

IN THE SUPREME COURT OF BELIZE, A.D. 2007

Action No. 7

IN THE MATTER of an Application by BEVERLY GENTLE
pursuant to Section 16 of the Married Women's Property Act,
Chapter 176 of the Laws of Belize, Revised Edition 2000

AND

In the matter of Section 143 of the Registered Land Act,
Chapter 194 of the Laws of Belize, Revised Edition 2000

AND

	BEVERLY GENTLE	APPLICANT
BETWEEN	AND	
	NORMAN GENTLE	RESPONDENT

J U D G M E N T

Before: HAFIZ J:

Mr. Darrell Bradley for Applicant
Mr. Rodwell Williams S.C. for Respondent

Introduction

1. This application was made under the provisions of section 16 of the **Married Women's Property Act, Chapter 176** of the Laws of Belize, Revised Edition 2000 -2003. The Application should also have been made under section **148:01 of the Supreme Court of Judicature Act, Chapter 91** which was a new section added by **Act No 8 of 2001**. This Act was assented to on 23rd February, 2001 and gazetted on 3rd March, 2001. The said section provides for declaration of interests in property and alteration of property rights. It provides guidelines for the distribution of property upon

divorce. The guidelines specifically address property acquired jointly during the subsistence of the marriage or acquired by either of the parties during the subsistence of the marriage. On the day of the hearing the Applicant made an application which was granted to rely upon the said section which is numbered in Act No. 8 of 2001 as section 148(A).

Factual Background

2. It is common ground that the parties were married in Belize on 8th October, 2002, lived at No. 22 Racoon Street and divorced on the 28th of December, 2007. The marriage produced no children. Prior to the marriage the parties had been living together in a common law union since 1985, first at No. 1502 Rainy River Drive, Houston Texas, United States of America and later at No. 22 Racoon Street, Belize City. After the divorce the parties continue to reside at No. 22 Racoon Street, Belize City.

Application before the Court

3. On 14th February, 2007 the Applicant issued these proceedings in which she claims the following relief:
 - (1) *A Declaration under section 16(1) of the Married Women's Property Act, Revised Edition 2000, that the matrimonial home situated at No. 22 Racoon Street, Belize City, Belize and more particularly described as Parcel 153, Block 45, Queen Square Registration Section, is held by the Respondent on trust for himself and the Applicant in equal shares or in such shares as the Court deems just.*

- (2) *An Order directing the Registrar of Lands to rectify the Register for Parcel 153, Block 45, Queens Square Registration Section by adding Beverly Gentle as co-proprietor with Norman Gentle of the land comprised therein.*
- (3) *A Declaration that the Applicant is entitled to \$30,000.00 being one half of the sum remaining in the parties' Holy Redeemer Account No. 8573 on April 24th 2003.*
- (4) *A Declaration that the Applicant is wholly entitled to the 1999 Ford Explorer bearing VIN # 1FMDU32E4XZA14713.*
- (5) *A Declaration that the Applicant is entitled to all of the items listed in the Schedule hereto.*
- (6) *An Order or injunction restraining the Respondent by himself, his agents and servants howsoever, from evicting the Applicant from the matrimonial home at No. 22 Racoon Street, Belize City, Belize until the determination of the Action herein or further order.*
- (7) *An order or injunction restraining the Respondent by himself, his agents and servants howsoever from selling, transferring, leasing, charging, or in any way dealing with any of the real and movable properties aforementioned until the determination of the Action or further order.*
- (8) *An Order for the sale of the Property situate at No. 22 Racoon Street, Belize City, Belize.*

(9) *An Order for the Respondent to transfer ownership of the 1999 Ford Explorer to the Applicant.*

(10) *An Order for the payment of the said \$30,000.00. forthrightly to the Applicant.*

(11) *Such further or other order of relief as the court may deem just.*

(12) *Cost.*

SCHEDULE

3 Glass tables

Sofa Set

1 Glass dining table

1 China Cabinet

4 Black Chairs

1 20 inch Zenith Television

1 19 inch Television

1 Entertainment Center

1 Breakfast table and stools

1 Breadbox

1 King Size bed

1 large black dresser

1 twin bed with accompanying dresser

1 small refrigerator

1 Swing chair

1 Straw Chair

1 Bathroom stand

1 Linen Closet

- 1 Brown microwave oven
 - 1 living room stereo set
 - 1 wooden desk
 - 1 small Air Conditioning Unit
- The entire contents of N& B Variety Shop.

4. The Sixth prayer for an injunction was granted by the Court on 26th June, 2008 when the Applicant made an Application to this Court for an Injunction. The order on that date was (1) *that the Respondent by himself, his agents and servants howsoever refrain from taking any steps to remove the Petitioner from the matrimonial home, or any part thereof, situated at No. 22 Racoon Street, Belize City, Belize until the determination of the Action herein or further order.* (2) *The Respondent is to provide the Petitioner with a copy of all keys in respect of the matrimonial home situated at No. 22 Racoon Street, Belize City.* (3) *An order mandating that the Petitioner and the Respondent are to have joint use and access to all household items until the determination of the Action herein or further order, said matter will be heard on July 18th, 2008.*

Statutory Provisions

5. This Application was made under the provisions of section **16 of the Married Women's Property Act, Chapter 142.** This section provides that:

"In any question between husband and wife as to the title or possession of property, either party may apply by summons

in a summary way to a judge of the court who may make such order with respect to the application as he thinks fit ...”.

6. As said above the relevant law that provides for the guidelines in division of property after divorce is section **148:01 of the Supreme Court of Judicature Act, Chapter 91** which provides:

148:01 (1) Notwithstanding anything contained in this Part or in any other law, a husband and wife may during divorce proceedings make an 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 interest and rights of either the husband and 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 of the marriage (if any);

(e) the non-financial contribution made by the wife in the role of the 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 favour 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 circumstances 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 the property be produced or such other 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.

(7) Any order made by the court under this section shall be binding on the husband and the wife, but not on any other person.

Evidence of Beverly Gentle

7. The Application by the Applicant is supported by an affidavit sworn to on 13th February, 2007 and a supplemental Affidavit sworn to on 18th July, 2008. The evidence of Beverly Gentle is that she and Mr. Gentle have been living together since 1985, first at No. 1502 Rainy River Drive, Houston Texas and subsequently at No. 22 Raccoon Street Belize City. She deposed that she made significant financial and non-financial contributions to the acquisition of assets during the marriage including the two matrimonial homes and personal property, namely:
 - (1) Matrimonial home at No. 1502 Rainy Drive, Houston Texas
 - (2) Matrimonial home at No. 22 Raccoon Street, Belize City, Belize.
 - (3) 1999 Ford Explorer
 - (4) Holy Redeemer Credit Union Account No. 8573.
8. Mrs. Beverly Gentle deposed that when she moved into No. 1502 Rainy River Drive (Texas Property) with Mr. Norman Gentle he had already been making payments towards the purchase of the said property. That after she moved in with Mr. Gentle they set up a joint Credit Union Account and both their salaries were deposited directly therein and all their personal and household expenses were met from this account, including the monthly mortgage payments.
9. Mrs. Beverly Gentle deposed that from 1985 – 1989 she worked at Sears and earned approximately US\$1,500. monthly. From 1990 – 2002 she worked full time as a Bus Driver for the Aldine School District earning between US\$8,000. – US\$15,000. per annum. Also,

she operated a cleaning service by the name of Gentle which earned her an additional US\$2,000. – US\$5,000. per annum. She exhibited the copies of her individual tax return for the years 1990, 1991, 1993, 1994, 1997, 1999, 2001 and 2002.

