

WINSTON DEMMING,)
Plaintiff,)
))
vs.)
))
SYLVIA DEMMING,)
Defendant.)
)

ACTION FOR DIVORCE

This matter came on for a divorce hearing on Thursday, November 13, 2014 before the Honorable Debra S. Watlington, Judge of the Superior Court of the Virgin Islands. Plaintiff Winston Demming appeared with counsel Leonard B. Francis, Jr., Esq. and Defendant Sylvia Demming appeared with counsel Clive Rivers, Esq. The parties stipulated to the dissolution of the marriage and request that the Court resolve the issues of distribution of real and personal property. Further, the parties stipulated to the admission of the following: three (3) deeds for Parcel No. 7 Estate Bolongo, St. Thomas, U.S. Virgin Islands; a deed for Parcel No. 25C Estate Bolongo, St. Thomas, U.S. Virgin Islands; and a November 7, 2014 appraisal of No. 7 Estate Bolongo. Both parties request possession of the marital home and Defendant also requests the household furniture and the return of her wedding ring. The Court heard sworn testimony from: (1) Winston Demming; (2) Sylvia Demming; and (3) Leston Stoutt.

RELEVANT FACTS

The parties, Mr. Winston Demming and Mrs. Sylvia Demming, were married on July 28, 2007 in St. Thomas, U.S. Virgin Islands. Mr. Demming is seventy (70) years of age and in good health. He has been employed as a taxi driver since 1996. Mr. Demming owns a taxi medallion and he recently purchased a \$36,000 vehicle to operate his taxi business. Mrs. Demming is sixty-five (65) years of age and a businesswoman. She owns a property in Estate Tutu, which she purchased in 1993 as well as No. 25C Estate Bolongo, which she plans to renovate and turn into a rental property. She owns a beauty supply business, but the business is not currently providing her any income. Mrs. Demming drove a taxi for many years, but she is no longer a taxi driver. She suffers with diabetes, high blood pressure and cholesterol. Mrs. Demming currently owes \$78,000 in debt. Her adult son, who resides in her Estate Tutu property helps her with her finances. There are no children born of the current marriage.

Mrs. Demming purchased No. 7 Estate Bolongo on June 23, 2000 for \$160,000 and acquired a deed in fee simple absolute. Mrs. Demming purchased the property in cash with money that she earned from her business, years of working as a taxi driver and funds from a previous marriage. She fully furnished the home before she and Mr. Demming were married.

Before their marriage the parties lived together for approximately twenty (20) years in a home owned by Mrs. Demming in Estate Tutu. They began living together in the 1980s, but stopped shortly after Mrs. Demming "got saved and became a Christian" in 1999. After she became a Christian, she told Mr. Demming that they could not live together unless they were married. Mr. Demming decided to leave the home the parties shared and acquired his own apartment for a short while. Sometime later in 2000, Mrs. Demming gave Mr. Demming a key for No. 7 Estate Bolongo and he moved into the home, while she paid for all household expenses. On February 22, 2002, Mrs. Demming conveyed No. 7 Estate Bolongo to Mr. Demming and herself by deed of gift in fee simple absolute as tenants in common.

In 2007 Mr. Demming was baptized, then the parties were married and resumed living together. When they married and resumed living together in No. 7 Estate Bolongo, Mrs. Demming believed that both she and Mr. Demming had made a lifelong commitment to each other. However, one month into the parties' marriage, Mr. Demming took the wedding ring back from Mrs. Demming and refused to return it claiming that it was lost.¹ For three years thereafter, the parties' relationship deteriorated, despite Mrs. Demming's efforts to maintain the marriage. Notwithstanding, on February 11, 2009, Mrs. Demming conveyed her interest in No. 7 Estate Bolongo to Mr. Demming by deed of gift in fee simple absolute. No. 7 Estate Bolongo is currently worth \$210,000. They separated in August 2010.

