

COMMONWEALTH OF THE BAHAMAS

2023

IN THE SUPREME COURT

FAM/DIV/No. 00292

Family Division

Between

WILLIAMS

Petitioner

AND

WILLIAMS

Respondent

JUDGEMENT

Before: The Hon. Madame Justice J. Denise Lewis-Johnson

Appearance: Carl W. Z. Bethel K.C. of Counsel for the Petitioner

Margaret Gonzales Sabola of Counsel for the Respondent

Hearing Date: 12th July 2023

Family Law-Matrimonial Causes Act-Divorce-Adultery-Cruelty-Desertion

Introduction

1. By Petition filed the 17 May 2023, the Petitioner alleged that the Respondent has treated her with cruelty since the celebration of the marriage.
2. By Answer and Cross-Petition filed 21 July 2023 the Respondent replied to the allegations of cruelty in the Petition and alleged that the Petitioner treated him with cruelty and deserted him since the celebration of the marriage.

Petitioner's Evidence

3. That sometime in 2020 while assisting their son with a project, she saw a photo in the Respondent's phone of the Respondent with the name "Roshiek" written on his arm.
4. That when she questioned the Respondent about the picture, the Respondent did not provide an answer, which resulted in the Petitioner refusing to have any sexual contact with the Respondent, as she was aware of who Roshiek was and was suspicious of a relationship.
5. That eight (8) months later, the Respondent then provided an answer regarding the photo stating that when at work he sometimes doodled on his arm.
6. That on the 23 March 2023 the Respondent went on a business trip to Florida for about 4-5 days and upon the Respondents return a pill called "Cialis" for men fell out of the Respondents clothing. The Petitioner stated that the entire time on the trip, the Respondent failed to reach out to the children which was unlike the Respondent.
7. The Petitioner furthered testified that when she asked the Respondent about the pill, he admitted that he went with Roshiek and did not deny having an affair with her.
8. That on the 30 March 2023, the Respondent began video tapping her against her will, resulting in her trying to retrieve the cellular phone from the Respondent. She stated that the Respondent chased her through the house and into the bathroom where she hit her head and that the Respondent began recording her again stating in the video that she attacked the Respondent.
9. That in April of 2023, while away with the children of the marriage on holiday, she called the Respondent and was greeted on the phone by another woman who then handed the

Respondent the cellular phone. The Petitioner testified that it was then she learned that the Respondent went on a trip which he failed to tell the Petitioner about.

10. That prior to the trip in April 2023 the Respondent retrieved all the Petitioner's credit cards making it impossible for her to have access to funds to take care of herself and the children, as she was a home-maker and the Respondent was always the financial provider for the family.

Respondent's Evidence

11. That he admits to having the photograph on his cellular phone and when he tried to explain the extent of the picture, the Petitioner became verbally abusive towards him which would usually occur during the marriage.
12. That the Petitioner never tried to move on from the incident of the cellular phone between them and refused to have any sexual intimacy with the Respondent. However they both communicated with the children despite the Respondent not informing the Petitioner of his business trip.
13. That the Respondent admitted to the Petitioner that he went on the business trip with Rosheik. The Respondent however denies taking away the Petitioner bank cards. The Respondent stated that not only did the Petitioner have access to the credit cards at all times, but the Petitioner withdrew \$114,500 cash from the parties' joint account without the Respondent's knowledge.
14. That in December 2020 on a Christmas trip in Aruba the Petitioner spoke down to the Respondent in the front of their children and family and that since 2020, the Petitioner has not only been withholding sexual intimacy from the Respondent, but the Petitioner also removed her wedding band stating that she was only there for the children.

15. The Respondent further stated that on 29 & 30 March 2023, the Petitioner tormented him for 2 days screaming for the Respondent to get out of the home, leaving on lights in the home and screaming in his face.
16. That on the 30 March 2023, he pretended to complete an assignment on his laptop when the Petitioner kept harassing him and acting erratically. As a result of the Petitioner acting in such manner, he began recording the Petitioner which led to injuries to the Respondent.
17. That on the 24 June 2023 the Petitioner along with the minor children left the matrimonial home without the Respondents knowledge or consent and to this present day, the Respondent claims he is unaware of their whereabouts. That the Petitioner would only allow the children about 3 minutes to have a conversation with him on the phone.
18. That the Petitioner deserted him after removing her wedding band in 2020, refusing to have sexual intercourse with the Respondent, moving out of the matrimonial bedroom and home a short time later.