10. She also deposed that from 1985-1991 Mr. Gentle worked at Sears as a Mechanic and earned approximately US\$2,000. That since his retirement his sole income has been and continues to be his retirement cheque under a United States Pension which was initially approximately US\$700. and is presently approximately US\$1,000. per month. She produced an Exhibit “BG 9” of Mr. Gentle’s individual tax return for 2002.
11. Mrs. Beverly deposed that in the year of 1997, Mr. Gentle proposed that they migrate to Belize and she accepted the proposal. That Mr. Gentle further proposed that they jointly construct a house on land situate at No. 22 Racoon Street, which was a leasehold property, the interest of which the Respondent had acquired from his mother. Ms. Beverly said that the freehold interest in the said land (Racoon Street property) was purchased by Mr. Norman Gentle and herself for the sum of \$669.22 in 1991 which was paid from money which they held in their joint account.
12. She further deposed that in May of 1997 they decided to obtain a loan from Belize Bank Limited in the sum of \$100,000. for the construction of their intended matrimonial home. The loan was duly made and the house was constructed shortly thereafter. She said that throughout the transactions involving the construction of the matrimonial home, Mr. Gentle insisted that all the documents would be issued in his name alone because she was not a Belizean Citizen and he believed that her US citizenship would only serve to

complicate matters. Also, that monthly loan payments were paid out of their joint account.

13. Mrs. Beverly Gentle testified that at the beginning of the year 2002 they decided to sell the Texas house and use some of the proceeds to pay off the Belize Bank loan. She said that at the end of July, 2002 the house was duly sold and after the deduction of the remaining mortgage payments they received US\$62,724.57. That on 8th August, 2002 they deposited the money from the sale of the house being BZ\$124,194.65 in their joint account at Holy Redeemer Credit Union. See exhibit "BG 10" for copy of deposit slip issued by H.R.C.U. She further deposed that on 24th April, 2003 they withdrew funds from their HRCU Account and paid off the outstanding balance of \$64,000.00 to the Belize Bank. She further deposed that on 18th November, 2002 she deposited the sum of \$14,784.26 being her retirement savings paid to her by the Aldine School District in the said account. Further, that on 25th April, 2003 there remained a balance of \$62,541.55 in their HRCU Account which the Respondent has since withdrawn for his personal use.

14. Mrs. Gentle testified that prior to them moving to Belize, she purchased a 1999 Ford Explorer in the United States for which all of the installments were paid by herself. At the time, Mr. Gentle had two other cars for his own use and the Ford Explorer was for her sole use. That upon her arrival in Belize in August of 2002, Mr. Gentle registered the 1999 Ford Explorer in his own name and has now taken it for his own use. She said Mr. Gentle said that it would be better to register the vehicle in his name since he was familiar with Belize and the system here. She further deposed that at no time did she agree that he should own the vehicle or share in the ownership of the vehicle.

15. Mrs. Beverly said that she currently runs a small business namely N & B Variety & Gift Shop and she is the sole income earner in the household. Further she deposed that all the items in the annexed Schedule were purchased by herself prior to her moving in with the Respondent.
16. Mrs. Gentle in her supplemental affidavit sworn to on 18th July, 2008 deposed that she was not born in Belize and have no attachment to Belize. The only reason she migrated to Belize was because the Respondent and she agreed that they would both move to Belize. She deposed that she and Mr. Gentle agreed that they would share ownership of the house situate at 22 Racoon Street, equally. She further deposed that the only reason why her name was not on any of the title documents was because the Respondent said that her being an American citizen might complicate matters and she believed him. Based on this, she contributed towards the mortgage payments for a Belize Bank loan to construct the house.
17. Mrs. Gentle said that when she move to Belize she left her children and gave up her job and a cleaning business. She said that when she was living with the Respondent in the United States she was the one who managed the finances and when they moved to Belize they both managed the finances but in the United States and in Belize she was the one who ensured that the food was bought and the house was taken care of. She said she bought most of the furniture by cash from money which she made through her business and/ or from her employment.

Evidence of Norman Gentle

18. Mr. Gentle deposed that he was married to Prunella Lord, his first wife up until 1986 when they divorced in the United States of America. Before moving to the United States in 1967 he lived at the Raccoon Street property at his late mother's home with his family. In 1967, he migrated to the US along with his then wife, four children and his mother. They lived at the Texas house until he and his wife divorced in 1986. He deposed that on the conclusion of the divorce in 1986, he remained with the Texas property and all furniture and household items and the mortgage on the property was fully discharged as a result of the divorce settlement.
19. He said that he first lived with the Applicant in or about 1989, when she and her two children moved into his Texas home until he sold the property in 2002 and moved back to Belize. He testified that when Mrs. Beverly Gentle lived with him at the Texas property she made no contribution to the improvement of that property and or acquisition thereof as the mortgage was already paid off and no improvement was done to the property.
20. He testified that before migrating to the United States he opened and operated a Holy Redeemer Credit Union Account No. 8573 in his name alone since in or about 1963 and over time he deposited money into this account from his income and other investments. He said that in 2002 he sold the Texas house for US\$69,000.00 and deposited the money in the Holy Redeemer Credit Union , the equivalent of about BZ\$124,000.00.
21. He deposed that in 1984 his late mother conveyed by way of gift to him the Racoon Street property. At paragraph 23 he deposed that

he improved it by constructing a concrete upper flat in or about 1998 and later in 1999 he added a lower flat also of concrete. He said the property has always been in his name alone. He exhibited a copy of the title of the property and the mortgage thereon in favour of the Belize Bank. See Exhibit "NG 5" . He said that the development was financed by a mortgage for \$100,000. from the Belize Bank and the mortgage note repayment was initially made from his savings in the Holy Redeemer Credit Union account, until he discharged the mortgage out of the proceeds of sale from his Texas property and from the realization of his Morgan Stanley Investment Account in about 2003. See Exhibit "NG 6" copy of discharge of mortgage.

22. Mr. Gentle deposed that the balance in the Holy Credit Union Account at the date of the affidavit is about \$2,000.00. He further deposed that in 1999 to about 2003 he agreed to allow Mrs. Beverly Gentle to sign on said account merely for convenience of accessing funds from time to time on her visits to Belize. That this happened prior to his migration to Belize and was not done with the intention to let her be a joint owner. He said he later removed her as a signatory of that account.

