

IN THE SUPREME COURT OF BELIZE, A. D. 2011

ACTION NO. 23

IN THE MATTER of an Application by Kent Faber under Section 16 of the Married Women's Property Act (Chapter 176) of the Laws of Belize, R. E. 2000

AND

IN THE MATTER of Section 148(A) of the Supreme Court of Judicature Act (Amendment Act No. 8 of 2001)

	(KENT FABER JR.	APPLICANT
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BETWEEN	(AND	
	(
	(MAUREEN FABER	RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

**Mrs. Robertha Magnus Usher of Robertha Magnus Usher & Associates for the Applicant
Mrs. Deshawn Arzu Torres of Young's Law Firm for the Respondent**

D E C I S I O N

1. The Facts

Kent Faber and Maureen Faber nee Arnold were married on December 19th, 1999. They purchased a property at 3432 Allan Pitts Crescent, Belize City. A conveyance was issued in the joint names of the husband and wife on December 6th, 2002. The marriage broke down and the parties were legally separated in 2008 then divorced on June 10th, 2011. There are no children of the marriage; Kent Faber has a son from a previous relationship who lived with the couple for several years .The husband makes this application for division of matrimonial property claiming, inter alia, that Mrs. Faber has no share in the property and that he is solely entitled to the matrimonial home. The wife has filed

affidavits in response claiming that she is entitled to an equal share in the property, or an order that the property be sold and that she is entitled to a 40% share in the proceeds of sale.

2. **The Issue**

Is Kent Faber solely entitled to the matrimonial property located at 3432 Allan Pitts Crescent or is Maureen Faber entitled to an equal share in the property or any share at all?

3. **The Evidence**

The Applicant's Evidence

Kent Faber filed affidavits setting out why he says he alone is entitled to the property, and why his former wife is not entitled to any share in the property at all. He claims that at the time of the purchase of the property, the bank insisted that the mortgage would not be issued to him unless and until his wife signed the mortgage with him. He said that his intention in purchasing the property was that it would be passed on to their children, if any, but that the marriage yielded no children. He said he made it clear to his wife that he intended to pass on the home to his son, Kendis.

Mr. Faber testified that his salary was assigned to Atlantic Bank as security for the mortgage and every month the payments for the mortgage were deducted from his salary. He paid \$1,059.00 every month which included interest; the total mortgage was \$80,500.00. He also paid for insurance on the house, property taxes and maintenance costs. He also paid the telephone bill, and often paid water and electricity bill because his wife failed to pay them (even though she was primarily responsible for those bills); he attached exhibits showing utility bills of \$100 - \$120 monthly. He also had a discount card at Save U where he bought groceries for the family, and bought meat at Running W and vegetables at the market in Cayo. He asserts that in 2007 Mrs. Faber stopped paying any of the utility bills and had the electricity and water transferred out of her name.

Mr. Faber further claims that the relationship fully terminated when in 2008, he discovered that Mrs. Faber had been physically abusing his son, and that that abuse had been going on for years. He said that he came home early one evening and found Mrs. Faber beating Kendis with a belt and kicking him. He told her to stop and to leave the disciplining to him. He later discovered that Mrs. Faber had on previous occasions burnt Kendis with an iron on his arm, stabbed him below the eye, punched him in the mouth, whipped him and pulled a gate on him. The child had started living with them at age 8 so he was about 15 years old at the time of these incidents.

The Applicant told Mrs. Faber that he would file a complaint with Family Court against her, but she instead pre-empted him by filing charges against him claiming he had abused her. As a result, she obtained an *ex parte* occupation order putting him and his child out of the matrimonial home. Upon trial, Mrs. Faber withdrew the charges, while Mr. Faber pursued his charges of domestic violence committed by Mrs. Faber against Kendis and himself. Mrs. Faber gave an undertaking to the Family Court dated November 18th 2008 not to commit any domestic violence against Kent Faber and Kendis Faber, and the Court barred Mrs. Faber from having contact with Kendis Faber or Kent Faber (Exhibit KF1). The Family Court also made a Legal Separation order in 2008, declaring the parties no longer bound to live together as man and wife, and that the marriage was at an end.

