

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX: KINGSHILL

ELMER WALCOTT)

Plaintiff)

vs.)

DOROTHY WALCOTT)

Defendant)

FAMILY NO. D175/1985

ACTION FOR DIVORCE

BRIAN L. MASONY
ATTORNEY AT LAW
55-56 COMPANY STREET
CHRISTIANSTED, ST. CROIX
U.S. VIRGIN ISLANDS 00820
(Attorney for Plaintiff)

MARK L. MILLIGAN
ATTORNEY AT LAW
28-A KING STREET
CHRISTIANSTED, ST. CROIX
U.S. VIRGIN ISLANDS 00820
(Attorney for Defendant)

SILVERLIGHT, Judge

MEMORANDUM OPINION
March 21, 1986

This matter is brought before the Court on plaintiff's complaint seeking a divorce and defendant's counterclaim seeking similar relief. Upon a trial of the matter, it was established that the parties were married to each other in St. Croix on December 20, 1964. Both parties are residents and domiciliaries of the Virgin Islands who have resided therein for more than six (6) weeks before the filing of the complaint.

Walcott vs. Walcott
Family No. 175/1985
Memorandum Opinion
Page No. 2

On or about June 28, 1985, the plaintiff removed himself from the marital home and the parties have remained apart ever since. This separation resulted from the inability of the parties to reside together harmoniously, due to constant disagreements as to their respective life styles and the plaintiff's involvement in an extramarital liason.

Three children were born of this marriage but Donna, who was born on December 27, 1964, and who attends college, and Gary, who was born on March 25, 1966 and who is working and self supporting, are both emancipated. The youngest child, Dawn, now 7 years of age, resides with the defendant.

Throughout the course of the marriage, both parties pooled their resources for the benefit of the family. Plaintiff, employed by the U.S. Postal Service as a postmaster, has a present income of \$1037.00 bi-weekly. Defendant is employed by the Virgin Islands Department of Education as a teacher and has a gross income of \$698.46 bi-weekly and a net income of \$426.46 ^{1/} bi-weekly.

Until 1976, the parties resided at Plots 212 and 213 Peter's Rest, Christiansted, St. Croix. These properties are

^{1/} In addition to withholding Tax, F.I.C.A., Retirement, and health insurance contributions, an additional sum of \$104.47 is withheld for repayment of a G.E.R.S. second mortgage covering the marital home.

Walcott vs. Walcott
Family No. 175/1985
Memorandum Opinion
Page No. 3

utilized as a single unit, are fenced as a single unit and contain a three bedroom, one bath dwelling. The premises have an estimated value of approximately \$85,000.00 and are encumbered by a mortgage having an approximate unpaid balance of \$10,000.00 to \$12,000.00. In or about 1976, the parties acquired the premises commonly known as 34-35 Tan Tan Terrace, Christiansted, St. Croix, moved into the home and resided therein until the separation which occurred in June, 1985. Plot number 35 contains the dwelling and plot number 34 has been used in conjunction therewith as a lawn or landscaped area. From the date upon which they occupied the Tan Tan Terrace home until June, 1985, the date of separation, at which time the plaintiff moved into the premises, the Peter's Rest parcel was utilized as a rental property.

Both parties are deeply in debt, both jointly and individually. This indebtedness is so great that it appears unlikely that either party can, within the foreseeable future, reach solvency.

There is no doubt that this marriage is irretrievably broken, that the legitimate objects of matrimony have been destroyed and that there is no possibility of reconciliation. Accordingly, each party is granted a divorce absolute, one from the other, without fault.

The parties are in agreement that the custody of their

Walcott vs. Walcott
Family No. 175/1985
Memorandum Opinion
Page No. 4

daughter, Dawn, should be awarded to the defendant; subject however, to the reservation of reasonable visitation rights to the plaintiff. There is, likewise, no dispute over the question of the need for child support from the plaintiff although the parties disagree as to the appropriate amount of such support. Plaintiff has offered to pay \$285.00 per month to cover school tuition plus \$100.00 per month as and for child support and further to continue medical and dental insurance coverage through his employer's group policy, for Dawn. Defendant, on the other hand, has demanded child support in the sum of \$600.00 per month.

While the evidence fails to establish the precise needs of the child, it is reasonable to conclude, on the basis of the evidence, that the payment of the sum of \$400.00 per month together with the provision of medical and dental insurance will constitute adequate child support in this instance. ^{2/} This conclusion is further supported by the recognition that the support of the minor child should be provided by both parents, in accordance with their ability so to do,
16 V.I.C. Section 345.

^{2/} This is intended as an all inclusive sum, a portion of which may be utilized for school tuition if defendant, as custodial parent, so elects.