23. He deposed that of the household items in the Summons, the following pieces of furniture are derived from his first marriage and owned by him. He shipped the said furniture when he migrated home:
 - (a) entertainment center;
 - (b) breakfast table and stand;
 - (c) king size bed;
 - (d) large black dresser;

- (e) twin bed and dresser;
- (f) small refrigerator;
- (g) china cabinet.

24. At paragraph 13 of his first affidavit, Mr. Gentle deposed that when he was in the United States he worked at Sears Company at a monthly salary of US\$2,000. until his retirement in 1991. Thereafter, he and Beverly jointly operated a cleaning service until about 2002. He said that he and Beverly maintained a joint account at Aldine Teacher's Credit Union now called InvesTex Credit Union into which both their salaries and income from the cleaning services were deposited while they cohabited together in the United States. He said they used those funds to live on. Further, he deposed that his pension from Sears Company is still deposited in this joint account. That Beverly is still using this account to support her lifestyle. The money from this account was also used to make the initial down payment on the Ford Explorer and to pay a few mortgage note on the vehicle before it was exported to Belize. See "N.G. 2" for a copy of Certificate of Registration for the 1999 Ford Explorer.
25. Mr. Gentle deposed that no money from this Aldine Credit Union Account was ever used to pay any mortgage note on the Texas property as that mortgage was paid off and no money from this account was used to improve his property at Racoon Street. See Exhibit "NG 1" for InvesTex Credit Union statement account.
26. Mr. Gentle deposed that in or about 2002 he closed the Morgan Stanley Investment account and received US\$29,540.22 after taxes by way of distribution. See Exhibit "N.G.3". He further deposed that he used part of the proceeds from the realization of the Morgan

Stanley Investment account to pay off the mortgage on the 1999 Ford Explorer motor vehicle and the remainder he deposited in his account at Holy Redeemer Credit Union. See Exhibit "N.G. 4" for a copy of the entries from his Holy Redeemer Credit Union pass book for the period 2001 – 2005.

27. Mr. Gentle deposed that he migrated to Belize in 2002 and was married to Beverly on 8th October, 2002 and that they divorced on 28th December, 2007.
28. Mr. Gentle denied proposing to Beverly that they jointly construct a house on his land in Belize as it had a house already and he decided to convert it to concrete upper and lower flat. He denied that any loan payment was made from any joint account with Beverly. He also denied that "BG9" is his tax return. He further denied purchasing any freehold interest in the Racoon Street property for \$669.72 in 1991.
29. Mr. Gentle filed a supplemental affidavit on 11th July, 2008 where he deposed that he is 70 years old. That after retiring he was able to maintain himself from the pension he collected and was not financially dependent on Beverly Gentle. Further, since retiring he has no source of income other than his pension and social security benefits.
30. Mr. Gentle deposed that he made it known to Beverly Gentle that he would be returning to Belize upon his retirement. He said that after moving to Belize in 2002, Beverly Gentle decided that she wanted to become a Belizean citizen and this was easily facilitated through marriage.

31. Mr. Gentle further deposed that he made all mortgage payments to the Belize Bank on the Racoon Street property from a monthly 'profit and sharing' scheme conducted by Sears, his previous employers. Further, Beverly never physically assisted in the improvements made on the Racoon Street property. That she simply moved with him into a completed house in 2002.
32. He deposed that the mortgage payments were not made from the joint account which he held with Beverly. That since August to September of 2002, his name has not been on Beverly's Aldine's Teacher's Credit Union Account. However, his entire pension from Sears in the sum of US\$300.00 is still deposited into that account and Beverly has had those monies at her disposal and to his exclusion.
33. He deposed that around August to September of 2002, he stocked N& B Variety Store with the estimated value of goods being \$4,000. Thereafter, it was stocked periodically. He said Beverly operates the business rent free from the ground flat of his home since it was first opened in 2002, which rental value is \$500.00 monthly.
34. Mr. Gentle further deposed that the 1999 Ford Explorer was shipped in a 20ft container along with his personal household effects in 2001. He alone paid the customs duty, entry fee, license and registration fee on the vehicle. See "N.G.S" for a copy of the Belize Customs and Excise Declaration Form for his personal and household effects.
35. He deposed that in or around 2006, he suffered a stroke. That due to his age and the condition of his health he is unable to work. At this time his social security benefit of US\$700.00 per month is his

only source of income and out of which he meets his medical and living expenses.

Legal submissions for the Applicant

36. Mr. Bradley referred to section **16(1) of the Married Women's Property Act** supra. Further, learned Counsel referred to the cases of **Pettitt v. Pettitt (1970) AC 777, (1969) 2 All ER 385** and **Gissing v Gissing (1971) AC 886, (1970) 2 All ER 780** where the English Court ruled (a) that the equivalent section 17 of the Married Women's Property Act 1882 of the United Kingdom was procedural and declaratory only, (b) applications under that section were to be decided on the legal and equitable principles of property law in order to decide who owned the property and in what shares and (c) these principles included the law of trusts and in particular the law relating to resulting, implied, or constructive trusts. He further submitted that the English position was applied in the Belizean case of **Jovita Novelo v. Alonzo Novelo et al (Supreme Court Action No. 623 of 2002)** which case cited both the **Pettitt case** supra and the **Gissing case** supra.

37. Mr. Bradley further submitted that the cases of **Gissing supra**, **Lloyds Bank v. Rossett (1990) 1 All ER 1111**, **Grant v Edwards and Edwards (1987) 1 FLR 237** and **Eves v. Eves (1975) 3 All ER 768** illustrate the common law principles to determine the proprietary interest of a spouse or partner in the absence of specific statutory rules or principles and in the absence or evidence of explicit agreement between them as to title, loan, gift, or of a declaration of trust.

38. Counsel also referred to the **Supreme Court of Judicature Act, Chapter 91** supra which shows several options for maintenance, alimony, and property settlement. Though Counsel referred to several sections I find that only section 148:01 is applicable in this case. Learned Counsel submitted that it is clear from the provisions of section 148:01 that the legislature intended to: (a) expand the powers and flexibility of the Supreme Court in making fair, just and equitable financial provisions for spouses on the breakdown of marriage and (b) enhance particularly the position of the wife.
39. Learned Counsel referred to the case of **Jovita Novelo v. Alonzo Novelo** et al supra and submitted that a similar application was made under section 148:01. He said that in this case there were three real properties involved. That the Court declined to make a declaration that the wife has an interest in any of the properties and instead ordered the payment of a lump sum of \$40,000. to the wife. Learned Counsel submitted that with due respect to the Judge that it is his view that the Court, rather than approaching the determination with a broad brush which the law intends, was too narrow and focused virtually exclusively on identifying financial contributions by the wife to the acquisition of the properties in question. Furthermore, he submitted that the Court determined the issue on the basis that *“the evidence must show that there was a written declaration or implicit or explicit agreement or common intention or understanding that she would share in the title to the property.”* In addition Counsel submitted that the Court was heavily influenced by its finding that the wife owned two properties one of which measured “a huge 1,495 acres” with a double storey building on one of them. Learned Counsel said that this decision was not appealed and thus the Court of Appeal did not have the

opportunity to give a ruling elucidating its interpretation and application of the relatively new section 148:01.

