

10/83

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :-

JOYCE LYNCH

Appellant

- and -

JOSEPH CHRISTOPHER LYNCH

Respondent

CASE FOR THE APPELLANT

10. 1. This is an Appeal from the decision of the Record
Court of Appeal of Trinidad and Tobago p.65
(Hyatali C.J., Cross J.A. and Braithwaite J.A.)
dated the 11th day of December 1981 allowing in
part the Appellant's appeal from the order and p.24-25
judgment of the High Court of Justice (Matrimonial) p.55-61
of Trinidad and Tobago (Warner J.) dated the 9th
day of October 1978.
20. 2. By that judgment Warner J. allowed the p.55-61
Appellant's application for ancillary relief
following the dissolution of the marriage p.15
between the parties on the 2nd day of September
1976 by making an order for payment of a lump sum
of \$3,800 by the Respondent to the Appellant
together with costs assessed at \$800. The Court
of Appeal increased that lump sum payment to \$20,000 p.73
with costs of the appeal to be taxed.

10. 3. This Appeal is made pursuant to an Order of Record
the Court of Appeal dated the 19th day of May
1982 granting final leave to Appeal to the
Judicial Committee of the Privy Council. p.76

4. On the 2nd day of June 1975 the Respondent
petitioned for the dissolution of the marriage
between the parties on the grounds that the
marriage had broken down irretrievably, that the
parties had lived separate and apart for a
continuous period of at least two years
20. immediately preceding the presentation of the
Petition and that the Appellant had consented
to a decree being granted. p.1-3

5. By her Answer dated December 1975 the
Appellant challenged many of the allegations made
by the Respondent's Petition and cross-petitioned
for the following relief : p.8

- (1) The Prayer of the Respondent be rejected.
- (2) The marriage be dissolved.
30. (3) The Respondent be ordered to pay the costs
of the suit.
- (4) An Order for a lump sum and/or periodical
payments to be made for the maintenance of the
Appellant.
- (5) An Order for securing the payment of the said
periodical payments.
- (6) An order for settlement of property and for
transfer of property by the Respondent to the
Appellant.

10. 6. On the 14th day of January 1976 a Reply was filed by the Respondent which, save in one minor respect, joined issue with the Answer filed by the Appellant. p.9
7. On the 21st day of June 1976 Warner J. made a Decree Nisi and on the 2nd day of September 1976 the Decree Absolute was made p.16-17
p.15
8. On the 27th day of June 1977 the Appellant applied to the High Court for ancillary relief to her cross-petition for divorce as follows : p.14
20. (1) An Order for a lump sum and/or periodical payments for her maintenance by the Respondent.
- (2) An Order for securing the periodical payments.
- (3) An Order for settlement of property and/or transfer of property by the Respondent to the Appellant.
30. 9. Affidavit evidence in support of the application for ancillary relief was filed by the Appellant on the 18th day of July 1977. Evidence against the said application was filed by the Respondent on the 6th day of July 1977 and the 29th day of July 1977. Those affidavits set out conflicting details of the means and contributions of both parties to the marriage and the maintenance of the former matrimonial home at 29 Crescent Gardens, Mausica Road, D'Abadie. p.19-21
p.22-23
p.10-13
- 40.

10. 10. The application for ancillary relief came before Warner J. on the 11th, 14th, 16th, 18th, 21st and 22nd August 1978 and the 9th and 10th October 1978. The learned judge heard both parties give extensive evidence on oath and found that the Appellant's evidence was more reliable than that of the Respondent. The learned judge duly ordered that the Respondent do pay to the Appellant the sum of £3,800 by two instalments together with assessed costs of £800. No order was made for periodical payments nor for any transfer of property.
20. 11. In her affidavit sworn on the 18th day of July 1977 the Appellant deposed that the former matrimonial home had a value at that date of not less than £90,000. At the trial the Respondent gave evidence that its value at that time was about £60,000. In his judgment Warner J. did not make a finding as to the value of the former matrimonial home at all, but did state that he had not taken account of the increased value of the house between 1974 and the date of the judgment on the 9th day of October 1978.
30. 12. On the 5th day of February 1980 the Appellant filed an Amended Notice of Appeal to the Court of Appeal. The Grounds of Appeal were as follows :-
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p.25-55

