

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
A.D. 2014
(DIVORCE)

CLAIM NO. SKBHCV 2013/0009

BETWEEN:

WAYLAND VAUGHAN
Petitioner

And

SABINA HEATHER JOSEPH - VAUGHAN
Respondent

Appearances

Mr. Fitzroy Eddy and Dr. Dennis Merchant for the Petitioner
Ms. Constance V. Mitchum and Ms. Rivi Warner for the Respondent

Written Closing Arguments filed 20 January 2014

2013: December 10
2014: June 30

JUDGMENT

- [1] **RAMDHANI J. (Ag.)** These divorce proceedings demonstrates what havoc that nine headed hydra can cause to the willing ear and heart. Too often lives are derailed from their chosen courses where there is absence of healthy communication between spouses and one or both are unable to bring trust and faith into the marriage and instead are too ready to listen to gossip and react without maturity.

- [2] The petitioner is now a 59 years old man who was once previously married and had a child from a previous relationship, when he got married to the respondent, a St. Lucian spinster, now 48 years old, at Gros Islet Seventh Day Adventist Church, St. Lucia on the 21 July 2002. After marriage, the parties lived at Keys Village, St. Kitts. There has been one child of this marriage, Salanah Joanne Dovlys Vaughan, who was born on the 22 April 2003.
- [3] These proceedings were commenced by a Petition filed on the 22 February 2013, in which the Petitioner has alleged that the marriage had irretrievably broken down as a result of the behaviour of the respondent; he asserts that her conduct has now rendered it intolerable for him to continue to live with the respondent. In an Answer filed on the 5 April 2013, the respondent has agreed that the marriage has broken down irretrievably but has denied that it was because of her conduct. She has also prayed for an order of divorce but she is asking the court to grant it to her since, as she claims, it is the petitioner's conduct which has led to the breakdown.
- [4] There is no doubt that under section 7(2) of the **Divorce Act Cap 12:03**, the court is empowered to grant a divorce to one or both spouses if it is satisfied that the marriage has irretrievably broken down for one or more of the following reasons, namely:
- (a) that the spouses have lived separate and apart for at least two years immediately preceding the commencement of the divorce proceedings and both spouses have made a statement that each of them believes that the marriage has broken down;*
 - (b) that the spouses have lived separate and apart for at least five years immediately preceding the commencement of the divorce proceedings; or*
 - (c) that the spouses against whom the divorce proceedings are brought has since the celebration of the marriage:*
 - (i) committed adultery;*
 - (ii) treated the other spouse with physical or mental cruelty or other behaviour of such a kind as to render intolerable the continued habitation of the spouses; or*
 - (iii) deserted the other spouse without cause for a period of one year or more.*
- [5] Both of the parties in this matter have relied on section 7(2)(c) as grounding their assertions that the marriage has broken down. The petitioner has asserted that the respondent has behaved in an intolerable manner towards him starting since 2003, when

she demanded that he stop sleeping in the matrimonial bedroom. Over the years, he alleges, she has done various things including throwing his food away, and deliberately spraying insecticide in his room whilst he was sleeping. He further alleges that on occasions she would lock him out of the upstairs part of the home, and that since 2010, the respondent has ceased having sexual intercourse with him. He alleges that she has refused to allow him to eat the food cooked in the home even though he pays all the bills in the home and contributes money towards the food. He alleges that on a number of occasions she has thrown his clothes from the closet, and has destroyed the SIM card from his phone. He states that she has continuously accused him of being an adulterer and has caused him to be removed as a Church Elder. Among other things, he also alleges that she has assaulted him on several times, on one occasion threatening to hit him with a coconut and another occasion in 2012, to run him through with a pair of scissors. He has alleged that in 2012, her intolerable conduct became more frequent and on the advice of his lawyer, he left the matrimonial home on the 9 July 2012.