Mr. Faber states that upon the parties' separation in 2008, Mrs Faber defaulted on hire purchase agreements she had with Courts Belize for home furnishings and the household items were therefore repossessed. Upon moving out of the house she removed various items from the house, including photos of his family before marriage. She damaged the home during the period of time she lived there to the exclusion of Kent and Kendis; Kent had to repair the home upon his return. She had taken out several loans which she asked Kent to co-sign. One loan was to purchase a vehicle for her personal use, and the other loan was for her Master's degree. She defaulted on both loans upon their separation in 2008, and the bank sued both of them. Mrs. Faber

reached a settlement with the bank and agreed to pay half the debt of \$18,000 plus costs of \$1500. The Bank accepted a lesser sum of \$10,000 from Mr. Faber.

He claims that she also defaulted on payment of a credit card debt of \$13,000; even though she became a Vice Principal of a school with a good salary, she failed to repay that loan or any part thereof.

The mortgage balance at the time the parties separated was \$69,563.00 in 2007. Only \$10,437.00 had been paid at the time of legal separation. The balance on the mortgage is now \$44,000.00. To date, it is Mr. Faber alone who keeps making mortgage payments and he has never defaulted. He claims he and his child mopped and cleaned the house even when he and Mrs. Faber lived as man and wife. He was the one who barbecued on the weekends to help her raise money for her studies, a fact verified by her email (Exhibit KF 8). He also points out that he has no other home or property, and that Mrs. Faber has moved on and lives with someone else in a common law union. She has a Master's degree and her income, although not disclosed to the Court, improved due to his assistance during their marriage. She is the Vice principal of a school and commands a good salary which enables her to acquire assets. She obtained a gratuity of \$60,000 in 2008 and not a cent of that gratuity went towards the mortgage payments or any expenses of the home. He therefore asks the Court that he be declared sole owner of the matrimonial property.

4. **The Respondent's Evidence**

Mrs. Maureen Faber says that she and Kent Faber first rented the matrimonial property from one Mr. Karl Barona on or about January 31st, 2000. She claims that she was the one who paid the monthly rent to Mr. Barona's agent at Holy Redeemer Credit Union and that she and Mr. Faber were satisfied with the property so they decided to buy it. Mrs. Faber states that all the loan documents including the Deed of Conveyance, Letter of terms of credit facility and Deed of Mortgage title to the property was issued in both their names (MF 1, MF 2 and MF 3). She states that she and Mr. Faber discussed the matter of purchase of the property and they agreed that they would own the property

in equal shares. She concedes that the mortgage payments were all paid by the Applicant. However she claims that all other expenses including water, telephone, electricity (MA 3), gas (MA 4) and food were paid by her. She claims that she did most of the cooking, cleaning and household work, and that Mr. Faber would occasionally take care of repairs to the house and vehicle. She states that at no time did Kent Faber express to her that he would leave the property to his son Kendis Faber. She states categorically that there was no agreement and or arrangement between the Applicant and herself to insert her name on the title merely to improve Kent's chances of getting a mortgage from the bank. The common intention was for the property to be owned by them in equal shares.

