

Joyce Lynch

Appellant

v.

Joseph Christopher Lynch

Respondent

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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REASONS FOR DECISION OF THE LORDS OF THE  
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE  
14TH FEBRUARY 1985, DELIVERED THE 21ST MARCH 1985

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*Present at the Hearing:*

LORD SCARMAN

LORD DIPLOCK

LORD BRANDON OF OAKBROOK

LORD BRIGHTMAN

LORD TEMPLEMAN

*[Delivered by Lord Scarman]*

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In this appeal Joyce Lynch ("the wife") appeals from the decision of the Court of Appeal of Trinidad and Tobago ordering the respondent, her erstwhile husband, Joseph Christopher Lynch ("the husband"), to make payment to her of a lump sum of \$20,000. The Court of Appeal, giving judgment on 11th December 1981, allowed the wife's appeal from an order of the High Court of Justice (Matrimonial) made three years earlier awarding her a lump sum of \$3,800. Dissatisfied with the amount ordered by the Court of Appeal the wife appealed to the Privy Council. Their Lordships heard the appeal in February 1985 and on the conclusion of the hearing announced their decision to dismiss the appeal and to give their reasons later. Their Lordships took this course so that the protracted proceedings could be brought to an end without further delay.

The proceedings began with the husband's petition for divorce on 2nd June 1975: the marriage was dissolved by decree absolute on 2nd September 1976: the wife applied for ancillary relief on 27th June 1977: Warner J. gave judgment on her application on 9th October 1978, and the Court of Appeal on 11th

December 1981: three years later, in February of this year, finality as to the financial provision for the wife was ultimately reached by the announced decision of the Board. Their Lordships do not know the causes (for they suspect there are more than one) of this intolerable delay - ten years all but for a few months between initiation of suit and determination of the appropriate financial provision for the wife. But it is unacceptable, being a severe injustice to both parties. Their Lordships would suggest an inquiry into the causes of the delay so that the conduct of matrimonial business in and by the courts may be reviewed and such delays obviated in the future.

Ten years to sort out the consequences of the breakdown of a marriage which was childless and lasted effectively for no more than seven years, such is the background against which their Lordships have had to consider the appeal. Yet there has only been one live issue in the case since October 1978 when Warner J. delivered the judgment of the High Court, namely the amount of the lump sum to be ordered.

The parties married on 3rd June 1967. They had no children. The marriage broke down in 1973: in September 1974 the wife left home. There is no problem as to conduct: it was a case of irretrievable breakdown followed by separation. The husband has married again and now has a child. The wife has not re-married but since leaving home has pursued a successful course of study and is now, their Lordships were told by her counsel, a fully qualified lawyer.

The husband is a police officer. By October 1978 he had become a police sergeant, a rank which he still holds. Warner J. found that with allowances he enjoyed an income from his job of some \$1,800 a month. He owned the house in which he lived and still lives. With the exception of a motor-car and a few shares, his salary and his home were and are the extent of his assets. The value of the home is in issue. He had bought the land in 1967 shortly before his first marriage and built the house in the early days of the marriage. The wife accepts that the house, which was their matrimonial home, is the property of the husband: and she does not now seek a transfer of property order or claim any beneficial interest in it. Her claim is for financial provision based on her need and on her contributions in cash and services to the welfare and support of their married life. She now accepts the finding of the judge that the appropriate provision is a lump sum and submits that a proper figure for the lump sum should be assessed by reference to the current value of the house: she submits that the figure should be one half of its value.

During the marriage the wife had been in salaried employment as a civil servant earning something between \$800 and \$1,100 a month. Warner J. examined the detail of the evidence and concluded that she had made a substantial financial contribution to the welfare of the family and had also performed her wifely services working in the home. The Court of Appeal did not understand how the judge's award of a mere \$3,800 could stand with his findings as to her contributions. The judge had apparently concentrated his attention on this factor but, while finding her evidence more reliable than the husband's, had either overlooked or heavily discounted her evidence that she contributed between \$150 and \$200 per month towards the household expenses. Their Lordships respectfully agree with the Court of Appeal that upon the evidence accepted by the judge the figure of \$3,800 for a lump sum unaccompanied by any order for periodical payments cannot stand.

Yet their Lordships also agree with the judge and the Court of Appeal that this was not an appropriate case for an order for periodical payments. On its facts, it is an unusual case. On leaving her husband, the wife abandoned salaried employment to become a law student. She retained her civil service appointment but save for part-time work in various government departments during vacations she had no income. She looked for support to relatives who contributed enough to enable her to continue her studies: her husband made no contribution. Her need now is for a sum sufficient to repay those who helped her. She obtained a law degree at the University of the West Indies and then took a diploma course in oil law at a Scottish University. Successfully completing that course, she returned to Trinidad and has now passed her professional examinations to become a fully qualified lawyer. Contrasting the respective financial situations of husband and wife the Court of Appeal commented that:-

"... it is highly unlikely that the husband's future earnings will ever approach those of the wife whose legal qualifications together with her special training in Petroleum Law virtually assure her of a successful and prosperous career."

Who can be better placed than the Court of Appeal to make this estimate of the wife's future?

By the time the case reached the Court of Appeal the question of fact still in dispute was the value of the house. Neither party had adduced any expert evidence. The husband put a value upon the house of \$60,000 and asked the court to note the existence of a \$10,500 mortgage. The wife was claiming that the house was worth \$90,000. The Court of Appeal understandably settled upon a figure somewhere in between.