- [6] The respondent on the other hand has denied that her conduct is such that it falls within section 7(2)(c). She states that it was the petitioner who withdrew his affections from her and became uncaring. She alleges that shortly after the marriage and her relocation to St. Kitts from St. Lucia, she became pregnant but that the petitioner began to absent himself from the home and left her alone knowing she had no friends or family around. When she spoke to him about this, he became aggressive and abusive towards her. She said that she later heard that he was having an affair and when she confronted him about these allegations, he stated that it was a pre-marital relationship but it was now over. She alleged however that 'the rumours of his extra-marital affairs continued' and whenever she would attempt to discuss it with him, he would get angry, telling her to mind her own business. This allegation affected her and she heard of it throughout the marriage and continuously confronted him about it. She alleges that he would stay out practically all night, leaving her and their young daughter all alone. She stated that she actually found a copy of divorce proceedings involving third persons which named the petitioner as a co-respondent alleging that he was committing adultery with one of those parties. She stated that she never got any satisfactory answer from him about this. She stated that he never spent any

time with either her or their daughter. She also alleges that he would verbally abuse her telling her that she was not as good in bed as the other woman he was seeing. She accepted that she had sprayed insecticide under the room door whilst he was inside the room, but stated that she did this because he had locked her out and had refused to let her in. She said that when she complained in 2004 about his extra-marital affair, he withheld financial contributions from the home for about five months. She also describes an incident when he refused to take her to the airport for an important job related trip, and at this time he also refused to care for their daughter during that time she would be away. She accepts that she 'tossed' his food on the ground on this day but she was frustrated she says because of his unreasonable conduct.

- [7] In his Reply to the Answer filed on the 22 May 2013, the petitioner has denied all of the allegations made against him and in particular that he was never abusive to his daughter and that he was always involved in her upbringing, and that he has never refused to care for the daughter. He also denied withholding finance to punish anyone.

The Approach of the Court

- [8] The question then for me is whether either of these parties has proven the allegations he or she had made and whether this reaches the necessary threshold.
- [9] I have borne in mind that the legislation requires me to find whether either of these spouses '*treated the other spouse with physical or mental cruelty or other behaviour of such a kind as to render intolerable the continued habitation of the spouses.*'
- [10] The legislation in St. Kitts and Nevis has, like some other jurisdictions, softened the law relating to divorce, shifting from the old common law approach which viewed the marriage bond as a bond that could only be broken in extreme cases. The old approach of the courts under the English canon law was 'founded upon the thesis that the general happiness of married life was secured by the indissolubility of the marriage bond, even though in individual cases its principles operated with great severity.'

[11] Today, even behaviour falling short of mental or physical cruelty, but which also is of such a kind as to render intolerable the continued habitation of the spouses will also allow a court to terminate the marriage. The Ontario Canadian courts construing somewhat similar legislation,¹ provide useful guidance on the approach the courts should adopt when it comes to what should amount to 'cruelty'. In **Knoll v Knoll**, Schroeder J.A of the Ontario Court of Appeal examining the case law stated:

"Over the years the courts have steadfastly refrained from attempting to formulate a general definition of cruelty. As used in ordinary parlance "cruelty" signifies a disposition to inflict suffering; to delight in or exhibit indifference to the pain or misery of others; mercilessness or hard-heartedness as exhibited in action. If in the marriage relationship one spouse by his conduct causes wanton, malicious or unnecessary infliction of pain or suffering upon the body, the feelings or emotions of the other, his conduct may well constitute cruelty which will entitle a petitioner to dissolution of the marriage if, in the court's opinion, it amounts to physical or mental cruelty "of such a kind as to render intolerable the continued cohabitation of the spouses". That is the standard which the courts are to apply, and in the context of s. 3(d) of the Act that standard is expressed in language which must be taken to exclude the qualifications laid down in Russell v. Russell, supra, and in the numerous other cases which have followed and applied the ancient ecclesiastical rule in matrimonial disputes. ...

"Care must be exercised in applying the standard set forth in s. 3(d) that conduct relied upon to establish cruelty is not a trivial act, but one of a "grave and weighty" nature, and not merely conduct which can be characterized as little more than a manifestation of incompatibility of temperament between the spouses. The whole matrimonial relations must be considered, especially if the cruelty consists of reproaches, complaints, accusations, or constant carping criticisms. A question most relevant for consideration is the effect of the conduct complained of upon the mind of the affected spouse. The determination of what constitutes cruelty in a given case must, in the final analysis, depend upon the circumstances of the particular case, having due regard to the physical and mental condition of the parties, their character and their attitudes towards the marriage relationship."

