

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Family Division**  
**BETWEEN**

**2021**  
**No.00319**

**P.A.A**

**Petitioner**

**AND**

**C.A**

**Respondent**

**Before: The Hon. Madam Justice G. Diane Stewart**

**Appearances: Ramona Farquharson for the Petitioner**  
**Marylee Braynen Symonette for the Respondent**

**Ruling Date: 16<sup>th</sup> December 2022**

### **JUDGMENT**

#### **Background Facts**

1. The Petitioner, P.A.A was married to the Respondent, C.A on 11<sup>th</sup> April 2017. There is one child of the marriage, namely P.A.A. Jr (male) born 31<sup>st</sup> May 2005. The Petitioner is employed as a Fuel Service Operator at Bahamas Power and Light (BPL). The Respondent is employed as a Teacher at the Government High School (GHS).
2. There have been previous proceedings in the Magistrate's Court in reference to the marriage. The Petitioner was charged with assaulting the Respondent and pleaded guilty.
3. The Petitioner filed a petition for dissolution of the marriage on May 5<sup>th</sup> 2021, alleging cruelty on the part of the Respondent. The Respondent by Answer and Cross Petition filed on June 11<sup>th</sup> 2021, defended the Petitioner's petition and seeks a Decree Nisi on the ground of cruelty by the Petitioner.

## The Petitioner's Evidence

4. The Petitioner recalls that the Respondent went out one night dressed scantily and was not wearing her wedding ring. When she return in the early morning hours the Petitioner expressed his discomfort with this behavior and she stated that she is not a child and she can do whatever she pleases. This encounter between the parties ended with a physical altercation.
5. A similar encounter transpired between the parties on 12<sup>th</sup> March 2021. On this occasion the Respondent left the matrimonial home without informing the Petitioner and returned home in a vehicle unknown to the Petitioner. She was also dressed "provocatively" for a married woman. She again told the Petitioner that she is not a child but a woman and can do as she pleases. Again a physical altercation ensued between the parties where the Respondent claims he choked her.
6. The Respondent filed a complaint against the Petitioner for assault to which he pleaded guilty and apologized for his behavior. The Respondent constantly makes threats saying she will have the Petitioner locked up.
7. The Respondent willfully ignores the Petitioner. Sometimes days even weeks would pass without either party speaking to each other. The Respondent refused to contribute any financial assistance to paying utility bills and refuses to contribute to the mortgage or to maintenance of the home. The Petitioner says that he is financially stretched due to the lack of financial assistance and has borne the cost of all expenses associated with the matrimonial home with the exception of groceries and life insurance.
8. The Petitioner expressed that he is extremely stressed and the Respondent's behavior is detrimental to his well-being and has made him depressed. The Respondent's treatment and behavior has also caused him headaches and anxiety.
9. Under cross-examination he denied being cruel to the Respondent or committing adultery. He denied sleeping out of the house. The allegations made by the Respondent regarding another woman happened before the marriage. He also denied drinking heavily so as to be regularly intoxicated.
10. He admitted to being on probation for the assault to which he pleaded guilty. He denied that his son ever saw him put his hand on the Respondent. He denied ever slapping or choking their son or threatening to kill their son. He further denied tearing the Respondent's underwear off.

11. He claimed that their son pulled a knife on him. The police were called by the son, but he was unaware how the son got out of the house and did not recall seeing him when the police was there, even though initially he had been in the house.
12. He admitted to telling the Respondent to get out of the house, but denied that it was a threat.
13. He denied spending a lot of money on motor vehicles except for the truck which was used to make deliveries.
14. The altercation which took place between the Respondent and Deandra happened before the marriage.