As has been earlier stated, the principal assets acquired by the parties during their marriage consist of the properties at Peter's Rest and Tan Tan Terrace. ^{3/} Plaintiff owns and uses a Honda Prelude automobile as well as a Ford pick-up truck which he acquired for \$5000.00. Defendant owns and uses a Honda Civic automobile. The parties also own the personal property contained in and utilized in conjunction with, the Tan Tan Terrace home.

The evidence clearly establishes that the parties, until the breakdown of the marriage, had pooled their resources and had acquired their assets as a result of such pooling. Further, the evidence establishes that the plaintiff's income has consistently been almost twice that of the defendant. The parties' equity in the Tan Tan Terrace property is approximately \$89,000.00 (value \$150,000.00 less Bank of America Mortgage of \$38,000.00 and Government Employees Retirement System Second Mortgage of \$23,000.00) and in the Peters Rest property, approximately \$74,000.00 (value \$85,000.00 less Chase Manhattan Mortgage of approximately \$11,000.00). Each owns an automobile and they are, in that sense, offsetting. Plaintiff also owns a pick-up truck having a value of \$5,000.00. The total equity of the parties in these assets, therefore, is \$168,000.00.

^{3/} The Court elects to discount the pleasure boat owned by the plaintiff because the unrefuted testimony of the plaintiff indicates the value of the asset is offset by the loan made to acquire it.

Walcott vs. Walcott
Family No. 175/1985
Memorandum Opinion
Page No. 6

Since this Court has authority under the provisions of Title 33 V.I.C. Section 2305(c) to distribute the marital homestead in accordance with the equities, it will address that issue first. This Court, having considered the teachings of Knowles vs. Knowles, 9 V.I. 360 (D.V.I. 1973); Dyndul vs. Dyndul, 541 F.2d 134, 13 V.I. 376 (3d Cir. 1976) and their progeny, concludes that only the Tan Tan Terrace property qualifies as the marital homestead. Since it is the only property which the parties utilized as the marital home prior to their separation, it is the only property which fits within the definition and limitations established by the case law.

A distribution of the marital homestead in accordance with the equities can best be accomplished by requiring the defendant to convey her interest in and to the premises 34 and 35 Tan Tan Terrace, Christiansted, St. Croix to plaintiff; conditioned, however, upon plaintiff's conveyance to the defendant of his interest in and to the premises 212 and 213 Peters Rest, Christiansted, St. Croix. Plaintiff shall be required to assume and agree to pay the outstanding balance of the Bank of America Mortgage and the GERS Second Mortgage on the Tan Tan Terrace Property and indemnify and hold harmless the defendant for the payment of same. Defendant shall be required to assume and agree to pay the outstanding balance of the Chase Manhattan Bank Mortgage on the Peter s Rest Property

Walcott vs. Walcott
Family No. 175/1985
Memorandum Opinion
Page No. 7

and indemnify and hold harmless the plaintiff for the payment of same. Plaintiff shall also quitclaim to the defendant all of his right, title and interest in and to the furniture and furnishings used in the Tan Tan Terrace property and his interest, if any, in and to the Honda Civic automobile which she possesses; conditioned, however, upon defendant's agreement to quitclaim her interest, if any, in the Honda Prelude automobile and the Ford pick-up truck which plaintiff possesses.

In this fashion, plaintiff will have acquired fifty-one (51%) percent of the marital assets (exclusive of the furniture and furnishings, having a dollar value of \$86,500.00) and the defendant forty-nine (49%) percent (having a dollar value of \$81,500.00). This percentage gap is substantially closed when the distribution of all furniture and furnishings to the defendant is considered. The distribution also comports favorably with the contributions of the parties to the marriage. Each party shall be required to execute the documents necessary to accomplish this distribution within thirty (30) days after the date of entry of the decree herein.

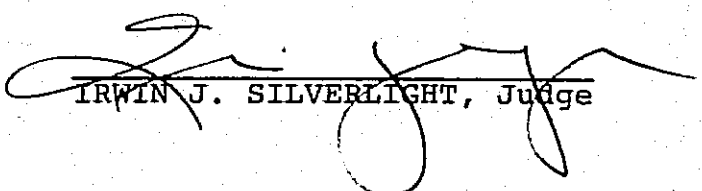
Because it is clear from the evidence that the defendant is without substantial funds, it is likewise apparent that she will require some financial assistance during the period of transition from her former married state to her present

Walcott vs. Walcott
Family No. 175/1985
Memorandum Opinion
Page No. 8

divorced state. Since the plaintiff's ability to pay is extremely limited and the defendant does have an independent income, the Court will award the sum of \$150.00 per month as alimony to be paid by the plaintiff to the defendant for a period of twenty-four (24) months from the date of entry of the decree herein.

DATED: March 21, 1985

E N T E R:


IRWIN J. SILVERLIGHT, Judge