Before the Board the wife has sought to adduce professional evidence of the current value of the house and has submitted that the Board should either make its own assessment of value or remit the question to the High Court. Their Lordships reject both courses. The first is contrary to the practice of the Judicial Committee which is not to interfere in matters of quantum save in rare and exceptional cases. Their Lordships would reiterate what was said in a recent appeal on quantum of damages in a personal injury case which, like the present, reached the Judicial Committee from Trinidad & Tobago. In *Selvanayagam v. University of the West Indies* [1983] 1.W.L.R. 585 the Board emphasised the unwisdom in most cases of substituting their assessment of pecuniary compensation (in that case, damages for personal injuries) for that of the local court and repeated Lord Diplock's warning, which he gave in the Australian appeal, *Paul v. Rendell* [1981] 55 A.L.J.R. 371 (376b and 377b), as to the risks inherent in the Board's lack of knowledge of local circumstances. The risk is, their Lordships believe, particularly serious in the valuation of property.

Their Lordships reject the second course for a number of reasons. The relevant value of property in cases such as this has to be primarily ascertained at the date of hearing of the application in the High Court, or, if the Court of Appeal should be, as they were in this case, minded to set aside the judge's order, at the date of the hearing of the appeal. Their Lordships can envisage the possibility that in some cases where the quantum of compensation or financial provision is the issue it might be just for the Board to take a later value, e.g. a current market value. But certainly not in the present case. The wife's need and the scale of her contributions, which are critical factors in this case, are largely of the past. The wife's present situation and future prospects when contrasted with those of the husband make it unnecessary and inappropriate to burden the husband with a capital provision which would tax his resources and cause him difficulty in meeting his commitments. The wife's need to repay those who helped her must, however, be met, and she must have a sum to compensate her for her past contributions.

It would be wrong, where the wife has far the better financial prospects and there is no suggestion that she has any property right in the house, for her to be able to take advantage of the lapse of time between the hearing of her application and the final disposal years later of her appeal. Her need and her contributions can be met without in effect transferring to her a property interest in the home which (quite rightly) she no longer claims directly. Their Lordships, therefore, refused leave to the wife to adduce evidence of today's value of the house and

dealt with the case on the basis of the Court of Appeal's finding that its value for the purpose of these proceedings could be reasonably estimated upon such evidence as was available at "somewhere between" \$60,000 and \$90,000. The median figure would be, on this basis, \$75,000 from which has to be deducted the amount of the husband's mortgage of \$10,500. The house's net value to the husband would be on this calculation \$64,500. The Court of Appeal's award can accordingly be seen to be about one-third of the net value of the house as at the date of their award.

The wife's case is that the sum of \$20,000 is so inadequate that the Board should intervene to correct it. She should have a lump sum, according to her submission, which represents at least half the value of the house and reflects also the value of her contributions to the welfare of the family - which ran at something like \$2,000 a year for some years of their short married life.

The issue for their Lordships is not whether they would have awarded more or less than the Court of Appeal but whether the Court of Appeal's award is so inadequate as to be explicable only upon the basis of error of law.

The relevant law is to be found in the Matrimonial Proceedings and Property Act 1971. Part II of the Act, which deals with "Maintenance and Related Matters", is in substantially the same terms as Part II of the English statute, the Matrimonial Causes Act 1973 before its recent amendment by the Matrimonial and Family Proceedings Act 1984, sections 3 to 7. S. 24(1) of the 1971 Act empowers the court on granting a decree of divorce or at any time thereafter to make one or more of a number of orders by way of financial provision for a party to the marriage: amongst the orders which the court can make are an order for periodical payments and an order for a lump sum. S. 27(1) sets out the matters to which the court is to have regard in deciding whether to exercise its powers under s. 24: they include:-

"(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;

.....

(f) contributions made by each of the parties to the welfare of the family, including any

contribution made by looking after the home or caring for the family;

.....

(h) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring;"

And the sub-section concludes with these words of principle:-

"... 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".

In the present case the Court of Appeal's attention was particularly directed to the earning capacity and financial resources of the parties now and in the foreseeable future: to the contributions made by each of them to the welfare of the family during the marriage: and to the financial position of the parties after the breakdown of their marriage contrasted with what it would have been if the marriage had continued. In their Lordships' opinion the Court of Appeal faithfully discharged their statutory duty to consider these and all the other matters bearing on the financial provision to be made for the wife. They came to the conclusion that her need was short-term, that her future prospects were excellent, and that in all the circumstances a modest lump sum of \$20,000 was reasonable. They were not given the evidential assistance which they might have expected as to the value of the house. But, if ever there was a case for a "clean break" (*Minton v. Minton* [1979] A.C. 593) and for limiting the provision for the wife to a sum which went no further than to meet her need and to compensate her for her past contributions to the family life which sadly did not endure for very long, it is this case. The marriage has imposed no future burdens or responsibilities upon the wife. She is well placed to achieve a standard of life far higher than the husband is ever likely to attain. In their Lordships' view the approach of the Court of Appeal to the facts of this case cannot be faulted in law: and their view of the amount to be ordered, being the assessment of the court possessing the knowledge of the local circumstances, must stand.

The appeal is, therefore, dismissed. The wife must have her costs in the High Court and the Court of Appeal: the husband must have his costs of the appeal to the Board.

