



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2011: No. 176

BETWEEN:

STEVE BRYAN SYMONDS

Petitioner

-and-

MERLYN LAVERNE SYMONDS

Respondent

Date/s of Hearing: October 1, 2, 2013

Date of Judgment: December 20, 2013

Lomas & Co., for the Petitioner;

Marshall Diel & Myers – Georgia Marshall for the Respondent.

JUDGMENT / RULING / REASONS FOR DECISION

1. The Petitioner and the Respondent were married on 9th November 2000. For convenience, at times I shall refer to the Petitioner and the Respondent as the husband and the wife respectively. This has been a rather tumultuous marriage. There were incidents of acknowledged assault, by the husband upon the wife, with the parties separating on a number of occasions; with one period of separation lasting 15 months. The parties separated permanently in August 2010. Decree Nisi was pronounced on 27th January 2012 and it was made absolute on 15th March 2012. There are no children of the union. The wife has two children, daughters, from a former relationship and one child lived with the parties during the subsistence of the marriage. She was treated as a child of the family.
2. This is an application by the husband, Petitioner, filed on the 3rd July 2012 seeking a lump sum provision, transfer to him of the wife's interest in real property known as Moonlight Sonata Avenue Henderson, Nevada, USA and, the wife's interest in a jointly owned timeshare unit in Las Vegas. On the 13th August 2012 the wife filed an application by which she sought lump provision, property adjustment order, maintenance and costs.

BACKGROUND INFORMATION

3. The husband is 58 years old and the wife is 55 years old. In 1991 the husband and his former wife purchased a condominium at 34 Bowes Lane. That marriage dissolved and he purchased his then former wife's interest in the condominium. After the husband and the wife were married, Bowes Lane condominium became their matrimonial home.

THE WIFE'S EARNINGS

4. From 2000 until 2003 the wife was employed as a Credit and Collections Coordinator earning \$3,500.00 monthly. From 2003 to 2008, twice changing employment the wife continued to earn \$3,500 monthly.
5. During the period 2008 to 2010 the wife earned \$4,000 monthly as a Government Employee. Between 2010 and 2012 she earned \$5,100 monthly from her employment as a Credit Recovery Manager at HSBC. She is currently unemployed.

THE HUSBANDS EARNINGS

6. When the parties separated the husband was earning \$6,290.62 monthly from his employment as a civil servant. However, since September 1, 2013 he has had a reduction in pay for all civil servants and now earns \$5,869.26 per month. He is required to pay \$3,491.90 per month for the mortgage, condominium maintenance fee and utilities for Bowes Lane; \$699.00 per month for the time share unit and \$281.54 monthly on Moonlight Sonata Avenue for the homeowners fee, property tax and utilities. After the payment of his monthly outgoings (\$4,472.47) the husband has a balance of \$1,396.79 disposable income.

TIME SHARE UNIT

7. In 2004 the husband purchased a time share unit in his and the wife's name in Flamingo Day Las Vegas with a cash deposit of \$1,679.00. In 2006 making a further cash injection of \$1,484.00 the husband exchanged this unit for the Planet Hollywood unit. In 2007 the

husband exchanged the Planet Hollywood unit for a larger unit after payment of a further \$1,000.00.

MOONLIGHT SONATA AVENUE

8. In December 2009 the parties purchased the property, Moonlight Sonata, which was conveyed into their Joint names. In order to purchase the property the parties secured a Bank of Butterfield loan for \$200,000 on the Bowes Lane property. In order to secure the loan the husband upgraded the bathrooms at Bowes Lane at a personal cost of \$34,000. After Moon Light Sonata was purchased the husband purchased furnishings in the sum of \$11,000 to furnish Moon Light Sonata. It is accepted that the husband would have been unable to secure the loan which was used to purchase Moonlight Sonata without the wife's income being taken into account by the bank and her being a guarantor for the mortgage. In the Court's judgment this is not an inconsequential contribution to the acquisition of Moonlight Sonata.
9. There is a conflict in the evidence of the parties as to whether the husband had asked the wife to pay \$700.00 monthly towards the mortgage secured on the Bowes Lane Property; initially she had agreed to pay the monies, but later reneged. I accept the evidence of the wife that she made no such promise. Yet, the court has no doubt that the issue of the wife's financial assistance with the mortgage payment was raised by the husband long before the parties got to court, and although the wife was in a position to financially assist, she failed to do so. It is clear that the husband paid the lion share of the household expenses, while the wife paid her own expenses and that of the child; consequently, the husband was relieved of this obligation.
10. In 2010 shortly after the purchase of Moonlight Sonata the wife purchased a sports car.

