

IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS
IN DIVORCE

ACTION NO. D – 1/02

BETWEEN:

GEORGINA DELORES LIGHTBOURNE

Petitioner

-v-

BOURNE

Respondent

DIVORCE
PROCEEDINGS

*Civil
(Order to pay
petitioner's wife out
of divorce).*

*son; and
as for the Respon*

RULING

INTRODUCTION

1. This matter comes before me on the Respondent husband's appeal from a decision of the learned Registrar, Mr. Fraser Hirst, ordering the Respondent to pay the Petitioner wife \$30,000 by the 31st July 2002. The order was made on 9th July 2002 on the wife's application for financial relief arising out of the divorce of the parties, and was upon her undertaking to transfer all her legal and beneficial interest in the former matrimonial home to the husband.

2. I should note that, under the limited powers conferred by the Divorce Ordinance, the Court does not have the power to adjust property rights. However, both parties had consented to the Registrar proceeding on the basis that he would assess an appropriate lump sum to be paid to the wife on her undertaking to transfer her interest in the matrimonial home to the husband, and the matter proceeded before me on the same basis.

3. The appeal before me was under Order 58 of the Civil Rules 2000, and was conducted by way of re-hearing in accordance with the English practice as set out in Note 58/1/3 of

the Supreme Court Practice 1999, as applied here by section 3(3) of the Supreme Court Ordinance. It was agreed, however, that the appeal should be on the record, save that further points emerged in argument, and I therefore allowed further evidence to be given by both sides to deal with them.

4. On the appeal Mr. Keeble argued that the power to order a lump sum under section 30 was only exercisable before the decree was made absolute. This point was not taken before the Registrar, and is really incompatible with the agreed basis referred to in paragraph 2 above. Mr. Keeble advance no authority for this proposition other than the wording of the section, which provides:

“30. (1) On any decree for the dissolution or nullity of marriage the Court may, if it thinks fit, order the husband to the satisfaction of the Court to secure to the wife such gross sum of money or such annual sum of money . . . as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it deems reasonable, . . .”

5. I do not think that the words “on any decree” limit the Court’s power in the way suggested. The matter was before the court on the decree nisi. It was adjourned then without objection or the point being taken. The court has a general power to adjourn matters, and did so in this case. I do not, therefore, accept Mr. Keeble’s argument on this point.

BACKGROUND

6. The wife is now 52; and the husband is 51. The parties were married on 10th July 1971. There are 6 children of the family now living, all of whom are over 18. The Petition was issued on 2nd January 2002, and in addition to the prayer for dissolution of the marriage, also contained a prayer that “the Petitioner be granted such orders for ancillary relief as the Court deems appropriate.” The Decree Nisi was pronounced by me in Court on 21st February 2002, on the grounds of the husband’s adultery. At that hearing there was a letter before me from Mr. Keeble which stated, *inter alia*, that he would “be

making an application in respect of certain property matters in due course." I specifically adjourned ancillary relief to Chambers, and made a note to that effect. The Order as drawn up recorded that wife's application for ancillary relief was adjourned to the Registrar in chambers. The Decree was made absolute, on the wife's application, on 8th April 2002.

7. The wife, on the same date as the Decree Absolute, swore and filed an affidavit as to her means and also filed a document headed "application to set down application for ancillary relief." On 9th April the Registrar, apparently on his own motion, gave directions for the husband to file an affidavit, and for both parties to give "full disclosure by exchange of lists of documents." and set the matter down for 29th April 2002. As far as I can see neither side gave full disclosure. In particular the husband did not produce any documents relating to his expenditure on various items of home improvements. In argument his counsel says that this is because they were not challenged before the Registrar, but in view of the order for disclosure that is a little disingenuous.

8. The husband also failed to disclose in his affidavit of means:

(i) part ownership of a property on West Road. In his evidence before the Registrar this was referred to as 'my mother's property on West Road' (see p. 5), but before me he said it was jointly owned between himself and his sister; and

(ii) monthly payments of \$120 each from those of his children who lived with him.

The wife, on the other hand, similarly failed to disclose monthly payments of \$250 each from 3 student lodgers during term time.

