

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Family Division**  
**Claim No. 2024/FAM/div/00436**

**B E T W E E N**

**KSW**

**Applicant**

**AND**

**BGW**

**Respondent**

**Before:**                    **The Honourable Madam Justice Cheryl Bazard KC**

**Appearances:**        **Ms. Terrel Butler for the Applicant**  
                              **Mrs. Lillith Smith-Mackey for the Respondent**

**Hearing Dates:**        **19 May, 2026**

**Family Law - Matrimonial Causes Act s. 16 – Dissolution of Marriage - Petition for divorce on the ground of cruelty – Petitioner claiming financial neglect - Whether the conduct of the Respondent was so grave and weighty that should the Petitioner have been called upon to bear it, it would have been detrimental to her health.**

**RULING**

**Bazard KC, J:**

**INTRODUCTION**

[1.]     On the 10<sup>th</sup> September, 2024, the Petitioner filed a Petition for Divorce seeking the dissolution of her marriage. The ground relied on is that since the celebration of the marriage the Respondent has treated the Petitioner with cruelty pursuant to s. 16(1)(b) of the Matrimonial

Causes Act. No other ground was pleaded in the alternative and no application was made to amend the Petition and the ground therein.

[2.] The Petitioner gave sworn oral evidence and did not call any witnesses. The Respondent gave no evidence and relied on his denial in the filed Answer.

[3.] The trial of this matter was heard and concluded on 19 May, 2026 and written submissions were requested from Counsel. Both Counsels complied with the request. I now rule.

## **BACKGROUND**

[4.] The parties were married on the 1<sup>st</sup> day of December, A.D., 2001 when the Petitioner was a spinster and the Respondent a bachelor. There are 2 children of the marriage, namely BNW born on the 7<sup>th</sup> September, 2004 and KZW born on the 30 September, 2008. The marriage was subsisting for nearly 23 years when the Petitioner filed the said Petition.

[5.] The Petition alleges the following particulars of cruelty:-

- (i) *That the parties' relationship is acrimonious. The Respondent has been arguing with the Petitioner a lot which is very stressful for the Petitioner. That as a result of the stress caused by the arguments the Petitioner informed the Respondent that she was going to leave him, he would tell her in a threatening manner that he knows where her family lives.*
- (ii) *The Respondent has not worked since the year 2019 although he works in the construction field and his last known employment was with Cavalier Construction which has caused a great financial burden on the Petitioner. They purchased the home together and the Petitioner has been paying the mortgage utility bills and all other expenses. The Petitioner has been solely responsible for taking care of the financial needs of the children of the marriage. This had caused the Petitioner great stress and distress.*
- (iii) *That the Petitioner sed (sic) her Pension in the amount of \$77,743.04 to pay off the mortgage because she was the sole person left with the responsibility of paying the mortgage and the Respondent was not contributing after he became unemployed because his portion for the mortgage was coming from salary deduction and the property was put up for sale.*
- (iv) *The Respondent started to have an inappropriate relationship with a woman that he met during jury duties. The Petitioner discovered inappropriate messages between them and in one of the messages the woman was telling the Respondent that she wanted to make breakfast for him.*

- (v) *The Respondent's cruel treatment of the Petitioner has caused his (sic) stress sleepless nights and inability to function properly at work.*

[6.] The Respondent filed an Answer on the 4<sup>th</sup> February, 2025.

[7.] In the Answer, he averred the following:-

- (i) *The Respondent accepts paragraphs 1,2,3,4,5 and 6 of the Petition filed herein.*  
(ii) *The Respondent denies the Petitioner's assertions that the Respondent has treated the Respondent with Cruelty, in the Petition filed herein save for which are admitted.*  
(iii) *The Respondent denies the Petitioner's assertions that the Respondent has treated the Petitioner with cruelty as outlined in paragraph 7i – 7v.*  
(iv) *Paragraph 8 is denied.*  
(v) *Paragraphs 9 and 10 is neither admitted nor denied.*  
*WHEREFORE THE RESPONDENT prays that:-*  
*1. The Petition filed herein by the Petitioner be rejected."*

#### **THE EVIDENCE OF THE PETITIONER**

[8.] In cross-examination, the Petitioner gave evidence that during the marriage, whenever the Respondent was out of a job, he would get dressed and go looking for work. He would cut the grass, paid for gas and bought toilet paper. Since the filing of the Petition, the Respondent paid twice for the daughter's tuition.

[9.] She testified that the lack of work on the part of the Respondent stresses her out and her hair was falling out. She cannot concentrate at work and that there is no hope of reconciliation between the parties.

[10.] Further, during cross-examination, she stated that the Respondent gave her \$10,000 towards the down payment of the property. The total down payment was \$12,000.00. He got up every morning to look for work. He would help with the bills when he worked and before he was laid off.

[11.] Regarding the repayment of the mortgage, she stated that he did not ask her to use her pension to pay off the mortgage. She voluntarily paid off the mortgage. She had no evidence that he has not tried to live up to his responsibility as a husband.

