



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN EQUITY

SUIT NO.E284 OF 1997

BETWEEN	DELORIA ROBINSON	APPLICANT
A N D	CARLTON ROBINSON	RESPONDENT

Mr. Patrick Brooks instructed by Nunes, Scholefield, DeLeon & Company for the Applicant.

Mr. M. Hussey instructed by Mrs. Nancy Tulloch-Darby for Respondent.

Heard: February 23, 24, 26, 1999;  
March 3 & 4, & September 24, 1999

GLORIA SMITH, J.

Mrs. Deloria Robinson, teacher and Mr. Carlton Lloyd Robinson businessman were married on the 6th day of August 1975 - the parties moved into the residence they would call their matrimonial home at Belle Plain, Clarendon in or about 1982. Mr. Robinson vacated this residence temporarily in 1985, but he moved back into the house in 1990.

Mrs. Robinson left the premises in 1990 due to disputes between herself and her husband. During the course of the marriage the parties acquired other properties and ventured into a number of businesses. Mr. Robinson could neither read nor write and so Mrs. Robinson was responsible for the day to day management of the business and did all the necessary paper work.

The parties operated between them a joint bank account at the

Royal Bank of Jamaica Limited. Mr. Robinson would from time to time travel overseas and work to send money home to help meet the various expenses the parties incurred.

Mrs. Robinson is seeking by way of Originating summons dated the 8th July 1997 an order to declare the nature and extent of the respective interests of herself and her husband with respect to the following:

(1) All that parcel of land known as 3 Bryants Crescent, May Pen in the parish of Clarendon, being land comprised in Certificate of Title Registered at Volume 1173 Folio 402 and Folio 403 of the Register Book of Titles. These properties are rented as offices to the United General Insurance Company Limited in May Pen in the parish of Clarendon.

(2) All that parcel of land part of Belle Plain Swansea, in the parish of Clarendon on which is situated the matrimonial home of the parties and a farm, being land comprised in Certificate of Title registered at Volume 417 Folio 58 of the Register Book of Titles.

(3) Furniture in the former matrimonial home -

The evidence before the Court is such that with respect to the Relief prayed in (1) the Applicant and the Respondent are the registered joint proprietors of all that real property known as 3 Bryants Crescent. It was transferred to them in December of 1983 in consideration of \$30,000.00 each in respect of Volume 1173 Folio 402 and Volume 1173 Folio 403.

A mortgage was obtained on both properties and in the names of both parties, on the 24th April 1984, from the Royal Bank of Jamaica

Limited, who granted a loan of \$50,000.00 on the security of the property.

The Applicant admits that it was the Respondent who made the initial negotiation to purchase the properties and had paid the initial deposit, but contends that the Respondent did not have sufficient money to pay for the properties in cash, and so he asked her thereafter to help him to complete the purchase of the said property by getting a loan from the bank. She agreed with him that they should get the loan (the said mortgage) in their joint names.

The Respondent on the other hand contends that, the Applicant made no contributions to the purchase price, and as such is not entitled to the benefit of same. Her name was placed on the title, according to his evidence, simply out of convenience as he was often out of the island at the time of purchase, and this would have enabled her to conduct business on his behalf with respect to the properties.

Mrs. Robinson while working as a teacher, managed the stores at 3 Bryants Crescent from 1983 when they were acquired until 1990 when Mr. Robinson took over control of the business - While being manager, she collected the rental, maintained the property, paid the bills and part of the mortgage.

Mr. Robinson describes his wife, as having free access and control over the monies collected; for the use of herself the children and the business.

Mrs. Robinson describes him as having little to do with the business over the period in which she played an integral role in the business.

Mr. Robinson, alleges that while abroad he worked as a mason and washed dishes in restaurants and would send money home regularly

to help pay off the mortgage. The mortgage on the premises was in fact paid off in approximately 3 months ending on the 31st July, 1984.

The facts as presented, beg the question as to what are the principles applied by the Courts in determining whether a party has acquired an interest in property?

Express agreement would be the best possible evidence of a common intention for joint ownership of property. But where there is no such written declaration or agreement, and where the oral evidence given by the parties is in dispute, the Court needs to establish the fact of common intention. i.e. the fact that at the time of acquisition of the respective property there was a common intention that that it would be owned jointly. In determining whether or not there was such a common intention, regard must be had to the conduct of the parties in relation to that intention and also at expenditure incurred by them as a consequence.

