



**IN THE SUPREME COURT OF BERMUDA**

DIVORCE JURISDICTION  
2008: No.42

BETWEEN:

LIONEL ROGER EUGENE FRANCIS

Petitioner

-and-

HOPE MADRIANA ELIZABETH FRANCIS

Respondent

**RULING**

Date of Hearing: June 10, 2009

Date of Ruling: July 1, 2009

Ms. Margaret Burgess-Howie, Wakefield Quin, for the Petitioner  
Ms. Sarah Denham, MacLellan & Associates, for the Respondent

**Introductory**

1. The parties were married on November 8, 2003. Decree Nisi was pronounced on the husband's March 7, 2008 Petition on May 30, 2008. The Decree was made absolute on July 15, 2008. The marriage effectively came to an end after less than 4 ½ years. However, the parties' relationship seemingly began in 2000. There are no children of the family.
2. The husband seeks an equal division of the family assets, namely the former matrimonial home (which is in his sole name) and the jointly owned family car. The wife asks that consideration be given to the fact that (a) she paid for the car in full, although it was registered in their joint names and principally used by the

husband; and (b) she contributed significantly more to the initial purchase of and subsequent renovations to the former matrimonial home, albeit that mortgage payments were essentially funded equally by the parties.

### **Applicable principles**

3. The applicable principles governing the present application are, in general terms, common ground. The applicable statutory guidelines are found in the following provisions of the Matrimonial Causes Act 1974. Section 28 of the Act empowers the Court to make property adjustment orders. Section 29 provides :

*“29 (1) It shall be the duty of the court in deciding whether to exercise its powers under section 27(1)(a), (b) or (c) or 28 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—*

*(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) the 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) 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.”*

4. Ms. Burgess-Howie, emphasising the equality principle, relied upon the Wade-Miller J's decision of *D-v-D* [2007] Bda LR 6. While this decision does illustrate the importance of the equality principle, Wade-Miller J (at page 7, lines 3-4) nevertheless acknowledges that “[t]he yardstick of equality is to be applied as an aid, not a rule”. This decision is in no way inconsistent with the authority relied upon by Ms. Denham for the purposes of diminishing the significance of the equality principle: *B-v-B* [2008] EWCA Civ 284 (cited in ‘*Jackson’s Matrimonial Finance*’, 8<sup>th</sup> edition). The wife’s counsel also relied on the same leading text’s analysis (at pages 222-229) the distinction between matrimonial and non-matrimonial property and the import of this distinction for the apportionment of property.
5. I am guided by the following general principles. The Court is required to have regard to the statutory criteria set out in section 29, the relevance of which must be assessed in all the circumstances of each case. Equality of property division is the usual rule, unless it would be unfair in the circumstances of the case. Fairness may require the Court to treat as non-family property (a) assets brought into the marriage by either party (“pre-marital property”) and/or (b) assets acquired by one party through gift, inheritance or the predominant efforts of one party during the marriage (“extra-marital property”).

### **Factual findings**

6. The husband is 56 years of age and the wife 50. He is closer to retirement and has a pension which is not worth substantially more than the wife’s savings. The parties’ basic income is roughly the same, with the husband earning just over \$3600 per month and the wife earning some \$3200 per month. She earns an additional \$800 per month through part-time work. He works at an imports company and she works as a domestic worker in a luxury fractional ownership development and in a fast food restaurant.
7. I find that the parties’ earning capacities are essentially equal and that the wife’s greater earning and saving potential is attributable primarily to the fact that she is motivated to work very hard and live very modestly. I reject the suggestion made on behalf of the husband that the two manuscript records of her savings club history reflect separate records evidencing her saving \$250,000 over a ten year period. I accept her evidence that the two lists refer to the same saving items and were prepared for tallying purposes. I find that she put between \$120,000 and \$130,000 into the savings club over the period in question.
8. As far as the car is concerned, I find that this was wholly or substantially paid for by the wife out of pre-marital property (50%) and a loan (50%). I accept that the husband paid for maintaining the car but this merely compensated for his nearly exclusive use of it. It would not be just to award the husband half the value of the car and I decline to do so.

9. The position with the house is more complicated. This is because when the matrimonial home was purchased, the wife was seemingly not in a position as a non-Bermudian to become a legal owner. She has no legal right, as the husband's counsel rightly submitted, to the benefit of the appreciation of the property's value over the last few years. She now does not wish to incur the expense of a license to buy-out the husband's share of the former matrimonial home. On the other hand, it seems clear that without recourse to the wife's pre-marital capital, the husband would not have been in a position to purchase the home in any event. I accept the wife's evidence (supported by the bundle of documents comprising Exhibit 1) to the effect that she contributed the following amounts to the deposit for the purchase of the former matrimonial home from her pre-marital assets: \$38,058 (some \$30,000 of which represented the proceeds of a previous marriage settlement). The wife received a receipt for this amount from Juris Law Chambers in her sole name, which suggests that the monies were paid by her solely and not by the parties jointly. It is possible that an additional sum of approximately \$16,000 paid from the parties' joint accounts also represented the proceeds of the wife's pre-marital savings, although this is disputed and less than crystal clear. The husband contributed only \$14,000 from his own pre-marital resources.
10. I further find that the wife contributed the lion's share of the renovation costs. However, these were funded out of marital assets. Having regard further to the fact that the wife is admittedly to receive the benefit of the capital appreciation of the property solely owned by the husband and the fact that the husband is closer to retirement than she is, I decline to order reimbursement of these sums.
11. I am bound to have regard to the fact that the husband has fairly conceded that the wife should be regarded in equity as entitled to half of the net proceeds of sale of the former matrimonial home. This concession, however, is consistent with what appears to be the present legal position; namely, that the wife could now apply for a license to become a joint owner of the property. In these circumstances, would it be just to construe the wife contribution amounting to possibly more than four times the husband's initial capital contribution as, in effect, a gift to the husband? Such a finding, in relation to a wife whose actual earnings are only greater than the husband's by dint of the sweat of her brow and undoubtedly depriving herself of even modest material pleasures (by ordinary Bermudian standards), would border on perverse, particularly in the context of a short marriage. Nevertheless, it would not be just in all the circumstances of the present case to treat as the wife's pre-marital assets sums which she paid into the parties' joint account(s) and thereafter contributed to the purchase of the property.
12. I find that the wife should be entitled to recover the difference between \$14,000 (the husband's capital contribution from pre-marital assets) and her capital contribution from pre-marital assets of \$38,085 (i.e. \$24,085), in addition to the 50% net equity which the husband concedes she should have. Any additional amounts which she may have contributed to the parties' joint accounts should in

my judgment be treated as having been contributed by the parties in equal amounts.

13. I reject the wife's claim for reimbursement in respect of the higher contributions undoubtedly made by her towards the cost of the house renovations, because these were made in the course of the marriage. The presumption of equality upon which the husband's counsel relied is far stronger in relation to marital assets than in relation to pre-marital assets.

### **Conclusion**

14. The wife is entitled to (a) 50 % of the net equity in the former matrimonial home plus \$24,085 representing the amount by which her pre-marital asset capital contribution exceeds the corresponding contribution made by the husband, and (b) is entitled to retain the car without compensating the husband as she purchased the car wholly out of her pre-marital assets. The husband is entitled to 50% of the net equity in the former matrimonial home.
15. I will hear counsel, if required, as to costs.

Dated this 1<sup>st</sup> day of July, 2009

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KAWALEY J