5. Mrs. Faber also alleges that she and Kent obtained a loan from Scotia Bank Belize Ltd. for \$8,500.00 to buy a 1999 Isuzu Rodeo vehicle. They agreed they would own the vehicle in equal shares but only Mr. Faber's name would appear on the Certificate of Registration. She claims she was the one who made all monthly instalments on that vehicle loan by her salary assignments (MF 5). She also sets out a list of household items which she purchased from Courts Belize including refrigerator, stove, microwave, queen size bed with mattress etc (MV 6). She denies the allegations that she spent all her money on herself (hair, clothing and entertainment). She claims that she paid all other bills in the home, and on several occasions she gave Kent ½ her salary to pay his credit card bill. She also paid for their yearly travels to the US and for Kendis' school fees for three years that they were living together. Mrs. Faber further states that she at no time damaged the matrimonial home and in fact she spent her own money to assist in repairs to the home due to normal wear and tear. She further alleges that at no time did the Applicant pay for her education or assist in such payment. By the time she met Kent Faber in 1998 she had already earned her Bachelor's Degree in Education, paid for in part through a government scholarship. Her parents paid for the remainder cost as she lived with them at the time.

6. Mrs. Faber states that she collected her gratuity of \$60,000 from the Government of Belize in 1996 after having served as a teacher for 13 years. She used \$35,000 of her gratuity to help finance her Master's Degree at the University of North Florida in the United States, and she financed the rest through scholarships from the university, as shown in email exchanges with the school (MF 7).
7. Mrs. Faber states that the marriage broke down, and the parties were divorced in 2011, after 7 years of marriage. She states that there were no children of the marriage as she was unable to bear children, and she claims that Mr. Faber's insurance was utilized by them to pay for fertility treatment but they were unsuccessful.
8. Mrs. Faber states that her stepson, Kendis, came to live with them one weekend a few months after she and Kent had moved into their matrimonial home. The child was about 7 years old at the time and had come to spend a weekend with them without any luggage. When Mrs. Faber attempted to return him to his home, she was informed by his aunt that they were to keep him as his mother had migrated to the United States. She states that while Kent worked outside of Belize District or attended seminars abroad, she had the responsibility of taking Kendis to school and picking him up in the evenings. She said that Kendis referred to her as "Mom" or "Ma". When Kendis was expelled from Wesley High School, she obtained a placement for him at Gwen Lizarraga High School, where she was named as his mother on the school's emergency information (MA 1).
9. She exhibits photos of one Marlene Avilez (MF 8) who she claims has been living in the marital home with Mr. Faber since. Mrs. Faber asserts that the breakdown of her marriage to Mr. Faber was caused by his infidelity to her. She claims that she was 100% committed to making her marriage work, and it was their joint intention that they would own their home together. She states that as far as she is aware the bank had conducted a valuation on the property and the balance currently owing is approximately \$44,000 BZ. She believes the value of the property is \$200,000 BZ (Exhibit MA2). She therefore asks the court to declare that the Applicant's claim be dismissed or that the house be

sold by order of the court and she be declared to be entitled to 40% share of the proceeds.

10. **Legal Submissions on Behalf of the Claimant**

Mrs. Usher on behalf of Kent Faber submits that the fact that the title of the parties to the property is held in joint names does not automatically lead to a finding that they are both entitled to an interest or that they are equally entitled. In *Stack v. Dowden* [2007] UKHL 17 it was held that a conveyance into joint names established a prima facie case of joint and equal beneficial interest, unless and until the contrary was proven. The contrary could be proven by looking at all the relevant circumstances in order to discern the common intention of the parties. Learned Counsel also argues that even where property title is held jointly, one party may be holding title in trust for the other party and the proportion of one party's interest may be greater than the other. Mrs. Usher cites Baroness Hale in *Stack v. Dowden* at p. 952:

"The approach to quantification in cases where the home is conveyed into joint names should certainly be no stricter than the approach to quantification in cases where it has been conveyed into the name of one only... but the questions in a joint name case are not simply what is the extent of the parties' beneficial interest but did the parties intend their beneficial interests to be different from their legal interest? And if they did, in what way and to what extent?"