### **The Respondent's Evidence**

15. The Respondent denies that she has treated the Petitioner with cruelty as alleged. She asserts however that the Petitioner has treated her with cruelty. She claims that the Petitioner has caused her much stress and distress by constantly physically and violently abusing her which has severely impacted her self-esteem.
16. She has cried herself to sleep, unable to eat or sleep and has lost significant weight because of the Petitioner's conduct which included his sleeping out and not coming home until 3 or 4am. This behavior started soon after their marriage.
17. The Respondent states that most of the time the Petitioner would be intoxicated and would physically and violently attack her. The Petitioner would become so enraged that he even attempted to attack their minor child. The Respondent states that she is also in fear for her son's life. The Petitioner had threatened to kill both herself and their child. This caused the Respondent fear, pain and distress. He would also call her demeaning, vile and derogatory names.
18. The Petitioner physically assaulted her but denied that he asked for her forgiveness. She also alleged she was so traumatized that she sought counselling with a Pastor. She and the child were so terrified of the Petitioner that they both refuse to be in the home with him.
19. The Petitioner has insisted that she and their child pack their belongings and get out of his house. The Respondent reported the matter to the police, but did not press charges.
20. The Respondent asserts that the Petitioner assaulted her in 2021 after she had gone out with a female colleague and returned home at 10:30pm. Upon her return

home her son met her and told her that she should sleep in his room because the Petitioner was acting uncontrollably and that he would sleep on the sofa. The Petitioner demanded that she come into the master bedroom as he wished to speak with her. Once there he choked her and started to slap her and threatened to kill her. He punched her in her eyes, and body slammed her, and tore off her underwear causing her bruising.

21. The Petitioner told her that the only reason he did not blacken her eyes was because people would know that he hit her.
22. When their son heard the altercation he tried to help her. The Petitioner then proceeded to wrestle, slap and choke their son.
23. When she tried to help their son, the Petitioner threatened to kill both of them. He then demanded that she return to their bedroom which she did because she feared for her life. She had shouted to her son to call the police.
24. Their son came back with the police and in a rage their son told the Petitioner that he was tired of his abusing his mother. The son was emotionally traumatized by the abuse and tried to hurt his own hand in anger because of the abuse.
25. As a result of the Petitioner pleading guilty to the assault charges, he was placed on probation for one year.
26. The police, when she went to report the abuse, did not assist her and suggested that she go home and resolve the matter with her husband.
27. Since the Petitioner was arrested for assaulting her he has refused to assume any financial obligations to the family as was previously agreed between the parties. The Petitioner went as far as threatening to conceive a plan that would leave the Respondent and the minor child homeless. This also added to the Respondent's stress and suffering. He blamed her for all of the issues in the marriage.
28. She has suffered severe verbal and physical abuse from the Petitioner. The Petitioner has little to no regard for her feelings. He has spoken harshly to her in the presence of others. She is severely depressed and stressed because of the Petitioner's actions. The Petitioner's physical abuse and emotional trauma has greatly diminished her self-esteem and increased her stress levels.
29. The Respondent further avers that since the celebration of the marriage the Petitioner has committed adultery. She claims that the Petitioner carried on extra-marital affairs with various women and blatantly flaunted the relationships. The

Petitioner carried out an adulterous relationship with a woman known to her. The woman has attacked and harassed her on numerous occasions.

30. The Petitioner's behavior has also caused emotional trauma to their son.
31. The Respondent denied under cross-examination that she was not afraid of the Petitioner. She did not deny having sexual intercourse with her husband hoping that his behavior would change.
32. After reporting the incident to the police, she denied having sexual relations with the Petitioner but admitted that they slept in the same bed as the only other bedroom was where their son slept. She said that she stayed in her corner and he in his. The couch was a sleeper couch and because of a slipped disk she could not sleep on it.
33. The Respondent maintained that before the marriage they had agreed that the Petitioner would pay the mortgage and utilities, and it was only after he started beating her that he started asking for her help on the mortgage.
34. The Petitioner took her off the life insurance and cancelled their son's insurance and squandered the proceeds.
35. She maintained that the Petitioner was irresponsible with his finances and did not pay the utilities on time. She did not assist in paying anything on the utility bills when she checked and saw that they had not been paid.