[12] The misbehaving spouse need not intend to engage in cruelty or such behaviour to render continued habitation intolerable; the intention does not matter.²

¹ The Divorce Act 1967-68 (Can.) Section 3. "Subject to section 5, a petition for divorce may be presented to a court by a husband or wife, on the ground that the respondent, since the celebration of the marriage, ... (d) has treated the petitioner with physical or mental cruelty of **such a kind** as to **render** intolerable the continued cohabitation of the spouses."

² Knoll v Knoll

[13] I am also in agreement with the Canadian cases that the 'test is both objective and subjective. Before the effect of the defendant's conduct on the plaintiff is considered, the court must first be satisfied that such conduct, in itself, is capable of causing physical or mental hurt.' When it comes to 'cruelty' the Canadian cases have shown that this must be those acts which are described as "grave and weighty conduct". I am of the view that the 'other behaviour', must also be of a 'grave and weighty nature'. In applying the test, the court must consider what effect the cruelty or other conduct had upon the complaining spouse with due regard to his or her particular temperament, sensibilities and state of health. So that whilst the cruelty or other behaviour 'must be looked at objectively by the court, the inability to tolerate on the part of the petitioner is really subjective, purely subjective, and must be found after judging the sincerity and truthfulness and indeed other facts of [the complaining spouse's] character peculiar to [himself or] herself in the circumstances of the case at bar.'³

[14] The cruelty or other behaviour must be proven by the complaining spouse on a balance of probabilities whether or not the divorce proceedings are contested.⁴ Further a distinction is to be drawn between incompatibility and cruelty or such other behaviour, which renders intolerable the continued habitation; merely irritating or distasteful conduct is not the kind which a court should act on to grant an order of divorce under the section.⁵

The Evidence and Findings of Facts

[15] Both of these parties relied on their affidavit evidence and were cross-examined on this at the trial. I have considered their evidence on the affidavits and what they gave on oath at the trial. I was able to observe them and assess the manner in which they gave their evidence and the following are my findings of facts in this case.

³ *Randell v. Randell*, [1977] O.J. No. 1693 (Ont. H.C.) at paragraph 10

⁴ *A. (I.) v. D. (S.)*, [2009] A.J. No. 974 (Alta. Q.B.),

⁵ *A. (I.) v. D. (S.)*, [2009] A.J. No. 974 (Alta. Q.B.),

- [16] This marriage started off on the wrong foot. From the earliest days when the respondent came to St. Kitts after their marriage, she fell prey to a conversation with a lady who told her that she hoped that the respondent could sexually satisfy the petitioner. When she heard this comment, it caused her great anxiety, because she shortly heard afterwards that this lady and her husband had been involved in a relationship before the marriage. This perhaps chance or maybe even deliberate remark was to set the stage for what was to follow in this marriage, as she immediately tasked her husband about this allegation who told her that that was in the past. It is clear to me that she never trusted this answer.
- [17] It was in the context of this belief that she viewed his many and various activities which took him out of the home leaving her lonely and pregnant with child in the early days. He was the Principal of the Basseterre High School, and was involved in many associations, the Football Associations being one of them. He was also at one time a Registration Officer. He was an active church member, and was part of the church band. I believe that this caused him to spend many evenings out of the home. This had a deleterious effect on the relationship, because she, being lonely at home, became even more convinced that he was having an extra-marital relationship, which caused her in turn to continuously task him about.
- [18] I am satisfied that her many interrogations based on her belief in his fidelity placed a great strain on this marriage from the inception. She would have done well to stop listening to these various gossips, as there was no real basis (proven to this court) for her to believe that he was being unfaithful from those early days. She herself admitted that she never sought to verify whether he was really a member of these associations and whether it was activities connected with them that took him out of the home. He too, of course is at fault for what happened in these early days, as he should have realized, that his young bride, had been brought from another country, taken away from her family and friends and that she was all alone at home without even his companionship.
- [19] This situation was not helped at all when divorce papers involving third parties, were served on him in 2003, in which he was named a co-respondent on allegations that he had

