

COMMONWEALTH OF THE BAHAMAS

2020/FAM/div/0444

IN THE SUPREME COURT

Family Division

BETWEEN

C. H

Petitioner

AND

M.M.H

Respondent

Before: The Hon. Madam Justice G. Diane Stewart

**Appearances: Cyril Ebong with Sidney Campbell for the Petitioner
Raynard Henfield for the Respondent**

Ruling Date: 22nd December, 2022

JUDGMENT

Evidence

1. The Petitioner, C.H was lawfully married to the Respondent M.M.H on 17th July, 2015. There are no children of the marriage. The Petitioner filed a Petition for divorce on 21st September 2020 praying for dissolution of the marriage on the ground that the Respondent has treated the Petitioner with cruelty since the celebration of the marriage. The Respondent filed an Answer and Cross Petition on 4th November 2020 seeking to have the Petition dismissed and a decree granted to the Respondent on the ground of the Petitioners cruelty. The parties were 39 and 58 respectively on the day of their marriage.
2. The Petitioner alleged that towards the latter period of their marriage, the marriage was marred by constant arguments and physical and mental abuse. The Petitioner alleges that the marriage had broken down and that he and the Respondent have lived separate and apart since August 2020.

3. In or around June 2018, the parties rent payments fell into arrears. At the time the Respondent was unemployed and the Petitioner agreed to pay the arrears in instalments. The Petitioner was humiliated and surprised when the Landlord was invited to the apartment by the Respondent and he proceeded to tell the Petitioner how worthless he was for not assisting the Respondent with the rent payments.
4. **The Respondent stopped washing the Petitioner's clothing and on one occasion informed the Petitioner's uncle that his clothes were dirty and that she was not going to wash them.**
5. **Further, in or about February 2020, the Petitioner found a knife in the Respondent's beside drawer. When questioned about it, the Respondent replied that it was for her protection.**
6. Under cross-examination, he maintained that the landlord spoke to him disrespectfully. He maintained that the landlord had stated that the Respondent asked him to come and speak to him, he felt very embarrassed with the exchange.
7. The husband had not previously been there and that they have never kept knives in the drawer at any time. He felt threatened and unsafe.
8. He admitted to drinking on occasions but denies being so intoxicated that he was "not of a sober mind" **and he denies returning home intoxicated. He stated that sometimes drinking was the only way to get to sleep.**
9. He denied using any belittling or derogatory words against the Respondent, he subsequently conceded that he may have called her an ass.
10. He accepted that when he was trying to restrain the Respondent that his leg was on her leg and that he probably hurt her leg. He released her leg immediately when she complained that he was hurting her leg.
11. He confirmed reporting to the police that the Respondent had scratched him, but he does not have a copy of the report or any photos of the scratches.
12. He confirmed that he had left the Respondent three times during the marriage and returned each time. It was during one of his absences that the Respondent advised that there had been a break in.
13. He denied having sex with his wife after the last separation.

14. He believed that their age differences caused problems. He felt that the Respondent treated him and talked to her like she was dealing with her children.
15. The Respondent would have the Petitioner followed and photographs taken.
16. He denied telling the Respondent that he had a relationship with a Pamela Bain.
17. The Respondent denies the Petitioner's allegations of cruelty and says that she has never been cruel towards the Petitioner. The Respondent alleges that there have been disagreements and disappointments during the marriage due to the **Petitioner's adulterous tendencies, intoxication, physical abuse, financial irresponsibility, acts of desertion and verbal abuse.**
18. The Respondent further alleged that the parties have not lived separate and apart as stated by the Petitioner. However, the Petitioner left the Respondent on 26th June 2019 and returned on 4th January 2020. The Petitioner left the Respondent again on 21st January 2020 and with a note stating that it was **not the Respondent's** fault but his own.
19. The Petitioner came to the matrimonial home again on 17th June 2020 stating that he did not want a divorce and wanted to return home. On 24th June 2020, the Petitioner apologized and confessed to living with another woman but wanted to return to the matrimonial home. The Respondent agreed to try and move past their issues and the Petitioner moved in again.
20. The Petitioner came home intoxicated on a regular basis and began arguing with the Respondent over trivial things, using profanity and insulting her. The Petitioner would repeatedly verbally assault the Respondent by using derogatory and belittling adjectives and would demean her body shape.
21. The Petitioner had deserted the Respondent on more than one occasion during the recent years of the marriage. On two occasions when the Petitioner was living away from the home, the home was burglarized. The Respondent has lived in fear since being at home during the burglary. As a result she began sleeping with a knife next to her bed.
22. The Petitioner has repeatedly told the Respondent that he wanted a divorce and had threatened to kill her. The Petitioner had neglected his financial responsibilities in the household and has opted to use his salary to purchase alcohol. Their rent was constantly in arrears. The Respondent had been placed in a position of having to request the assistance of family and friends to cover expenses of the matrimonial home.

23. On one occasion, the Petitioner contributed \$300.00 towards the rent expense and later asked for the money back. When the Respondent refused, the Petitioner attacked the Respondent which resulted in an altercation between the parties.
24. The Respondent alleges that she has tried to forgive the Petitioner for his acts of cruelty, but the Petitioner has repeatedly treated her with cruelty and has shown no efforts to treat the Respondent better. The Respondent has lost sleep and feels depressed, unloved and embarrassed by the treatment of the Petitioner.

