

MONTSERRAT

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 30 OF 2001

BETWEEN:

SHIRLEY WILLIAMS

Claimant

and

JOHN WILLIAMS

Defendant

Appearances:

Mr. G. Kirnon for the Claimant

Mr. H. Sergeant for the Defendant

2001: November 15 and 30

JUDGMENT

[1] **MATTHEW J. Ag:** On September 12, 2001 the Claimant filed an Originating Summons under Chapter 302 of the Married Womens Property Act, asking for an order inter alia that the property registered at Block 12/4 Parcel 387 Beachettes Registration Section, the legal title of which is vested in the Defendant, is owned jointly by herself and the Defendant in equal shares or in such other shares as the Court considers just.

- [2] An Affidavit of Shirley Williams in support of the summons was filed on September 12, 2001.
- [3] In her affidavit Shirley Williams stated that she and the Defendant were married on November 30, 1985 and they have two children ages 16 and 12.
- [4] She said that after the marriage the Parties lived in rented premises at Bakers Hill but after a few years they became desirous of owning their own house and so they decided to build on land owned by the Defendant at Bakers Hill.
- [5] The Claimant stated that the Defendant is a generator technician employed by the Montserrat Electricity Service and she is a registered nurse at the Glendon Hospital and was promoted in 1997 to the position of staff nurse.
- [6] She stated that the Defendant and herself agreed that the Defendant would service the loan while she would be primarily responsible for the up-keep of the house in which they lived and the upkeep and welfare of the children.
- [7] She stated the loan received by the Defendant to construct the house was not sufficient and she assisted the Defendant from time to time in purchasing building materials from her own resources to an approximate sum of \$9,500.00 over the two years during which the house was constructed.

- [8] She stated that during the period of construction, she cooked food and provided drinks from time to time to the Defendant and the workmen who assisted the Defendant.
- [9] She said she contributed to the purchase and maintenance of a motor vehicle, which provided the Defendant and the workmen with transport during construction.
- [10] She stated that her contributions to the house, both direct and indirect, were made as part of a common intention that she and the Defendant were to build a house in which they were to reside with their children.
- [11] I cannot help observing that this last paragraph is an attempt to give evidence relating to an issue which the Court must find on the totality of the evidence.
- [12] The Defendant filed an affidavit in opposition on October 12, 2001.
- [13] He said that after the marriage he discussed the prospects of building a home on lands given to him by his mother and the Claimant was not happy with the idea and tried to persuade him to build on a parcel of land which her parents had given to her at St. John's.
- [14] It is pertinent to note that in her affidavit the Claimant stated that after she left the matrimonial home in 1991, she resolved to build a modest home with the assistance of her family and a small loan. She did not state the location.

- [15] The evidence reveals construction of the home began in 1987 according to one Party and 1988 according to the other Party but that completion was about the end of November 1991 and in February 1992 the Claimant left the matrimonial home.
- [16] There is no evidence that a decree nisi has been made or that there has been any petition for divorce.
- [17] The Defendant stated that the Claimant gave him no encouragement or assistance to build the house but instead went to purchase a car without his knowledge and made it clear that she wanted nothing to do with the building of the house.
- [18] He stated that at no time did the Claimant and himself ever discuss or decide to obtain a loan from the Montserrat Building Society.
- [19] He said that he spent about \$20,000.00 of his own money before he was able to obtain the loan from the Montserrat Building Society.
- [20] He stated that the Claimant never inquired or offered any assistance throughout the entire construction and he denied that she ever assisted him in purchasing building materials amounting to \$9,000.00.
- [21] He also denied that she ever assisted with preparation of meals for workmen during the construction of the house and in fact on completion of the house she was so hostile to him that when he was

traveling to St. Maarten to purchase furniture for the house she said that she wished the plane would crash with him.

[22] Besides the affidavit evidence the Parties also gave oral evidence on the date of hearing, November 15, 2001.

[23] At the end of the oral testimony both sides made submissions.

[24] Learned Counsel for the Defendant submitted that there was no common intention of the Parties that the Claimant was to receive a share in the house and in fact she made no contribution to the construction either directly or indirectly.

[25] Counsel submitted that there was no supporting evidence that a contribution of \$9,000.00 was made by the Claimant and that Claimant had not proven to the Court what contribution she made.

[26] Counsel submitted that the home has been improved significantly by the Defendant and his relatives since the Claimant left.