40. Counsel then referred to the case of **White v. White (2000) 3 WLR 1571** which he submitted is instructive on the approach of the Courts in determining financial provision for spouses on divorce. Counsel submitted that this case is important because it provided general guide lines on how the Courts should approach the exercise of its jurisdiction to make financial provision under the English Matrimonial Causes Act which he said is roughly equivalent to our Supreme Court of Judicature Act as it relates to division of property. The main judgment in that case was delivered by Lord Nicholls of Birkenhead who said that the objective must be to achieve a fair outcome and in seeking to achieve this there must be no discrimination. Further as a general guide, equality should be departed from only if there is a good reason for doing so. Another factor is the available resources of the parties but there is no need for analysis of the contributions as the court has wide discretionary powers.
41. Counsel also referred to the case of **Miller v. Miller (2006) UKHL 24** where the main judgment was delivered by Lord Nicholls of Birkenhead and in which he referred again to fairness.
42. In applying the guidelines under section **148:01 of the Supreme Court of Judicature Act**, Learned Counsel submitted as follows:

In respect to section 148:01 (5) (a) the Petitioner has made substantial contributions both directly and indirectly to the acquisition, conservation and improvement of the matrimonial property in that she paid for the freehold title and at least half of the

mortgage payments for the Belize Bank loan from 1997 to 2003, this being paid from the joint American Account.

43. Counsel submitted that in regards to section 148:01 (5) (b) which provides for non-financial contribution, the Petitioner actively participated with her husband in the maintenance of the Texas property and also in the acquisition, constructions, improvement of the matrimonial home. He submitted that Ms. Beverly worked several jobs after the Respondent was retired and her money was paid into the joint American Account, the proceeds of which enabled the parties to live.
44. Mr. Bradley submitted that with regards to section 148:01 (5) (c) which provides that the court shall take account of the effect of any proposed order against the earning capacity of either the husband or the wife, that Ms. Beverly was gainfully employed and had her own business in the United States and chose to leave her life there to move to Belize on the invitation of Mr. Gentle. He submitted that the break up will now affect her future prospects and earning capacity because she had no other place to live in Belize and no other ties.
45. As for age and state of health of both the husband and the wife, and the children from the marriage (if any) which is section 148:01 (5) (d), Mr. Bradley submitted that both Mr. Gentle and Ms Beverly Gentle can be considered of retirement age and thus in making a determination the Court should take into account their retirement.
46. Section 148:01 (5) (e) provides for the non-financial contribution made by the wife in the role of the wife and/or mother and in raising the children born from the marriage. Counsel submitted that here

Ms. Beverly devoted herself so much to the Respondent that she opted to move to the Respondent's country of origin. That she worked several jobs and had her own business and her income was contributed to the joint United States account to support her and the Respondent.

47. As for section 148:01 (5) (f) which provides for pension Counsel submitted that there is evidence that Mr. Gentle receives a pension, but because Ms. Beverly is currently self-employed she will not draw a pension.
48. As for section 148:01 (5) (g) which provides for the period when the parties were married, Counsel submitted that the parties were married on 8th October, 2002 and divorced on 28th December, 2007. Previous to that date of marriage, the Petitioner and the Respondent co-habited as husband and wife continuously since 1985 to the date of the marriage. The parties therefore were co-habiting from 1985 to 2007 (twenty two years).
49. Counsel submitted that with regards to section 148:01 (5) (i) which provides for other fact or circumstances which in the opinion of the Court, the justice of the case requires to be taken into account, Counsel submitted that the intent of the legislation and the overriding objective of these provisions are to achieve a fair outcome as Lord Nicholls said in **White v White** supra. He submitted that the approach is not to focus on any particular prescribed factor, but to consider the factors and the particular circumstances of the case as a whole and do what is fair. Counsel further submitted that *“every relationship of marriage gives rise to a relationship of interdependence ... mutual dependence begets mutual obligations of support.”* The relationship is properly viewed

as one of “sharing”. Mr. Bradley submitted that in addressing the division of assets the essential approach should be based on the yardstick of equality of entitlement and that equality should only be departed from and to the extent, there is good reason for doing so and in these circumstances there is none. See **Miller v Miller** supra.

Respondents submissions

50. Mr. Williams submitted that section 148:01 provides guidelines for the distribution of property upon divorce of the parties. The guidelines specifically address property acquired jointly during the subsistence of the marriage or acquired by either of them during the subsistence of the marriage. He submitted that Norman Gentle and Beverly Gentle were married in Belize on the 8th October 2002 and divorced on 28th December, 2007. That the properties in dispute were acquired before that period and were as a result of the efforts of Mr. Gentle alone.

51. Mr. Williams submitted that the Belize City property, the Account at Holy Redeemer Credit Union and the 1999 Ford Explorer are all properties acquired before the marriage or as a result of the individual effort of Mr. Gentle to the exclusion of the Petitioner and therefore is non-matrimonial. He submitted that non-matrimonial property is the property the parties bring with them into the marriage or acquire by inheritance or gift during the marriage, as per definition by Lord Nicholls in **Miller v. Miller** supra who said that it is “*the financial product of the parties’ common endeavour.*”

52. Mr. Williams submitted that the Belize City property was acquired in or about 1984 as a gift from his mother and therefore clearly non-matrimonial as it is from a source outside of the marriage as they did not marry until 2002.
53. Mr. Williams submitted that the improvements made to the Belize City Property was through the efforts of Mr. Gentle alone and through his financing alone. He submitted that Ms. Beverly made no direct or indirect financial contribution to the improvements made as per section **148:01 (5) (a)**. Learned Counsel submitted that section **148:01 (5) (b)** speaks of non-financial contribution during marriage. However, it has no effect where the properties were acquired before marriage as in this case. He submitted that Ms. Beverly has not asserted any non-financial contribution and even if she did, they both have made mutual non-financial contributions to each other.
54. Learned Counsel submitted that **148:01 (5) (c)** does not arise. As for section **148:01 (5) (d)** which speaks of age and health the Court must look at Mr. Gentle's age and illness. He is 70 years old and he suffered a stroke in 2006.
55. Learned Counsel submitted that section **148:01 (f)** speaks of eligibility of either party to a pension and that Mr. Gentle receives a pension of US\$1,000.00 monthly but he only receives US\$700.00 as the balance of US\$300. goes to Ms. Beverly's account in United States.
56. Mr. Williams submitted that section **148:01 (5) (e) and (g)** speaks to the duration of the marriage and the needs arising as a result and the compensation for the disadvantage of one party as a result

of the marriage. He submitted that in the case of **Miller v Miller** supra it was stated that *“the most common source of the need is the presence of children, whose welfare is always the first consideration, or other dependent relatives, such as elderly parents”*. Counsel submitted that this is not evident in the Gentle case. They were no children from the relationship and both parties worked. He further submitted that Ms. Beverly was never at a disadvantage as a result of the marriage. That the parties did not order their affairs to the advantage or disadvantage of the other.