[12.] When the issue was raised regarding the woman he met during jury duty, the Petitioner stated that it was a friendly relationship that she told him to stop. There was no other evidence of

“unfaithfulness” nor the interaction by the Respondent with a female that was inappropriate. The Petitioner never suggested counselling and there was no participation in counselling prior to the filing of the petition.

[13.] She further stated that they were going through a rough patch and that counselling will not fix her marriage. She has been sleeping on the chair and has asked him to leave. She further put his clothes on the porch to get him to leave but he didn’t leave.

[14.] As for the alleged stress, she did not go to a doctor. As such, the evidence was not corroborated. It was just her saying that he caused her stress which resulted in her hair falling out. He never physically harmed her.

[15.] During re-examination, she said that she slept on the chair for more than 2 years. She does not want to be near the Respondent. Every time she looks at him, she gets angry because he does not support the family. They have not spoken to each other in over 2 years. There is no communication at all. The Petitioner expressed that she does not even want to look at the Respondent. The evidence that they have not spoken to each other in over 2 years goes against the Petitioner’s allegation that the Respondent has been arguing with the Petitioner a lot which is very stressful to the Petitioner.

[16.] When questioned by the Court, the Petitioner stated that the Respondent does not talk to her and she does not talk to him. There is not even a good morning that passes between the parties. The parties have also not lived as man and wife for the past 2 years. There is no discussion between them regarding the children of the marriage. The children speak directly to the parties. The children are 21 and 17 years of age. The 21 year old child is not in the jurisdiction and the Respondent collects the 17 year old occasionally and paid for the last 2 tuition costs. The parties do not share meals together.

[17.] The Respondent gave no evidence.

## **Issue**

[18.] The issue before the court is to determine whether the Petitioner has met the legal standard of cruelty as defined by the Matrimonial Causes Act.

## **Law and Analysis**

[19.] Section 2 of the Act defines cruelty as:

*“...voluntary conduct that is 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 of the part of that other spouse and being conduct which after taking due account of all 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.”*

[20.] Counsel for the Petitioner in her written submissions relied on *Saunders v. Saunders [2005] 1 BHS J. No. 66* and the dicta of Hepburn J. that the offending party’s behavior “*must be conduct deserving of censure or rebuke, or must be conduct which, in the context of the marital relationship, is clearly blameworthy. It must not be conduct of a trivial nature nor conduct which can properly be described as being part of the fair wear and tear one would reasonably expect in a marriage...*”

[21.] Counsel for the Respondent relies on *Russell v. Russell [1897] AC 395* where the House of Lords defined cruelty at pages 401 to 402 as:

*“The principle is that cruelty consists of the willful infliction of a bodily or mental pain, and the Courts will not wait until a person suffers before they find cruelty, the apprehension of injury being enough. But in order to found an application for relief in matrimonial cases the conduct must be grave in degree. Further, there is no legal limitation to the character of the cruelty, but the Courts will consider as an important element of the conduct in question whether it is likely to produce injury to health; or whether it is calculated to make the discharge of matrimonial duties practically impossible or unendurable.”*

[22.] In the oft-cited *Gollins v. Gollins [1962] All ER 797*, Denning MR defined cruelty as: “*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 cases 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.*” (Emphasis added)

[23.] In *Lauder v. Lauder 1949 1 All ER 76*, Pearce J stated at page 90:- “*Cruelty cases, more than any other class of case, depend particularly on a careful estimate of the witnesses, for in a cruelty case the question is whether this conduct by*

*this man to this woman, or vice versa is cruelty. How far a spouse has to depart from the normal standards of kindness and self-control that are the basis of married life and how great an effect that departure has to have on the other spouse before it constitutes cruelty is always a question of degree, depending largely on the temperament, circumstance and health of each party...*"

[24.] In *Gollins v. Gollins*, *supra*, Wilmer, L.J. added that:

*"I would venture to propose the relevant proposition of law as follows:*

- (1) The conduct complained of must be such as to cause danger to health (bodily or mental) or a reasonable apprehension thereof. This is the basic requirement laid down by the House of Lords in Russell v. Russell [1997] A.C. 395.*
- (2) The conduct on the part of the offending spouse must be in some sense aimed at or directed towards the complaining spouse. This requirement was laid down by this Court in Kaslefsky v. Kaslefsky [1950] 2 All E.R. 398 a decision which, so far as I know, has never been overruled and is therefore binding on us. Moreover, the necessity of this element in order to constitute cruelty follows, I think, from the circumstances noted by Bucknill, L.J., in Kaslefsky v. Kaslefsky at pp 401, 402 that the statute speaks of offending spouse having treated the petitioner with cruelty. It follows that in order to constitute cruelty there must always be some element of intention in relation to the impact of the conduct complained of on the other spouse. Where the Court finds that the conduct complained of was pursued with an actual intention to injure the other spouse, no further inquiry is necessary. But such an intention may in a proper case be inferred where, for instance, the conduct complained of is persisted in (a) after warning that it is having an adverse effect on the other spouse, or (b) in circumstances in which any reasonable person would appreciate that it was likely to injure the other spouse. For any spouse may be presumed to intend the natural consequences of his own behaviour. Thus, any course of conduct intentionally pursued, provided it has some impact on the other spouse, may in appropriate circumstances justify a finding of cruelty. This concept has, I think, never been better expressed than by Shearman, J. in Hadden v. Hadden, (Dec 4, 1919), "The Times", Dec 5, 1919, in words specifically approved by Lord Merriman in Jamieson v. Jamieson, [1952], 1 All E. R., at pp 881*

