

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

NANYAMKA TAHIRA THOMPSON,
Petitioner,

vs.

GLEASON EZEKIEL THOMPSON, SR.,
Respondent.

FAMILY NO. ST-13-DI-107

ACTION FOR DIVORCE

Henry C. Smock, Esq.
(For the Petitioner)

George M. Miller, Esq.
(For the Respondent)

WATLINGTON, Judge.

MEMORANDUM OPINION
(Filed: November 6, 2017)

This matter came on for a divorce hearing on March 16, 2017 before Honorable Debra S. Watlington, Judge of the Superior Court of the Virgin Islands. Petitioner, Nanyamka Thompson personally appeared and was represented by Henry Smock, Esq. The Respondent, Gleason E. Thompson, Sr. also personally appeared and was represented by George Marshal Miller, Esq.

The parties have agreed to their divorce. The issue of child custody has been resolved and the parties therefore seek a divorce and equitable distribution of the disputed real properties.¹ The parties initially asked the Court to equitably divide and vest their interest in the business known as 3 G's Jewelry & Repair located in St. Thomas, Virgin Islands. At trial, the Petitioner relinquished any interest she asserted in 3 G's Jewelry & Repair.

The Court heard sworn testimony from the parties and admitted into evidence two deeds pertaining to the properties which are in dispute. The parties own two real properties as joint tenants. There is no dispute between the parties that both real properties are marital properties but they dispute their shared interest in the properties.

¹ The parties' unsuccessfully mediated the dispute.

RELEVANT FACTS

The parties were married on July 21, 2001 in St. Thomas, Virgin Islands. There are two children born of the marriage G.E.T., Jr. born January 29, 1997 and G.I.T. born on September 20, 2004. A child custody determination was made on December 1, 2015, at which time the parties were awarded joint legal custody of their only minor child G.I.T. The parties agree that any issues related to child support can be determined by the Department of Justice, Division of Paternity and Child Support. The real properties in dispute which the parties own as joint tenants are: Parcel No. 2-18 Estate Bonne Esperance, No. 2 West End Quarter, St. Thomas, Virgin Islands acquired on March 28, 2001 and Parcel No. 206 Hospital Ground, King's Quarter Charlotte Amalie, St. Thomas, Virgin Islands acquired on December 16, 2005. Although the Bonne Esperance property was acquired some months before the marriage, each party gave uncontroverted testimony that marital income was used to build, improve and maintain, No. 2-18 Estate Bonne Esperance. Therefore, the parties each acquired an equitable interest in both marital properties subjecting them to distribution by the Court.

ANALYSIS

I. EQUITABLE DISTRIBUTION

Pursuant to Title 16 V.I.C. § 109(a) (7), the Family Division of the Superior Court of the Virgin Islands is statutorily vested with the authority to equitably divide joint personal and real property arising from an action for divorce. Marital Property as defined by statute is "*all real and personal property acquired by either spouse subsequent to the marriage, except:*

- (A) *Property acquired by gift, bequest, devise, or descent;*
- (B) *Property acquired in exchange for property acquired prior to the marriage, or in exchange for property acquired by gift, bequest, devise, or descent;*
- (C) *Property acquired by a spouse after a decree of legal separation;*
- (D) *Any judgment or property obtained by judgment awarded to a spouse from the other spouse;*
- (E) *Property excluded by valid, written agreement of the parties; and*
- (F) *Income from property acquired by a method listed in subparagraphs (A) through (E), if the income is not attributable to the personal effort of a spouse.*"²

² Title 16 V.I.C. § 109 (a) (7) was amended effective December 19, 2014.