57. Mr. Williams submitted that the Court should look at other considerations as per section 148:01(5) (i). Counsel submitted that the court should look at short marriage in this case. He submitted that the union in this case is a short one. He referred to the case of **McCartney v Mills McCartney (2008) EWHC 401** where the duration of the marriage weighed heavily on the award. It was a short marriage and it was unfair to expect Mills McCartney should continue to live at the same rate as during the marriage. He further submitted that the Court should look at the conduct of the claimant resulting in the breakdown of the union.

Determination

Matrimonial Property - Racoon Street Property

58. The first Claim by Ms. Beverly is for a Declaration under section **16 (1) of the Married Women’s Property Act** that the matrimonial property situated at Racoon Street is held by Mr. Gentle on trust for himself and herself in equal shares or in such shares as the Court deems just. She must therefore establish that Mr. Gentle holds the

legal estate on trust to give effect to her beneficial interest. If the Court decides that there is a trust, whatever type it may be, then that interest would have to be quantified.

59. But, before looking at the evidence to establish a trust the Court will decide whether the evidence in this case should be considered from the date of the commencement of the common law union or the date of the marriage. Mr. Williams in his submissions said that the Act speaks to property acquired during marriage and that the parties were married on the 8th October 2002 and divorced on the 28th of December, 2007. He said this was a short marriage. Counsel submitted that the properties in dispute were acquired before that period and were as a result of the efforts of Mr. Gentle alone.
60. In my view the Court has to look at all the evidence from the commencement of the union to the end of their living together and not just during the period of marriage. The evidence is that they lived together in a common law union since 1985 and later married on 8th October, 2002. They divorced on the 28th December, 2007. The application was correctly made under the **Married Women's Property Act** and section 148:01 of the **Supreme Court of Judicature Act** which is section 148 A in Act No. 8 of 2001. Section 148 E in the said Amendment to the Act provides for declaration of interests in property and alteration of property rights where the parties live in a common law union. Section 148 D provides that *"common law union" or "union" means the relationship that is established when a man and woman who are not legally married to each other and to any other person cohabit together continuously as husband and wife for a period of at least five years.* The evidence is that the parties have lived together

for over sixteen years in a common law union before they got married.

61. Sections 148A and 148E are identical except for one there is a marriage and in the other there is a common law union. Since the parties were married then in my view it was not necessary to bring the action under section 148E as well. This does not prevent the court from looking at evidence from the commencement of the union to the end of the marriage to determine property rights.

The law to establish trust

62. I agree with Mr. Bradley's submission who relied on the cases of **Pettitt v. Pettitt** and **Gissing and Gissing** that Applications under section **16 (1) of the Married Women's Property Act** is procedural and declaratory only. That the applications must be decided on the legal and equitable principles of property law. Further that these principles included the law of trust and in particular the law relating to resulting, implied or constructive trust.
63. The applicable statute in Belize is **The Registered Land Act, Chapter 194** and **The Law of Property Act, Chapter 190**. In fact, Mr. Bradley's application is made under **section 143 of the Registered Land Act**.
64. The Racoon Street Property is in the name of Mr. Gentle. He is the registered owner and therefore the owner of the legal estate. He has absolute ownership subject to any over-riding interest. See **sections 26 and 31 of the Registered Land Act**. Mrs. Beverly Gentle said that she had made significant financial and non-

financial contributions to the acquisition of the assets of the marriage. She therefore has to prove that she made these contributions to be entitled to an equitable interest in the property.

65. I agree with Mr. Bradley citing the **Gissing case** that a trust is created when the holder of the legal title conducted himself in such a way that induced the other to act to his/her detriment in the reasonable belief that by so acting she was acquiring a beneficial interest in the property. Lord Diplock at page 10 of his judgment said:

“Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate of the land is not vested must be based on the proposition that the person in whom the legal estate is vested holds it as trustee on trust to give effect to the beneficial interest of the claimant as cestui que trust. The legal principles applicable to the claim are those of the law of trust in particular the law relating to the creation and operation of resulting, implied or constructive trust.

66. In **Gissing case** Lord Diplock said:

A resulting, implied or constructive trust – and it is unnecessary for present purposes to distinguish between these three classes of trust - is created whenever the trustee has so conducted himself that it would be inequitable to deny the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the

reasonable belief that by so acting he was acquiring a beneficial interest in the land.”

67. I further agree with Mr. Bradley’s submissions that the cases of **Gissing supra**, **Lloyds Bank v. Rossett supra** , **Grant v Edwards and Edwards supra** and **Eves v. Eves supra** all illustrate the common law principles to determine the proprietary interest of a spouse or partner in the absence of specific statutory rules or principles and in the absence of evidence of an explicit agreement between them as to title, loan, gift, or of a declaration of trust. In this case there is no written agreement between Mrs. Beverly and Mr. Gentle.
68. It should be noted that the cases of **Pettitt v. Pettitt** and **Gissing v Gissing** were decided before the Matrimonial Causes Act 1973 and were based on the ‘normal’ law of trusts. It is now accepted that the important point in these two cases is that the Court cannot simply find a trust because that would be a fair result. Also the courts cannot find an intention to create a trust where the evidence is that no such intention exist.
69. In **Gissing v Gissing supra** it is stated that to establish such trust it could only arise (a) by express declaration or agreement (b) by way of resulting trust where the claimant has directly provided part of the purchase price or (c) from the common intention of the parties.
70. In this case the Court has to look at all three of these situations as Mrs. Beverly said that there was an agreement between herself and Mr. Gentle. Also, that she contributed directly to the purchase price.

Express declaration or agreement

71. There is no written agreement in this case therefore sections 43, 44, and 45 of the **Law of Property Act** does not apply. To be applicable the agreement, gift or declaration must be in writing.

72. The express declaration or agreement therefore, must be based on express discussions between the parties about what their respective beneficial interest in the property were to be. Lord Bridge in **Lloyds Bank** case opined that the finding of an agreement or arrangement must be based on evidence of express discussions between the parties.

Beverly Gentle filed her first affidavit on 15th March, 2007. She filed her supplemental affidavit on 18th July, 2008 which is about one year four months later in which she deposed of an agreement between herself and Mr. Gentle to share ownership of the house. She also put forward an excuse as to why her name is not on the title to the house. This is stated at paragraph 2 which reads:

“The Respondent and I agreed that we would share ownership of the house situate at 22 Racoon Street, Belize City, Belize equally. The only reason why my name was not on any of the title documents was because the Respondent said my being an American citizen might complicate matters and I believed him. Based on this, I contributed towards the mortgage payments for a Belize Bank loan to construct the house.”

73. The evidence from Beverly in her first affidavit is that at the beginning of the year 1997, the Respondent proposed that they migrate to Belize and she accepted the proposal. That Mr. Gentle

proposed that they jointly construct a house on land situated at No. 22 Racoon Street which was a leasehold property which Mr. Gentle had acquired from his mother. She said that the freehold interest in the said land at No. 22 Racoon Street was purchased by Mr. Gentle and herself for the sum of \$669.22 in 1991 which sum was paid from their joint account. See para 12 and 13 of first Affidavit.

