

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO. 8/95

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A.

BETWEEN RUPERT ROBINSON APPELLANT
AND JENNIFER ROBINSON RESPONDENT

Donald Scharschmidt, Q.C., instructed by
Robinson, Phillips & Whitehorne for appellant

Carleen McFarlane, instructed by
Ernest A. Smith & Co. for respondent

October 10 and 25, 1995

PATTERSON, J.A.:

The respondent Jennifer Robinson is the wife of the appellant Rupert Robinson; they were married on the 18th February, 1980. The marriage has broken down, apparently irretrievably, and so the wife sought to have the question as to property rights determined. On the 5th September, 1991, she applied by summons under the provisions of the Married Women's Property Act to the resident magistrate for the parish of St. Ann for determination of her interest in property which she claimed had been acquired during the course of the marriage. She listed the property to be (a) matrimonial home at Lot 6, Mervin's Park, St. Ann, (b) auto parts business at 61 Main Street, St. Ann's Bay, (c) motor vehicles, (d) current and savings accounts, (e) numerous items of furniture.

The resident magistrate heard viva voce evidence over a number of days and finally determined the matter on the 6th December, 1994. The order of the court fixed the wife with a "50% share" in the matrimonial home at Mervin's Park, St. Ann, "one half share" in a Chevrolet pick-up, numerous items of furniture, and a "50% share" in the White River

property. It was further ordered that the Mervin's Park property be sold and the wife be paid one half of the net proceeds of sale; "the White River Business may be valued or sold and the wife be paid a half share of the net proceeds of sale"; the Chevrolet pick-up may be valued or sold and one half of the proceeds paid to the wife. It was further ordered that "in any case where it is ordered that property be sold, such property may be valued by a qualified valuator agreed by both parties and have (sic) the net value thereof be paid to the Plaintiff." It was never established whether the husband acquired "the property" (i.e. the realty) at White River or whether "the business" consisted of personalty only.

The husband appealed against the order of the resident magistrate, and filed a number of grounds of appeal. Before us, however, Mr. Scharschmidt, Q.C. confined his arguments with admirable clarity, to just one issue. He contended that the resident magistrate erred in holding that the wife was entitled to a half or any interest at all in the "White River property" or "White River business". He argued that there was no evidence to support such a finding; the wife did not claim any such interest either in the particulars of claim or in her evidence. The only reference to it came out in cross-examination of the appellant on the 12th November, 1993; and this is what was said, "I have established Bar and Restaurant at White River. I use title of Mervin's Park to get loan to establish business at White River ... Business few months old." Counsel submitted that there was no basis for finding that the wife was entitled to a half share in that business or property. He pointed out that at no time did the wife seek to add the White River business to her claim.

Faced with such cogent argument, Miss McFarlane readily conceded that she could not support the finding of the resident magistrate on that score. We are in complete agreement. The resident magistrate formed the view that

since the title to Mervin's Park "was used to acquire the White River property" that entitled the wife to a 50% share in that property or business. Such a view is flawed. In the first place, the premises at Mervin's Park was registered in the name of the husband only; this was not a joint tenancy or tenancy in common. The husband was therefore at liberty to pledge the estate without the consent of the wife, and the liability created remained personal to him. Secondly, there was no evidence to suggest that the White River business was acquired by the joint efforts of the husband and wife or that it was intended to provide for them both. The evidence is that the marriage had broken down long before the business was established. Those may have been compelling reasons why no attempt was made to amend the summons to include such a business.

In the event, we allowed the appeal in part. We set aside that part of the order which relates to the White River business or property, and confirmed the order in all other respects. We allowed the appellant costs fixed at \$350.

CAREY, J.A.:

I agree.

GORDON, J.A.:

I agree.