

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**FILE NO. FAM/div/00240/2016**

**BETWEEN**

**V D**

**AND**

**D D**

**Before:                   The Hon. Madam Justice Donna D. Newton**

**Appearances:**       Ms. Bridgett Ward for Petitioner  
                              Mr. Arthur Minns for Respondent

**Hearing Date:**       29<sup>th</sup> August, 2017

**Dated:**                12<sup>th</sup> April, 2019

**RULING**

## **NEWTON, J**

1. The Parties herein have been married for 15 years and are 50 years and 44 years respectively, there are no children of this marriage. The Petitioner, the wife (W) has applied for the dissolution of the marriage on the ground of cruelty.
2. She alleged that the H was financially irresponsible in that he would refuse to assist with the utility bills and would gamble away his income. Under cross examination she explained that she remained in the same house with the Respondent because she had no choice as they were paying the mortgage. That he would return home in the early morning hours while she was asleep and would put the light on and proceed to pull the blanket off her grumbling that no one will sleep in the house. Additionally she stated that he followed her around and attempted to take photographs of her while she was in the shower, which caused her to shower only while he was away from the house.
3. Further she stated that he would accuse her of sleeping with other men and would go to the extent of retrieving her underwear from the hamper to smell it. She stated that she was afraid of sleeping in the house and as a result of this she went to the doctor. She said on two occasions she called the police because of the Respondent's cruelty to her.
4. She said that she made attempts in the magistrate's court to have him bound over to keep the peace but this application failed she said because she could not prove that he was cruel to her in public.
5. The W explained that she attended the doctor because the situation at home was affecting her health. On the advice of her doctor she applied for and was granted a judicial separation from the Respondent in the Magistrate's Court in Abaco on 3<sup>rd</sup> June 2014, on the ground of cruelty. Despite this, she explained that they remained living in the same house and the Respondent continued to interfere with her.

6. The H in his Answer and Cross Petition denied being cruel to the W and alleged that the Separation Order from the magistrate was only to facilitate the W's adulterous lifestyle.
7. He holds her responsible for the breakdown of the marriage stating that it was due to her adultery, her cruelty and the fact that she deserted him.
8. On the adultery the H alleged that prior to the separation the W committed adultery with a man known to him. That the parties reside in Abaco but the W would often make trips to New Providence to visit this man and on her return she would leave her clothing in her vehicle until he (H) leaves the home then she takes them inside to wash.
9. He further explained that the Petitioner would engage in telephone conversations with this man discussing the "*great time*" they had together and on another occasion she informed the man that she had cooked and left food for him and cleaned his clothes before she returned to Abaco. Also that on one occasion he interrupted the telephone conversation to advise the man that the Petitioner may not be faithful to him (the man).
10. He also alleged that the W committed adultery with another man when she again travelled to New Providence and again she would engage in telephone conversations with this other man stating that she could not wait to return to New Providence to be with him.
11. As a result of these relationships he said he contacted two local pastors to counsel them but despite the consultations she continued with the adultery. He stated that one of the women in the community confronted the W at the bank where she (the W) was employed about the adulterous affair with her husband.
12. He also alleged that the W was dating another man and that she was seen at a festival on Abaco with the said man. He further alleged that since 2015 the Petitioner was living an adulterous life with yet another man and is continuing to do so.

13. On the ground of cruelty he stated that the Petitioner is manipulative and verbally abusive to him. That she told him she does not need him and tried to extort \$40,000 from him. He also considered cruel the fact that she attempted to have him bound over to keep the peace in the Magistrate's court which he said hurt him.
14. He explained that while the W was on vacation he telephoned her to extend birthday greetings and to enquire about payment of the electricity bill. Instead he said that she reported him to the local police which embarrassed him and made him depressed and feel unwell and scorned in the community of Abaco.
15. The H said while they both resided in the home he assisted with paying the mortgage, the cable and telephone bills in addition to paying for the W to attend the beauty salon. Despite this he said the W sold the house without his knowledge and he was forced to vacate it for the new owners.
16. He said that in April 2014 the W deserted him. That they stayed in separate bedrooms for more than three years and had not been intimate for two years.
17. The W in her Reply and Answer explained that the H gambled his money and refused to contribute to the bills in the home. That he would call her fat and say that she looked bad and that no man would want her. That he accused her of sleeping with every man she talked with and that he stalked her and made her feel very uncomfortable. She said his evidence of stalking is in the fact that he could state the contents of her telephone conversations.
18. She explained that she always kept a bag with her clothing in the car because she was afraid that one day she will have to run from the H. She also said that he would spread rumors throughout the community that she committed adultery which embarrassed her. That he switched off the electricity to the room which she occupied and as a result she called the police.