74. Mr. Gentle's evidence at paragraph 6 is that in about 1984, his late mother conveyed by way of gift to him her house and lot at No. 22 Racoon Street, Belize City. At paragraph 23 of the said affidavit Mr. Gentle said that he later improved the property by constructing a concrete upper flat in or about 1998 and later in 1999 he added a lower concrete flat. Exhibit "NG 5" shows a Land Certificate in the name of Norman Gentle for No. 22 Racoon Street, Belize City dated 3rd February, 1994. At paragraph 30(b) he said that: *"I never proposed to Beverly Gentle that we jointly construct a house on my land in Belize as it already had a house and I decided to convert it to concrete upper and lower flat. And at 30 (c) he said that "I did not purchase any freehold interest in No. 22 Racoon Street for \$669.72 in 1991 from money in any joint account with Beverly Gentle. The property was entirely a gift from my late mother and the improvement thereto was by way of loan which I paid off out of proceeds of sale of my property in Houston, Texas, and from proceeds of my Morgan Stanly Investment account."*
75. Mr. Williams submitted that Queens Square became a Compulsory Registration area in 1984 and that Mr. Gentle would have had to turn in his Deed of Conveyance to get title under the Registered System. The Minister's Order declared Queen's Square Area a compulsory registration area on 30th July, 1984. Racoon Street is

in the Queens Square Area. The evidence by Ms. Beverly is that the freehold interest in the said land at No. 22 Racoon Street was purchased by Mr. Gentle and herself for the sum of \$669.22 in 1991. If this evidence by Mrs. Beverly was correct, then the Certificate of Title would have been dated 1991 as Queens Square was already a registered area then. The Certificate of Title is dated 1994. I am therefore satisfied that Ms. Beverly Gentle is not being truthful to this court.

76. On the other hand, I find Mr. Gentle's evidence credible. It is obvious from the evidence that when his mother gave him the property it was not under the compulsory registration system and that he would have had to turn in his Deed of Conveyance to get Title under the Registered System which was done in 1994. I am further fortified by my finding because there is no evidence of the payment of the \$669.22 in 1991 for the freehold title. I don't find the evidence by Mrs. Beverly Gentle credible that there was an agreement between herself and Mr. Gentle to share ownership of the house and that her name was not on any of the title documents because Mr. Gentle said that she being an American citizen will complicate matters. Further, I find there was no agreement to jointly construct a house on Racoon Street.
77. This case is unlike the cases of **Eves v. Eves** supra and **Grant v Edwards** supra where it was established that the parties did arrive at an express agreement or common intention. In the case of **Eves v. Eves** the house was bought in the husband's name, partly by a sale of his former home and partly by a mortgage which he obtained. At the time of the purchase he told the wife that if she had been 21 years of age he would have had the house put in their joint names. At the trial he admitted in evidence that he used the

wife's age as an excuse for not having the house put in their joint names. It was held on appeal that a trust had been created because the husband led the wife to believe that she had an interest in the house.

78. And in the case of **Grant v. Edwards** supra a cohabiting couple, both of whom were married to other people decided to buy a house which the man said should be conveyed into his name and his brother's name jointly because his brother would assist him in obtaining a mortgage. He told his spouse that her name was not on the title because it would prejudice the matrimonial proceedings which were pending against her husband. The woman contributed substantially to the household expenses but the man paid the deposit and all the mortgage instalments. The Court of Appeal held that the woman was entitled to half of the beneficial interest in the house. In this case it was found that Mr. Edwards never had any real intention of replacing his brother with the Plaintiff. As in the case of **Eves v Eves** supra the man was being untruthful. Mustill L.J. had this to say about the untruthfulness at page 12: *"Whatever the Defendant's actual intention, the nature of the excuse which he gave must have led the Plaintiff to believe that she would in the future have her name on the title, and this in turn would justify her in concluding that she had from the outset some kind of right to the house."*

79. Further, in the case of **Lloyds Bank** supra Lord Bridge of Harwich said at page 4 that *"The expectation of parties to every happy marriage is that they will share the practical benefits of occupying the matrimonial home whoever owns it. But this is something quite distinct from sharing the beneficial interest in the property asset which the matrimonial home represents. These considerations give*

rise to special difficulties for judges who are called on to resolve a dispute between spouses who have parted and are at arm's length as to what their common intention or understanding with respect to interest in property was at a time when they were still living as a united family and acquiring a matrimonial home in the expectation of living in it together indefinitely.”

80. In the case at bar the parties are divorced and are now at arm's length as to who should get what. The difficulty here is the evidence as there is no evidence showing the common intention or understanding based on express agreement of the parties. Mrs. Gentle has failed to prove that there is a common intention or understanding between herself and Mr. Gentle with respect to the interest in the Racoon Street property.
81. If the Court had found that there was an express agreement between the parties then the next stage would have been whether the claimant subsequently conducted herself in a manner which was detrimental to herself as a result of that agreement. But, since there is no evidence of an express agreement the court will now look to see whether a common intention to share could be inferred from the conduct of the parties.
82. Further, as stated above there is no evidence of the payment of the \$669.22 towards the purchase price of the freehold title of the Racoon Street property in 1991. There is no evidence to establish a resulting trust. Therefore, I am satisfied that this property was a gift from Mr. Gentle's mother and that he turned in his Deed of Conveyance in 1994 to get his Certificate of Title under the Registered System.

Trust from the common intention of the parties based on conduct

83. In the absence of evidence of an express agreement, the question to be answered is whether there was a common intention which can be inferred from the conduct of the parties both as a basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In **Grant v. Edwards** supra Nourse L.J. said at page 7,

*“In order to decide whether the Plaintiff had a beneficial interest in 96, Hewitt Road we must climb again the familiar ground which slopes down from the twin peaks of **Pettitt v. Pettitt** (1970) A.C. 777 and **Gissing v. Gissing** (1971) A.C. 886. In a case such as the present, where there has been no written declaration or agreement, nor any direct provision by the Plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the defendant, that she should have a beneficial interest in the property. If she can do that, equity will not allow the Defendant to deny that interest and will construct a trust to give effect to it.”*

84. To decide whether there was the necessary common intention which can only be inferred from the conduct of the parties, the Court will look at all the evidence with regards to any expenditure (direct or indirect contributions to mortgage payments) on the Racoon Street property and also any other conduct which she acted upon to her detriment such as indirect contributions. The Court has already decided above that Ms. Beverly did not spend any money on the purchase of the freehold property. I will now turn to the mortgage payments for the renovation of the Racoon

Street property but will start with the Texas property as the proceeds of sale of this house was used to pay off the mortgage on the Racoon Street property.

