

FOR PUBLICATION

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

BERNADINE RUTH LYN VACHER,
Petitioner,

v.

CONRAD CULTARD VACHER,
Respondent.

CASE NO. SX-14-DI-119

ACTION FOR DIVORCE

ORDER

THIS MATTER came before this Court for hearing on Tuesday, August 21, 2018 for additional hearing pertaining to the division of a personal injury settlement received by the Respondent, Conrad Vacher, during the course of the marriage. The hearing was set to obtain further evidence and documentation about the settlement and the purpose of the amount granted to Mr. Vacher. The Petitioner, Bernadine Ruth Lyn Vacher, was present at hearing accompanied by her counsel, Attorney Yvette Ross Edwards. In addition, the Respondent was present at hearing accompanied by his counsel, Attorney Martial Webster.

This Court deferred ruling on the issue of the personal injury settlement at the time the divorce and other issues were decided because *Inniss v. Inniss*, 65 V.I. 270 (V.I. 2016) was pending in the Supreme Court of the Virgin Islands. In accordance with *Inniss*, this Court has decided the personal injury settlement distribution as follows. The hearing was ordered in accordance with precedent set by the Supreme Court of the Virgin Islands in *Inniss v. Inniss*, 65 V.I. 270 (V.I. 2016), wherein the Supreme Court required that the trial court review certain evidence in considering the division of a personal injury settlement acquired during the course of a marriage.

At the post *Inniss* decision hearing, Ms. Vacher testified her desire to proceed based on the evidence previously submitted to the court. Mr. Vacher equally chose to present no additional evidence to that already on the record.

Background

According to the record, Mr. Vacher received three hundred thousand dollars (\$300,00.00) pursuant to a personal injury claim he had brought against his company, Hovensa, when Mr. Vacher had been injured on the job. Testimony from the parties indicated the settlement occurred around the end of 2003 or beginning of 2004. Ms. Vacher claims the settlement was for medical costs, lost wages, and pain and suffering. However, the parties did not provide documentation of the civil case, settlement agreement, or other information regarding the purpose of the three hundred thousand dollars Mr. Vacher received. There is testimony in the record indicating Mr. Vacher had not been able to access the records; his previous attorney did not have the physical file or access to the electronic information because the electronic information had become outdated. Despite the Court scheduling a hearing on August 20, 2018 to afford the parties further opportunity to present such settlement documentation to satisfy the requirements of *Inniss*, Ms. Vacher declined to offer further evidence or testimony.

Discussion

The Superior Court has jurisdiction to distribute marital property according to section 109 of title 16 of the Virgin Islands Code. 16 V.I.C. § 109; *see also Garcia v. Garcia*, 59 V.I. 758, 778 (V.I. 2013) (“the Superior Court also possesses jurisdiction to distribute the spouses' personal property acquired during the marriage and through their joint efforts.”). Even though there are provisions in the Virgin Islands Code governing divorce, annulment, and the rights and duties of the parties while in a marriage,

“no provision of the Virgin Islands Code provides any factors or test for determining whether a personal injury settlement payment is personal property of the injured spouse or marital property subject to division.” *Inniss v. Inniss*, 65 V.I. 270, 275 (V.I. 2016) (internal citations omitted). As a result, the Supreme Court in *Inniss* laid out the appropriate test after conducting a Banks analysis. *Id.*

The Superior Court should use the Analytic Approach because it is consistent with “[t]he Virgin Islands’ abandonment of the law of community property [which] demonstrates a public policy that further supports a definition of marital property that recognizes the source (e.g., work, inheritance, gift) of the asset in question.” *Id.* at 277. Under the Analytic Approach, the Superior Court should evaluate the **purpose** of the award to determine whether it counts as personal or marital property. *Id.* at 283 (emphasis added).

[T]he portion of the settlement allocated to pain and suffering and loss of future earnings after the marriage is dissolved is categorized as personal and, therefore, separate property. However, compensation for lost wages, medical expenses, lost earning capacity for that part of the marriage for which the spouse was disabled, . . . and compensation to the non-injured spouse for loss of services or loss of consortium are considered marital property.

Id. at 283 (citing *Johnson v. Johnson*, 317 N.C. 437, 346 S.E.2d 430, 435-36 (1986)). When the Court looks to distribute the personal injury award, the “personal injury settlement or jury award is classified based on what it is *designed to replace*.” *Id.* (emphasis added). This Court reads *Inniss* to require the Court to determine what the settlement award was meant for *at the time it was awarded*, not what it was actually used for after the award was received.

In conducting the Analytic Analysis, the Superior Court must conduct a three-step analysis. *Id.* at 288. First, the Court must determine what “property constitutes the marital estate.” *Id.* Second, the Court must determine the “value of the property in the marital estate.” *Id.* Finally, the Court must equitably

distribute the marital estate. *Id.* (citing *Zimin v. Zimin*, 837 P.2d 118, 121 (Alaska 1992); *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky. Ct. App. 2003)). If the settlement proceeds or award does not allocate economic and non-economic damages, the Court must review the evidence and make its own determination as to the amounts. *Id.* (quoting *Murray v. Murray*, 190 Md. App. 553, 989 A.2d 771, 779 (2010)).

In the present case, there is no evidence or testimony in the record related to the purpose of the settlement award at the time it was given. There is ample evidence from the parties as to what the award was used for, but no documentation of the original civil case or settlement agreement that would indicate what the money was to be used for. This Court cannot glean the purpose of the settlement award or determine what it was given to replace without further information provided by the Plaintiff. Ms. Vacher chose to proceed on the evidence in the record, despite the Court bringing *Inniss* to both parties' attention and scheduling a hearing solely devoted to testimony that would satisfy the *Inniss* analysis required by the Supreme Court. As a result, Ms. Vacher has not fulfilled her burden of proof and her request for a greater interest in the marital property through "Plaintiff's Additional Briefing on Defendant's Motion for Reconsideration" is accordingly **DENIED**.

Conclusion

It is hereby:

ORDERED Ms. Vacher's request for a greater interest in the marital property be **DENIED**; it is further

ORDERED that this case be administratively **CLOSED** as all matters have been decided upon; and it is

FINALLY ORDERED that a copy of this order be directed to the parties.

Vacher v. Vacher
Case No. SX-14-DI-119
Order
Page 5 of 5

DONE AND SO ORDERED this 9th day of October, 2018.



DENISE A. HINDS ROACH, JUDGE

A T T E S T:
Estrella George
Clerk of the Court

By:



Court Clerk Supervisor
10/9/18