

COMMONWEALTH OF THE BAHAMAS

2023

IN THE SUPREME COURT

FAM/div/00384

Family Division

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT, CHAPTER 125 AND THE
DOMESTIC VIOLENCE (Protection Orders) ACT, CHAPTER 99A

BETWEEN:

CAH (nee S)

Applicant

AND

DPH SR.

Respondent

DECISION

BEFORE: The Honourable Madam Justice C. V. Hope Strachan

APPEARANCES: Raynard Henfield for the Applicant

Lillith Smith Mackey for the Respondent

1. Pursuant to a Divorce Petition filed by the Applicant on 26th June 2023 the Applicant as Petitioner prayed inter alia that the court would grant her an Emergency Protection Order.

2. Subsequent thereto an Affidavit in support of Maintenance Order Pending Suit and an Affidavit in Support of an Application for Emergency Protection Order, Notice of Proceedings of Summons, Certificate of Urgency and a Summons for Maintenance Pending suit were all filed on 30th June, 2023 on behalf of the Applicant.

3. On 5th July, 2023 this court granted to the Applicant ex-parte an Interim Protection Order pursuant to Section 3 of The Domestic Violence (Protection Orders) Act, 2007 that the Respondent was not to interfere with the Applicant or engage in any form of domestic violence,

inclusive of, but not limited to, any form of assault, sexual assault by spouse, verbal abuse or threats of harm. The said order to remain in place pending hearing of the substantive application inter parties. The matter was adjourned to 10th August to be fully ventilated with the Respondent having been served to appear.

4. On 25th July, 2023 an Affidavit was filed herein on behalf of the Respondent in which he denied the allegations of violence made by the Applicant.

5. On 27th July, 2023 the Applicant filed a Supplemental Affidavit in which she made further allegations of domestic violence against the Respondent.

6. The matter came on for trial on 10th August, 2023 at which time the parties had arrived at an agreement as it relates to the financial arrangements on the application for maintenance pending suit, the terms of which were approved by the court in the form of an interim order pending finalization of the divorce proceedings. The Order was perfected and filed on 14th August, 2023. In the premises this decision addresses only the issue of whether the interim Domestic Violence Protection order dated the 5th August, 2023 should continue or be set aside.

7. Notably the evidence presented to the court at the hearing of this matter consisted only of the sworn Affidavits of the Applicant and the Respondent, as both counsels for the Applicant and the Respondent were satisfied to rely thereon opted out of cross-examination. Both Counsel provided submissions in support of their client's positions.

THE DOMESTIC VIOLENCE (PROTECTION ORDERS) ACT, 2008, Chapter 99 A, STATUTE LAWS OF THE BAHAMAS

8 The Domestic Violence (Protection Orders) Act, 2008 defines which acts constitute domestic violence at S. 2 as including "physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, partner, child, any other person who is a member of the household or dependent; emotional or psychological abuse" means a pattern of behavior of any kind, the purpose of which is to undermine the emotional or mental well-being of a person including:

- (a) Persistent intimidation by the use of abusive or threatening language;
- (b) Depriving that person of the use of his property;
- (c) Interfering with or damaging the property of the person;
- (d) The forced confinement of the person;
- (e) making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person."

"Financial abuse" means a pattern of behavior of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependence."

"harassment" includes-

- (a) the intimidation of a person by –
 - (i) persistent verbal abuse;
 - (ii) threats of physical violence;
 - (iii) the malicious damage of the property of a person;
 - (iv) any unwanted physical, verbal or visual sexual advances, requests for sexual favours, and other sexually oriented conduct which is offensive or objectionable to the recipient, including but not limited to: epithets derogatory or suggestive comments; slurs or gestures and offensive posters, cartoons, pictures, emails, telephone calls or drawings but not being occasional compliment of a socially acceptable nature
- (b) stalking
- (c) the hiding of any clothes or other property owned by or used by a person or depriving of a person of the use thereof or the hindering of a person in the use thereof; or
- (d) the indulgence or engagement in a pattern of behavior by a person that would or likely have the effect of undermining the emotional or well being of another;”

“Physical abuse” means any act or omission which causes physical injury to a complainant or his child and includes the commission of or an attempt to commit any of the offences of the nature listed in the First Schedule in relation to the complainant or his child;”

The EVIDENCE

9. The affidavits of the Applicant alleges acts of physical violence ;slapping, forced sexual intercourse, threats of harm as in the gestures made in rage with the iron, and producing a firearm while the couple were arguing, verbal abuse such as the use of profanity and name calling like “bitch” and “prostitute.” The Applicants allegations extend to financial abuse through the withholding of money to take care of the children and to pay financial obligations as was the case during the currency of the marriage. I am satisfied that the treatment meted out to the Applicant by the Respondent falls within the definition of Domestic Violence.”

