THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2015 – 04093

Between

DOROTHY HAMILTON also called

DOROTHY ANNMARIE HAMILTON

Claimant

And

KEITH RAMPERSAD

First Defendant

MARILYN RAMPERSAD

Second Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Farai Hove Masaisai and Mr Issa Jones for the Claimant

Mr Prem Persad Maharaj for the Defendants

Date: 1 February 2019

JUDGMENT

1. This is a case between two neighbours. They live next to each other. The defendants are husband and wife. The parties share a boundary. There is a dispute over a fence the claimant had before and a wall the defendants built. There was a claim about an encroachment. The claimant says part of the area the defendants have blocked off is a road reserve. The defendants say it is a private driveway that they enclosed. Issues were raised about whether each party has affected the other's property. The claimant says water from the defendants' property damaged hers. She said the defendants interfered with her fence. The defendants' case is that water from the claimant's property came onto theirs and caused damage. It goes without saying that relations between them have broken down.

2. In its initial stages the court tried to move the parties towards a consensual resolution. Unfortunately that did not occur and it was left to the court to resolve the claims. Each side sought several reliefs. Having identified the core areas for dispute, I will deal with these in turn on the way to resolving the claim. It is not necessary to resolve every factual conflict. For example, there is evidence by the claimant that harsh words have been used to her. But there is no claim in law arising from this.

3. The first matter I will consider is whether water from the claimant's property cause damage to the defendants' place.

4. This was not proved. There was no independent evidence to support this claim. All we had was the say so of the first defendant. His evidence was somewhat bare. There was no report of a civil engineer which is the kind of evidence that would have been required to establish this claim. The evidence of the first defendant is that his property is lower than the claimant's. This was agreed by the claimant. However, there was also evidence from the first defendant that water comes down from the SS Erin Road into all the properties on that side of the main road. Thus it cannot be said that water from the claimant's property can be wholly responsible for any damage to his property or land. Put another way the claimant can't be held accountable for what would be a natural flow of water. The defendant would have been required to take measures, knowing the lay of the land, to protect his property by constructing appropriate drainage to reduce the impact of water from higher areas into his property. The claimant would also have to take measures to contain as far as is reasonable, water from her land going over to the defendants' property. The defendant asserted, and the claimant agreed, that there was no guttering on her property. However, there was no evidence of how the water flows from the claimant's property. Does the water flow down her own property to the back or through the defendants' land? This was not resolved by the evidence. Thus, neither the water flow nor the connection to any damage sustained by the defendants has been shown. I therefore found this aspect of the defendants' claim not proved.

5. The next issue to de decided is, did the defendants damage the claimant's fence to put up a wall.

6. I accept the defendants put up a wall on their property. The continuation of it was stopped when the injunction proceedings were filed by the claimant.

7. In this regard, while I do not think the defendants removed the fence, from the photographs, the digging to put up the wall may have caused some minor displacement of the existing fence. The defendants would have been entitled to put up a wall. It would have been better if the claimant's cooperation was secured. However, that does not mean the defendants were not entitled to take measures to secure their property. Their actions were lawful and legitimate. It has not been proved that the claimant's land has been encroached on. I found that the boundary was always accepted as being the claimant's fence. The defendants' wall was built within or on the line of the claimant's fence.

8. There was a dispute about who had put up the claimant's fence. I accepted that the claimant and her family would have done so. The first defendant gave evidence that he met it there. There was no evidence that the previous occupiers of the house he bought had put it up. The claimant asserts her family had done so. It has been recognised as their fence.

9. The defendants were exercising their right to put up a wall on their property. In her witness statement, the claimant's reference to her fence was at paragraphs 6 and 7 where she stated the defendants trespassed on her property by destroying her "galvanize fence" and depositing sand, bricks and stone onto her property. The claimant in cross-examination said the fence was moved by the defendants but she could not say how much of it was

moved. There was no reference to a chain link fence in her witness statement. Her evidence lacked specifics.

10. The conclusion I came to was that the claimant's fence, whether part chain link or galvanize, was somewhat old (the claimant had said the chain link fence was there for over 40 odd years) and the defendants put up a wall in roughly the same position that the fence was. There was no interference beyond what was necessary for them to put up their wall as they were entitled to do. Any interference would have been temporary and minimal for which no effective relief is necessary.

11. This aspect of the claimant's case therefore fails.

12. The next issue is, has the claimant proved that the work done by the defendants and water emanating from the defendants' property damaged her property.

13. The evidence of the claimant in cross-examination was that her property is higher than the defendants'. Thus water coming from the defendants' place could not logically go up to her property. Further, the evidence of the claimant in her witness statement was that water coming from a PVC pipe came onto her property. She said this caused damage to her land. She did not describe in her witness statement how that water from the claimant's PVC damaged her property. I do note that there was some discussions between the parties in the early stages of the claim which resulted in the defendants relocating a

PVC pipe. However, this did not prove that the water from the pipe was causing damage to her property as claimed and the extent of it. After discussions, it is my understanding that the parties agreed among themselves about the orientation of this PVC pipe and where the runoff water from it should be directed.

