

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Family Division

2021
FAM/div/00412

B E T W E E N

AA

Petitioner

AND

BB

Respondent

Before: **The Hon. Madame Justice J. Denise Lewis-Johnson**
Appearances: Mr. Ranard Eric Henfield for the Petitioner
Mrs. Rhchetta Godet for the Respondent
Hearing Date: 28th March 2022

Family law - Divorce — Cruelty - Petitioner claiming cruelty by respondent – Respondent claiming cruelty by petitioner - Grounds on which divorce may be obtained in The Bahamas - Decree nisi granted on the ground of cruelty

Introduction

1. By a Petition filed 10th June 2021, the Petitioner, wife, sought a divorce on the ground that since the celebration of the marriage the Respondent has treated her with cruelty.
2. The Respondent filed an Answer and Cross Petition on 21st September 2021 denying the allegation of cruelty and prayed for the dissolution of the marriage on the ground that the Petitioner had treated him with cruelty.
3. The Petitioner and the Respondent were married on 17th December 2005 and there is one child of the marriage.

The Petitioner's Evidence

4. The Petitioner averred that the Respondent has subjected her to emotional and mental abuse throughout the marriage.
5. The Petitioner claimed that, "For an extensive period of time the Petitioner has felt like a rape victim during the ordeal of sexual intercourse with the Respondent. The last time the Respondent climbed on top of the Petitioner was on 18th April 2021 and the following morning, the Petitioner suffered a meltdown at work."
6. The Petitioner stated that the events which transpired on 18th April 2021 felt like an out of body experience. In her evidence in chief, she stated that she often thought to herself that this is not what marriage is supposed to feel like. She stated that sexual intercourse with the Respondent became a chore and lacked intimacy. The Petitioner alleged that the Respondent would come home, lubricate himself take his pleasure, and leave. After each occasion she would have to find ways to distract herself.
7. The Petitioner alleged that it was standard for the Respondent to come home, ask for sex and, if she refused, lubricate, (forcefully penetrate her) have sex with her and when he was satisfied, roll over, watch television, use his computer or go to sleep. The Petitioner alleged that the Respondent did not care if she consented or said no, but would force her and once he climaxed and satisfied himself, he would "get off her".
8. She claimed that the Respondent's behavior and treatment toward her has severely damaged her physical, emotional and mental health. The Petitioner maintains that she was diagnosed with high blood pressure and prescribed NATRILIX SR in March 2021 due to the emotional and mental abuse inflicted by the Respondent. Further, that as a result of the Respondent's conduct, the Petitioner was forced to see a mental and emotional therapist for her distress as of May 2021.
9. The Petitioner further stated that the Respondent does not provide any emotional or mental support, which results in her feeling ill, alone, unloved, depressed, anxious, overwhelmed and burdened. The Petitioner recalled an interaction which took place after her first book was published. The Respondent said to her, 'Do you know that if you cut off your big toe, National Insurance would pay you double?'. After accomplishing a major goal of hers, the Petitioner said she was left feeling very unsupported and unloved, by his response.
10. The Petitioner further testified that a few weeks after having a double mastectomy, she and the Respondent got into an argument. She recalled walking away three times and being followed by him. She claims that when she closed the bathroom door, the Respondent pushed the door

forcefully, damaging the knob. She asserts that this was another instance where she was afraid of the Respondent and what he might do.

11. She claimed that the Respondent admitted to having mental health issues but refused to see a therapist, asserting, 'that is why I have a wife'. The Petitioner indicated that she was afraid that one day he would snap.
12. The Petitioner denied that she ever mentally abused the Respondent. In response to the Respondent's Answer in which he lists irregular church attendance on the Petitioner's part as an example of cruel conduct, the Petitioner clarifies that her not attending church regularly does not amount to cruel conduct.
13. In response to the Respondent's Cross Petition, the Petitioner states that at no time did she treat the Respondent cruelly. She states that she may have failed on occasion to clean the home to the Respondent's liking, but she claims that the Respondent failed to appreciate that she worked a 9:00am to 5:00pm job, cares for the child of the marriage and solely assists the child with his schoolwork, prepares meals, tends to the pets and maintains the physical structure of the home, while the Respondent spent his time gambling, playing dominos and online gaming.
14. Further, the Petitioner finds that the Respondent is overly concerned with how people view him. She claimed that she did not refuse marriage counseling but, rather, counseling with the selected Priest. She stated that in her opinion a religious Priest could not offer her much help with the problems she faced within her marriage.
15. The Petitioner stated that the Respondent continually showed no regard for her feelings concerning the night of 18th April 2021 and says it is absurd that the Respondent viewed her application for divorce or refusal to join him in a marriage counseling session as cruelty. She added that these claims demonstrate how detached, inconsiderate and unconcerned for the Petitioner the Respondent has been throughout the marriage.