- committed adultery with the respondent in those proceedings. He spoke to her about this, but his forthright manner did nothing to assuage her suspicions. Those proceedings were later withdrawn against him, but it had done their damage.
- [20] She never believed his denial about the relationship, and the tension continued. Several years later, someone told her that the lady in question was his cousin and this time she asked him to cease having contact with this lady. He refused to do so telling her that they were members of the same congregation and she was part of the church band. He was clearly shortsighted about this. I cannot get as far as finding that he did in fact have an improper relationship with this lady, but his reactions surely led his wife to further question him and doubt him. Now, every marriage should have some degree of trust. Maybe he should have reassessed his association with this lady if only for domestic harmony. He did not. Whether his conduct was reasonable or not, their marriage surely suffered for his reactions.
- [21] It became even more difficult for the respondent when she was called by someone one day and told that his first child was with this lady. She allowed herself to agonize over this. She said she immediately called him and questioned him about this. He admitted this and she made a decision that she would stop going to the church after this. He continued attending the same church, playing with the church band.
- [22] The strain on the marriage was having its toll. I believe that he spent more time out of the home than with his wife and child. I believe that the respondent many interrogations were having a circular effect on the marriage. I believe that he was losing his patience over all this as his denials were not making any headway. He too was not intent on changing his approach. There was no real attempt by either of them to sit down and have any mature conversation about all this.
- [23] By 2009, there was a change in their living conditions. The arguments were more frequent. The sleeping arrangements were that of spouses in trouble; separate and apart. She put him out of the matrimonial bedroom. When she had found out the lady was his cousin, a

really bad argument followed, and after he had insisted in retiring to the matrimonial bedroom, she sprayed insecticide under the door, saying that she sprayed enough to make him come out. She had asserted that he had locked her out, and she wanted to get in. I believe that she was not spraying him so that she could go in and sleep. She was retaliating. Who sprays 'BOP' insecticide into a room to go in and sleep? This was a dangerous act, one of those stupid things people do in bad marriages.

- [24] The specter of the extra-marital relationship fuelled by the many rumours and the insistence of the petitioner to continue to attend the same church and belong to the same band to which that other lady was a member, led to the arguments continuing. They were frequent. By 2010 the respondent stopped having sexual relationship with the petitioner.
- [25] In 2012, the incidents became more frequent. On or about March 2012, they had a physical confrontation during which the respondent 'jammed' him against the wall, and he pushed her off. The Pastor of the church was called in. On or about May 2012, he withdrew his financial support for about five months. On the 1st June 2012, another argument resulted in the respondent threatening to hit the petitioner over the head with a coconut. He left the home at this point and actually went to church 'practice' coming home at 11 p.m.
- [26] She was also unhappy with his approach to parenting. He had, over the years, spent more time with his activities than his child, though he still gave her some attention. He would travel overseas and properly expect the mother to care for the daughter, but it became an issue for him when she wanted to travel on business and she expected him to take care of the child.
- [27] This manifested itself in an incident in June 2012. She was to travel overseas for business, and after leading her to believe that he would take her to the airport, he then refused on the basis that it was his Sabbath. Whether this was because of his religious belief in not working on the Sabbath, he surely handled this badly when he waited until the last minute to tell her that he would not take her to the airport and even made her question whether he

