

NEW
IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

116
M.775/83

575

IN THE MATTER of the Matrimonial
Property Act 1976

BETWEEN

BETTY JEAN CORFIELD

Plaintiff

A N D

ALVA GLEN CORFIELD

Defendant

Hearing : 30th April 1984

Counsel : P.A. Fusic for Plaintiff
No Appearance for Defendant

Judgment : 30th April 1984

(ORAL) JUDGMENT OF BARKER, J.

This is an undefended application under the Matrimonial Property Act 1976. I shall refer to the parties as "the husband" and "the wife".

The parties separated in August 1970. The wife, who brings the present application, has not heard from the husband since about 1973. He deserted her in August 1970 and went to Australia where he is believed still to be. The wife has no knowledge of his present whereabouts; he has not communicated with her or her children since he returned for a brief visit to New Zealand in 1973; service on him of these proceedings was effected by substituted service, namely, by an advertisement in an Australian newspaper.

At the time of the separation, the wife was left with the custody of the two youngest children of the marriage who were then aged 6 and 15; there are two other children of the marriage who were born in 1951 and 1953 respectively; they were not dependent on the parties at the time of the separation.

The husband has taken no steps to maintain either the wife or his children who have all ceased to be dependent. The wife obtained orders in the Magistrates' Court (as it then was) on 7th May 1971 for separation, custody, maintenance and possession of the matrimonial home. The husband has never obeyed the maintenance orders; according to the most recent information supplied by the Social Welfare Department, the amount of arrears owing to the Department on the maintenance orders is \$8,540; the amount of arrears owed by him to the wife in addition is \$3,750.

The sole assets of these parties were the house situated at 77 Vine Street, Mangere East, and the furniture (which would now be of negligible worth). This house was purchased by the parties in June 1960 for \$7,500. They received \$2,000 from capitalisation of family benefit; they had a first mortgage from the State Advances Corporation (as it then was).

The balance of principal outstanding under the mortgage as at 6th April 1984 was \$1,495. The family benefit charge was largely paid off by the date when the parties separated. A registered valuer has filed an affidavit to the effect that the market value of the house property is \$40,000 including floor coverings and drapes, estimated at \$2,000. The wife deposed that she has paid the outgoings on the house for the last 14 years;

Currently the rates (including water rates) are \$430 and mortgage repayments, \$22.86 per month.

Since the separation, the wife has carried out certain improvements to the house; she built a porch and deck and estimates that the cost of her so doing was at least \$4,500. However, there is no residual value remaining as the porch has been removed. Her capital repayments under the mortgage, since separation, total \$2,607.

It is clear that the wife has, with limited means, paid off the house with no assistance from the husband. She is now aged 51; she is working fulltime as a shop assistant, earning \$166 net. She has savings of \$778. She had to bring up her two youngest children single-handed without any assistance, let alone interest, from their father.

In my view, this is a classic exceptional situation which I discussed in Bromwich v. Bromwich, (1977) 1 N.Z.L.R. 613 which was approved by the Court of Appeal in Meikle v. Meikle, (1979) 1 N.Z.L.R. 137 and followed by Hardie Boys, J. in Beams v. Api (1980), 3 M.P.C. 4.

Accordingly, I have no hesitation in fixing the interest in the matrimonial home of the husband as at the date of separation; this was the approach which I adopted in Bromwich's case which was very similar; the only material difference from Bromwich's case was that, at the date of the Court hearing, the wife still had dependent children living with her.

The value of the matrimonial home as at the date of separation is considered by the valuer to be \$9,600. The amount owing under the mortgage then was \$4,108 and under the family benefit charge, \$122. The half-share of the respondent is \$2,687.41.

The only thing that concerns me is what one should do with this amount. In Beams v. Api, Hardie Boys, J. ordered that the husband's small share be paid to the Public Trustee to be held by him on the husband's behalf to earn interest until claimed. Clearly, the Public Trustee is the appropriate agency to hold monies for persons who cannot be located. The only difference in this case is whether, having in effect penalised the husband for his disregard of his obligations by assessing the value of the home as at the date of separation and not at the date of hearing, one should further penalise him by not awarding him interest on the money which is now held to be his.

In Bromwich, I did not award interest because the house was still being used as a home for dependent children; such is not the case here.

I think it appropriate that a charge in favour of the respondent be created to bear interest at a modest rate until such time as the property is sold, with liberty to apply. Interest need not be paid by the wife but of course would have to be calculated and added to the husband's share. Another difficulty is ensuring proper registration of his charge.

I think the mechanics of this rather unusual situation

require that the Public Trustee prepare a charge in which he is to be trustee on behalf of the respondent in the sum of \$2,687.41 less the costs to which I shall later refer. Initially, the costs of the Public Trustee will have to be paid by the wife but she will be able to recover these from the husband's share in the event of the property being sold.

I therefore make the following orders:

- (a) That the respondent's share as at date of separation in the house at 77 Vine Street, Mangere East, being all the land contained and comprised and described in Certificate of Title 1804/57, North Auckland Registry, be fixed at \$2,687.41;
- (b) That the joint family home in respect of this property be cancelled;
- (c) That subject to the registration of the charge, to be referred to, an order be made vesting the house in the sole name of the plaintiff;
- (d) A condition of the vesting of the property in the sole name of the plaintiff is that there be a charge registered against the title and given by the wife in favour of the Public Trustee as trustee for the defendant in the sum of \$2,687.41 less the costs referred to in paragraph (e). This sum is to earn interest at the rate of 6%. Interest need not be paid but is to be added to the sum secured until sale or earlier payment. The amount, including interest, is to be payable to the Public Trustee upon sale of the property or at the further order of the Court;
- (e) Out of the said sum, there is to be deducted the disbursements of this application, which would include the costs of advertising and the costs of valuation.

These additional costs were caused purely by the irresponsibility of the husband; they

should be deducted from the amount which has to be set aside as the husband's entitlement.

Liberty to apply is reserved to both parties and to the Public Trustee. I am happy to see counsel if necessary if any question of implementation of this order arises.

R. S. Barker, J.

SOLICITORS:

Glaister, Ennor & Kiff, Auckland, for Plaintiff.