At the commencement of this case, this Court's jurisdiction was limited to the distribution of only the marital homestead. Previously, the division of other real properties between the parties required a separate civil action. In a Memorandum Opinion dated February 19, 2016, this Court concluded that the legislative intent of the amendment to Title 16 V.I.C. § 109 was to be retroactively applied and allowed the Superior Court to exercise jurisdiction over all marital property. The Supreme Court of the Virgin Islands subsequently upheld the retroactive application of the statute and its applicability to divorce actions filed before its effective date. Thus, Title 16 V.I.C. §109 as amended on December 19, 2014 is applicable in this case.³

The Petitioner, at trial, requested a 50/50 distribution of the parties' real properties, while the Respondent desired a 70/30 or 80/20 distribution in his favor. The doctrine of equitable distribution ensures a fair and just division of the parties' property. However, equitable division does not necessarily mean equal division.⁴ The following factors are considered by Courts for equitable distribution:

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 the 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 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 to the family unit."⁵

In the case at bar, the salient factors to be considered for equitable distribution based on the circumstances of the parties' marriage are, **the duration of the parties' marriage; contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in the value of the estate; age; health; station; occupation; sources of income; employability; liabilities; and opportunity of each for future acquisition of capital assets and income.**

³ *Drayton v. Drayton*, 65 V.I. 325

⁴ *Demming v. Demming*, 2015 V.I. Lexis 152 reciting *Fuentes v. Fuentes*, "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 mean 'equal' but 'equitable' "

⁵ *Demming v. Demming*, 2015 V.I. Lexis 152 reciting *Armstrong v. Armstrong*, 266 F. Supp. 2d * 395

1. Duration of Marriage.

The parties who were married on July 21, 2001, separated in 2012 and the Petition for Divorce was filed on September 18, 2013. As of the filing of Petition of Divorce, the parties were married for twelve (12) years. The parties testified that they have had a relationship since 1999 and together established a business called 3 G's Jewelry & Repair. Along with the growth of 3 G's Jewelry & Repair and the sale of joint property owned by the parties prior to their marriage, mortgages and down payments were acquired to purchase Parcel No. 2-18 Estate Bonne Esperance, No. 2 West End Quarter, St. Thomas, Virgin Islands and Parcel No. 206 Hospital Ground, King's Quarter Charlotte Amalie, St. Thomas, Virgin Islands. The parties also testified that their employment incomes contributed towards the down payment for the properties. From the testimony of the parties, the Petitioner and the Respondent worked in 3 G's Jewelry & Repair from which the mortgage for the properties were paid, and maintenance for each was completed. Further testimony from the parties revealed that expenses for the properties were covered by rents collected. Although the Respondent testified that 3G's Jewelry & Repair is his sole business, that it was his income attributable to his own personal effort which was responsible for paying the properties' mortgages, maintenance and other expenses, there is no financial evidence submitted to refute the Petitioner's testimony of a joint enterprise from the parties' joint efforts.

Where disputes are raised between parties to a divorce as to what percentage share of property they are entitled, the Superior Court of the Virgin Islands (formerly the Territorial Court) in *Creque v. Creque*, 1983 V.I. Lexis 57*11 is guided by *Sebold v. Sebold*, 444 F.2d 864 (D.C. Cir. 1971). In Sebold, the court emphasized:

"The rule is, therefore, that the interests of joint tenants being equal during their lives, a presumption arises that upon dissolution of the joint tenancy during the lives of the cotenants, each is entitled to an equal share of the proceeds. This presumption is subject to rebuttal, however, and does not prevent proof from being introduced that the respective holdings and interests of the parties are unequal. This presumption may be rebutted by evidence showing the source of the actual cash outlay at the time of acquisition, the intent of the cotenant creating the joint tenancy to make a gift of the half-interest to the other cotenant, unequal contribution by way of money or services, unequal expenditures in improving the property or freeing it from encumbrances and clouds, or other evidence raising inferences contrary to the idea of equal interest in the joint estate."

The parties' testimony and documentary evidence submitted by property deeds support the Petitioner's proposition that during the parties' marriage it was joint marital income, that was used to build, maintain and improve the two real properties. Equally, the deed for the properties identify the parties' interest as joint tenants, and without more, neither a tenancy in common nor tenancy by entirety could arise⁶. Thus in the absence of evidence by the Respondent to rebut the presumption of an equal share in the properties, it is appropriate that Parcel No. 2-18 Estate Bonne Esperance, No. 2 West End Quarter, St. Thomas, Virgin Islands and Parcel No. 206 Hospital Ground, King's Quarter Charlotte Amalie, St. Thomas, Virgin Islands be equally divided between the parties.

