

No Special
Consideration

IN THE MATTER of the Matrimonial
Property Act, 1976

BETWEEN

CHRISTINE ALEXA GILBERT
of R.D.2, Hamilton,
Married Woman

Applicant

A N D

ANTHONY LEO GILBERT
of Hamilton, Fisherman

Respondent

Hearing: 9 March 1981

Counsel: Mr Jerram for Applicant
Mr Houston for Respondent

Judgment: 2 April 1981

JUDGMENT OF GREIG, J.

In my interim judgment of 4 November 1980 I dealt with a number of the items of matrimonial property in dispute but was unable to deal with what was described as a motor home, insurance policies, family and other chattels and the electrical business which had been operated in partnership. I hoped in November 1980 that the parties might have settled their differences on the remaining items but that hope was in vain.

The parties have now filed further affidavits and have appeared before me for further cross-examination. Their attitude towards each other is, if anything, more

bitter than it was and they are continuing to dispute about minutia of the assets which they owned on separation. I should say at once that I am not able to come to any conclusion as to the electrical business because there is still some accounting dispute, the substance of which, has not been presented to me at all. In addition, I am unable to come to any final conclusion as to the insurance policies as there is still some lack of evidence as to the surrender value of them. What seems clear about the insurance policies however is that it is agreed that the surrender values will be shared equally in respect of two policies in the names of the husband and wife and that a third policy in the name of the child will remain outside the matrimonial property dispute. I hope that once the surrender values have been ascertained no further recourse will be required to me in respect of them.

I deal first with the family chattels and other chattels. A number of these items were valued in 1980 by Bonham's Auctions in Hamilton. The real dispute in respect to these chattels and the valuation is that the wife claims that some of these in her possession are post-separation property and in respect of the Zachary organ and some other items, that she is entitled to credit for post-separation contributions.

I accept that some minor items should be treated as post-separation property. In respect of the organ that seems to have a much reduced value, presumably

as a secondhand article. It was bought on hire purchase and some of the early payments were made either by the husband or the wife, or both of them, before separation. The payments made since separation have clearly done nothing to increase the value of this item. Other post-separation contributions related to maintenance and repair of certain items and again have done nothing to increase the value. In my view, it is not appropriate to give in the exercise of my discretion, any credit to the wife in respect of those alleged post-separation contributions. In default of any other evidence and since there is no suggestion that there has been any substantial change in values since separation, I think the appropriate way to deal with those chattels is on the basis of the valuations made by Bonhams.

I find in respect of those chattels that the husband has in his possession chattels worth \$204 and the wife has in her possession, chattels worth \$4,700. That latter figure takes into account the adjustments which I think are appropriate.

There are a large number of chattels outside those valued by Bonhams which are alleged to be in the possession of the husband or the wife. There is substantial dispute as to the existence or otherwise of these items and of their value. It is clear however that the husband and the wife have in their possession, a number of chattels which fall for division between them and which they did not disclose at an earlier stage. It is clear that each of them

has in various ways dealt with those assets or some of them without regard to the rights or interests of the other.

In face of the dispute between them as to the existence or otherwise of these items and of their value and of the lack of any precise evidence as to value of those which are admittedly in, or were in possession of either of them, I do not propose to deal with all the items in detail. I have gone through the various allegations and counter-claims both in affidavit and oral evidence in respect of these items. In the end, as far as the husband is concerned, it seems to me that there are only a few items of any real value and these include the gas plant, guns and some wire. In respect of the husband, I find that the chattels of which he has, or had possession of, including those valued by Bonhams, are of a total value of \$550. That amount is to be divided equally between the husband and wife.

As to the wife, there are a very large number of items, a number of which have now been sold at what appears to have been very much reduced prices. The major items include the mower, some barbed wire and other wire, some electrical trunking, a sow and a television aerial. It is to be noted that the television aerial and its value is a matter agreed upon.

Having regard to the evidence I find in respect of the chattels in the possession of the wife, including those valued by Bonhams, have a value of \$6,135. That

sum is to be divided equally between the husband and the wife.

In respect of the chattels there will be an order that those in the possession of each of them will vest in the possessor, subject to the payment of the half share of the value I have found.

In regard to the motor home, there was at an earlier stage evidence of an arrangement put forward perhaps tentatively as a compromise that it be valued at \$3,500. There is now a valuation by a motor firm in Tauranga at November 1980 of \$2,200. There was some evidence that as part security for an advance to the husband, it was treated as having a value of over \$6,000. It was suggested that some further steps be ordered or a further valuation of this item. It is clear that this item is in an unfinished condition and has decreased in value since separation. I think that the appropriate course for me is to fix a value of this item. Having regard to the various pieces of evidence which relate to its value, I fix the value of it at \$3,500. I order that it will vest in the husband and he is to pay half of that.

Taking into account the values already settled in respect of the boat and the Chevrolet Vega motorcar and the values I have now fixed for the other items and assuming, as appears to be the case, that the value of the tractor, lathe and welder has been credited as to \$400 each to the parties, it seems to me that the assets

held and which I have ordered to be vested in the husband are valued at \$22,950 and the assets likewise of the wife are valued at \$11,075. Each are to share equally in those amounts and the crediting and debiting as between them will be paid from the half shares in the proceeds of the house, the total of which is \$54,104.91.

That leaves only for settlement the insurance policies and the electrical business. Leave is reserved to the parties to make any further submissions to the Court that may be required. I make no order as to costs.

W. J. T.