The property at No. 7 Estate Bolongo is a two (2) story single family home with three (3) bedrooms and two (2) bathrooms in the upstairs main house, with a downstairs efficiency apartment. While the parties were living together in the main house, the downstairs efficiency was occupied by renters who paid \$500 total per month. There was an agreement between the parties that Mr. Demming would collect the money from the renters and give that money to Mrs. Demming. During the three (3) years that the parties were together, Mrs. Demming satisfied nearly all household expenses. Mr. Demming made the payments for the property tax and homeowner's insurance. He paid \$5,000 for a sewage repair in 2007. Mr. Demming also paid Mrs. Demming \$35,000 to help offset the debts on No. 25C Estate Bolongo.²

In August 2010, Mrs. Demming left the marital home due to lack of affection, verbal abuse and unhappiness from her husband and stayed with a relative for a while before attempting to return to the home. Mr. Demming refused to allow her to return to the upstairs main house of the marital home and changed the locks preventing her return. Since August 2010, Mr. Demming has continued

¹ Mr. Demming testified that when he took the ring he was really joking with his wife and had placed it in a coat pocket.

² This property does not constitute the marital homestead, therefore the Court does not have jurisdiction to make any decisions about same.

to reside upstairs in the main house with his nephew and Mrs. Demming has lived in the efficiency apartment. When they separated, Mr. Demming began paying for utility, doing the yard work, and made payments to Mrs. Demming that amount to \$6,000. Mr. Demming believes that he is entitled to all of No. 7 Estate Bolongo since it was given to him. Mrs. Demming believes that she is entitled to ninety percent (90%) of No. 7 Estate Bolongo's equity value, including all of the household furniture. She also wants to move into the upstairs main house and for Mr. Demming to move into the downstairs efficiency.

ANALYSIS

I. EQUITABLE DISTRIBUTION

In an action for divorce, this Court has the authority to equitably divide joint personal property and real property, limited to the marital homestead as defined in Title 33 V.I.C. § 2305(d). *Bradford v. Cramer*, 54 V.I. 669, 676 (2011). Real property owned by the couple, other than the marital homestead, is divided by way of a civil partition action. *Fuentes v. Fuentes*, D89/1995, 1997 WL 889532 (V.I. Terr. Ct. May 12, 1997). When determining the equity of the distribution, the Court also has broad discretion to consider the case's most salient facts. *Charles v. Charles*, 788 F.2d 960, 965 (3rd. Cir. 1986). The Supreme Court of the Virgin Islands further refined the Court's discretion to divide property by eliminating marital fault as a factor in dividing the homestead. *Garcia v. Garcia*, 59 V.I. 758 (2013). "The doctrine of equitable distribution is applied to effectuate a fair and just division of the property between the parties. As its name suggests, equitable distribution does not necessarily mean 'equal,' only 'equitable.'" *Fuentes*, 1997 WL 889532, at *5.

The equity of the case doctrine concerns the fair distribution of marital assets. *Robles v. Robles*, No. CIV. 2005-0188, 2011 WL 336404, at *2 (D.V.I. Aug. 1, 2011). The following factors form the basis of this equitable inquiry:

the duration of the marriage, prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties,

custodial provisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the ... estate, and the contribution of a spouse as a homemaker or to the family unit.

Armstrong v. Armstrong, 266 F.Supp.2d 385, 395 (D.V.I. App. Div. 2003); *see also Charles v.*

Charles, 788 F.2d 960, 967 (3d Cir.1986)(noting that equity may also require consideration of “the extent to which the spouses have brought income and property to the marriage”). “Consideration of each party's contribution to the acquisition of the property necessarily requires the court to delve beyond the form of ownership and title and inquire into the specific facts and circumstances of the parties' marriage and the circumstances under which the property was acquired.” *Armstrong*, 266 F.Supp.2d at 395.

A. Marital Homestead

Pursuant to Title 33 V.I.C. § 2305(a), a homestead is defined as “the abode including land and buildings, owned by, and actually occupied by, a person, or by members of his family free of rental charges.” Title 33 V.I.C. § 2305(a). The Court in *Garcia* quoted *Harvey v. Christopher*, to explain that although the Virgin Islands Code does not expressly define a “marital homestead,” both the United States Court of Appeals for the Third Circuit and the Appellate Division of the District Court interpreted Title 33 V.I.C. §§ 2305(a),(c) to hold that a “‘marital homestead’ is any ‘homestead’ in which a husband and wife both reside during the marriage and that is owned by one or both of the spouses.” *Garcia*, 59 V.I. 758 (2013) quoting, *Harvey v. Christopher*, 55 V.I. 565, 572 (2011). The home located at No. 7 Estate Bolongo appears to satisfy the requirements outlined in Title 33 V.I.C. § 2305(a) since: (1) the parties resided in the home during the marriage and (2) Mrs. Demming gained ownership rights when she purchased the property by warranty deed, and later gifted the property to both parties and then to Mr. Demming through deeds of gift.