The Respondent's Evidence

16. The Respondent alleged that the Petitioner has since the celebration of the marriage treated him with cruelty.
17. The Respondent claimed he respected the Petitioner throughout the marriage. He states that he does not drink, smoke, use drugs, use obscene language in the home or toward the Petitioner, fight or participate in adulterous behavior. He indicated that throughout the marriage he has always paid the household bills.

18. He acknowledges shortcomings, but stated that he is still an active member of the church. In his belief, the Petitioner presented herself as a religious person before the marriage but failed to attend church regularly throughout the marriage, is presently not registered in any church and has not done been so registered for the past fifteen years of marriage.
19. He explained that he has always cared for the Petitioner. He notes that the Petitioner has had two major surgeries, and that he nursed the Petitioner back to health with love, care, patience and attention. He recalled supporting her projects financially and always being her go-to person.
20. He indicated that he would often help to clean the home, as he would often return home to a dirty house. Clothes that the Respondent previously washed were not folded and the bed would be covered with the Petitioner's work. He claimed that whenever the Respondent brought the issue to the Petitioner's attention, her response was "*things were good until you reach home*". He stated in his evidence in chief that as a husband he has a right to ask for the house to be cleaned.
21. The Respondent also recalled a time when the Petitioner's wedding ring was on the floor in the front room, where the dog was licking it and the Petitioner did not seem to care.
22. The Respondent claims that he waited until marriage to engage in sexual activity out of respect for the Petitioner. However, during the marriage, he found that his sexual needs were not being met due to the Respondent's job obligations. The Respondent stated that after going out to sea with 'a bunch of men', he wishes to have sexual intercourse with his wife when he returned because 'he is not gay'. He claimed that it is his belief 'a wife's obligation is to have sex with her husband'.
23. The Respondent said that the Petitioner stopped all sexual obligations on 18th April 2021 but asserted that to this day he remained faithful. He claimed that the Petitioner never communicated to him that she felt like a rape victim. The Respondent contends that this contributed to his feeling mentally abused.
24. As to the Petitioner's statement concerning the argument during which she closed the door in his face, the Respondent stated that it was disrespectful for the Petitioner to walk away from him while he was talking. Her slamming the door in his face led him to be upset.
25. When told that the Petitioner wanted a Divorce, the Respondent requested to see a Priest. The Respondent stated that he saw the Priest on six different occasions, but the Petitioner did not attend any of the sessions. The Respondent alleged that the Priest tried to reach out to the Petitioner but she failed to attend.

26. The Respondent acknowledged that he refused to move out of the matrimonial home only because he found that there was no reasonable explanation provided and that in his opinion 'things between them were not so bad that it had come to this point'. On 8th July 2021, the Respondent noticed that the Petitioner had abandoned the home and left to live somewhere else. The Respondent stated that he was left ill, alone and confused as he has always been there for the Petitioner in critical conditions.

The Issue

27. The issue to be determined by this Court is whether the Respondent has treated the Petitioner with cruelty or whether the Petitioner has treated the Petitioner with cruelty.

The Law

28. The Matrimonial Causes Act, Chapter 125 statute laws of The Commonwealth of The Bahamas by **Section 16 (1)**

"16 (1) A Petition for divorce may be presented to the Court either by the husband or the wife on any of the following grounds that the Respondent:-

- (a) has since the celebration of the marriage committed adultery; or**
- (b) has since the celebration of the marriage treated the Petitioner with cruelty; or**
- (c) has deserted the Petitioner for a continuous period of at least two years immediately preceding the presentation of the petition; or**
- (d) has lived separate and apart from the Petitioner for a continuous period of at least five years immediately preceding the presentation of the petition; or**
- (e) has, since the celebration of the marriage been guilty of a homosexual act, sodomy or has had sexual relations with an animal:**

Provided that a wife may also petition on the ground that her husband has since the celebration been guilty of rape."

29. Cruelty is defined in **Section 2 of the Matrimonial Causes Act**, as: -

"Cruelty include voluntary conduct reprehensible in nature or which is a departure from the normal standards of conjugal kindness on the part of one party to a marriage thereby occasioning injury to the health of the other spouse or a reasonable apprehension of it on the part of the other spouse and being conduct which, after taking due account of all the circumstance of the case, would be considered to be so grave and weighty a nature that should such other spouse be called upon to continue to endure it, would be detrimental to his or her health".