9. In the event the hearing fixed for 29th April was then adjourned to 9th May by consent, and the timetable for affidavits and disclosure extended. The matter then duly came on for hearing before the Registrar on 9th May. At the close of the hearing the Registrar

ordered that the former matrimonial home and the wife's property be valued, and a report provided to the court. He delayed delivering his decision until that was done, and he afforded an opportunity for the parties to be heard on the valuations if they wished, although neither availed themselves of that. He then gave his ruling in writing on 9th July 2002. The Notice of Appeal is dated 15th July. It contains no grounds, but as the matter comes before me by way of re-hearing, I think that is permissible.

THE PARTIES' MEANS & EXPENSES

10. The Petitioner works for the Tourist Board as an assistant Statistical Officer earning \$1,075 per month (or \$933.62 net of National Insurance). In addition during the Community College term time she rents her spare rooms to three students for \$250 per month each, out of which she provides all their meals. She also occasionally sells birthday and Christmas cakes the profit from which appears negligible. She had previously been employed by government, but was made redundant in or about March 1994 (and not 1996 as stated in her affidavit). After that she operated a restaurant for a while, until getting her present job on 1st December 1999.

11. The wife puts her current expenses at \$2,880, but that represents an incorrect addition. The corrected total is \$1,805 (the error being due to her salary figures being totalled into the expenses). She also now accepts that the \$500 per month for clothes is an annual figure, so that should be about \$42 per month. She includes a \$120 per month contribution to her church, which I assume is voluntary. She says that all the money from the students goes on their upkeep, and that that is not included in her monthly expenses. However, I have little doubt that the money from them goes some way towards meeting her utility and fuel bills. Taking all this into account, I find that she is able to live within her current means. However, she also has various debts (in addition to her regular car loan) which she is not currently servicing.

12. The husband is employed by the Ministry of Works earning \$2,838.04 net per month (including long service and travel allowances). In addition the adult children who live with the husband pay him for board and lodging. In evidence before the Registrar the

husband accepted that 4 of the children paid him \$120 per month each, giving \$480 per month, and that that goes to food, utilities and maid service and so on. That increases his real income to \$3,318. To the extent that one of the children may not pay when away at college, I think that that is likely to be offset by a corresponding reduction in food and other costs.

13. The husband puts his living expenses at \$3,718 per month. However, he said before the Registrar that the \$89.80 health insurance includes an element for his wife, which should now cease. He claims \$600 for food, but acknowledges that that is for the whole household, including the children who live with him. There is also an item of \$200 per month for one of the boys at college. That child has now received a scholarship (which is disbursed to the father), and I doubt the need for that additional payment. There is an item of \$333 per month for renovations (representing a \$4000 cost amortised monthly). This is disputed by the wife, and no documents are produced to support it. In any event, his evidence was that the full amount had already been paid out, and so it is a past expense. Gasoline of \$250 per month seems high on an island 6 miles by 2 miles, but he assures me that his works requires a lot of driving. Taking out the \$200 for the child and \$333 notional renovation costs, I come up with a figure of \$3,185 per month. I therefore find that he too can live within his income.

PROPERTY

14. The former matrimonial home is in joint names. It stands on 0.35 acres in Palm Grove, Grand Turk, and consists of 5 bedrooms, 2 bathrooms, living room, dining room and kitchen area. The valuer noted the need for some maintenance, but considered it to be in good condition. She assessed the open market value of the property as between \$100,000 and \$110,000, noting that the property market in Grand Turk is currently stagnant and depressed.

15. The learned Registrar made findings as to the charges on the property, but he was misled (I accept innocently) and his findings are not entirely correct. I took further

evidence on this question and, based on that and on the encumbrances section of the land register. I find that there are now essentially two charges on the property:

(i) one in favour of the Bank of Nova Scotia, which secures various advances from that Bank as follows: \$15,200 in 1983; \$5,200 in 1984; \$5,000 in 1987; a further \$23,000 in 1987; and \$16,000 in 1990. I accept that these were all used for repairs or improvements to the matrimonial home. Technically each was a separate charge, and the early advances will now have been paid, but the remaining debt is now consolidated by the Bank, the principal remaining due being \$24,318.18 as at 24th April 2002 (having been paid down from \$39,388.47 on 16th July 1998, the earliest date for which the documents provide a figure).

(ii) a subordinate charge in favour of TCInvest in the sum of \$20,000 which secures the tuition fees for the child Tito, and which both parties regard as the liability of the child. Nothing is being paid on this at the present time.