Since the Petitioner at trial waived any of her interests to 3 G's Jewelry & Repair, the Respondent would be entitled to a 100% ownership of the business.

2. Age, Health, Station, Occupation, Source of income, Employability, Liabilities, Opportunity of each for future acquisition of capital assets and income.

The parties are both in their forties and are in good health. They are both employed and have their own income and neither require maintenance from the other. In their testimony at trial, both indicated they are financially independent and capable of acquiring their own assets and income in the future. The Petitioner, Nanyamka Thompson is employed with the Legislature of the Virgin Islands and has had small business ventures throughout the marriage. The Respondent solely operates his business, 3G's Jewelry & Repair. Neither party is in need of alimony or support. The parties have not testified or submitted any documentary evidence regarding marital debts or other liabilities although pleaded in the Petition for Divorce.

⁶ 28 V.I.C § 7 (b) Every conveyance or devise of lands or an interest therein... made to two or more persons, other than to executors and trustees as such, shall create a tenancy in common in such estate, unless it is expressly declared in the conveyance or devise that the grantees or devisees shall take the land as joint tenants."

28 V.I.C § 7 (c) A conveyance or devise of real property to husband and wife jointly creates an estate by entirety unless otherwise provided in deed or will."

3. Contribution or Dissipation of each party in the acquisition, preservation, depreciation, or appreciation in the value of the estate.

From the party's testimony, it has been established that the source of their income has been their employment. The parties jointly paid the sum of \$30,000.00 for the purchase Parcel No. 2-18 Estate Bonne Esperance, No. 2 West End Quarter, St. Thomas, Virgin Islands and \$185,000.00 for the purchase of Parcel No. 206 Hospital Ground, King's Quarter Charlotte Amalie, St. Thomas, Virgin Islands. The Petitioner and Respondent both established 3 G's Jewelry & Repair. The Petitioner's testimony which remained undisputed by the Respondent, revealed that 3G's was financed by both parties, and the Petitioner worked in the business until 2009 doing book keeping, ensuring timely payment of bills, compliance with taxes and assisted with any other administrative and operational duties. The Petitioner stopped working in the business temporarily in 2008 due to complications with her health and again in 2012 after the parties separated.

After the parties' separation in 2012, the rent from 206 Hospital Ground was collected by the Petitioner, who testified that the monies were used to pay the mortgage for the property and maintain the property. However, 2-18 Estate Bonne Esperance is occupied by the Respondent, who testified that he pays the mortgage for that property and sometimes for 206 Hospital Ground from 3G's Jewelry & Repair.

4. Distribution of Pension

There is insufficient evidence for the Court to make a determination on the distribution of pension funds. In his Answer to the Petition, the Respondent denied that there was any personal or real property of the parties to be divided. Moreover, the Respondent raised the issue of pension funds for the first time at trial. He failed to amend his Answer to request distribution of the same or provide any evidence to support such an amendment. The Respondent had ample opportunity to obtain evidence of the Petitioner's pension during the extended discovery period. There is no justification for his failure to fulfill his burden to produce evidence of the pension and related information. Thus, there is no basis for any award of pension funds.

CONCLUSION

After due consideration of the foregoing, the Court concludes that the parties' jointly owned real properties namely, Parcel No 2-18 Estate Bonne Esperance St. Thomas, Virgin Islands and Parcel No. 206 Hospital Ground, St. Thomas are to be equally distributed between the parties consistent with their joint tenancy.

ORDERED that copies of this Memorandum Opinion shall be directed to George Marshal Miller, Esq. and Henry Smock, Esq.

DATED: November 6, 2017


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

ATTEST:
ESTRELLA GEORGE
Clerk of the Court

By: 
BRENDA MONSANTO
Court Clerk Supervisor

11/1/2017