



In The Supreme Court of Bermuda

DIVORCE JURISDICTION

2018: No. 79

BETWEEN:

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Petitioner

-and-

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Respondent

Before: Hon. Alexandra Wheatley, Acting Justice

Appearances: Angelita Dill of AAA Law Company Ltd, for the Petitioner
The Respondent, Failed to appear

Date of Hearing: 23 September 2024

Date of Judgment: 27 September 2024

JUDGMENT

(Written Reasons)

WHEATLEY, ACTING JUSTICE

INTRODUCTION

1. This matter was listed further to my Ruling of 18 September 2024 (**the Ruling**). This Judgment should be read in conjunction with the Ruling as the background of this matter will not be repeated for the purposes of this Judgment.
2. The purpose of this was to hear counsel as to whether the December 2021 Order made in these proceedings should be set aside or varied based on my view that the Court had no jurisdiction to order the sale of the former matrimonial home (**FMH**) under the Matrimonial Causes Act 1974 (**the Act**).
3. Having heard from Ms Dill, it was accepted that there was no jurisdiction in the Act to allow the court to make an order for the sale of property. Therefore, Ms Dill submitted that given the jurisdiction under section 28 of the Act for a property adjustment order, that the FMH should be transferred to the Wife.
4. My Judgment at the conclusion of the hearing after applying the legal principles required to be considered (see paragraphs 5 to 8 below):
 1. *That Respondent's interest in the FMH shall be transferred forthwith to the Petitioner, Ms. Jill Leona Johnson so that she shall hold the FMH as hers absolutely without any claim thereon by the Respondent.*
 2. *The costs of the said transfer referred to in paragraph 1 above shall be borne by the Respondent.*
 3. *Given the Respondent's continual non-compliance of court orders and his continual failure to appear before these courts, the Registrar of the Supreme Court is empowered to execute all documents on behalf of the Respondent to affect the transfer of the FMH as referenced in paragraph 1 above.*
 4. *Costs of the application shall be awarded to the Petitioner, to be taxed if not agreed.*

THE LAW AND ANALYSIS

5. There is a statutory obligation to have regard to the factors set out in Section 29 of the Act (**the Section 29 Checklist**) when determining an application for ancillary relief under Section 27 and/or Section 28 of the Act. When assessing “needs” courts will have regard, in particular, to the matters set out in Section 29(1):

“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 which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contributions by looking after the home or caring for the family;

.....

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.”

6. Consideration must be had to the tailpiece of Section 29 (1) of the Act which requires the Court to place the parties insofar as it is possible and practicable to do so in the position that they would have been in if the marriage had not broken down and each party had discharged their respective financial obligations to the other. This tailpiece no longer exists in the UK legislation, but in determining what the aim of the court should be when exercising its discretion under Sections 27 and 28 of the Act, the House of Lords in the *White v White [2001] AC 596* decision determined that the aim of the court is to come to a fair outcome as between the parties.

This aim has been adopted in interpreting the tailpiece in our legislation. Justice Meerabux's judgment of 1 November 2001 in the Bermuda case of *Green v Green*, concluded that the tailpiece has the same meaning as the concept of fairness enunciated in *White v White*.

7. In considering what is fair, the court distinguishes between two types of assets, matrimonial assets on the one hand and non-matrimonial assets on the other. In this case there were no non-matrimonial assets.
8. There is a presumption that matrimonial assets will be divided equally between the parties upon the breakdown of the marriage unless there is good reason to depart from equality.
9. Taking into consideration the principle of fairness and applying the Section 29 Checklist, the following are the key factors which led to the decision referenced at paragraph 4 above for the determination of the Wife's Application for Ancillary Relief:
 - a. The parties had a long marriage of approximately thirty years.
 - b. The FMH is the only matrimonial asset.
 - c. I accepted that the value of the FMH stood at \$545,000 based on Ms Dill's previous submissions regarding the deterioration of the FMH as well as there being an outstanding issue with the Department of Planning that had to be resolved.
 - d. The outstanding mortgage secured against the FMH totals approximately \$440,000 as of today's date.
 - e. The monthly mortgage payments for the FMH are approximately \$3,200 per month.
 - f. In accordance with the Order dated 25 February 2021 (**February 2021 Order**), the Husband continued to directly receive the rental income from the rental unit of the FMH in the sum of \$1,500 per month. The Husband failed to apply the said rental income against the monthly mortgage payments in accordance with paragraph 3 of the February 2021 Order. The total rental income the Husband has received during this period amounts to minimum of \$63,000.
 - g. As at 5 November 2020, there were arrears of the monthly mortgage payments which totalled approximately \$16,000.
 - h. The Husband has continued to reside in the FMH.

- i. Costs were awarded to the Wife in relation to her application for ancillary relief, which have not yet been agreed or taxed.

DATED this **27th** day of **September 2024**



ACTING JUSTICE ALEXANDRA WHEATLEY