

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
ON MONTSERRAT  
CASE MNIHCV2019/0010

In the Matter of the Married Women's Property Act  
And  
In the Matter of the Matrimonial Proceedings Act

**BETWEEN:**

<b>OSLYN DESEREE GREENAWAY</b>	<b>CLAIMANT</b>
<b>AND</b>	
<b>IVOR CARLVIN GREENAWAY</b>	<b>DEFENDANT</b>

**APPEARANCES**

Ms Chivone Gerald for the claimant Oslin Greenaway.

Mr Warren Cassell for the defendant Ivor Greenaway.

---

**2020: NOVEMBER 26**

**2021: JANUARY 8**

---

**JUDGMENT**

**On share of a house for an ex-wife**

- 1 **Morley J:** I am asked to decide what share if any of a matrimonial home can be claimed by Oslin Greenaway in respect of Woodlands plot 12/3/149 following the end of her marriage on 29.04.19, begun in church after banns on 18.07.10 to Ivor Greenaway, by which union there was a daughter Kaylee on 10.08.08, now aged 12. All still live at the home.

- 2 Claim was filed on 23.04.19, mediation failed, and there was a brief trial on 26.11.20, where Oslyn and Ivor<sup>1</sup> gave evidence in the Montserrat courtroom, via zoom, with the Judge and Counsel Cassell on Antigua owing to covid.
- 3 Having reviewed the affidavits and heard the evidence, I find on balance the following facts:
- a. In around 2006, Oslyn and Ivor began courtship.
  - b. In 2007, Oslyn put Ivor on notice a friend of her mother, it seems 'Florestina Farrell', was selling the land at plot 12/3/149, which Ivor acquired in his sole name at the land registry on 30.05.07, raising a loan on 05.07.07 from the St Patrick's credit union of \$30600ec.
  - c. The reason Ivor bought the land was to build a house for the family he planned with Oslyn.
  - d. Between the purchase in 2007 and 2010, while Ivor lived mainly with his parents, and Oslyn lived in Olveston, there then being no shared home, the house for the marriage was built on the land, for which Ivor raised on 03.07.09 a credit union loan of a further \$251340.04ec, making mortgage payments of \$1835ec pm, and when completed the house was occupied as the matrimonial home, in which Kaylee has been brought up.
  - e. Also in 2010, Oslyn took out a loan to purchase furniture.
  - f. Finances were arranged so that Ivor paid the mortgage, home insurance, and Kaylee's education, amounting perhaps to \$2500ec pm, while Oslyn paid largely for food, utilities, the upkeep of the home, and generally for Kaylee, amounting perhaps to \$1300ec pm.
  - g. The plot with the house is currently valued at about \$540000ec.
  - h. Though Ivor has monthly paid more than Oslyn, nevertheless theirs has been a shared commitment together to raise a family, where Oslyn has given the greater part of Kaylee's care, which will continue so: in short, the family has been a joint effort in a home jointly.
- 4 During trial, the following occurred:
- a. Ivor could not bring himself to describe the house as the 'matrimonial home';
  - b. Ivor described the house as 'my house';
  - c. Ivor asserted 'I don't accept she has an interest in the property, I don't';

---

<sup>1</sup> The parties will be referred to by their first names for ease of reading and no disrespect is intended by not writing out their full titles and legalese as whether claimant or defendant.

- d. When asked what did he expect Oslyn could take away from the marriage he was silent, (though did later say he had offered \$50000ec, which the court accepts is not a formal admission);
  - e. When asked, what did he expect marriage meant in terms of his church vow to share what he has, he was silent, while Counsel Cassell strenuously objected to the question.
- 5 Specifically, following the trial, having heard the parties and weighed their reliability, the court finds as a fact Ivor did tell Oslyn, as part of their early discussions settling together, he would share ownership of the house equally with her, that eventually they would both own it, the court preferring her evidence, and rejecting Ivor saying a shared ownership of the house was never meaningfully discussed.
- 6 On the evidence therefore, though in Ivor's sole name, I find beneficially Oslyn has a 50% share of plot 12/3/149. It matters not there has been unequal financial contribution, as Oslyn's non-financial contribution as homemaker and primary carer for Kaylee balances matters.
- 7 Moreover, the shared interest in the matrimonial home extends to the furniture, which though purchased by Oslyn's loan is co-owned by Ivor.
- 8 There are many authorities to support a 50% share for each of the home and contents, though financial contribution may not be co-equal, bearing in mind the marriage was as long as 9 years, with commitment expressed several years earlier, and there being a child aged 12 residing at the property as her home. Indeed the court notes both parties still reside there together, though separately.
- 9 Specifically, the court has been reminded of **para 1065 Halsburys Laws of England (4<sup>th</sup>ed)**, **Grant v Edwards et al 1986 EWCA Civ4**, **White v White 2001 UKHL 54**, and **Scatliffe v Scatliffe 2016 UKPC 36**, all of which may be said to flow naturally from **Ulrich v Ulrich & Fenton 1968 1WLR 180**, where Lord Diplock said tellingly:

It comes to this: where a couple by their efforts gets a house and furniture, intending it to be a continuing provision for their joint lives, it is a prima facie inference from their conduct that the house and furniture is a 'family asset' in which each is entitled to an equal share. It matters not in whose name it stands,

or who pays for what, or who goes out to work or who stays at home. If they both contribute to it by their joint efforts, the prima facie inference is that it belongs to both of them equally, at any rate when each makes a contribution which is substantial.

- 10 Further support in local jurisprudence may be found in **Stonich v Stonich 2002** BVI appeal 17 of 2002 where Saunders JA, as he then was, opined *'the court should not pay too much regard to a contribution merely because it is quantifiable in hard currency and too little to a contribution that is less measurable but equally important to the family structure.'*
- 11 Cases raised by Counsel Cassell in support of there being no proprietary interest available to Oslyn were notably **Button v Button 1968** 1WLR457, **Gissing v Gissing 1971** AC 886, **Lloyds Bank v Rossett 1991** AC 107, **Abbott v Abbott 2007** UKPC 53 quoting **Stack v Downden 2007** UKHL 17. However, in *Stack v Downden* supra, Baroness Hale made the pithy observation, *'The search is to ascertain the parties shared intentions, actual, inferred, and imputed, with respect to the property in the light of their whole course of conduct in relation to it.'* Clearly, given the findings in this case, as above, as to shared intention, being that the home was to be jointly owned, on the evidence these mostly old authorities are not on point.
- 12 In consequence, given Oslyn remains the primary carer for Kaylee whose home is the plot, the order of the court is there shall be a valuation of the home and furniture, with liberty to Oslyn to buy out Ivor within three months, up to 08.04.21 (taking over the outstanding mortgage), failing which Ivor shall have three months to buy out Oslyn, up to 08.07.21, failing which the home and furniture are to be sold and the proceeds distributed equally.
- 13 The court has formed the unfortunate view Ivor has been unreasonable as to settling Oslyn's financial interests at the sad end of their marriage, and in light of how his litigation has been unrealistic he shall pay the costs of this action as prescribed costs.

**The Hon. Mr. Justice Iain Morley QC**

**High Court Judge**

**8 January 2021**