Mortgage payments on Texas property

85. Mrs. Beverly Gentle's evidence is that when she moved in with Mr. Gentle in the Texas home they set up a Joint Credit Union Account in the USA (Aldine Credit Union Account) and both their salaries were deposited in that account. She also said that all personal and household expenses were met from that account including the monthly mortgage payments. She did not say how much payment was made monthly, when she began paying from this account and when the mortgage was discharged. She made this bare statement without any figures and any supporting documentation. She has not closed the Aldine account and it would have been very easy for her to get a statement which shows proof of any monthly withdrawals to this account. There is absolutely no supporting documentation. I am not convinced by this bare statement.
86. Mr. Gentle deposed that there was a joint account at Aldine Teachers Credit Union from which both their salaries from the income of their janitorial service was deposited and that they used those funds to live on. On a balance I find this evidence credible. Further, he deposed that there was no mortgage on the Texas property as that mortgage was paid off at the end of his first marriage and no improvement was made on the said property. I find that Ms. Beverly did not prove that mortgage payments were made from the Joint Aldine Credit Union Account on the

Texas property nor that she contributed to any improvement or conservation to the said property.

Mortgage Payments on the Racoon Street Property

87. Mrs. Beverly deposed that in May of 1997 they obtained the loan of \$100,000.00 for the construction of their intended matrimonial home. She said that the monthly loan payments were duly paid out of their joint account. Again, she did not say how much payment was made monthly on the mortgage loan. Again, there was no supporting documentation. No receipts or no records from the Joint Aldine Credit Union Account and no explanation given as to why there was none. It is for the Petitioner, Ms. Beverly to prove her case.
88. Mr. Gentle's evidence is that no money from this Aldine account was used to improve his Racoon Street property or to make any mortgage payments. In his supplemental affidavit he deposed that he made all mortgage payments to the Belize Bank Limited from a monthly 'profit and sharing' scheme conducted by Sears.
89. Mr. Gentle also deposed that he had a Morgan Stanley Account (IRA) since he migrated to the USA and he made contributions to that to the exclusion of Beverly Gentle. There was no evidence from Beverly about this IRA account. There was real evidence forthcoming from Mr. Gentle. "NG 3" shows that Mr. Norman Gentle received US\$ 29,840.22 on 20th November, 2001. There was further real evidence from Mr. Gentle which is "NG 4" showing copies of entries from his Holy Redeemer Credit Union Pass Book. This pass book showed the proceeds of sale from the

Texas house which was sold for US\$69,000.00. in the year 2002. Mr. Gentle said the equivalent of \$124,000.00 was deposited in this account. The book shows that on the 8th August, 2002, \$124,194.65 was deposited in this Holy Redeemer account.

90. Beverly on the other hand exhibited a Holy Redeemer Credit Union receipt in the name of Norman and/or B. Gentle showing the sum of \$124,194.65. See Exhibit "BG 10". Why is Beverly's name on this receipt? Mr. Gentle's evidence is that in about 1999 to 2003 he agreed to allow Beverly on the account for convenience to access funds when she was visiting Belize and not with the intention of them becoming joint owners. He said this is prior to their moving to Belize but he later removed her as signatory to that account. Mrs. Gentle did not dispute this although she filed a supplemental affidavit. I therefore find Mr. Gentle's evidence credible. Further, as a result of my finding above that Beverly did not prove that she made any mortgage payments on the Texas property, this sum deposited in this Holy Redeemer Credit Union Account which is the sale from the Texas property belongs solely to Mr. Gentle.

91. Mrs. Beverly Gentle also said that on 18th November, 2002 she deposited the sum of \$14,784.26 in the Holy Redeemer Credit Union which is her retirement savings from Aldine School District. There is no receipt or cheque showing this payment. Mr. Gentle's evidence is that the said amount is from his IRA proceeds as Beverly did not retire or receive any retirement savings from Aldine School District. There is real evidence from Mr. Gentle that he received the IRA payment. There is no real evidence from Ms. Beverly that she received this payment. As a result I don't find Beverly's evidence credible. She has not proven that the

\$14,784.26 is her retirement savings which was deposited in the Holy Redeemer Credit Union Account.

92. Learned Counsel, Mr. Bradley further submitted that Mrs. Beverly devoted herself to Mr. Gentle and opted to move to Belize. He submitted that she quit her job and came to Belize and that this is detrimental evidence. I don't find this as detrimental to Beverly. The fact that she moved to Belize to be with the Respondent does not by itself entitle her to beneficial interest in the property. As Mustill L.J. said in **Grant v Edwards**, *the law does not recognize a concept of family property, whereby people who live together in a settled relationship ipso facto share the rights of ownership in the assets acquired and used for the purposes of their life together.*" My view is that this evidence shows love and affection and wanting to be with Mr. Gentle who had indicated to Beverly that he would retire in Belize. Further, Mrs. Beverly was running a business to the exclusion of Mr. Gentle who did not claim any profits from this business although the business is at the bottom flat of the Racoon Street property.
93. I find that the evidence adduced by Beverly fails to show the existence of any common intention that she should share in the ownership of the Racoon Street property. There is no evidence of any mortgage payments made to the Texas property nor to the Racoon Street property. There is also no evidence that Ms. Beverly contributed to the improvement or conservation of the Texas Property or to the Racoon Street Property. I find that Mrs. Beverly Gentle has failed to prove that Mr. Gentle holds the Racoon Street property on trust for himself and her in equal shares.

94. As for Mr. Bradley's submissions on the case of Jovita Novelo v. Alonzo Novelo et al Supreme Court Action No. 623 of 2002 which judgment was delivered by my brother Judge on 15th November, 2004 I disagree with his submissions for several reasons. Firstly, the \$40,000. awarded to the wife was a lump sum payment for maintenance and had nothing to do with the property rights.
95. Secondly, I disagree with Mr. Bradley that the Judge focused exclusively on identifying financial contributions by the wife to the acquisition of the properties in question and determined the issue on the basis that the evidence must show written declaration or implicit or explicit agreement or common intention or understanding that she should share the property for the following reasons:

At paragraph 23 of the Learned Judge's judgment he said:

“... In Belize as in England, statute complemented by equity, now applies in the determination of title or proprietary right between spouses or partners. In the absence of explicit or implicit agreement or common intention of the spouses or partners as to propriety interest, equity may impose the right of a spouse or partner to beneficial interest in property acquired jointly or by the other during marriage or during common law union if the applicant has made contribution whether in money, labour or otherwise in kind, in the acquisition, improvement or conservation of the property in circumstances that it is just that the title holder should be deemed to hold the property on trust to the extent of the beneficial interest.” (emphasis mine).

96. The Learned Judge identified the applicable principle which as can be seen above is not just financial contributions and he applied them. In this case the husband gave evidence that he owned the properties before he met his wife and he sold those properties to buy the matrimonial property. Further, the wife admitted in cross-examination that the money used for the purchase of the matrimonial property was from sale of the husband's properties in Caye Caulker and that he had acquired those properties before she went to live with him. Furthermore, the Judge did find at paragraph 31 that there is no evidence that the matrimonial property was improved at all or conserved with money from their fishing business. See also paragraph 32 where the learned Judge said that, "*The contribution must be made in circumstances from which it can be inferred that joint ownership was intended, an example would be the sort of labour or conduct the claimant could not reasonably be expected to engage in unless he or she was to have an interest in the property – see judgment of Nurse LJ at page 95 in Grant v Edwards and Edwards.*"

The Learned Judge did not find any evidence of such labour or conduct to give rise to a beneficial interest.

