

Divorce Action No. 140 of 2006

(TERESITA ESTEPHAN

Petitioner

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BETWEEN (AND

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(JOSEPH ESTEPHAN

Respondent

(WILMA COLEMAN

Interested Party

APPEARANCES:

Mr. Kareem Musa of Musa and Balderamos for the Petitioner
Ms. Tricia Pitts and Mr. Wilfred Elrington S.C. of Pitts and
Elrington for the Respondent

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Facts:

1. This is a petition for divorce based on adultery. There is also a claim for maintenance of the Petitioner and of the minor child of

the marriage and for division of matrimonial property. The Petitioner was married to the Respondent on July 29th, 1972 at La Inmaculada Church in Orange Walk Town, Orange Walk District. There were six children of the marriage all of whom are adults except for Giovanni Estephan who was 17 years old at the time this Petition was heard and a high school student attending Dellile Academy in Stann Creek District. The Petitioner and the Respondent both worked together in various family businesses to generate income to maintain themselves and their six children.

2. In establishing proof of the Respondent's adultery, Mrs. Estephan claims that the Respondent had an affair with Ms. Wilma Coleman, the Interested Party, with whom he has cohabited from 1998 and with whom he has fathered a child. It is the Petitioner's case that the Respondent left the matrimonial home in 1998 and has not returned to live with her.

3. The Respondent agrees that he has committed adultery, but he is saying that the Petitioner knew about his relationship with Wilma Coleman since 1994 and about his child with Ms. Coleman and that Mrs. Estephan condoned his behavior. According to Mr. Estephan's testimony, Mrs. Estephan continued to have intimate relations with him even after she found out about his adultery and she would make jokes to him about his adultery, saying she would prefer to be the sweetheart since she as the wife had to do all the work to wash clothes. He also claims that she would belittle Ms. Coleman by calling her a "mule" for not being able to have a child. He also remarked that after the child "Ahmed" was born to Ms. Coleman and himself in 1993, Mrs. Estephan stopped calling Ms. Coleman a "mule". He stated that he "thinks" that Mrs. Estephan knew about this child in 1994. He is saying that before their separation in 1998, Mrs. Estephan would question him "off and on" about the child, and that he never denied being the father of the child. He denies that the breakdown of the marriage

was caused by his adultery with Wilma Coleman and claims that marriage had irretrievably broken down due to problems he and the Petitioner experienced since 1985.

4. Did the Petitioner know of the Respondent's adultery and did she condone his behavior?

Condonation of the Respondent's adulterous behavior would be a bar to the Petitioner obtaining a divorce on the ground of adultery. However, knowledge of adultery is an essential ingredient and mere suspicion of adultery, even ingrained suspicion, is not enough to constitute knowledge and does not become knowledge merely because the person who holds it becomes convinced of its truth without proper supporting evidence. (**Burch v Burch [1958] 1 ALLER 848 at 853**) It is not enough for the Respondent to claim that he believed that the Petitioner knew that he was having an affair and that he had

fathered a child with Ms. Coleman. It appears from the evidence that while Mrs. Estephan suspected that her husband may have been having an affair prior to 1998, most of information on which she based this suspicion stemmed from conjecture, innuendo and hearsay. For example, at one point in her testimony she said that she learnt of the affair when her daughter Ingrid told her about it. I accept Mrs. Estephan's evidence that she only found out for a fact about her husband's adultery in 1998 when he abandoned her to go to live with Ms. Coleman. She said she never forgave him for this adultery and I am convinced that she never condoned his behavior. I am satisfied on the evidence that Mr. Estephan's adultery with Ms. Wilma Coleman was the cause of the breakdown of his marriage. I therefore grant the decree nisi to the Petitioner on the ground of adultery to be made absolute in two weeks.

5. Maintenance of Petitioner and minor child of the marriage

The Petitioner is also seeking maintenance for herself and for the minor child of the marriage, Giovanni Estephan. The court has evidence as to the expenses Mrs. Estephan has incurred maintaining Giovanni and herself, but apart from a bare assertion that Mr. Estephan is the owner of a water plant in Punta Gorda, there is not a shred of evidence as to his income. It appears that the water plant in Punta Gorda belongs not to Mr. Estephan but to Ms. Wilma Coleman. It also appears that Mr. Estephan is blind and unable to maintain himself and that he has been totally dependent for several years on Ms. Wilma Coleman taking care of him. In the circumstances, this court finds itself in the same position as the lower court and is unable to grant the orders for maintenance sought by the Petitioner. The Respondent is handicapped, unable to care for himself or his children due to this disability and this court will not make an order in vain.