p.24-25

p.60

e.29-31

p.24-25

p.19-21

p.20
e.7-11

p.51&p.55-6
e.17-18

p.61
e.38-40

p.62-64

10. "(1) That the decision of the Learned Judge was against the Weight of evidence.

p.63
e.12-38

(2) The Learned Judge failed or omitted to decide upon the rights of the appellant in accordance with the provisions of Section 24, 26 and 27 of the Matrimonial Proceedings and Property Ordinance and in particular failed to exercise the power of the Court to place the Appellant in the financial position in which she would have been if the marriage had not broken down.

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(3) The Appellant was in the circumstances established by the evidence entitled to relief immediately after the breakdown of the marriage and the Learned Judge ought to have made orders for periodical payments and/or lump sum and for a transfer of an interest in the matrimonial home sufficient to protect her rights.

(4) The award of a lump sum payment of \$3,800.00 was wholly inadequate to meet the entitlement of the appellant in the circumstances disclosed by the evidence and in particular it failed to take into account the need of the Appellant for a roof over her head and her maintenance needs while endeavouring to qualify for entry into the Legal profession."

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13. On the 11th day of December 1981 the said Appeal was heard and allowed in part in that the said judgment of Warner J. was varied from a lump sum of \$3,800 to a lump sum of \$20,000 to be paid by the Respondent to the Appellant together with the taxed costs of the appeal.

p.65-66

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14. The judgment of the Court of Appeal was delivered by Cross J.A. who stated that this was the first case where the Court of Appeal had been asked to review a judgment granting ancillary relief pursuant to the discretionary powers conferred by sections 24 and 26 of the Matrimonial Proceedings and Property Act. The Learned Justice of Appeal reviewed the provisions of Section 27(1) of the Act and the facts of the case.

p.66-73

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p.67
e.30-39

10. 15. Insofar as the application for the transfer of property was concerned the Court of Appeal held that Warner J. was right in not ordering a transfer of property on the grounds that the former matrimonial home was acquired by the husband before the marriage, the Appellant had left and the Respondent then occupied the house with his second wife :

p.71 e.35
- p.72

Wachtel v. Wachtel (1973)2 W.L.R. 366.

20. Kowalczyk v. Kowalczyk (1973)1 W.L.R. 930.

Backhouse v. Backhouse (1978)1 W.L.R. 243.

16. Insofar as the application for periodical payments was concerned the Court of Appeal held that Warner J. was right in not ordering periodical payments on the grounds that :

p.73
e.1-13

30. "... the justice of the case will be met by ordering the payment of a lump sum to enable the wife to make a deposit on a suitable home of her own so that she would be placed in the position in which she would have been if the marriage had not broken down. In view of the wife's probable earnings in the near future, the fact that there is no child of the marriage and the husband's present situation and future prospects, I think an order for periodical payments would be inappropriate and unjust."

40. 17. The Court of Appeal ordered that the lump sum payment should be increased to \$20,000 on the grounds that :-

p.73
e.14-30

"The wife has contributed to the extension of the property and to repairs. She has worked during the whole of their life together and after the purchase of a car in 1971 carried the burden of feeding the husband for 3 years. She has had to house and maintain

10. herself since the breakdown of the marriage. An award of what amounts to just about two months of the husband's salary is, in my opinion, clearly inadequate. I would order the husband to pay the wife a lump sum of \$20,000 on or before 31st March 1982. Taking into account his salary at the time of the trial - it is probably much higher now - and the value of his property he should have no difficulty in raising a second mortgage."