97. I also disagree with Mr. Bradley that the Judge was heavily influenced by the fact that the wife owned two properties. This did not form part of his consideration at all as to beneficial interest.
98. As for Counsel's submissions on the interpretation of section 148:01 and the Court of Appeal not having an opportunity to give its interpretation, in my view the learned Judge did not have to apply section 148:01 in this case. The Learned Judge

painstakingly explained at paragraph 14 of his judgment that the *“considerations in this section are not stated as factors in deciding whether only one or both spouses have title or rights which the court may make declaration of, they are stated as factors in sharing out property in which joint title is found to exist...”*

99. In my view, since the Judge found that the wife had no proprietary interest in the property then it was not necessary to apply section 148:01 for the sharing out of that interest.

Like in the case at bar since the Court found that Mrs. Beverly Gentle has no beneficial interest in the Racoon Street property, then it would not be necessary to apply the factors in section 148:01 for sharing.

Holy Redeemer Credit Union Account No. 8573

100. On a balance I find Mr. Gentle's evidence credible that he opened the Holy Redeemer Credit Union Account in 1963 in his name alone and that he allowed Beverly to sign on this account between the period 1999 to about 2003 for the sake of convenience of accessing funds from time to time when she visited Belize and prior to Mr. Gentle's migration back to Belize. I also find that he did not do this with the intention of her becoming a joint owner of the account. I find his evidence credible that he later removed her as a signatory to this account. This was never disputed by Beverly. Also, for reasons stated above the money in that account belongs solely to Mr. Gentle. I find that Mrs. Beverly Gentle is not entitled to \$30,000. being monies remaining in the Holy Redeemer Credit Union Account on April 24th, 2003.

The 1999 Ford Explorer

101. I find Ms. Beverly evidence credible that she made significant contributions to the acquisition of the 1999 Ford Explorer although she did not quantify the amount. Mr. Gentle in his evidence also admitted that the Joint Aldine Teachers Credit Union was used to make the initial down payment on the 1999 Ford Explorer and to pay a few mortgage note on the said vehicle before it was exported to Belize. Further, at paragraph 21 of his first affidavit Mr. Gentle deposed that he used part of his Morgan Stanley Investment Account to pay off the mortgage on the 1999 Ford Explorer motor vehicle but he did not say how much was paid or what was the balance. Also, Mr. Gentle's evidence is that he alone paid the customs duty, entry fee, license and registration fee on the vehicle. Here again, he did not say how much was paid. I am not satisfied with the evidence as to the financial contributions by each party. However, I am satisfied that both parties contributed to the acquisition and both paid the mortgage. I therefore find that the parties are entitled to the equal distribution of the value of the vehicle. Principles in **White v White** supra and **Miller v Miller** supra applied.

Household items and items in N & B Variety & Gift Shop

102. I find Mr. Gentle's evidence credible that some of the furniture in the Summons as claimed by Beverly are his personal furniture which was derived from his first marriage and was shipped back to Belize when he migrated home. This evidence was not challenged.

I find the following pieces belong to Mr. Gentle:

- 1 Entertainment Center
- 1 Breakfast table and stools
- 1 King Size bed
- 1 large black dresser
- 1 twin bed with accompanying dresser
- 1 small refrigerator
- 1 China Cabinet

I find the following pieces belongs to Beverly:

- 3 Glass tables
- Sofa Set
- 1 Glass dining table
- 4 Black Chairs
- 1 20 inch Zenith Television
- 1 19 inch Television
- 1 Breadbox
- 1 Swing chair
- 1 Straw Chair
- 1 Bathroom stand
- 1 Linen Closet
- 1 Brown microwave oven
- 1 living room stereo set
- 1 wooden desk
- 1 small Air Conditioning Unit

103. As for the contents of N& B Variety Shop, Mr. Gentle's evidence is that Beverly alone is benefiting from the profits of the business and

still continues to benefit. Although his evidence is that in 2002 he stocked the business with goods to the value of \$4,000. and that Beverly operates the business rent-free he makes no claim from the profits derived from this business. I therefore find that Beverly is entitled to the entire contents of N & B Variety Shop.

Injunction

104. The injunction granted by the Court on 26th June, 2008 was to last until the determination of this matter. As a result of the finding by the Court which is that Mrs. Beverly Gentle has no beneficial interest in the Racoon Street Property, she cannot continue to share the home with Mr. Gentle nor continue her business on the said property. However, I think it would be unfair to ask her to remove from the said property forthwith. I think one month would be a reasonable time for Mrs. Beverly to find alternative accommodation.

Conclusion

105. The orders made are as follows:
1. *The Declaration under section 16(1) of the Married Women's Property Act, Revised Edition 2000, that the matrimonial home situated at No. 22 Racoon Street, Belize City is held by the Respondent on trust for himself and the Applicant in equal shares or in such shares as the Court deems just is refused.*
 2. *An Order directing the Registrar of Lands to rectify the Register for Parcel 153, Block 45, Queens Square Registration Section which is the Racoon Street property by adding Beverly Gentle*

as co-proprietor with Norman Gentle of the land comprised therein is refused.

- 3. An Order for the sale of the Property situate at No. 22 Racoon Street, Belize City, Belize is refused.*
- 4. A Declaration that the Applicant is entitled to \$30,000.00 being one half of the sum remaining in the parties' Holy Redeemer Account No. 8573 on April 24th 2003 is refused.*
- 5. An Order for the payment of the said \$30,000.00. forthrightly to the Applicant is refused.*
- 6. A Declaration that the Applicant and the Respondent are equally entitled to the 1999 Ford Explorer bearing VIN # 1FMDU32E4XZA14713.*
- 7. An Order for the sale of the 1999 Ford Explorer and the proceeds to be divided equally between the parties.*
- 8. A Declaration that the Applicant is entitled to the following items:*
 - 3 Glass tables*
 - Sofa Set*
 - 1 Glass dining table*
 - 4 Black Chairs*
 - 1 20 inch Zenith Television*
 - 1 19 inch Television*
 - 1 Breadbox*
 - 1 Swing chair*
 - 1 Straw Chair*
 - 1 Bathroom stand*

- 1 Linen Closet
 - 1 Brown microwave oven
 - 1 living room stereo set
 - 1 wooden desk
 - 1 small Air Conditioning Unit
- The entire contents of N & B Variety Shop.

9. *A Declaration that the Respondent is entitled to the following items:*

- 1 Entertainment Center
- 1 Breakfast table and stools
- 1 King Size bed
- 1 large black dresser
- 1 twin bed with accompanying dresser
- 1 small refrigerator
- 1 China Cabinet.

10. Mrs. Beverly Gentle is given one month to find alternative accommodation.

Costs

Each party to bear own costs.

Dated this September, 2008

.....
MINNET HAFIZ
SUPREME COURT JUDGE