B. Equitable Distribution of the Marital Homestead

In accordance with *Armstrong*, this Court used several factors to determine how to equitably distribute the marital homestead. This Court considered the duration of the marriage, the extent to which the parties brought income and property to the marriage, the circumstances under which the property was acquired, as well as the age and health of the parties. Pursuant to the November 7, 2014 Appraisal of Real Property, No. 7 Estate Bolongo is valued at \$210,000.

1. Duration of the Marriage

After a long “live-in” relationship, and a breakup, the parties married on July 28, 2007 in St. Thomas, U.S. Virgin Islands.³ However, only one month after the parties were married, Mr. Demming took the wedding ring back from Mrs. Demming claiming he was only playing a game, but he never returned the ring.⁴ The parties did not establish any wealth together, purchase property, or raise a family during the marriage. Mrs. Demming acquired all of her real property prior to the marriage including all of the household furniture. Only three (3) years after the marriage began the parties separated in August 2010.

Since the parties only spent three (3) years together as a married couple before they separated, during which time Mrs. Demming made most of the household contributions, there was not ample time for the marital homestead to develop into an equally shared marital asset. Mrs. Demming conveyed No. 7 Bolongo to Mr. Demming after the marriage out of her love for Mr. Demming and her commitment to the marriage. Since the separation, Mrs. Demming has been denied access to the main portion of her home, forced to live in a small space, prevented from using any of the household items she purchased, and she has been humiliated by Mr. Demming.

³ The parties resided together for an unspecified period of time between 1980 and 2000.

⁴ Despite Mrs. Demming’s insistence for the return of the wedding ring, Mr. Demming testified that he does not have the ring and he does not know where it is.

2. Extent to which the Parties Brought Income and Property to the Marriage

Mrs. Demming purchased No. 7 Estate Bolongo on June 23, 2000 in cash with no financial or other contribution from Mr. Demming. Mrs. Demming furnished the home, paid all of the expenses of the home, and allowed Mr. Demming to use the premises gratuitously until the parties were married, on July 28, 2007. Mr. Demming did not bring any property into the marriage. Yet, he now deprives his wife of access and use while he and his family reap the benefits of her labor.

Considering the history of the efficiency apartment and the considerable size of the main home when compared to the efficiency, the value of the main home more than doubles that of the efficiency.⁵ The Court can easily infer that the modest value of Mr. Demming's occupation at No. 7 Estate Bolongo is no less than \$1,000 per month. The total value of the benefit received by Mr. Demming is approximately \$48,000 because he has lived in the home over the past four years. The Court will determine the value that Mr. Demming is entitled to receive from the property by calculating the value of the benefit received by Mr. Demming, less the value of Mr. Demming's financial contributions towards the home. The value of Mr. Demming's contributions are \$35,000 that he gave to Mrs. Demming, plus \$5,000 for maintenance to the home, plus \$6,000 in additional payments to Mrs. Demming.⁶ Using the formula above $\$48,000 - \$46,000 = \$2,000$. The Court finds that Mr. Demming has received a benefit of \$2,000 more than his financial investment in the property. Therefore, Mr. Demming has received a greater benefit by living in the home than he invested into the property.

⁵ While the parties were living together in the main house, the downstairs efficiency was occupied by three (3) renters who paid \$500 total per month.

⁶ Mr. Demming provided receipts for payments that he made to Mrs. Demming in October 2011 in the amount of \$2,000, on November 2, 2011 for \$2,000, on November 30, 2011 for \$1,000, and one additional payment for \$1,000, which is undated.

