contributions

It seems to me that in light of the contentions of the parties it is necessary to first determine the beneficial interests of the parties in the farming business.

I accept the respondent's evidence that when the parties met he was already rearing chicken on land owned by his parents. Indeed the applicant during cross-examination admitted that the respondent had 6 "eating chickens" when she went to live with him at his parent's home.

It is agreed that it was the applicant who initially bought the two pigs. The pigs increased in number. It is not disputed that some of the pigs were sold and chickens were bought.

In 1991 the applicant purchased a goat. The respondent also purchased one.

So what we have is that the respondent/husband was rearing chicken before the parties met. After they met he bought pigs. Later on each bought a goat.

I accept the applicant's evidence that she left working, with her mother pursuant to the parties decision to rear livestock to supplement their income.

In my view the respondent's contention that the applicant's involvement in the business was "minimal and at times even negligible" cannot be accepted.

If indeed her involvement was negligible he would not, it seems to me, be forced to make "alternative arrangements for outside help" when she withdrew. He even admitted that eventually he had to cease animal husbandry as a result of the applicant's refusal to be further involved.

I find as a fact that the applicant contributed significantly to the rearing of the livestock. Her evidence in this regard is to some extent supported by the affidavit evidence of Ms. Pansy Jonas.

It seems to me that a reasonable husband would necessarily have realised that his wife's reason for making such substantial contribution was her belief that she was a partner in the business.

It would be inequitable to hold that a wife who made such a substantial contribution through service gets no interest in the business.

To my mind the fact that she was not directly paid (neither was the respondent) but that the profits from the business was placed in a joint savings account, supports her evidence that it was the common intention that both parties should acquire beneficial interest in the business.

What are the respective interests of the parties in the farming venture?

It was the respondent who initially bought the pigs and this was really the beginning of the joint venture. The applicant relied on the expertise of the respondent. The farming was done on the property of the respondent's parents. The applicant admitted that she has already taken 20 layers.

Having regard to these factors and to all the circumstances, I am of the view that the parties' interests should be apportioned as follows: Applicant 1/3

Respondent 2/3

Interests of parties in the matrimonial home at Ebony Vale

The respondent admitted that without the income from the farming he could not have obtained a mortgage from the N.H.T.

Having carefully considered all the evidence and the

submissions by both counsel I am clearly of the view that the income from the farm played a major roll in the affairs of the parties.

I am satisfied, having carefully examined the conduct of the parties, that it was their common intention that the beneficial interest in the house was not to belong solely to the respondent in whom the legal estate was vested but was to be shared between them in some proportion.

The contributions made by the wife, by her substantial service in the farming business, were such as to relieve the husband/respondent from expenditure which he would otherwise have had to bear. In this way I find that the wife helped him indirectly with the mortgage payments. This must clearly be so in light of the respondent's admission that some months after deductions he was left with only \$156 or \$206 of his salary. He even went on to say that he would change the cheque and give her all the money. This must have been done pursuant to some arrangement. Of course utility bills, school fees, clothing, supermarket bills and so on had to be met.

It is appropriate, I think, at this point to quote Lord Pearson in Gissing v. Gissing (1970) 2 All E.R. at 788, (1971) A.C. at 903:

"Contributions are not limited to those made directly in part payment of the price of the property or to those made at the time when the property is conveyed into the name of one of the spouses. For instance there can be a contribution by arrangement between the spouses one of them by payment of the household expenses enables the other to pay the mortgage instalments."

In Falconer v. Falconer (1970) 3 All E.R. 499 at 452 Lord Denning M.R. said:

"It does not matter who pays what so long as there is a substantial financial contribution to the family expenses, it raises the inference of a trust."

It is true, as was pointed out by Lord Denning M.R. in Hazel v. Hazel (1972) 1 All E.R.; tht some of their Lordships' speeches in Gissing v. Gissing are to a different effect. However what seems to me to be clearly established by the decisions of the Court is that where it would be inequitable for the legal owner to claim sole beneficial ownership the court will infer a trust.

In the instant case the applicant went far beyond the call of "wifely/maternal" duties, she gave yeoman service to the farming

venture and by so doing contributed to the acquisition of the property at Ebony Vale. She said she "had to tend the animals from early morning and walk long distances.....to the farm." She worked throughout "the duration of her pregnancy despite the fact that it was extremely strenuous to bend and collect and wash eggs and clean pig pen."

I cannot accept the submission of counsel for the respondent that such contribution was not referable to the acquisition of the property. The evidence is that because of their joint earnings from the farm the respondent was able to purchase the house as this assisted him in qualifying to get the morgage loan. Respondent's Counsel urged that the applicant's evidence that the joint earnings were used to cover household expenses long before the purchase of the house shows that such contribution was not referable to the purchase.

The simple answer to this is that where, as in this case, the contributions by the wife are such as to relieve the husband from expenditure which he would otherwise have had to bear, then the wife can be said to have indirectly helped with the mortgage payments. It does not matter that he could have afforded the mortgage payments without the earnings from the farm.

In Hazel v. Hazel supra Lord Denning MR had this to say:

"It may be that he does not strictly need her help - he may have enough money of his own without it - but if he accepts it, she becomes entitled to a share."

The fact that she indirectly made contributions to the mortgage payments is not the only evidence available to assist the court in ascertaining the common intention.

The pattern of the conduct of the parties over the years is relevant in this regard.

A close examination of the evidence will show that the parties had a system of meeting expenses. Deductions were made from the respondent's salary to meet certain expenses as he explained. Then according to the evidence of the respondent his salary cheque was encashed and the money handed over to the applicant.

The applicant's evidence is that the respondent would collect

the money from the sale of chicken, eggs and pigs. From these amounts payments of utility bills, groceries, clothing etc. would be met. The balance would be lodged to a joint account to which both parties had access. From savings the parties bought property at Top Mountain in their joint names. They also bought a car and jointly operated a taxi business.

This pattern of conduct of the parties is certainly consistent with the claim of the applicant to a share in the property at Ebony Vale.

I accordingly hold that the wife is entitled to a share in the property at Ebony Vale. I must now endeavour to determine her share.

On the evidence before me it is clear that the respondent had contributed much more than the applicant. The farming was commenced by the respondent. He used up his N.H.T. benefits. The farming was not the only source of income. Since the applicant pulled out of the venture, the respondent has not received any assistance from her in meeting the mortgage payments.

In the circumstances I would put her share as one third (1/3) the value of this property.

Conclusion

The court makes the following Declarations and Order:

1. The parties' beneficial interests in the land situate at Lot 308 Ebony Vale

Applicant	1/3
Respondent	2/3

2. The said property be valued and the applicant be paid the value of her interest within 3 months of date hereof. Premises to be valued by C.D. Alexander & Co. Limited both parties to share equally the cost of such valuation. Applicant to give up possession of property on receipt of her 1/3 share.

3. The interests of the parties in the livestock at the farm at Fairfield are:

Applicant	1/3
Respondent	2/3

4. The Respondent to render account in respect of livestock at Fairfield and all and any income derived therefrom from the date of separation to wit June 1992 taking into account the 20

layers which the applicant admittedly took and for which she must render an account to the Respondent from the said date. These said accounts to be rendered within 12 weeks hereof.

5. No order as to costs.
6. Liberty to apply.