She stated that her daughters purchased the car in her name but she has not provided any evidence in support of this.

11. When the parties married in November 2000 Bowes Lane outstanding mortgage was \$209,574.00 with an equity of \$65,000.00. When the parties separated in August 2010 the mortgage balance was \$215,682.00. From the date of separation to June 2013, the husband made all mortgage payments totaling \$97,070.00. On the 29th August 2013 the property was valued at \$290,000.00.
12. The husband argues that throughout the marriage the wife failed to make any financial contribution or commitment to the partnership. He maintains, for example, that when they first got married it was agreed that the wife would pay the electricity and the telephone bills. However, despite being responsible for these two bills only, she did not make timely payments. Eventually, the husband took over the payments of these two bills. During cross-examination of the husband it became clear to the court that these bills were always paid by the wife although not on the husband's schedule.
13. Counsel for the husband submits that the wife conducted her affairs as though the parties were not married. For example, she had elective surgery which cost some \$19,000. Further, in 2009 without any discussion with the husband, she took out a loan of \$36,000 which she says was used to fund her education.
14. Further Counsel submits that in April 2010 the wife borrowed \$6,000 from the BIU Members Credit Union. The application form states that the loan was for tuition fees. To secure this loan the wife had to assign \$1,500.00 in savings as collateral. She has not disclosed those savings.

Despite surplus income, the wife did not make any contribution to the mortgage payments on Bowes Lane nor to the time share unit, maintenance of the properties, payments or household expenses. In light of this, it was selfish and unreasonable for the wife to increase her liability and to expect the husband to continue to house and feed her. The court finds on the evidence that the wife did not make any financial contribution to the general household expenses; she used her income to provide for her personal care and financial needs of her daughter.

15. Subsequent to the wife vacating the matrimonial home in August 2010, she purchased, along with her two daughters, property at St. John's Road. She holds as a tenant in common a one third interest in this property. Her equity values \$8,112.00. The Wife resides in this property and contributes \$500.00 monthly towards its maintenance, land tax et cetera and, \$393.00 monthly as her share in reduction of the mortgage.
16. The purchase of Moonlight Sonata was financed by securing a further charge of \$200,000.00 on the Bowes Lane property. Therefore, there is no encumbrance against Moonlight Sonata.
17. I attach some weight to Counsel for the husband's submission that Bowes Lane value should be taken from the date of separation. Further as the wife made no financial contribution since separation therefore the wife should not benefit from any increased equity. The husband resides at the house alone and continues to be solely responsible for the mortgage payments.
18. The husband is seeking a release of the wife's interest in the Time Share Unit and

conveyance to him of her joint interest in Moonlight Sonata. He says that he's in a position to release her as a guarantor on the Bowes Lane property.

19. Counsel for the husband argues that throughout the marriage the wife has minimized her financial "obligations" to the marriage despite being in a financial position to make a fair and meaningful contribution. She has treated all the joint financial responsibilities as though they were the husband's sole obligation; consequently, she cannot "reap what she did not sow". In effect her "insignificant contribution" disentitles her from receiving any portion of the matrimonial assets. She should not receive a lump sum payment from the husband. The wife has lived for over nine years rent free and has applied all her income on her education which will enable her to have an increased earning capacity.
20. On the other hand Mrs. Marshall for the wife, views the case through a different lens. She submits, that almost all of the matrimonial assets have been created during the marriage. Based on her calculations she submits that at the date of the marriage the husband brought \$33,757 worth of equity into the marriage. The current net equity in Bowes Lane is \$53,893.93.
21. Further, regarding the value of the time share unit, that in light of the husband's evidence that he received three offers of between \$60,000 and \$75,000 for the unit, they would deduct the mortgage and he would receive somewhere between \$40 and \$50,000. Mrs. Marshall says that he was not re-examined on this evidence consequently it is a bit of "a nonsense" to say there is a negative equity in the unit.