11. Mrs. Usher submits that the evidence reveals that the parties had no intention of pooling their income or assets e.g. separate bank accounts at separate banks, separate vehicles, separate credit cards, separate contracts for home furnishings. Learned Counsel also argues that the domestic relations of the parties reveal that the common intention was not that the Respondent would have any beneficial interest in the property. She points to the fact that the Applicant told the Respondent at the very beginning of their marriage that all that he owned would be for his children. He always expressed that to the Respondent that he intended to leave the property for his son Kendis. The only reason the Respondent's name was on the title was because the bank

advised him his application would be more readily approved if his wife's name was there too. He received no independent legal advice. The Respondent has never paid any direct financial contribution to the mortgage despite earning a higher salary than the Applicant. All outgoings of property taxes, insurance and upkeep were paid by the Applicant. The property was purchased with a Bank loan which to date has a substantial balance of approximately \$44,000 and on divorce in 2011, a balance of \$60,000. The Respondent did not contribute to any of the financing. The parties were legally separated in 2008 and the Respondent stopped contributing to household expenses in 2007. The Respondent had no children, and physically and mentally abused the Applicant's only child throughout the marriage.

12. Examining the factors under section 148 of the Supreme Court of Judicature Act applicable to determining whether the Respondent is entitled to any share of the property, Mrs. Usher submits as follows:

a) Direct Financial Contribution

The Respondent did not contribute any money to the acquisition, conservation or improvement of the property.

b) Indirect or Direct Non-financial Contribution

The Respondent did not make any non-financial contribution directly or indirectly to the acquisition conservation or improvement of the property:

- i) The marriage was short and the parties were in fact together only for a short period of 4 ½ years during the life of the mortgage.
- ii) The household expenses of light and water were only occasionally paid by the Respondent. They were not significant contributions either in saving the Applicant expense, or being a sacrifice for the Respondent. She could afford these bills and she was a member of the household who also incurred this expense.

- iii) The Respondent made no significant contribution as homemaker, housewife or parent.
- iv) The Respondent relied heavily on the husband who at some points did extra jobs to supplement his income.
- v) During her occupation of the home to the exclusion of the Applicant and child, she caused damage to the house and furniture. She took furniture away and during this time the Applicant paid the mortgage.
- vi) She did not pay the outgoings on the property taxes and insurance.
- vii) She did not cook often.

c) Effect of Any Proposed Order

An order acknowledging the property as that of the Applicant will not have any negative impact on the Respondent. She has the ability to obtain her own financing and buy herself a house.

d) Age and State of health of the Parties

The Respondent is six years younger than the Applicant and no children were born from the marriage. The husband paid all medical expenses for a major operation the wife had which improved her health significantly.

e) Non-financial contribution as wife/mother to raising children born of the marriage

No child was born from this marriage. The Respondent did more harm to the stepchild than good. No evidence that the Respondent "raised" Kendis, as he was very independent and assisted in housework from he was 8.

f) The eligibility of parties to a personal allowance or gratuity

The Respondent got a pension of \$60,000 during the marriage and spent it on herself. She is entitled to a further pension and gratuity at the end of her present employment.

- g) The parties were married for a short period. The formalities of divorce were completed after 11 years but they lived separate and apart for 4 of those years. The Wife's educational status improved significantly.
- h) There are no children of the marriage. The Respondent has no desire to continue any role as mother.
- i) The Respondent has overlooked the fact that the house is still subject to a mortgage lien. She has disregarded her own obligations further subjecting the Respondent to debts. According to *Vidrine v. Vidrine* Civil Appeal No. 2 of 2010 and *Usher v. Usher* Civil Appeal No. 2 of 2011 the assets must be assessed as at the date of divorce. The amount paid towards the mortgage as at divorce was only \$20,500. The mortgage was \$80,000 and the balance was \$60,000.