30. The offence of Rape is set out in Section 3 of the Sexual Offences Act which provides:-
- “3. Rape is the act of any person not under fourteen years of age having sexual intercourse with another person who is not his spouse —**
- (a) without the consent of that other person;**
 - (b) without consent which has been extorted by threats or fear of bodily harm;**
 - (c) with consent obtained by personating the spouse of that other person;**
- or**
- (d) with consent obtained by false and fraudulent representations as to the nature and quality of the act.” [Emphasis added]**

Decision

31. The Petitioner’s evidence was heavily weighted on acts of sexual intercourse between the parties that she described as acts of rape by the Respondent. I will not recount her evidence save to say that she states that as a result of the Respondent’s behavior, she felt like a rape victim. She further alleges that her physical and mental health have been negatively affected.
32. The issue raised by parties of non-consensual and forced intercourse, together with the use of the word rape requires the court to consider the term in the context of the matrimonial laws of The Bahamas. The court accepts that rape is a most heinous act of cruelty and a malicious violation of a person. However, on a strict reading of laws of The Bahamas there is no rape in marriage. Pursuant to **Section 3 of the Sexual Offences Act**, the law does not allow for one spouse to rape the other. In this place we interpret existing laws and apply them; we cannot and must not succumb to the temptation to reform laws.
33. I turn now to the standard that must be met to succeed on the grounds of cruelty. In **Gollins v Gollins**, Denning CR stated:-
- “Whether cruelty, as a matrimonial offence, has been established is a question of fact and degree, which should be determined by taking into account the particular individual concerned and the particular circumstances of the case, rather than by any objective standard; accordingly, in case where the two spouses are of normal physical and mental health, and the conduct of the respondent spouse, so considered, is so bad that the other should not be called on to endure it cruelty is established and then it does not matter what was the Respondent’s state of mind, e.g., it is immaterial whether the Respondent’s conduct was aimed at the other spouse or due to unwarranted indifference, attributable, perhaps to selfishness or laziness.”**

34. According to Maynard, J in *P v. P* [2007] 5 BHS J. No. 9:

“the ground of cruelty should not be confused with irretrievable breakdown or irreconcilable differences, as appear in other jurisdictions. Given the options available in section 16 of the Matrimonial Causes Act (ch. 125) (the Act), parties often choose cruelty as a catch-all, when the circumstances may not amount to cruelty. While I believe the Act is in need of reform, it is the law as it stands.”

35. Having heard the evidence and observed the parties demeanor, it is clear that the marriage is over. The Matrimonial Causes Act establishes fault grounds for a divorce and so one party must show that the other has wronged them.

36. I am of the view that the standard to be met in cruelty is a high one. It ought not to be trifling acts or the occasional hurt feelings caused by one spouse to the other. The action must be reprehensible in nature and result in some harm to the other spouse, be it mental or physical. The court must consider the duration of the acts and if there was condonation. Whether the offending party intended to be cruel or not, will not determine if the standard is met. Lastly, the act must also be such that to expect a spouse to live with or under those conditions would readily be seen as unacceptable to right thinking individuals.

37. I accept the evidence of the Petitioner and do not question the veracity of same; however, the law is clear. The grounds for divorce are listed in **Section 16 (1) of the Matrimonial Causes Act**. I am of the view, therefore, that based on the Petitioner's evidence, the Respondent's actions clearly amount to cruelty and thus satisfy a ground for divorce.

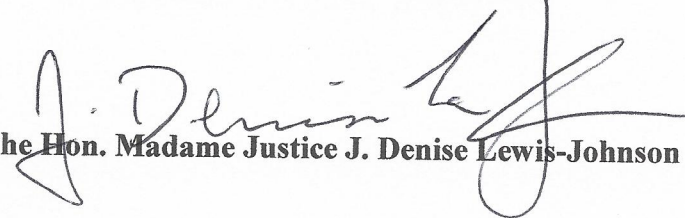
38. The Respondent is correct that Bahamian law provides for sex in marriage between the parties as a right; there must be consummation. I am, however, of the view that it ought not to be taken by force and is painful to one party. It was clear from his evidence that he lacked concern and did not appreciate how his actions impacted the Petitioner. The court accepts his evidence of meeting the financial needs of the family, of loyalty, fidelity and commitment; however, given the evidence in its totality, I find that the Respondent was cruel to the Petitioner.

39. Notwithstanding the Respondent's belief that his actions were his right in marriage, I find the manner in which he carried out that right – his forcing himself on his wife, his ignoring her feeling of not being a willing participant in intercourse resulting in mental harm to the Petitioner and a feeling of being violated – meets the standard of cruelty under **Section 16(1) of the Matrimonial Causes Act**.

40. I therefore find:-

- i. The Decree Nisi be granted to the Petitioner on the ground that since the celebration of the marriage the Respondent has treated the Petitioner with cruelty.
- ii. The Respondent's Cross Petition be dismissed.
- iii. The Decree is not to be made absolute for three months.
- iv. Ancillary matters are adjourned to Chambers
- v. Each party is to bear their own cost.
- vi. I order that this file be sealed

Dated this 29th day of August 2022


The Hon. Madame Justice J. Denise Lewis-Johnson