THE COURT

22. The Court has taken into account all the circumstances placed before it and it does not propose to set out any further details, but it has taken into consideration all the relevant information.

MATRIMONIAL ASSETS

23. The total matrimonial assessed by the Court is made up as follows:
- Net equity in Bowes Lane - \$53,970.00.
 - Net equity in the time share unit - \$40,000.
 - Equity in Moonlight Sonata - \$139,675.00.
 - Equity in St. John's Road property - \$8,112.00.
24. Section 29 of the Matrimonial Causes Act 1974 sets out the matters to which the court must have regard in exercising its statutory powers in these applications. I have taken these matters into account, as well as precedent. The court has been referred to a number of authorities including Miller v Miller: McFarlane v McFarlane (2006) UKHL 24 and, Daniels v Daniels 2005 No. 16, Supreme Court Divorce Jurisdiction which Counsel urges should guide the court's statutory exercise.
25. The yard stick of equality of division of matrimonial assets reflects a non-discriminatory result. Proper assessment of the parties' different contribution to the welfare of the family should generally lead to an equal division unless there is good reason to depart from equality.

In *Miller v. McFarlane* at paragraph 22 Lord Nicholas said:-

“The parties marital home even if this was brought into the marriage by one of the parties usually has a central place in any marriage. So it shouldn’t normally be treated as matrimonial property for this purpose.”

26. I agree with Counsel for the husband that Bowes Lane was a pre-marital asset which the husband brought into the marriage. However, it became the matrimonial home and it was consumed in the acquisition of Moonlight Sonata. Consequently, the argument to exclude it from the matrimonial asset, or depart from equality, is considerably diluted.
27. I have approached this case by attempting to evaluate the available assets at the date of the hearing. This court places a value of \$233,545 on the assets.
28. In this Court’s judgment the wife’s role in supporting the raising of the capital to purchase Moonlight Sonata and her role as a guarantor of the loan is a significant contribution. Until her name is removed as guarantor she continues to be liable for the mortgage on Bowes Lane.
29. As previously mentioned the wife made no direct financial contribution in maintaining the properties. After marriage the husband requested the wife to pay the electricity and telephone bills as a contribution to the household expenses. However, he took over those payments when the wife did not make payments in accordance with his schedule.
30. The wife is guilty of at least one instance of non-disclosure. The Court is therefore

unable to assess the true value of the funds the wife has available to her. In assessing the parties' standard of living, the Court notes that they did not inter-mingle their funds but their combined incomes allowed them to enjoy a comfortable standard of living. As I have intimated from time to time there was some argument about the paying of bills but the husband maintained control and paid all the bills.

31. Each party reasonable requirement for a home has been met. The Court regards the wife as having an excellent earning potential as well as her pension.

32. Having regard to all the circumstances of this case and the discretionary exercise the Court awards the wife \$60,000.00. The husband would be left with the equity the balance in Moonlight Sonata, Bowes Land and the time share unit, his earnings, and his pension intact. In the Court's judgment this order achieves a fair result given the facts and circumstances of this case.

33. The sum of \$60,000.00 is to be paid within 120 days. The wife is to convey her joint interest in Moonlight Sonata to the husband within four months. The husband shall have prepared the necessary conveyance documents transferring the wife's interest in Sonata Beach to himself. The wife is to sign the conveyance once presented to her. The husband is to pay the entire costs of this transfer. Additionally, the husband should make arrangements for the wife to be discharged from any liabilities to Bowes Lane in 120 days.

I shall here Counsel on the issue of costs if they are unable to agree.

Dated the 19th December of 2013.

Justice Norma Wade-Miller
Puisne Judge