### **Issues**

36. The Court must decide the following:-
  - i) Whether the Respondent has treated the Petitioner with cruelty since the celebration of the marriage
  - ii) Whether the Petitioner has treated the Respondent with cruelty and has committed adultery since the celebration of the marriage
  - iii) Whether any of the acts of cruelty complained of have been condoned by either party

### **Decision**

37. The **Matrimonial Causes Act, Ch. 125 Section 2 ("MCA")** defines adultery as:-  
**"adultery" includes any voluntary act of an intimate sexual nature, other than that regarded as an act of mere familiarity, between one party to a marriage with another party of the opposite sex who is not the other spouse and which act is inconsistent with that sexual fidelity that is presumed in the interest of public policy to exist between parties to a marriage, or any conduct between a party to a marriage with another person as afore-mentioned whereby a strong presumption arises that such sexual act occurred between them"**

38. **Section 2** 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”**

39. Section 19(1)(b) 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.**

40. The threshold in cases of allegations of cruelty is making a determination that the conduct of either party has departed from the normal standards of kindness thereby inducing injury to the health of the other party, whether mental or physical based on the particular characteristics of the parties involved.

41. In **Gollins v. Gollins [1963] 2 All E.R. 966** the House of Lords considered the meaning of cruelty and 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 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 respondents 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.”**

42. The Court must consider each party individually and the effect of one’s conduct on the other to determine whether either has been treated with cruelty. There is no objective standard of cruelty.

43. 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."**

44. The Petitioner outlined his allegations of cruelty referring to matters as far back as 2017. The misconduct complained of must be so weighty in nature based on the individual characteristics of the parties involved and their particular circumstances so that the acts move from normal acts of kindness to behavior which is unacceptable and reprehensible. The party alleging cruelty must prove that the other party's conduct caused some injury to his or her physical or mental health.

45. The Petitioner in my opinion, has not proven beyond a reasonable doubt that the conduct of the Respondent amounts to cruelty so weighty in nature that his physical or mental health was negatively impacted. In fact, after hearing his evidence and observing his demeanor, I was satisfied that the acts relied on by him as acts of cruelty were not cruel. What he claimed to be cruel was the Respondent behaving in a matter to gain respite from a hostile, violent home environment. It appears that the Petitioner sought to totally control and belittle the Respondent and when he was not successful, he became extremely violent towards her and ultimately their child. The complaint of the way his wife dressed was simply baseless and reflective of his attempt to control her totally. The Petitioner's Petition is therefore dismissed as I do not find that the Respondent has treated the Petitioner with cruelty.

46. The allegations of cruelty alleged by the Respondent however are so weighty in nature that no person should be called on to endure the same and they are reprehensible and totally unacceptable. The Respondent should not be made to endure the physical abuse. The fact that the Petitioner pleaded guilty to the assault confirms his unacceptable behavior. After listening to her evidence and observing her demeanor, I am satisfied and accept her evidence of the actions of the Petitioner even after being strongly cross-examined.

47. The threshold of proving that a party has committed adultery since the celebration of the marriage is no small task. The Court finds that the evidence led by the Respondent has failed to prove that the Petitioner has committed adultery since the celebration of the marriage. There was no concrete proof of adultery led by the

Respondent. What evidence she relied on would support her allegations of cruelty against the Petitioner if at all. In fact the Petitioner averred that the acts stated by the Respondent took place prior to the marriage.

48. In Lockhart v. Lockhart, Hall CJ referenced the *10<sup>th</sup> 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)**

49. I am satisfied that there was no evidence led which supports the allegation that the Respondent condoned the Petitioner's cruel conduct. The Petitioner denies that he has treated the Respondent with cruelty and has not committed adultery since the celebration of the marriage. The Petitioner has not consented to be forgiven as he maintained that he did not commit the acts alleged. The Respondent admitted that she did have sexual relations with the Petitioner after the acts complained of, however I am satisfied this behavior was evidence of a person extremely belittled and cowed by the Petitioner's cruel acts with low self-esteem and in abject fear of the relationship and not an act of condonation on her part.

50. This Court finds that the Petitioner has since the celebration of the marriage treated the Respondent with cruelty, the ground of adultery is dismissed. A Decree Nisi is granted to the Respondent on the ground of cruelty by the Petitioner and is not to be made absolute for a period of three months. Ancillaries are adjourned to chambers.

51. Three quarters of the costs of the action are awarded to the Respondent to be paid by the Petitioner and to be taxed if not agreed.

Dated this 16<sup>th</sup> day of December 2022



Hon. Madam Justice G. Diane Stewart