Mrs. Usher submits that if the Court holds that the Respondent is entitled to an interest then that share be calculated in keeping with steps outlined in *Vidrine v Vidrine* as follows:

Valuation of home	\$100,000
Less discount in price obtained By the Applicant	\$23,000
Less mortgage balance	<u>\$60,000</u>
	\$17,000
Less damage to home Caused by the Respondent	<u>\$3,500</u>
	\$13,500
Less Debt in Civil Action Defaulted on by Respondent	<u>\$11,500</u>
Actual value of equity on which contribution Can be assessed	<u>\$2,000</u>

Finally Mrs. Usher submits that the question remaining for the Court is whether it is just and equitable to make an order giving the Respondent a share in the value of

\$2,000, bearing in mind the parties domestic relations or common intention, she submits that this is not such a case, and it is certainly not a case for equal division.

13. **Legal Submissions on Behalf of the Respondent**

Mrs. Arzu Torres submits that the Respondent is entitled to an equal share in the property. She argues that the fact that Mrs. Maureen Faber is named on the conveyance as joint owner, she is lawfully entitled to share therein. The intention of the parties was evident from its inception and as the Respondent stated her husband had primary responsibility for paying the mortgage while she dutifully paid other expenses, as is the hallmark of a marriage where parties contribute to the operation and functioning of a home. Learned Counsel submits that the principle of equality which is used in English law does not apply to Belize due to statutory intervention. Therefore equality is not the yardstick, but rather it is equity with special consideration of those factors declared by statute. Mrs. Arzu Torres submits that the evidence presented by both parties effectively and upon close examination shows that the parties were equals in both their financial and non-financial contributions to the household, and most importantly in the acquisition of the property in question.

14. Mrs. Arzu Torres contends that since the claim is made by originating summons under section 16 of the Married Women's Property Act, this is a procedural section giving to the court the power to declare rights of the parties. In that respect, the court has no power to re-distribute or adjust the shares in the property, as it thinks justice demands, but only to declare the existing rights. Property is acquired by spouses under the general law of contract or real property. There is no special law applicable to matrimonial property and there is no principle of community of property as between spouses (*Pettitt v Pettitt* [1969] UKHL 5).

15. Mrs. Arzu-Torres further submits that, on the other hand, section 148 (a) of the Supreme Court of Judicature Act allows an application to the Supreme Court for a declaration of title or rights in matrimonial properties. That section stipulates that

the application for a declaration of title or rights to property has to be in respect of property acquired by the husband and wife jointly during the subsistence of the marriage, or acquired by any of them during the marriage. Learned Counsel cites Barrow JA in *Vidrine v. Vidrine* Civil Appeal No 2 of 2010 where His Lordship held that the objective of the Court when considering Section 148 A of the Act was to achieve a just and fair outcome in the division of such assets, having regard to such considerations of fairness, equality and non-discrimination. Barrow JA described the two step process to be followed in property alteration under section 148(5) as follows:

- (i) Identify and value the property acquired during the subsistence of the marriage;
and
- (ii) Consider and evaluate the matters listed in subsection (5) where the factors are stated which the court shall take into account in deciding whether it is just and equitable to make an alteration order

16. **Identification of the Property**

Mrs. Arzu Torres submits that the property is limited to the matrimonial home as 3432 Allan Pitts Crescent and the Applicant in evidence told the Court it was valued at \$99,500.

Consideration of Section 148 factors

a) Financial Contributions made directly or indirectly

Mrs. Arzu Torres asserts that the husband made financial contributions to the acquisition of the property by way of mortgage payment, while the wife made indirect financial contributions by way of paying for all other household bills. She cared for her husband and her stepson by helping him pay for loans for household goods, family travel expenses and Christmas expenses which the Applicant shared in and benefitted from.

b) Non-financial contribution made directly or indirectly

The husband made non-financial contributions to the house by repairing it. Mrs. Faber made non-financial contributions to the home by being primarily responsible for cleaning and cooking for the household, as well as caring for the Applicant's son from the time he moved to the property until the time she left the home.

c) Effect of Proposed Order on the Parties

There is no evidence that an order of the court would affect the earning capacity of either party

d) The age and state of health of husband and wife and children born of the marriage

Both parties are in good health, no evidence to suggest age of the parties, and no children of the marriage.

e) The non-financial contribution made by the wife in the role of wife and or mother and in raising any children born from the marriage (if any).