Issue

- i) Whether the Petitioner has been treated with cruelty by the Respondent
- ii) Whether the Respondent has been treated with cruelty by the Petitioner

Decision

25. The **Matrimonial Causes Act, Ch. 125 Section 2** (“the Act”) defines cruelty as:-
“cruelty” includes 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 that other spouse and being conduct which, after taking due account of all the circumstances 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”
26. Section 19(1)(b) of the Act provides statutory considerations for the Court when dealing with cruelty:-
“19. (1) If the court is satisfied on the evidence that the case for the petitioner has been proved and –

(b) where the ground of the petition is cruelty that the petitioner, has not in any manner condoned the cruelty,

the court shall, subject to section 18 grant a decree declaring the marriage to be dissolved; and if the court is not satisfied with respect to any of the matters aforesaid; it shall dismiss the petition.
27. **In Gollins v. Gollins [1963] 2 All E.R. 966** the House of Lords considered the meaning of cruelty and stated that:-
“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 individuals concerned and the particular circumstances of the case, rather than by

an objective standard, accordingly in cases where the two spouses are of normal physical and mental health, and the conduct of respondent spouse so considered, is so bad that the other should not be called upon to endure it, cruelty is established and 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."

28. The starting point is determining whether the conduct of one party has departed from the normal standards of kindness, therefore causing some injury to the other party based on the particular circumstances and characteristics of the individuals involved. The Court must consider each party individually and the effect of one's conduct on the other to determine whether either party has been treated with cruelty. There is no objective standard of cruelty.

29. In Lockhart v. Lockhart 1995 BS SC 22 Hall CJ, set out the Court's task in contested divorces:-

"141. The inevitable task of trial courts in (contested) divorces and matrimonial matters is to wade through the detritus resulting from the posture of parties (who, despite the fact that they must have been "in love" with each other at some time in the past, in the unforgiving glare of scrutiny by strangers (which is the trial process), each seeks to monopolize virtue for his/her cause and to demonize the other party (and this, even if they so choose to embarrass themselves, to the distress of the children of that union reverberating for years to come)) and shift minutiae of truth from the sediment."

30. Further in Spencer v Spencer (2003) BHS 162, Thompson, J. stated:-

"The court is not inclined to preserve a limping marriage but it is still obliged to be satisfied that the matrimonial offence is proved, since The Bahamas does not recognize irreconcilable differences as a ground for divorce."

31. As stated in Spencer v Spencer the Court is not interested in preserving a limping marriage. The marriage between these parties has obviously deteriorated. The constant arguing, bickering and fighting which ensued between the parties as admitted by the Petitioner and the belief that he had been treated as a child assists in proving the Respondent's behavior had moved from acts of marital kindness to cruelty. Although arguments are not unusual in a marriage, the persistency and quality do not reflect normal acts of marital acceptable behavior even if they are caused by the behavior of the Petitioner himself. The incident with the landlord is not an act of cruelty by the Respondent. In the absence of any evidence to prove that the landlord was using any words that the Respondent had directed him to use they were the actions and words of the landlord and not the Respondent and she cannot be held responsible for them.

32. I am satisfied that the knife in the drawer was not an act of cruelty but an act to protect the Respondent who had experienced a burglary in her home and was fearful of her safety particularly as the Petitioner had left the home on previous occasions.
33. **The Respondent's description of the manner in which the Petitioner treated and spoke to her when he was in a drunken state, and the threat to kill her are acts of cruelty.**
34. I accept that the Petitioner spoke to the Respondent in a demeaning manner as she did him. I also accept that he drank to the annoyance of the Respondent. His concession that drinking was the only way to get to sleep is evidence of this act. The reason for his drinking may have been from the atmosphere in the home, or from the manner which he felt treated or spoken to.
35. In Lockhart v. Lockhart, Hall CJ referenced the *10th Edition of Rayden's Practice and Law of Divorce at pp 264-266 and 281-284*, which provided:-
“Mere forgiveness of a matrimonial offence, whether expressed orally or by letter cannot amount to condonation, unless it is followed by the reinstatement of the offending spouse in his or her former marital position. Although the best evidence of such reinstatement is the continuance or resumption of sexual intercourse, there may be a resumption of conjugal cohabitation sufficient to constitute a reinstatement without sexual intercourse: Conversely, there may be sexual intercourse not amounting to reinstatement. But nothing short of full reconciliation will suffice; therefore if the guilty party does not consent to be forgiven there is no condonation.” (My emphasis)
36. Both parties have departed from the normal standards of conjugal kindness toward each other. I am satisfied that based on the evidence led by both sides, despite averments of sexual intercourse after the acts complained of, there was no full reconciliation or condonation by either party.
37. The Court finds that since the celebration of the marriage the Respondent has treated the Petitioner with cruelty and that the Petitioner has treated the Respondent with cruelty.
38. I find that both parties, based on their admissions, have contributed substantively to the breakdown of the marriage.

39. Joint Decrees Nisi shall be granted on the ground of cruelty that since the celebration of the marriage the Respondent has treated the Petitioner with cruelty and the Petitioner has treated the Respondent with cruelty.

40. As there are no children of the marriage, I hereby declare pursuant to Section 73 1 (a) of the act;

"that for the purposes of this section there are no children of the family to whom this section applies"

The Decrees Nisi shall not be made absolute for six weeks.

41. The Petitioner and the Respondent shall each bear their own costs of these proceedings.

Dated this *27th* day of *December* 2022



The Hon. Madam Justice G. Diane Stewart