10. The Respondent’s answer to the Applicant’s allegations were at the very least equivocal. He admits that the incident on 3rd January occurred but says that the couple made amends and reconciled after. He speaks of the couple sharing intimate moments after this incident but contrarily avers that the couple has not been intimate for several months. He suggests that the Applicant moved away from the matrimonial home of her own volition after returning home from an extended stay abroad, however he offers no explanation as to why she would have done so if they were getting along fine as he alleges. His account of the verbal altercations in the marriage is

that the Applicant starts them, uses profanity, belittles him through the use of derogatory comments, calling him dumb, black and no good, and that he leaves the home to avoid it becoming physical. Interestingly again he admits that he and the Applicant “often” exchanged words during arguments.

11. The respondent admits that he made “the lion’s share” of the couple’s income and always took care of the children. The Applicant describes him as “the breadwinner” and I accept that there is little distinction in the terms of art. It stands to reason that any withdrawal of that support would’ve negatively impacted the Applicant, precipitating an application as is before the court.

12. This court accepts and prefers the evidence of the applicant as presented. The fact that both parties reside in Bimini a recognizably small island, the unlikelihood of the parties being able to avoid each other is a glaring reality. I am therefore constrained to factor this into my decision.

13. In the premises this court finds that the Respondent has been violent towards the Applicant **before** he learned of the Petition i.e. when he slapped her. The court rejects the Respondent’s assertions that the slapping incident was an isolated one provoked by the Applicant. His abuse was also manifested when he produced a firearm during an argument. His admitted reaction to discovering the Applicant had consulted an attorney (even though he contends that they made amends) is indicative of a lack of self-control towards his wife resulting in abusive behavior. His abuse continued **after** being served with the Petition when he physically assaulted the wife in her bedroom and smashed her phone preventing her from calling the police.

14. Counsel for the Respondent suggests that only if the Applicant suffered injuries as a result of the alleged incidents of physical abuse and only if the police were involved for the production of reports could the Applicant be entitled to a Domestic Violence Protection Order. I reject this assertion for the following reasons:-

PERSUASIVE AUTHORITIES

15. **Halsbury's Laws of England, Civil Procedure (Volume 11 (2020), paras 1–496; Volume 12 (2020), paras 497–1206; Volume 12A (2020), paras 1207–1740)**

16. No requirement for corroboration in civil cases.

“In general, a court may act on the evidence of a single witness, or a single document properly proved, both in civil and criminal proceedings. There are no circumstances in which such evidence requires corroboration. DPP v Kilbourne [1973] AC 729, [1973] 1 All ER 440, HL; and see Wright v Tatham (1838) 5 Cl & Fin 670; Davis v Hardy (1827) 6 B & C 225; Morrow v Morrow [1914] 2 IR 183.”

17. I do considering the factual circumstance already alluded to above and taking into consideration that there are decided cases in opposition to each other. **In Reid v Reid (1984) 30 July 1984, 136 NLJ 541 per Balcombe J.;**

“...”the court should be wary of making an ouster order in the absence of corroboration, where the incidents are of a nature where corroboration might be expected – for example, if the injuries are alleged medical evidence might normally be expected; if police have been summoned it might be possible, although one knows the practical difficulties in this type of case, to get police evidence;...”