14. She called a Mr Reid to give evidence in support. He is a builder. He does construction and masonry work. I accepted that Mr Reid went to the house and saw the cracks. I also accepted his opinion that he could fix them. I had no reason to disbelieve his estimate. However, I do not accept that he could say what caused the cracks. His witness statement was bare in this regard. He simply did not set out in his witness statement how any water from the defendants' property or any works done by the defendants resulted in the cracks. Second, I do not think he had the requisite qualifications and experience to do such an assessment and make a conclusion. Third, the evidence is inconclusive as to whether there may have been cracks before the work done by the defendants. This was a matter that the claimant had to prove by calling evidence of an expert, such as a civil engineer, who could have done a proper examination and assessment for the court. This aspect of her claim was therefore not proved.

15. The next aspect of the claim related to the defendants enclosing the "driveway" to their home by blocking off with a gate part of what the parties now call Hamilton Drive. This was marked as a road reserve on the plans put forward to the court.

16. There was no reason not to accept the evidence of the agreed surveyor Mr Koylass in terms of his mapping the boundaries and encroachments. However, that is where his evidence had to end. He could not give evidence about for how long each party were in occupation. He mapped out what was present on the ground on his site visit. He could not say who had occupied what areas and for what period of time.

17. What he found, however, is that the defendants are encroaching on the road reserve. This is what the claimant calls part of Hamilton Drive. The first defendant, while being cross-examined, accepted that the road reserve is his driveway.

18. The defendants moved their gate further away from their house and created a paved driveway. In doing so they cut off the use of the road reserve to the claimant on one side of her property. It also closed off access to that portion from the use of the public. It does not matter that the claimant may not have been using that way to get to her property for a considerable time. It also did not matter that the claimant had a chain link fence on that side of the road reserve. The question is whether the defendants could cut off the use if the claimant chose to use that side of her property at a future time to get to her property. She does have another entrance way through a gate which exists. The survey plan identified what exist now as a paved driveway. However, the uncontradicted evidence is that this driveway was established on the road reserve.

19. The survey of Mr Koylass sought to give effect to what exists at this time marrying occupation with a final plan which he described as a redefinition survey. In the joint instructions he was asked to find the current location of the boundaries of the property and a comparative analysis with previous surveys lodged in the Lands and Surveys Department. He was also asked to report on the location and "ownership" of Hamilton Drive… "presently" and to do a comparison with previous survey plans. In undertaking his job Mr Koylass identified the existing occupations. His plan identified the gates and the defendants' paved driveway. However notwithstanding this this did not take away from other evidence, including previous survey plans, which appeared to identify the road reserve extending down the driveway constructed by the defendants.

20. It is true that the first defendant is effectively the only present user of the area where his driveway is. Looking towards Hamilton Drive from his house the neighbour to the left has a wall and fence. The claimant is to the right and she also has a fence. The defendants might logically have thought that being the only effective users of that area it could be blocked off and paved. However, it had been identified as a road reserve and by moving his gate higher up he would deny the claimant access to the back portion of her property on that side of it.

21. The first defendant's evidence was that he had been occupying the "driveway" area of land from 1995. It seems likely that this is the case because there was a fence on the claimant's side and a fence and wall on the other side. The real difficulties between the parties seemed to have started with his construction of the wall and the placement of the gate. But even if he was occupying this

area exclusively, he was not entitled to close off an existing road reserve. His evidence in cross-examination was that the road reserve is his driveway. He therefore could not move the gate higher up such as to enclose part of the road reserve.

22. The above resolves the essential aspects of the claims brought by the respective parties. It may not resolve the underlying sources of discontent among them. Clearly over time there has been harsh words spoken and bad blood resulting. However, all the court can do, without the parties agreeing to work towards resolving their dispute, is to seek to determine the legal issues raised consistent with the court's findings on the facts. The appropriate orders to give effect to the court's conclusions will be as follows.

Order

23. The defendants' gate is to be removed from its present position at the top of the "driveway" to a position just beyond the drain they created in the photograph 0599 on the compact disc exhibited as KR 11.

24. The defendants may continue construction of their wall to the area enclosed up to the re-positioned gate. In this regard, if necessary, the attorneys may helpfully assist the parties to identify the position for the repositioning of the defendants' gate with the assistance of Mr Koylass or another agreed surveyor in accordance with the redefinition plan.

25. The claimant and the defendants must ensure that no runoff water from pipes are to run off into the other party's property. Both parties are entitled to take measures by way of drainage on their own lands to ensure their respective properties are protected.

26. The respective claims in negligence and nuisance for damage to the houses and properties of the parties are dismissed. The defendants' claim for adverse possession is dismissed.

27. The claims for injunctive relief on both sides are dismissed.

28. The claimant has succeeded partially on one aspect of her claim. However, she has not succeeded on the major part of the claim. There was no costs budget or stipulation of the value of the claim. Considering also that these parties are neighbours and must continue to strive to live together in relative peace, each party will bear their own costs.

Ronnie Boodoosingh

Judge