

IN THE SUPREME COURT
OF TURKS AND CAICOS ISLANDS

Case number D 27/07

BETWEEN

ALEJANDRO BAROTTI

Petitioner

AND

CANDY GIGI BAROTTI

Respondent

T Prudhoe and N Coleman for petitioner/husband
J Rutley and P McKnight for respondent /wife

Hearing: 16 March 2009

Ruling: 23 March 2009

Ruling

A decree nisi has been granted on the husband's petition on the grounds of the wife's admitted adultery. The wife's answer to the husband's petition had sought provision for the wife and the sole child, Giselle and all matters of ancillary relief were adjourned

Numerous affidavits have since been served in an attempt to achieve disclosure of assets and at one stage to try and reach an agreed settlement. In the face of an almost total lack of success, the Court ordered there should be disclosure using the English Form E as a general guide. The completed forms were filed on 15 January 2009. Although the husband has made apparently full disclosure, the wife has maintained, and continues to maintain, that he has substantial undisclosed assets. The present hearing is to ascertain the position and to order appropriate relief.

At the start of the hearing, Mr Prudhoe for the husband applied for an order that the wife make proper application for ancillary relief on Form 16 in accordance with the Rules. I mistakenly understood that had subsequently been waived but, after the wife's and her witnesses' evidence had been completed, the husband's application for Form 16 was renewed.

It had become apparent during the wife's case that her attorney was intending to seek some form of property distribution and the husband's renewed application for Form 16 was made in an attempt to clarify exactly what was being sought. An adjournment was taken and the Court ordered Form 16 should be filed in the period of the adjournment.

Mr Rutley, for the wife, maintained that the Courts powers were much wider than those which had been indicated by the Court earlier in the hearing and should include some form of order for sale or distribution of real property. I heard counsel on that matter and give this ruling to clarify the Court's powers under the Divorce Law Ordinance and the Rules

Section 3 of the Divorce Law Ordinance gives this Court jurisdiction in divorce and matrimonial matters. Mr. Rutley submits that section 4 also allows this Court all the powers of the Court of Chancery in England and, on that basis, relies on the equitable jurisdiction of the Chancery Division to obtain a distribution.

Section 4 provides:

"The Supreme Court shall have, in addition to its own powers, all the powers of the Court of Chancery necessary to enable it to exercise such jurisdiction as is by this Law conferred on it, and for the purpose of enforcing its orders and decrees."

I do not consider that assists his case. The powers granted by that section are only those necessary to enable it to exercise the jurisdiction given under the Divorce Law Ordinance. It does not extend the jurisdiction of the Court beyond that provided by the Ordinance. It gives the Court power to grant ancillary relief in respect of decrees for judicial separation, nullity, restitution of conjugal rights and divorce.

The powers of the Court to make provision for the wife following divorce are set out in section 30:

“30 (1) On any decree for the dissolution ... 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 for any terms not exceeding her own life, as ... it deems reasonable ...

(2) In any such case as aforesaid the court may, if it thinks fit, by order, either in addition to or instead of an order under subsection (1) of this section, direct the husband to pay to the wife during the joint lives of the husband and wife such monthly or weekly sum for her maintenance and support as the court may think reasonable ...”

This is followed by a proviso governing subsequent applications for modification of the original order. Provision for the children of the marriage is covered by sections 36 to 38.

I consider it is clear that section 30 only allows the Court to secure a single gross sum or an annual sum paid for a period of years not exceeding the wife's own life. The Court must be satisfied with the manner in which the sums are secured and must set a term of years it deems to be reasonable over which any annual sum is to be paid.

Section 30(2) allows the Court either in addition to an order for a secured gross or annual sum under subsection (1) or instead of any such order, to order such monthly or weekly maintenance payments as it thinks reasonable. The parties may find it instructive to consider the basis upon which Hallchurch CJ approached the assessment of an adequate lump sum or periodic payment in Joy Hanchell v McAllister Hanchell; Case no D 5/96 (21 August 1997):

“Section 30 ... empowers me to make a lump sum order and/or a periodical payments order in favour of a wife if I am satisfied on the balance of probabilities that it is fair and just to do so, bearing in mind the husband's ability to pay, the fortune of the wife, if any, and the conduct of the parties.

The aim of the court is to put both parties into the financial position in which they would have been if the marriage had not broken down so far as it is practicable.”

There are no powers given to the Court to order the sale or distribution of land or, indeed, any property for the benefit of the other spouse except section 57, which gives some powers to order settlement of property held by a guilty wife for the benefit of the husband and the children, and section 38, which allows the Court after decree absolute to inquire into and order the settlement of property previously settled in an ante nuptial or post nuptial settlement for the benefit of the children or the parents.

The matters which, if sought, must be included in Form 16 are set out in rule 3(2) of the Matrimonial Causes Rules in particular, in the present case, (2)(e) and (g).

Having ordered an application for ancillary relief to be made on Form 16 at this late stage of the proceedings and following my earlier direction to make declaration on the English Form E as far as is appropriate here, I waive the requirement for the husband to file an affidavit of property and income in accordance with rule 45(2).

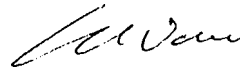
Mr Rutley has suggested that this Court might rule on whether the various properties held by the parties are or could be subject to some form of trust and to settle them accordingly. In the case of

Helen Mercedes Thomas v Franklyn Kirby Thomas; Case no D 8/99 (6 April 2000), Ground CJ explained:

"I do not think that the Divorce Ordinance as it now stands gives me the power to vary property rights other than by consent. The husband has a half interest in the property and I cannot take that away from him. I could, of course, do that under a more modern system but I cannot pretend that the Ordinance is something which it is not. That very much ties my hands in dealing with this matter."

He later described his powers under the Divorce Law Ordinance as "inadequate" to give any relief under a purported trust; Collette Bubnic v Adrien Lanteigne; Case no CL 41/98 (24 May 2001).

23 March 2009



Gordon Ward
Chief Justice