18. An approach to this issue was identified by Judge Thornton QC in **R (on the application of Balakoohi) v Secretary of State for the Home Department [2012] EWCH 1439 (Admin), [2012] All ER (D) 57** (at para [60]) – Although this case and the Re JR case which follows was specific to evaluating evidence of domestic violence in order to qualify for immigrant status i.e. it was specifically relatable to rules laid down in specific statutes I found such an approach to be informative and relevant to the application of the factual circumstances at hand:

“The overriding features of the guidance are that all the material available to a decision-maker should be evaluated and taken into account save in unusual circumstances and that the decision-maker’s task is to weigh the credibility and reliability of all the evidence and not to discard any of it. Thus, although relevant material should wherever possible be independently supported or corroborated, none of it is ordinarily to be discarded altogether. This is particularly so if there is a good reason for the relevant evidence not being supported by independent corroborative evidence.

19. In **Re JR 161’s Application for Judicial Review and another [2022] NIJB 79, [2022] NIJB 79**

Per Scoffield J” – “An applicant’s own account and testimony is evidence. If credible, it could in itself satisfy the test in an appropriate case.”Such a requirement goes beyond the immigration Rules and would also represent an improper fettering of the respondent’s discretion to accept an obviously credible first-hand account unsupported by other evidence.

20. Most persuasive was the expose from the decision in **Alli v Alli [1965] 3 All ER 480** - Sir Jocelyn Simon P and Cumming-Bruce J.

“In our opinion, therefore, there is abundant authority to support Sir Boyd Merriman P’s statement of the practice of the court in B v B ([1935] All ER Rep at p 429, [1935] P at p 83) namely, that the court

demands that, when a matrimonial offence, whatever it is, is charged, if possible the evidence of the spouse making the charge should be corroborated. To sum up, then, our view of the authorities so far: (a) where a matrimonial offence is alleged, the court will look for corroboration of the complainant's evidence; (b) the court will normally, before finding a matrimonial offence proved, require such corroboration if, on the face of the complainant's own evidence, it is available; (c) these are not rules of law, but of practice only. They spring from the gravity of the consequences of proof of a matrimonial offence; and because, we would add, experience has shown the risk of a miscarriage of justice in acting on the uncorroborated testimony of a spouse in this class of case; (d) it is, nevertheless, open to a court to act on the uncorroborated evidence of a spouse if it is in no doubt where the truth lies; (e) these statements are equally applicable to proceedings in courts of summary jurisdiction as to those in the High Court.

Further, Justices should direct themselves, just as a judge should direct a jury, that it is safer to have corroboration, but when the warning has been given, and given in the fullest form, then there is no rule of law which prevents the tribunal from finding the matter proved in the absence of corroboration.”

21. In all the circumstances of the case the court accepts the evidence of the applicant and finds that the need for the order of protection against the Respondent is has been proven. The court therefore orders the following;

1. That pursuant to Section 8 of the Domestic Violence (Protection Orders) Act, 2008, the Respondent be restrained from being on premises in which the Applicant resides.
2. That pursuant to Section 8 of the Domestic Violence (Protection Orders) Act, 2008, the Respondent be is restrained from being on premises in which the Applicant works.
3. Pursuant to Section 8 of the Domestic Violence (Protection Orders) Act, 2008, The Applicant be allowed to enter and remain in the matrimonial home with the minor child of the marriage.
4. Pursuant to Section 8 of the Domestic Violence (Protection Orders) Act, 2008, the Respondent shall leave the matrimonial home situate Bailey Town, Bimini, The Bahamas.
5. Pursuant to Section 8 of the Domestic Violence (Protection Orders) Act, 2008, the Respondent to continue any and all legal obligations for the matrimonial home except that the Applicant shall be responsible for the

payment of all utilities in the said home while she occupies the same to the exclusion of the Respondent.

6. Pursuant to Section 8 of the Domestic Violence (Protection Orders) Act, 2008, the Respondent be restrained from taking any personal property from the matrimonial home that is needed for the household, inclusive of, but not limited to any furniture and appliances.
7. That the Respondent is restrained from selling or disposing of the matrimonial home in anyway.
8. Pursuant to Section 8 of the Domestic Violence (Protection Orders) Act, 2008, the Respondent is restrained from harassing, assaulting or interfering with the Applicant in anyway.
9. That this Domestic Violence Protection Order shall remain until the finalization of divorce proceedings, but in any event shall not expire for a period of One (1) year unless and until set aside by the court.

Dated the 8th day of September, A.D.2023



C.V.H. STRACHAN, J.