[27] Learned Counsel for the Claimant submitted that the law on the subject was clear and that there must be a common intention by the Parties.

[28] Counsel submitted that the salary of the Defendant was only \$1,500.00 after tax and if he had to pay \$927.00 for the mortgage and he gave the Claimant \$400.00 for maintenance of the house and family, the conclusion is clear that the Claimant assisted him.

[29] Counsel in support of his submissions cited the case of *BROWNE V BROWNE*, Civil Appeal No. 4 of 1987 of the OECS Court of Appeal, decided on February 22, 1988, a judgment of MOE J.A.

CONCLUSIONS

[30] At the commencement of the case I suggested whether the Parties could come to an amicable settlement or arrangement whereby the property could be registered as half share for the Defendant and half share for the two children of the family. The Defendant readily consented. The Claimant did not. I then proceeded to hear the evidence.

[31] I find that there was no common intention between the Parties that the Claimant would have an interest in the property in question.

[32] The facts of the case of *BROWNE V BROWNE* are far different from those in this case. There is no common intention as was stated at pages 2 to 3 of that judgment.

[33] The reason why I find that there was no common intention is that I believe the Claimant was desirous that the matrimonial home be built at St John on her land and because the Defendant did not agree she took no active part in the construction.

[34] I believe what was said by the Defendant in paragraphs 14 and 15 of his affidavit.

- [35] I would have thought that if one wanted a vehicle to assist in the construction of a house one would purchase a jeep or a truck, not a car. I believe the Defendant's oral testimony that she did not encourage him in the building of the house and instead she went to purchase a car.
- [36] It follows that I do not believe the Claimant when she said in paragraph 8 of her affidavit that during the construction of the house she also contributed to the purchase and maintenance of a motor vehicle, which provided the Defendant and workmen with transport.
- [37] Why would the Defendant want transport when he lived close to where the house was being constructed at Bakers Hill?
- [38] I find as a fact that the Claimant did not contribute to the construction of the house by paying for materials or cash payments to the tune of \$9,000.00 as she stated in evidence.
- [39] Any meals for workmen was done only at weekends when friends and relatives assisted. The Defendant did pay workers during the week. I do not believe the Claimant assisted in that respect to any significant degree. After all she is a nurse and nurses work on weekends. And if anyone who has a wife who is a Ward Sister at a larger hospital than Glendon Hospital, he would know.
- [40] But cooking for workmen at the occasional weekends from resources provided by the Parties according to the Claimant's oral testimony

could not give the Claimant a right to the property. This is why the facts of this case are different from those in *BROWNE v BROWNE*.

[41] Neither would the fact of the Claimant accompanying the Defendant to the Bethisrael Hospital in Boston, Massachusetts, where he had open heart surgery in 1991 especially when the passages were paid by the Defendant.

[42] But I find that she did not even perform her wifely duties with consistence for she did not assist him afterwards when he came from Boston and was passing blood.

[43] I believe that the Defendant paid the mortgage after the house was completed for the 3 months that the Parties lived together after the construction and looked after the maintenance of the home as well.

[44] Exhibit "JW1" says the amount owed on the mortgage is \$65,798.95 as at September 29, 2001. The Defendant stated in evidence that the amount he borrowed was \$86,000.00. He could only have started repayment after the construction of the house was completed.

[45] I do not believe that there was any agreement that the Claimant would look after the house and the Defendant would pay the mortgage as she stated in oral testimony.

[46] The demeanour of the Claimant in giving evidence did not exhibit reliability. The Defendant was more forthright.

- [47] I believe the house which the Claimant would have assisted in, is not more than half of the present value of the structure at Block 12/4 Parcel 387 of the Beachettes Registration Section which was improved after the Claimant left in February, 1992.
- [48] I am of the view that the Claimant is not entitled to any share of that property.
- [49] But I recognize that the Parties are making a clean break. The Claimant has been taking care of the children since she left with them in February 1992. The Defendant is only making a contribution of \$150.00 for the children every fortnight.
- [50] I recognize she is making the major contribution to the welfare of the children and she must have assisted in some small measure during the construction even if not enough to give her a proprietary interest.
- [51] In all the circumstances of the case, I would order the Defendant to pay to the Claimant the sum of \$10,000.00 for the contributions she made to the welfare of the family. There shall be no order as to costs.

A. N. J. Matthew
High Court Judge Ag.