As stated by Lord Upjohn in Pettit v Pettit 1970 AC 777 in delivering the Judgment at p.815 he states:-

"Where both spouses contribute to the acquisition of the property, then my own view (of course in the absence of evidence) is that they intended to be joint beneficial owners and this is so whether the purchase be in the joint names or in the name of one. This is the result of an application of the presumption of resulting trust."

However in Edmonson v Edmonson S.C.C.A 87/91 Rowe P. in delivering the Judgment referred to the dicta of Carey J.A. in Lynch v Lynch S.C.C.A. 36/89 at p.10 where he stated:-

"It is now a fact of modern economic reality that many building societies

require as a matter of policy the names of husband and wife to be joined as parties to mortgage loan."

However Rowe P. went on to state that, in that case it was found that the mere fact of the mortgage being issued in the names of the husband and wife was not sufficient to give the wife an entitlement to a share in the beneficial interest of the property - He went on further to state that, the same principle in a sense, applies to the situation where the property is conveyed in the names of both parties - Although prima facie the parties are jointly entitled, evidence may be given to prove that there was no common intention that the property would be jointly owned.

On the facts presented here however, it is found that the Respondent has not rebutted the presumption of a common intention existing between the parties for the purchase of Bryants Crescent. There is evidence to support the view that the intention of the parties was to secure a joint business enterprise.

Both were involved in the mortgage negotiations, but more importantly Mrs. Robinson was integral to the success of the business as Mr. Robinson could not read or write.

According to Mr. Robinson, the Applicant managed the property for around 7 years and that she did all the paper work which was needed to be done - It is felt that, this amounts to conduct from which their intention could be ascertained viz that the property was intended as a continuing provision for them during their joint lives.

I have come to the conclusion that on the facts and in principle, the parties should hold the beneficial interest of the property as joint owners - Hence on the sale of the premises

the proceeds should be divided equally between the parties.

In respect of the relief prayed for paragraph (2) the evidence as presented is that the parties acquired the property which was to be their matrimonial home situated at Belle Plain, Swansea in the parish of Clarendon.

The Applicant's evidence is that the Respondent had shown this property to her sometime between 1979 - 1980, and that they along with their children moved into that house a year later. She admits that at the time the house was purchased, it was the Respondent who had negotiated the purchase and that it was he who had paid the initial purchase price. She contends that, there was an agreement between herself and the Respondent that she would continue to pay the rental for the place they were then living at Longsville (rented premises) and some of the maintenance costs for the children from her salary as a teacher, while he was making payments for Belle Plain and this was a part of her contribution to Belle Plain.

The property was registered in two parts - one part was registered at Volume 417 Folio 58 and the other part as Volume 348 Folio 130. Only the first is the subject of this application - This part was registered in the sole name of the Respondent Mr. Robinson on the 25th day of September 1984.

It is clear, from the date of the transfer that some rental had to be paid in respect of Belle Plain and that rental on a balance of probability was paid by Mrs. Robinson from her salary or from the joint funds of her husband and herself so as to free Mr. Robinson to pay the purchase price.

The Respondent on the other hand contends that the property was paid for entirely by him in cash, that there was no contribution on the part of the Applicant and that she is therefore not entitled to any share in the property - In his evidence however, he admits that the parties operated 2 trucking business, where trucks were leased to Grace Kennedy & Company Limited, one truck being in his name and the other in hers and that they also operated a small taxi service - Both these ventures were operated from the matrimonial home by Mrs. Robinson - He also admits that she did repairs to the property while it was under her control.

What are the legal principles governing the establishment of a trust of the beneficial interest in the property in favour of a person in whom the legal estate is not vested, whether based on express agreement or implied from conduct, and what should be the apportionment of shares in the said beneficial interest from the facts presented?

A resulting, implied or constructive trust was expressed by Lord Diplock at p.790 of his Judgment in Gissing v Gissing 1970 2 ALL E.R. 780 (H.L.) as being one:

"Created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired, and he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so doing he was acquiring a beneficial interest in the land."