3. Circumstances Under Which the Property was Acquired

Mrs. Demming neither got what she deserved nor what she expected. Mrs. Demming purchased and fully furnished No. 7 Estate Bolongo, and allowed Mr. Demming to live in the property before the parties were married. Even though Mrs. Demming received her marriage in return for all of the work that she put into her relationship, Mr. Demming took advantage of her and manipulated her until he got what he wanted. He was being manipulative when he took Mrs. Demming's wedding ring back and he was playing emotional games when he treated Mrs. Demming with disrespect, called her names, and denied her intimacy. Notwithstanding, on February 11, 2009 she gave the property to Mr. Demming out of her love and affection because she felt that their relationship was a lifelong commitment and she wanted to win him back. Instead of winning Mr. Demming back, Mrs. Demming was banished from her home in August 2010. She was humiliated when Mr. Demming changed the locks and denied her entry into the main house, but allowed his nephew to reside in the home. This was not what she deserved and clearly not what she expected.

The Court finds that Mr. Demming did not receive the home through his contributions and commitment to the marriage. He mistreated and exploited Mrs. Demming's love and affection for him and has been unjustly enriched at her expense. Mr. Demming played a mean trick on Mrs. Demming by taking the wedding ring back, verbally abusing his wife, and denying her entry into the marital homestead.

4. Age, Health, and Liabilities

Based on the parties' age, health and financial positions previously described above, Mr. Demming is capable of living independently, earning a living, and has no reported health issues. Mr. Demming's good health and successful taxi business provide him with the necessary tools to care for himself. To the contrary, Mrs. Demming is no longer able to profit from her beauty supply business, no longer taxis, and faces several health issues. Mrs. Demming can no longer provide for herself financially, is saddled with debt, and relies on her son, Leston Stoutt to assist with her finances. Mr.

Stoutt, corroborated Mrs. Demming's testimony that he helps her financially. He has also taken out two loans and reached the maximum limit on his credit cards, all to help his mother with her finances.

C. Equitable Distribution of the Personal Property

This court is authorized by Title 16 V.I.C. § 109(4) to deliver to the wife those items of her personal property which are in the possession or control of the husband. *Morris v. Morris*, 153-1982, 1984 WL 998145 (Terr. V.I. Jan. 31, 1984). This authority must necessarily be interpreted to infer that the court may also order the delivery to the husband of those items of his personal property which are in the possession or control of the wife, thereby avoiding the constitutional issue of equal protection and the legal issue of self-help. *Id.* In determining which personal property belongs to the wife and which belongs to the husband, the court has based its decision on provable ownership, and in the absence of provable ownership, considers the personal property to be jointly owned in equal shares. *Id.*

Mrs. Demming argues that she is entitled all of the household furniture and personal property inside the home. Mrs. Demming testified that she purchased the furniture in the home prior to the marriage. Mr. Demming does not object to Mrs. Demming's request for the furniture. He has provided no evidence that he purchased any of the furniture or that any furniture was purchased by the parties during the marriage.

Although Mr. Demming concedes to hiding the wedding ring, it is no longer in his possession and return is impossible.

CONCLUSION

Based on the foregoing, the Court concludes that the short time that the parties were married coupled with Mr. Demming's limited contributions to the home do not justify equal distribution of the home. Mrs. Demming purchased the home before the marriage and gifted the property to Mr. Demming based on her belief that they were making a life-long commitment to each other. Mr. Demming's disregard for Mrs. Demming after the marriage and after she gifted the marital homestead

to him, fall short of what Mrs. Demming expected and deserved. Moreover, Mr. Demming has outlived the financial benefit that he brought to the marriage and the home. Mrs. Demming is entitled to sole ownership and possession of the marital homestead No. 7 Estate Bolongo based on principles of equity. With respect to the disposition of the household furniture, the evidence satisfies the Court that they are owned by Mrs. Demming and she is entitled to possession. In the absence of evidence of the value of the wedding ring and its disappearance, no determination can be made.

Thus, distribution of the real and personal property is resolved in accordance with this Memorandum Opinion along with the Findings of Fact, Conclusions of Law and the Decree of Divorce, which shall issue as of even date.

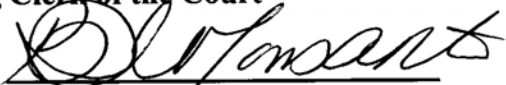
Accordingly, it is hereby

ORDERED that copies of this Memorandum Opinion shall be directed to Leonard B. Francis, Jr., Esq. and Clive Rivers, Esq.

DATED: May 5, 2015

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By:


BRENDA MONSANTO
Court Clerk Supervisor

5/6/15


DEBRA S. WATLINGTON
Judge of the Superior Court
of the Virgin Islands