6. Determination of the Ownership of Spoilt Caye

The final issue for the determination of this court is the ownership of the caye known as “Spoilt Caye” or “Tek Turn Caye”. In 1994, Mr. Estephan purchased the leasehold interest in a caye from one Filadelo Chinchilla for \$15,000. He says that he did not have the money to pay for the caye so he asked Ms. Coleman for help. Mr. Estephan claims that even though this property was acquired during the subsistence of his marriage to Mrs. Estephan, she did not contribute anything to its acquisition. He said Ms. Coleman paid for the down payment of \$5,000 from her savings and that she later paid for all their living expenses at the Caye as well as for the construction of living accommodations. Mr. Estephan said that he later transferred the Caye to Ms. Coleman out of love and affection.

7. Mrs. Estephan claims that the purchase of the caye was financed from money from the Estephan hardware business, of which she was the manager. She is therefore claiming a declaration that she is entitled to a one-half share or interest in the caye as it is matrimonial property. She obtained an injunction from the Supreme Court to stop the transfer of the title to the Caye from Mr. Estephan to Ms. Coleman in November 2006.

8. I find as a fact that the property known as Spoilt Caye or Tek Turn Caye belongs to Mr. and Mrs. Estephan jointly as it was purchased during their marriage from money generated from their family business. I reject the assertion that it was Ms. Coleman who assisted Mr. Estephan in the purchase and development of the

Caye. In any event, whatever investment Ms. Coleman may or may not have made in her capacity as Mr. Estephan's paramour to assist him in the development of the island involved an unwise risk which she chose to take, knowing that Mr. Estephan was still legally married to Mrs. Teresita Estephan. If it were the case (as Mr. Estephan asserts) that Ms. Coleman contributed to the purchase of that property then the title should have been vested in both their names to protect Ms. Coleman's interest, and not in his name alone, especially since Mr. Estephan was still the lawful husband of another woman at the time the property was acquired. It is even more significant that although this property was purchased by Mr. Estephan from 1994, absolutely no attempt was made by either Mr. Estephan or by Ms. Coleman during the thirteen intervening years to transfer the title into their joint names or to register any interest that Ms. Coleman might have held in the property. It was only in 2007 that Mr. Estephan, having been served with his wife's divorce petition, attempted in an

apparently frantic rush to transfer the title to Ms. Coleman in a blatant attempt to defeat his wife's interest in the property and was only prevented from doing so by an injunction issued by the Supreme Court on November 2nd, 2006. On the evidence from both the Petitioner and the Respondent it is clear that at the time the caye was purchased in 1994, it was Mrs. Estephan who was in charge of managing all the money in the family business. Mr. Estephan admitted this and explained that it was due to his failing eyesight. It also appears that at that time the Estephan family had not yet disintegrated, the family hardware business was still viable and that they were still living together as a family unit. I also accept as true the testimony of Mrs. Teresita Estephan and of the adult children of the marriage Mrs. Ingrid Miller and Kerry Estephan that Mr. Joseph Estephan Sr. purchased the island with funds from the family hardware business.

9. The Law

Section 148 A (1) of the Supreme Court of Judicature (Amendment) Act Chapter 82 of the Laws of Belize Revised Edition 1980- 1990 states as follows:

148 A (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 fit 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 subsection (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 has affected the education, training and development of either of them in whose favor 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 circumstance 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 property be produced or such 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.

10. Ruling on Ownership of Spoilt Caye

Based on the evidence presented, I find that the property known as Spoilt Caye is property acquired during the subsistence of the marriage with funds taken from the Estephan family business. I am in agreement with Counsel for the Petitioner's legal submission that Mrs. Teresita Estephan as a wife and business partner of 35 years standing to Mr. Joseph Estephan Sr. and mother to his three children is entitled to an equal share in this matrimonial property. I therefore order that the property be

divided in equal shares between Mrs. Teresita Estephan and Mr.
Joseph Estephan Sr.

A handwritten signature in black ink, appearing to read "Michelle Arana". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

MICHELLE ARANA

SUPREME COURT JUDGE

Dated this 19th day of August, 2008