Issue

19. The court must decide whether to grant a Decree Nisi to the Petitioner on the ground of cruelty, to the Respondent on the ground of cruelty or both on the grounds as alleged in their Petition and Cross-Petition.

Law

Matrimonial Causes Act, Chapter 125, Statute Laws of The Bahamas

20. **Section 2.....**

“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.

“Desertion” includes behaviour without cause or excuse on the part of one party to a marriage towards the other spouse whereby it can reasonably be concluded that that party intended through such behaviour to bring the matrimonial consortium to an end.

21. **Section 16(4)** On a petition for divorce it shall be the duty of the court —

(a) to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the petitioner and whether any collusion exists between the parties; and

(b) to inquire into any counter charges made against the petitioner.

22. **Section 18** The court may dismiss a petition for divorce if:

(a) it is not satisfied on the evidence that the case for the petitioner has been proved;

or

(d) in its opinion the petitioner has been guilty —

(i) of unreasonable delay in presenting or prosecuting the petition; or

(ii) of cruelty towards the other party to the marriage; or

(iii) where the ground of the petition is adultery or cruelty, of having without reasonable excuse either deserted or willfully separated himself or herself from the other party before the adultery or cruelty; or

(iv) where the ground of the petition is adultery or desertion, of such willful neglect or misconduct as has conducted to the adultery or desertion

23. **Section 48** If in any proceedings for divorce the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the court may give the respondent the relief to which the respondent would have been entitled if the respondent had presented a petition seeking that relief.

Decision

1. The Court is required on the grounds of cruelty to consider each party and the effect of their behavior on the other as per Fraser J. in **S.R. v W.R. [2016] 1BHS J No. 5** where she relied on this quote:-

"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."

2. **Rayden and Jackson on Divorce and Family Matters** Sixteenth Edition at page 213 states:

"The Court has to decide the single question whether the Respondent has so behaved that it is unreasonable to expect the wife to live with him: in order to decide that, it is necessary to make findings of facts as to what the respondent actually did, and findings of fact as to the impact of that conduct on the

petitioner.....It has been said that the correct test to be applied is whether a right-thinking person, looking at the particular husband and wife, would ask whether the one could reasonably be expected to live with the other taking into account all the circumstances and personalities of the two parties concerned."

3. The Court must also consider provocation. **Rayden and Jackson 16th Edition** at page 223 addresses this while acknowledging **"there is no reference to provocation in the Matrimonial Causes Act 1973"**, there is equally no reference to it in the Matrimonial Causes Act, Chapter 125 Statute Laws of The Bahamas. The position in law, however, has long been that **"when cruelty was a ground of relief a spouse who provoked the conduct which caused actual or apprehended danger to life, limb or health was not entitled to relief."**

4. This position was supported in **Cartwright v. Cartwright [2006] 2 BHS 158** where Watkins J having acknowledged the Respondent's conduct to be reprehensible in nature, and a departure from the normal standards of conjugal kindness stated:

"Having regard to the circumstances, the Petitioner who had committed the matrimonial offence of adultery cannot complain if the Respondent lost patience and in the heat of the moment did or said something which, on reflection, ought never to have been done or said. This is a fundamental principle in matrimonial proceedings and it is one that is reinforced by the Act."

5. I therefore accept the Petitioner's submission that the Respondent cannot rely on the Petitioner's conduct in March 2023 as cruelty towards him. This Court goes further and states that the Respondent will not be allowed to rely on conduct of the Petitioner from 2020 after finding the photo of the Respondent's arm with "Rokeish" written on it, arousing the Petitioner's suspicion of adultery. This Court accepts that the reasonable suspicion of adultery can amount to cruelty.