He further stated at paragraph f p.790 that:

"an express agreement between spouses as to their respective beneficial interests in land conveyed into the name of one of them obviates the need for showing that the conduct of the spouse into whose name the land was conveyed was intended to induce the other spouse to act to his or her detriment on the faith of the promise of a specified beneficial interest in the land and that the other spouse so acted with the intention of acquiring a beneficial interest. The agreement itself discloses the common intention required to create a resulting, implied or constructive trust. But parties to a transaction in connection with the acquisition of land may well have formed a common intention that the beneficial interest in the land shall be vested in them jointly without having used express words to communicate this intention to one another; or their recollections of the words used may be implied or conflicting by the time any dispute arises. In such a case, a common one where the parties are spouses whose marriage has broken down it may be possible to infer their common intention from their conduct."

The case of Gissing v Gissing in my opinion has laid down quite clearly the foundation that the Courts should build upon, and has put forward the direction the Courts should take in approaching these matters, especially where the evidence of the parties is conflicting.

It is left to the Court to examine the conduct of the parties and infer from their conduct the existence or non-existence of a common intention.

Campbell J.A. (Ag.) in his Judgment in the case of Trouth v Trout S.C.C.A. 27/81 expressed the opinion that, as he understood the law, when husband and wife acquire property such as a matrimonial home,

this manifests an intention to make a continuing provision for their future. In his words at p.99 he stated:-

"If the spouse to whom the legal estate in property is not conveyed, does make substantial financial contribution such acquisition is conceived as being a joint venture or a joint interprise creating "joint property."

He went on to express that, proof of this joint venture is sufficient, not only to create an implied, resulting or constructive trust, but is also sufficient to establish the share to which the said spouse is entitled. Once it is found that the parties had the understanding that their joint endeavour constituted "a joint effort" which is theirs, they must be assumed to have had the common intention of sharing equally in the property.

The facts established from the Affidavits and the oral evidence were that the Applicant and the Respondent operated their business from the matrimonial home - That the Applicant repaired and maintained the premises up until 1990 and that the children were looked after from their business. There is evidence that there was also a farm on the premises housing a number of pigs and goats which Mrs. Robinson would tend and look after.

In my opinion the inference to be drawn is that Mrs. Robinson had free control, access and use of the property and profits, (that she contributed significantly by running the business, running the farm and continuing her teaching job) for the benefit of them both and their children.

The Court is satisfied that it was the common intention of both parties that the contributing wife should have a share in

the beneficial interest and that her contributions were made on this understanding.

In such a situation as the present one, the Court in exercise of its equitable jurisdiction will not permit the husband in whom the legal estate is vested and who has accepted the benefit of the contributions to take the whole beneficial interest merely because at the time the wife made her contributions there had been no express agreement as to how her share in it would have been quantified.

These contributions though indirect were not of an epheremal character, her business acumen and the fact that she alone could do the paper work between them, goes a far way in saying that her contributions sustained the needs of herself and her family.

Lord Denning M.R. in the case of Nixon v Nixon 1969 3 ALL E.R 1133 expressed the view to be taken in situations such as this - He stated at p.1136 the following proposition as it related to the facts of that case, and they are equally applicable in the present case. He said:-

"What is the position of a wife who helps in a business - Up and down the country, a man's wife helps her husband in the business - She serves in the shop - He does the travelling around. If the shop and business belonged to him before they married, no doubt it will remain his after they marry. But she by her work afterwards should get some interest in it. Not perhaps an equal share but some share - If they acquire the shop and business after they marry and acquire it by their joint efforts - then it is their joint property no matter that it is taken in the husband's name. In such a case when she works in the business after, she becomes virtually a partner in it and she is entitled prima facie, to an equal share in it ..... The wife services are equivalent to a financial contribution."

Against this background, and in light of all the circumstances, it is reasonable that the share in the matrimonial home should be equal between the parties from the time they acquired the premises.

The necessary common intention and conduct have been proved to rebut any question of an unequal share.

The parties also sought a determination of questions between them relating to furniture and fixtures at the matrimonial home and farm.

It is ordered that the furniture and fixtures should be divided equally between the parties as those items are also representative of the parties common intentions.