16. As at April 2002 the husband has the following further debts, which are not charged on the matrimonial home (but which are taken into account in his statement of means):

(i) \$21,214.06 borrowed from TCInvest, which he states was used for home improvements, and particularly the retiling of the floors throughout the house, and the replacement of doors and windows. There was a dispute over the use to which the loan was put, but I accept his evidence on that. This loan is in his sole name and is secured on other property owned by him in West Road. I find as a fact that the husband tried initially to secure it upon the matrimonial home by signing on the wife's behalf without her knowledge or consent. In fact she had not been asked to consent. However, this difficulty emerged before the loan was made and as a result of that the lender required other security.

(ii) \$16,711.34 borrowed from the Bank of Nova Scotia, which is a car loan and which I assume is secured on the vehicle in the ordinary way.

17. As to the contributions each party made to the purchase of the matrimonial home, the husband acquired the lot (which the valuer now assesses at \$10,000) by purchase before the marriage. In his evidence before the Registrar he said it cost him \$110. In 1983 it was conveyed into their joint names, but the wife's evidence, which I accept, was that they had been paying the mortgage 50/50 since 1974. Immediately prior to 1994 the total payment was \$1,281 per month. After her redundancy in 1994, and while she was in Miami attending to a sick daughter, the loan was renegotiated with the Bank and the payments from her ceased. Thereafter the husband paid \$737 p.m. He says that that has now risen to \$837, although that is not easy to reconcile with the Bank documents, and the wife thinks that the increase was due to an additional loan. However, for the purposes of this ruling, I accept monthly payments due from him of \$837.

18. The wife now has her own property in Breezy Brae. She purchased this with the aid of a bank loan in 1996, shortly before the parties separated. No cash was put down for the purchase, which was entirely financed by the loan. The loan was for \$55,000, and is in the joint names of herself and 3 of the children, and they each pay a quarter of the mortgage, being \$165 per month. The property in fact cost \$15,300 but required extensive renovation and furnishing, and the balance of the loan was spent on that, with \$5,000 going on furnishings. She moved in in December 1996 and has lived there ever since. The property was valued at \$65,000 - \$70,000 by the same valuer, and on the same basis, as the matrimonial home.

PENSION RIGHTS

19. In arriving at his assessment the Registrar noted that the wife made no claim in respect of her husband's future pension entitlement, although it was likely to be greater than hers. She has now made such a claim by a document entitled "Response to Ruling", filed on 27th July. I took evidence on their respective pension entitlements, but the husband's are impossible to quantify without more information as to his salary throughout his working life. His will certainly be greater than hers, given that he has been earning salary at his present grade since about 1996. Moreover, I note that under

the Pensions Regulations the husband is entitled to take 25% of his entitlement by way of gratuity on retirement.

20. In respect of the wife's pension entitlements, she says that she will be entitled to \$300 - \$400 per month, based on 22 years service and final salary with Government of \$1200 per month. Her present employment with the Tourism Board is not pensionable.

21. In addition the wife says, and I find, that she took a gratuity and compensation package on being made redundant from her former employment in 1994. It seems that, at her request, this was by way of two cheques – one for \$16,400 she immediately cashed and used to support herself and her daughter while the latter was receiving medical treatment in Miami between 18th September 1994 and 8th August 1995; the other, for \$14,248, she gave to her husband on the understanding that he had arranged with Scotiabank that it would not be taken by them and put towards the mortgage on the matrimonial home. She says she saw nothing further from that cheque, although she accepts he sent her two one way tickets while she was in Miami. He says that he also sent her \$2,000 with her sister on one occasion, but the sister was called and denied that. I have copies of both cheques in evidence, and the bank stamp on the latter shows that it was negotiated with Scotiabank on 16th November 1994. I find that both of these cheques constituted substantial contributions by the wife to the joint economy of the marriage, and that the sums paid to her then reduced the amounts she can now expect on retirement, and that she therefore deserves a credit for them in adjusting their rights and liabilities.

CONTRIBUTIONS TO THE MARRIAGE

22. As to their respective contributions during the marriage, I find that in financial terms each contributed equally, and to the extent of their available means, to the joint economy and the raising of the children. There is some dispute over the details. I find that the wife worked throughout until she was made redundant in 1994. She says that her income went on the mortgage and supporting the family, including putting the children through private schools, and I accept that. The wife puts the husband's monthly cash contribution

to the household expenses at \$240 (which stopped in 1992 when relations soured). The husband accepts that figure, but he says that he met other incidental expenses as the need arose, and I accept that. In essence I think that both parties contributed their earnings to the joint economy to the full extent of their means. However, I have no doubt that, in addition to her financial contribution, the burden of housekeeping and the day to day work of raising the children fell, as it so often does, largely upon the wife.