Mrs. Arzu Torres claims that Mrs. Faber said in her evidence that she treated Kendis "*as her own*".

f) The eligibility of either the husband or the wife to a pension, allowance gratuity or some other benefit under any law.

No evidence has been presented by either of the parties pertaining to allowance or gratuity due, only evidence of a pension already received by the wife.

g) The period when the parties were married and the extent to which such marriage has affected the education, training, and development of either of them in whose favour the order will be made:

There is no evidence to show that the marriage affected the education, training and development of either party. The Respondent during the course of the marriage received her degree from the University of North Florida and the Applicant has at that time supported him during said time.

- h) The need to protect the position of a woman, especially a woman who wishes to continue in her role as other; any other fact or circumstances that in her opinion of the court the justice of the case requires to be taken into account;

As there are no children from the marriage the first part of this provision does not apply, and as for the second part there has been no evidence presented which is likely to be considered a circumstance for which the court for reasons of justice would be required to take into account, besides that which was previously discussed i.e. the care of the child from the husband's previous relationship.

Finally, Mrs. Arzu Torres submits that albeit the Applicant made all the mortgage payments to the Bank, the wife indirectly contributed to the same with her assistance by upkeeping the same, taking care of her step child during the marriage and when her husband travelled within the country of Belize for work, taking care of her husband, cooking, cleaning, etc., and she should therefore be entitled to an equal share thereof. The Applicant's Claim should therefore be dismissed, or in the alternative, the Respondent should be awarded 40% of the value of the claim.

17. **Decision**

I am grateful to both counsel for their comprehensive submissions which were of great assistance to this Court.

Identification and Valuation of the Property

As agreed by both counsel, the property which the Court is called upon to determine is the matrimonial property located at 3432 Allan Pitts Crescent Belize City. The value is \$100,000 BZ.

Section 148 of the Supreme Court of Judicature Act reads as follows:-

“148A. (1) Notwithstanding anything contained in this Part or in any other law, a husband or wife may during divorce proceedings make application to the court for a declaration of his or her title or rights in respect of property acquired by the husband and wife jointly during the subsistence of the marriage, or acquired by either of them during the subsistence of the marriage.

(2) In any proceedings under subsection (1) above, the court may declare the title or rights, if any, that the husband or the wife has in respect of the property.

(3) In addition to making a declaration under subsection (2) above, the court may also in such proceedings make such order as it thinks fits altering the interests and rights of either the husband or the wife in the property, including:-

(a) an order for a settlement of some other property in substitution for any interest or right in the property; and

(b) an order requiring either the husband or the wife or both of them to make, for the benefit of one of them, such settlement or transfer of property as the court determines.

(4) The Court shall not make an order under subsection (3) above unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

(5) In considering whether it is just and equitable to make an order under section (3) above, the court shall take into account the following:-

(a) the financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, or otherwise in relation to the property;

(b) the non-financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent;

(c) the effect of any proposed order against the earning capacity of either the husband or the wife;

(d) the age and state of health of both the husband and the wife, and the children born from the marriage (if any);

(e) the non-financial contribution made by the wife in the role of wife and/or mother and in raising any children born from the marriage (if any);

(f) the eligibility of either the husband or the wife to a pension, allowance, gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid;

(g) the period when the parties were married and the extent to which such marriage had affected the education, training and development of either of them in whose favour the order will be made;

(h) the need to protect the position of a woman, especially a woman who wishes to continue in her role as a mother;

(i) any other fact or circumstances that in the opinion of the court, the justice of the case requires to be taken into account.