- would take care of the daughter in the respondent's absence. She reacted to his conduct, and threw his bowl of cereal off the table. His reaction was aggressive, standing with closed fists as if to hit her. She in turn picked up a pair of scissors and threatened to run him through. This was where the marriage had gotten.
- [28] He then called the police station and made a report that she had threatened to kill him, and officers were dispatched to their home. He wanted her arrested, but in the end, the officer, possibly seeing that this was no more than two spouses equally to blame on that occasion, left. At this stage he was advised to leave the matrimonial home by his lawyer and he left.
- [29] Shortly after, in June 2012, she brought proceedings against him in the magistrate's court for maintenance. Later she threw his rocking chair out of the home. In September 2012, she met him in public and abused him about the other lady.
- [30] I am convinced that the marriage has irretrievably broken down. I am satisfied that the respondent is responsible for its breakdown.
- [31] This respondent fell prey to the gossips of the world, that nine headed hydra that grows stronger with every effort to quell it. And in so doing, she made it intolerable for this petitioner to continue this marriage. Idle gossip is like that. Its sensational nature is its attraction. If you let it, it takes hold of you, get into your pores, and if the rumour is a bad one, it constricts your lungs, and squeezes all the joy out of your life. For these parties, the result was that the respondent was constantly going beyond mere carping and was unleashing a tirade of questions and abuse at this petitioner. Ever so often, whenever it seems she got a phone call or someone spoke to her, reactively she would have a go at him, with this persistent and painful torment. For years this continued. This is classic emotional abuse. This constant onslaught even if justified, would ultimately break even the strongest spirit.
- [32] It was not only this constant interrogation and complaining. The respondent also threw him out of the matrimonial bedroom since 2010. When she did not get his attention in quarrels

she threw away his food, and removed his clothes from the bedroom. Coming to the end, she also assaulted him, forcing him to leave the matrimonial home. I believe that he had gotten to his breaking point; he had now found it intolerable to live with this respondent.

- [33] She is responsible for the breakdown of this marriage.
- [34] The respondent has also prayed for an order of divorce. This court has the jurisdiction to grant such an order if it is also found petitioner's conduct is responsible for the breakdown of the marriage.
- [35] I am unable to find that the conduct of the petitioner was such when viewed objectively amounted to such which would render it intolerable for the respondent to continue habitation.
- [36] There is no doubt that if the respondent has a reasonable belief in an adulterous relationship by the petitioner, such belief being consequent on the petitioner's behaviour, even if adultery cannot be proved, such behaviour can amount to behaviour on which the respondent can rely when alleging that continued cohabitation had been rendered intolerable.⁶ When I examine the evidence objectively, apart from him staying out, often late, and being with the church band, there is nothing else in his conduct which could have led her to believe that he was having an adulterous relationship. She herself never sought to confirm his statements that he was not out for all the good reasons. There may have been some basis for her to question his conduct and maybe a considerate husband should have parted company with the church band and in so doing cease placing himself in places where that other lady was. On a realistic note, however, in today's world, spouses are expected to bring to their marriage some degree of maturity and trust. Marriage is not to be viewed as license to dictate who your other half should or should not speak with even though one can surely expect that one's wishes and expectations would be respected. The petitioner in this marriage surely was ether insensitive to his wife's feelings

⁶ See Rayden and Jackson's Law and Practice in Divorce and Family Matters Volume 1, 16th ed. 1991, para.13.21

or did not respect or love his wife well enough to care what she was going through when he refused to cease all contact with that other lady.

[37] I do not believe that he withdrew his financial support. I believe that he made statements to her about how good sex was with the other woman. But I believe she goaded him into this comment. It is obvious to me his comment was made in the context of the constant emotional and mental battering of her interrogations. Even if he might have put her in fear of a battery when she threw his food off the table, and for this he acted improperly, his conduct on this occasions is also to be seen in the context of all that she was doing that that moment. I do not find that he acted in such a manner that it made it intolerable for her to live with him.

[38] His conduct is more in the nature of serious incompatibility with this respondent than conduct that would render intolerable the continued cohabitation. He was clearly not ready to have a wife from another country who would have serious issues with his many activities which he was not prepared to give up.

Conclusion and Order

[39] In the circumstances of all my findings in this case, I will grant an order of divorce to the petitioner on the grounds that the marriage has irretrievably broken down. The respondent is to pay the costs of these proceedings. All ancillary matters will be dealt with in chambers.

[40] I would like to express my gratitude to both Counsel for their written closing arguments.

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Darshan Ramdhani
Resident Judge (Ag.)