CONCLUSIONS

23. What the wife seeks is a lump sum payment of \$30,000 in return for her rights in the matrimonial home, and as a capitalization of any rights she may have as to maintenance for herself. The Registrar regarded the wife's request as "extremely reasonable," and that is the sum he awarded. He got to that sum by valuing her share in the matrimonial home at \$29,734 (based on a total value of \$105,000, being the median of the valuer's figures); by finding that the husband had no claim on her share in the Breezy Brae property; and by valuing her claim to maintenance at \$5,000 and discounting it for immediate payment.

24. The wife has a joint interest in the matrimonial home. Prima facie she is entitled to realise that, and there is nothing in the history of their respective contributions to either the home itself or the joint economy to cause me to alter her entitlement (even had I power to do so). In particular I consider that the husband's contribution of the purchase price of the land, and the payment of a much reduced monthly payment after about 1994, are offset by (i) the contribution of her redundancy payments to the joint economy, and in particular by the husband having the use of her second redundancy cheque (for \$14,248); (ii) her substantial contribution to the joint economy both in cash and in labour throughout the marriage; (iii) and the direct monetary contribution she made to the house by paying half the monthly payments for a period of c. 20 years between 1974 and 1994.

25. Mr. Keeble submits that the wife should be entitled to one third of the joint assets at the most. I reject that approach. The one third rule may be a useful guideline when assessing the entitlement of a wife whose contribution to the joint economy was limited

to running the household and raising the children. But in this case the wife contributed very substantially in money both directly to the mortgage on the matrimonial home itself, and to the cost of supporting the family.

26. In respect of the recent home improvements loan (see paragraph 16(i) above), I accept the husband's evidence that that was spent on the matrimonial home. The difficulty is how to account for that. I have no valuation evidence on this, but I take it to be notorious that improvements and repairs do not increase the capital value of the property to the extent of the expenditure. In an extreme case they may not affect it at all. Moreover the loan was obtained without the wife's consent, and to the extent that there is a day to day benefit from the work, it is the husband who enjoys it, and not her. As with many such matters, the best that the courts can do is to adopt a broad brush approach.

27. Similarly with the payments to the mortgage since 1994. As indicated above the bank documents show that the husband has reduced the principal debt by \$14,970.29 since July 1998. On the other hand he has had the benefit of occupation of the premises, and the use of her notional half share, during this period.

28. I accept the Registrar's finding that the husband has no claim on the wife's 25% share in the Breezy Brae property – he has made no contribution towards it, and there is nothing to suggest that it was bought from the joint economy.

29. Given the wife's present employment, and the income from that, I do not think that she is presently entitled to a maintenance payment, and that therefore there is nothing to capitalise in this respect. Nor, on the facts, do I think that she is entitled to a share in her husband's ultimate pension: their earnings, and therefore their pension entitlements, were similar until his promotion in 1996, and by that time the marriage had effectively come to an end. I do not, therefore, need to consider whether such a claim can be advanced at law in this jurisdiction, and I defer a decision on that point to a case in which it arises.

30. Against the above background, I find the Registrar's award of \$30,000 entirely reasonable, and no less than wife's entitlement. I do not, however, adopt his means of getting there, because I do not think that she has any existing maintenance claim to capitalise. I would prefer to say that that figure represents a fair assessment of her share in the matrimonial capital given her contributions to it and to the marriage during its subsistence.

31. The husband has complained of difficulty in raising such a sum, but has led no evidence that he could not re-finance the home to do this. He is represented, and could have led such evidence if he had made attempts to raise the money and been refused. He will also be entitled to a substantial cash payment when he retires at 55, and may be able to borrow against that expectation and retire any further debt then. In saying that, I do not wish to be misunderstood. For the reasons given above, I am not holding that the wife has any claim against his pension entitlements, but merely noting that they are among the means he has of raising the money necessary to meet the lump sum.

30. I therefore dismiss the appeal. I will hear argument on costs.

Dated this 31st day of October 2001



Richard Ground
Chief Justice