(6) Where the court makes an order under subsection (3) above, it may also make such consequential orders in respect thereto, including orders as to sale or partition, and interim or permanent orders as to possession, and may further order that any necessary deed or instrument be executed, and that such documents of title to the property be produced or such other things be done as are necessary to enable the court's order to be carried out effectively, or that security be provided for the due performance of an order.

(7) Any order may by the court under this section shall be binding on the husband and the wife, but not on any other person."

In considering whether it is just and equitable to make an order altering the rights of the husband or the wife in this property, I will apply the factors set out in Section 148(5) to the evidence in this matter.

(a) The financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property

It is beyond dispute that the Applicant is the only person who has made payments toward the mortgage of this property. The Respondent concedes this but argues that she made indirect payments by paying light, water and other utilities during the marriage. I note that while some payments were made by the wife towards these bills, all such payments ended in 2007 when the parties went their separate ways. I agree with the submission by Mrs. Usher that at the time of separation the mortgage stood at around \$60,000 and Mr. Faber has continued paying the mortgage to date without missing a payment. I do not find that the indirect contribution between 2003 to 2007 of Mrs. Faber to be of any great significance.

(b) The non-financial contribution made directly or indirectly by or on behalf of either the husband or the wife in the acquisition, conservation or improvement of the property, including any contribution made in the capacity of housewife, homemaker or parent.

It appears from the evidence that the Respondent was and has always been a professional career woman working outside the home. It also appears that all parties including the minor stepson at the time assisted in the performance of household duties such as cleaning and cooking. I do not find that there was any direct or indirect contribution made by Mrs. Faber during the 4 ½ years of marriage in the role of housewife, homemaker or parent that would entitle her to any share in this property. I will say more on this parental role later.

(c) The effect of any proposed order against the earning capacity of either the husband or the wife.

I find that Mrs. Faber has, with the assistance of Mr. Faber, greatly improved her education during the marriage, having earned her Master's Degree from the University of North Florida in the USA. She is therefore in a better financial position than when she entered the marriage and she is to be commended for pursuing her

education and empowering herself through her academic accomplishments. She can therefore afford to buy or build her own property. On the contrary, it appears from the evidence that Mr. Faber has not progressed financially nor academically, and since this is the only property he owns, in which he presently resides, he will suffer great hardship were the Court to divide the asset and order a sale of the property, thereby displacing him from his residence.

(d) The age and state of health of both the husband and wife; and the children born from the marriage (if any)

I do not have any evidence as to the age and state of health of the husband or the wife so I will not take it into account. There were no children of the marriage.

(e) The non-financial contribution made by the wife in the role of wife and/or mother and in raising any children born from the marriage (if any)

Mrs. Arzu Torres argues on behalf of the Respondent that she considered Kendis as her own. She “*raised*” him since he came to live with them at the age of 8. This is in my view the most damning portion of the evidence against the Respondent in that the brutality with which the Respondent attacked this child was so severe that Maureen Faber had to give an undertaking to the Family Court promising to desist from further harming Kendis. I find it extremely reprehensible that a person such as the Respondent failed to embrace the motherly role of parenting this child, and instead subjected him to gross acts of cruelty and violence such as beating him, kicking him and branding with an iron. The behaviour of the Respondent is reminiscent of, and in fact surpasses, that of the wicked stepmother in the Cinderella fairy tale and I therefore refuse to give her any credit under this heading. I was particularly taken aback by the glib remark she made in the witness stand that Kendis is now in prison. There are many factors that contributed to this sad path that this child’s life has now taken; one can but wonder to what extent the apparent abandonment by his birth mother followed by the cruelty of the Respondent in her own role as his step mother could have played a significant role in this unfortunate

outcome. As she is an educator, I would like to take this opportunity to advise Mrs. Faber of Article 37 of the United Nations Convention on the Rights of the Child which came into force September 2nd 1990 to which Belize is a signatory, which reads as follows:

“States Parties shall ensure that -

***(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment*”**

The rights of the child are incorporated into local law in the Families and Children Act Chapter 173 of the Laws of Belize as set out in Section 4 of the First Schedule, and I will state for the record that this Court is unapologetically committed to safeguarding the interest of all children.