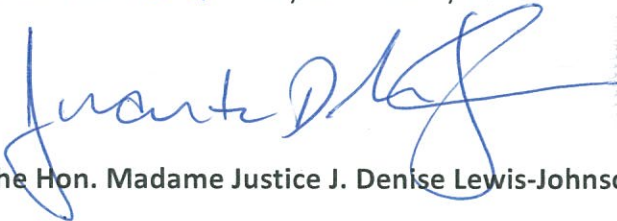
6. The Petitioner upon finding out that the Respondent was having an affair with a co-worker refused to have sexual intercourse with him. The Respondent was not forthcoming with information about the affair, however the Court finds the Petitioner's withdrawal of intimacy reasonable in all the circumstances. The Petitioner expressed health concerns having worked in the area of HIV and Aids, she was acutely aware of the dangers of sex with multiple partners.
7. The Respondent acknowledged he was committing adultery. It was only after this that the marriage fell apart. The parties had numerous altercations both verbal and physical after this. They both rely on them as grounds for cruelty against each other.
8. I am satisfied that the Respondent is at fault. He singularly caused the breakdown of the marriage. All instances raised by him as acts of cruelty by the Petitioner which occurred after she became aware of his infidelity are not to be relied on. The Petitioner simply did not condone the Respondent's adultery and cruelty. By his evidence the Respondent expected her to accept his adultery and remain in the marriage.
9. The Court accepts the evidence that the Respondent created an unsafe environment. The fights, both verbal and physical were unhealthy. It was a responsible and safe decision of the Petitioner to move out of the home before greater damage or harm was done. The Petitioner moving out the matrimonial home for her safety is not desertion of the Respondent but can be considered constructive desertion.
10. The Respondent referenced four incidents of alleged cruelty by the Petitioner prior to 2020 and claimed not to have condoned them. The Court does not accept this evidence of the Respondent and find him to be less than truthful. The Court finds if they amounted to cruelty, there was condonation by the Respondent as he continued to live with the Petitioner and never sought a divorce until now.

11. **Hayden's Practice and Law of Divorce 16th Edition defines condonation as "the reinstatement in his or her former martial position of a spouse who has committed a matrimonial wrong of which all material facts are known to the other spouse with the intention of forgiving and remitting wrong, on condition that the spouse whose wrong is so condoned does not henceforward commit any further matrimonial offence. Condonation therefore consists of a faction of reinstatement and an annum remittendi."**
12. Albeit the Respondent alleges that he has met the standard for cruelty and that he did not apply for a divorce because he wanted to be like his father and provide a stable family for his children. He however, for years stayed in the marriage and thus was clearly able to withstand the alleged cruelty. By all evidence they were happy. This Court is of the view that these allegations are exaggerated due to the present circumstances and were the usual discord between married persons.
13. The Petitioner gave evidence of finding out that the Respondent was having an affair, that the Respondent restricted her access to finances, called the bank to launch an investigation, she caught him in lies about the affair. She found a male enhancement pill after he came home from a trip with the coworker whose name he had on his arm. She called the Respondent names in an argument after the trip he took with another woman.
14. The Court finds the Petitioner to be a credible witness and accepts her evidence. The physical altercations, videotaping the Petitioner, threatening to call the police and other instances alleged by the Petitioner in all the circumstances of this case amount to cruelty by the Respondent.
15. The Petitioner's moving to another bedroom, eventually moving out of the house and refusing to have sex with the Respondent does not amount to desertion but were justified

acts by the Petitioner having regard for all the circumstances of this case and the provocation by the Respondent.

16. For all of the reasons stated above, the Court having heard the evidence, having observed the demeanor of the witnesses and having considered the relevant law finds as follows:-
- i. Decree Nisi is granted to the Petitioner on the grounds that since the celebration of the marriage the Respondent has treated the Petitioner with cruelty.
 - ii. The Answer and Cross-Petition is dismissed; and
 - iii. The Respondent is condemned in cost to be taxed if not agreed.
 - iv. Ancillary matters are adjourned to Chambers.

Dated this 27th day of February 2024


The Hon. Madame Justice J. Denise Lewis-Johnson

