

EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

COMMONWEALTH OF DOMINICA

DOMHMT2013/0028

BETWEEN:

NATASHA LISA JERVIER

Petitioner

and

JERRY BERNARD MAXWELL

Respondent

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Singoalla Blomqvist Williams for the Petitioner

Mrs. Dawn Yearwood-Stewart for Respondent

JUDGMENT

[2013: July 10th]

[July 11th]

[1] **Cottle J:** This is an Application for Leave to present a Petition for divorce before the expiry of 3 years following a marriage. In the Commonwealth of Dominica parties to a marriage are not permitted to Petition for divorce within 3 years of the marriage unless a court determines that the

party presenting the petition has suffered exceptional hardship or that the other party has displayed exceptional depravity.

- [2] In the present case the Applicant seeks the leave of the court on the basis that she has suffered exceptional hardship and continues to do so. The Respondent denies that the circumstances put forward by the proposed Petitioner amounts to exceptional hardship so as to justify the grant of leave.
- [3] The Applicant's Affidavit in Support revealed complaints by the Applicant that the Respondent was denying the Applicant her conjugal rights to her great distress. She swore that the husband only wanted to be intimate once each month. Even at that rate the husband would complain that the wife was too sexually demanding. The marriage lasted 10 months before the wife left the matrimonial home. She says that intercourse occurred only a few times during that period and when it did, the experience was brief and frustrating for her. The tension this caused led to violence in the union. She went so far as to tearing the husband's trousers on one occasion when he tried to get dressed and leave the marital bed before satisfying her.
- [4] The wife says that she is now 28 years old. She wishes to start a family. She wants to get out of a "*sexless, loveless, violent, relationship*" so she can try to find another suitable partner. Because of her religious views she does not wish to embark on other relationships before her marriage is dissolved. She also says that she is the principal provider of the finances of the family. There is no hope for reconciliation according to the wife.
- [5] The husband for his part accepts that there have been difficulties on the domestic front. He says the wife abused him verbally and thus adversely affected his sexual performance to the extent that he resorted to an "energy pill for men" and alcohol in an effort to meet the 'abusive demands' of the wife, but these only made him ill.
- [6] He says that the hardships and ***** experienced by the wife do not go beyond the pale of those usual in a marriage. He prays that the wife's application be rejected as he fully intends to honour his marriage vows to love his wife until death.
- [7] Counsel for the parties referred the court to a number of authorities including the English cases of Brewer v Brewer [1964] 1 All ER 539 a decision of the UK Court of Appeal and Fay v Fay [1982] 2 All ER 922 from the House of Lords. These cases were also referred to in a number of authorities from the High Court of Botswana to which counsel for the husband pointed the Court.
- [8] In Kgosiemang v Kgosiemang [2008] (2) B.L.R, Kirby J refused to grant leave to a husband who complained that the wife had accused him of being unable to provide for her. She publicly accused him of infidelity and sexual inadequacy. She threatened to assault him and actually did assault him on two occasions. She was overly possessive and paranoid and had deserted the matrimonial home taking with her jointly owned property and attempts at reconciliation had failed.

- [9] The legal position as I discern from the authorities is that at this stage the court is not called upon to try the issues raised in the affidavit. Rather, the court should look at the wife's affidavit in this case and decide if the facts alleged if proved, could amount to exceptional hardship on the part of the wife.
- [10] Mwaikasu J. in Maswabi v Maswabi 1999 2 B.L.R put it well. The hardship suffered by the wife must be out of the ordinary, judged by the prevailing standards of acceptable behavior between spouses, in order to permit the court to grant leave. The wife in this case has suffered hardship. She continues to do so. If her application is refused she must wait in the shambles of her marriage for the expiry of the prescribed period before she can petition for the divorce. During this time she is denied the opportunity of embarking on a new potentially fulfilling relationship. And in the background she hears the ominous ticking of her biological clock as she approaches age thirty.
- [11] The House of Lords in Fay's case says that it is right to consider the hardship suffered by a young wife in having to wait for the elapse of three years from the date of marriage before petitioning for divorce. Having carefully considered the facts of this matter I am unable to say that the suffering being experienced by the wife is of so exceptional a character as to justify granting her leave to petition for divorce at this time. I note that the wife endured 10 months before leaving the matrimonial home. Since then a further year has passed. In a little over one year from now she will be able to present a petition for divorce if she still so desires. The application for leave is refused.

Brian Cottle

High Court Judge