*I do not question ... that he had no intention of being cruel...but...his intentional acts amounted to cruelty."*

- (3) If the two foregoing requirements are not satisfied, the charge of cruelty is not made out and must as a matter of law be dismissed.*
- (4) If the two requirements, which I have mentioned, are satisfied, then the question whether the conduct complained of does or does not amount to cruelty is one of fact and degree to be decided in the light of all the circumstances of the particular case. In approaching this question of fact and degree, regard must be had to the following consideration. (a) A charge of cruelty is a serious charge, and a spouse is not lightly to be held guilty of it.*

*In this connexion I venture to quote the words of Denning, LJ at the conclusion of his judgment at Kaslefsky v. Kaslefsky, at p 403:*

*If the door of cruelty were opened too wide we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperilled."*

*In Squire v. Squire, [1948] 2 All E.R. 51, it was said by Evershed, L.J., that the alleged cruelty must be something which satisfies that language according to its ordinary acceptation...(B) It is always necessary to consider the personality of two spouses, and in particular the physical and mental condition or susceptibilities of the innocent spouse – per Lord Tucker in Jamieson v. Jamieson, [1952] 1 All E.E., at p 887... [I]t is necessary to consider that the impact of the conduct complained of was on the personality of the complaining party. In this connexion I think that it is worth repeating once more the oft-quoted remark of Pearce, J, in Lauder v. Lauder, [21949], 1 All E.R., 76, at p 90:...in a cruelty case the question is whether this conduct by this man to this woman, or vice versa, is cruelty."*

[25.] For a party to succeed in the claim for cruelty it must be shown and proven on a preponderance of probability that there has been injury to life, limb or health, bodily or mentally or a reasonable apprehension of it.

[26.] As per Fraser, J., as she then was, in *BH v. SH BS 2016 SC 15*, referring to *Minnis v. Minnis FAM/div/311/1986 at page 105:-*

*"The test to be applied in deciding whether some action or inaction could amount to cruelty is a subjective one; and one spouse must therefore take the other as he or she is in terms of what that spouse's susceptibility to being injured or being put in danger to life or limb or health, bodily or mental."*

[27.] I am of the opinion that the Petitioner has not proved the cruelty as alleged. I am not satisfied that the standard required by law on the evidence before the court that the Petitioner proved that the Respondent treated her with cruelty as defined by the Matrimonial Causes Act.

[28.] There is no doubt that the marriage between the Petitioner and the Respondent appears to have broken down. Unfortunately, this is not a ground for divorce and does not fall within the definition of a matrimonial offence. Further, the evidence of the Petitioner suggests that she has been the principal architect in ensuring that there is no physical contact between herself and the Respondent by first removing herself from the matrimonial bed and sleeping on a chair for the last 2 years followed by packing the Respondent's clothing and placing them on the porch with the hope that he would be provoked into leaving the matrimonial home. She did not speak to the Respondent and the Respondent does not speak to her. There is nothing to suggest that an effort

was made by the Petitioner to engage the Respondent and that engagement has been spurned. In fact, in the words of the Petitioner, owing to him not having put his best with respect to finances in her opinion, "Every time I look at him, I get angry."

[29.] As per 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 on 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."*

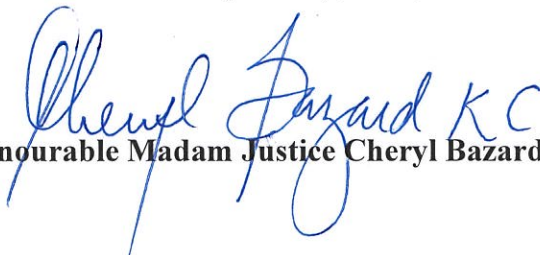
[30.] The Petitioner also made mention that the Respondent used threats of knowing where her family lived when she stated that she would leave. I do not believe that the language used was in the serious manner that the Petitioner attempted to relay to the Court. Nor does it reach the standard of "injury to health" or "a reasonable apprehension of it" as required by the Act.

### **Conclusion**

[31.] As such, I dismiss the Petition pursuant to s. 18(a) of the Matrimonial Causes Act, i.e., I am not satisfied on the evidence that the case for the petitioner has been proved. Additionally, pursuant to s. 18(d)(ii), I also find that the Petitioner has been guilty of cruelty towards the Respondent by her own admission and evidence.

[32.] Both parties are to bear their own costs of these proceedings.

Dated this 20<sup>th</sup> day of July, A.D., 2026.

  
The Honourable Madam Justice Cheryl Bazard, KC