20. 18. In the judgment of the Court of Appeal, Cross J.A. stated that :

30. "Apart from a motor car and a few shares jointly owned with the wife, the husband's property consists solely of the house which he occupies with his present wife. He values it at \$60,000 while the wife claiming that it is worth \$90,000. The real value probably lies somewhere between the two figures. In any case the amount of the mortgage is \$10,500. The wife owns no property."

19. Against this Judgment the Appellant filed a Notice of Motion and Affidavit on the 29th day of December 1981 seeking leave to appeal to the Judicial Committee of the Privy Council. On the 19th day of May 1982 the Court of Appeal made an order granting the Appellant final leave to Appeal p.76

20. The Appellant respectfully submits that the Court of Appeal erred in law in its application of the provisions of Section 27(1) of the Matrimonial Proceedings and Property Act to the facts of the instant case in that it took an arbitrary sum of \$20,000 to be the relevant lump sum payment to the Appellant given the value of the Respondent's property. The said sum was 31½% of the value of the Respondent's property. Having regard to the facts

10. found by Warner J. and applied by the Court of Appeal and the provisions of Section 27(1) of the said Act the proper proportion lump sum which should have been awarded to the Appellant was one half.

21. In particular the Appellant relies upon the following matters :

- (a) The fact that at the trial before Warner J. the Respondent was earning approximately £1700 per month whilst the Appellant's notional salary was approximately £1200 per month. p.68 e.50-
- (b) The Appellant's debts at the date of trial were approximately £10,000. p.69 e.39-45
- (c) The specific contributions made by the Appellant during the subsistence of the marriage. p.70-e.15-
p.71 e.20

22. The Appellant respectfully submits that the Court of Appeal erred in law in deciding that the value of the former matrimonial home should be assessed as at the date of the trial before Warner J. in August 1978. The Court of Appeal impliedly rejected the approach of Warner J. who held that he should value the former matrimonial home at a 1974 value. In the premises the Court of Appeal valued the house at a figure which was erroneous. It should have valued the house at the 11th day of December 1981.

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10. Mulholland v. Mitchell (1971) A.C. 666;
Murphy v. Stone-Wallmore (Charlton) Ltd
(1969) 1 W.L.R. 1023;
Warren v. Warren (1983) 13 Fam. Law 49.

23. The Appellant will seek the leave of the Judicial Committee to adduce fresh evidence as to (a) the value of the house at the date the appeal was heard by the Court of Appeal and (b) the value of the house at the date the appeal is heard by the Judicial Committee. Such evidence will show that the value of the house has increased considerably (a) between the date when Warner J. gave his judgment and the hearing of the appeal before the Court of Appeal and (b) since the date when the Court of Appeal gave its judgment.

24. Further or in the alternative the Appellant will respectfully submit that the appeal should be remitted to the High Court to determine the correct current valuation of the house at the instant time.

25. It is respectfully submitted that the Order and judgment of the Court of Appeal was wrong and should be set aside and that this appeal be allowed, with costs, for the following amongst other :

R E A S O N S

1. BECAUSE the Appellant is entitled to a one half share in the former matrimonial home.

10. 2. BECAUSE the value of the former matrimonial home should be assessed at the date of the hearing before the Court of Appeal.
3. ALTERNATIVELY BECAUSE the value of the former matrimonial home should be assessed at the date of the hearing before the Judicial Committee of the Privy Council.
4. BECAUSE fresh evidence should be admitted so as to prove the relevant values of the former matrimonial home.
5. ALTERNATIVELY BECAUSE the Appeal should be remitted to the High Court for fresh evidence to be admitted so as to prove the relevant values of the former matrimonial home.

WILLIAM BIRTLES

IN THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL

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B E T W E E N :

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Appellant

- and -

JOSEPH CHRISTOPHER LYNCH

Respondent

CASE FOR THE APPELLANT

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