19. The W explained that during the counselling session she advised the local Pastors of the H's gambling and his irresponsibility in the home and as a result nothing came of the meeting.
20. She admitted being confronted at her place of employment by a lady from the community, accompanied by the H, alleging an adulterous relationship with the lady's husband. She stated that she explained to the lady that she and the lady's husband sat next to each other on a flight to New Providence and he was interested in obtaining a credit card and bringing his business to the bank where she worked. That the lady apologized and the husband later got an appointment to apply for a credit card.
21. She also admitted to merely talking to a gentleman at the festival in Abaco and denied that they were having an affair. She said that the H was advised by the Magistrate not to call her but despite this he would call her and frighten her by breathing deeply into the phone. She explained that he was embarrassed because the Police had to constantly warn him against interfering with her.
22. She said that the H was lazy, unsupportive and emotionally abusive. She admitted to selling the house but explained that it was in her sole name and therefore she did not require his signature. That he was aware of her intention to sell the house because she offered to sell it to him but he refused to purchase it. Further, that he is aware that she is willing to give him his share of the proceeds of sale and he was advised that it was placed on an account.
23. Counsel for the H was not allowed to proceed with his submissions regarding the validity of the Magistrate's Separation Order as there was no appeal of the said Order.

24. He went to great lengths to show the court that the W was not a truthful witness because she omitted to mention in her Petition the Magistrate's Court Binding Over matter and the fact that the Respondent had filed a previous Petition for Divorce in 2014. He urged the court to cite her for perjury.

25. He asked the court to dismiss the Petition and grant the divorce to the H on his Cross Petition on the grounds of the W's adultery, cruelty and desertion.

26. The issues here are whether the W has proven that the H has treated her with cruelty and whether the H has proven the alleged cruelty, adultery and desertion on the part of the W.

27. Cruelty, as defined by the Matrimonial Causes Act includes behaviour which is a;

***“departure from the normal standards of conjugal kindness”***

by one party which causes injury to the health of the other party or a reasonable apprehension of it. That should the other spouse be called upon to endure it would be detrimental to his health.

28. The W's evidence is that her husband's behaviour affected her health to the extent that she had to attend the doctor and as a result of her visit she filed for the separation in the Magistrate's Court. The behaviour complained of included stalking, attempting to take nude photographs of her, spreading rumours in the small island community alleging adultery and financial irresponsibility.

29. On the other hand the H's evidence of cruelty is that the W refused sexual intercourse with him, was verbally abusive and embarrassed him by reporting him to the police. The period of refusal of sexual intercourse coincides with the period of the separation granted by the Magistrate.

30. The court in *Gollins v. Gollins [1963] All ER 966* determined that cruelty is established where the physical and mental health of the two spouses are normal and the conduct of the respondent spouse is so bad that the other should not be called on to endure it. In this case the husband's refusal to help his wife earn funds amounted to persistent cruelty.
31. While the behavior of both parties could be described as a departure from the normal standards of conjugal kindness it has to be determined whether the actions affected the health of the parties.
32. I believe the evidence of the W, that the H stalked her, that he suspected her of committing adultery with every male she talked with and that her health was affected to the extent that she attended the doctor because of his actions.
33. On the other hand, I do not find that the H provided sufficient evidence to show that as a result of the W's cruelty his health had been affected and therefore has not proven his case of cruelty to the required standard.
34. Taking all the circumstances of this case, I consider it to be so grave and weighty a nature that should the Petitioner be called upon to continue to endure it would be detrimental to her health.
35. The W cannot rely on the ground of cruelty if she has condoned the actions of the H. Condonation is the complete forgiveness and blotting out of a conjugal offence, followed by cohabitation. The W stated in evidence that she did not forgive the H for the manner in which he treated her, that in fact because of his treatment of her she vacated the matrimonial home. There is no evidence of condonation on the part of the Petitioner.

36.The H is also claiming that the W committed adultery. Adultery defined by the **said** Act

*“is any voluntary act of an intimate sexual nature.....or any conduct between a party to a marriage with another person as aforementioned whereby a strong presumption arises that such sexual act occurred between them.”*

37.The only evidence the H tendered regarding the alleged adultery was several telephone conversations he said he overheard as to what a good time the W said she had with the men on the other side of the conversation. The W denied this. He provided no other evidence to prove the intimate sexual act or conduct in order that a strong presumption of the sexual act would arise as required by the Act.

38.Desertion as described by the Act *“includes behavior without cause or an excuse on the part of one party .... to bring the matrimonial consortium to an end”*. The period of the desertion that the H complained of occurred after the separation granted by the magistrate so it can hardly be said that the desertion was without cause or excuse.

39.I find therefore that the Respondent has not proven the allegations in the Cross Petition and it is therefore dismissed. The Petitioner having proven her Petition the court exercises its discretion in her favour and grants the decree nisi on the ground that since the celebration of the marriage the Respondent has treated the Petitioner with cruelty not to be made absolute for three months and ancillary matters are adjourned to chambers. Each party to bear its own costs.

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**DONNA D. NEWTON**

Justice





































































































































































































































































































































































































































