(f) “The eligibility of either the husband or the wife to a pension, allowance, gratuity or some other benefit under any law, or under any superannuation scheme, and where applicable, the rate of such pension, allowance, gratuity or benefit as aforesaid:”

The evidence shows that the Respondent received a sum of \$60,000 as a gratuity which she chose not to spend a single cent on paying the mortgage, but on herself. She is not to be berated for choosing to spend her money on her own education or on her personal grooming or anything else as that was her money which she is legally entitled. But having made that choice, there is now no basis on which this factor can now be considered by the court as a factor which would entitle her to a share in the matrimonial property.

(g) “The period when the parties were married and the extent to which such marriage affected the education, training and development of either of them in whose favour the order will be made:”

The parties were married in 2003 and legally separated by 2007, and divorced in 2010. This was a very brief marriage.

The Respondent has admitted that her educational status has improved significantly during the marriage in that she now holds her Master's Degree. She denies that this was due in large part to the assistance and support of the Applicant. Yet the evidence shows that she thanked him in an email for barbecuing on the weekends to raise funds to help her, and the Applicant's evidence is that he bought her a laptop to assist with her studies. I find that the Respondent has improved her academic status and economic power during the marriage, while the Applicant has not, and I take this into account in deciding this matter.

(h) "The need to protect the position of woman, especially a woman who wishes to continue in her role as a mother; any other fact or circumstance that in the opinion of the court the justice of the case requires to be taken into account:"

There are no children of the marriage; and I have already condemned the behaviour of the Respondent in her role as mother to the Applicant's son which the evidence shows resulted in an undertaking to the Family Court not to further harm the child.

(i) "Any other fact or circumstances that in the opinion of the court the justice of the case requires."

I find on the totality of the evidence, that it is neither just nor equitable to grant the Respondent a share of this property. She is a highly educated woman, she is independent and fully capable of buying her own home. I agree with the submission of Mrs. Usher that the evidence shows the parties had no common intention to share the matrimonial property, despite the fact that the Respondent's name appears on the title. It also appears from the evidence that the Respondent's negligent and irresponsible behaviour in not paying her personal credit card debt plunged the Applicant into additional financial debt as he had co-signed with her; I therefore take into account the fact that the Applicant has had to expend additional sums in paying loans which enured solely to the benefit of the Respondent in a civil action before another court. The presumption of equality of ownership is rebutted by the behaviour of the parties throughout the marriage by keeping their bank

accounts separate, the ownership of their vehicles separate and even their hire purchase agreements for household furniture separate. I accept as true the evidence of Mr. Faber that he told Mrs. Faber that the property would be for their children, and since the marriage did not yield children, the property would go to Kendis. It further appears from the evidence that each party to the marriage has moved on with different partners and that is commendable. This is the only home that Mr. Faber owns and it would cause him great hardship to be deprived of it after all his years of investment in it.

I therefore grant the Applicant Kent Faber the relief sought as follows:

A Declaration that pursuant to Section 148 A of the Supreme Court of Judicature (Amended) Act No. 8 of 2001, the Applicant Kent Faber is beneficially entitled to all that property situate at No. 3442 Allan Pitts Crescent Belize City and a declaration that the Respondent Maureen Faber holds title in the Property situated at the No. 3442 Allan Pitts Crescent Belize City in trust or and on behalf of the Applicant Kent Faber. I further order that the Respondent Maureen Faber do transfer her title in the property situated at 3432 Allan Pitts Crescent to the Applicant Kent Faber.

Costs awarded to the Applicant to be paid by the Respondent to be taxed if not agreed.

Dated this 23rd day of July, 2015

Michelle Arana
Supreme Court Judge