

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division**

2023/FAM/div/FP/00003

B E T W E E N

SW

Claimant

AND

OW

Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Cassietta McIntosh-Pelecanos with Louisiene Louissaint for the Petitioner
Constance McDonald, KC for the Respondent

Hearing date(s): 19 November 2025

Submissions: 9 December 2025

JUDGMENT

DELANCY, J.

[1.] This is the Court’s decision on the prayer for the dissolution of the marriage between SW (“the Petitioner”) and OW (“the Respondent”) in their respective Petitions.

Background

[2.] The parties were married on 10 August 2013. At the date of Petition and Answer and Cross-Petition, the parties were married for approximately 9 years.

[3.] The Petitioner filed a Petition on 20 January 2023 seeking a dissolution of the marriage on the grounds of desertion and cruelty.

[4.] The Respondent filed an Answer and Cross-Petition on 26 May 2023 and an Amended Answer and Cross-Petition filed on 30 May 2023 denying the allegations contained in the Petition and cross-petitioned for a dissolution of the marriage on the grounds of cruelty.

[5.] The Petitioner filed a Reply and Answer to Cross-Petition on 30 January 2025 denying the allegations contained in the Amended Answer and Cross-Petition.

[6.] The Petitioner's evidence is contained in her filed Petition, Amended Petition, Reply to Answer and Cross-Petition. The Respondent's evidence is contained in his filed Answer and Cross-Petition. Both parties gave oral evidence at the hearing and were extensively cross-examined.

Evidence

[7.] The parties have not been sexually intimate since or about 2019. The Petitioner says that Respondent rebuffs her attempts to initiate sexual intimacy. The Respondent says the Petitioner suffers from a skin condition which when irritated her skin oozes blood, pus and emits an odor and as a result he would not be able to engage her sexually. The Respondent was unable to say how often this occurred nor how long such eruptions lasted. Prior to the marriage the Petitioner disclosed the nature of her condition to the Respondent and while she has flare-ups, she does not emit an odor and manages condition.

[8.] The Petitioner disputes the Respondent's assertions that she emits an odor, as she manages her condition. The Respondent concedes that he never complained of this to the Petitioner neither before nor during the marriage. He also admits that he would tell her she smelled good especially when she wore a particular pear scent fragrance.

[9.] The Respondent says he was unable to engage in sexual intimacy with the Petitioner because of chronic back pain caused by injuries sustained prior to the parties' marriage. However, he admitted he was sexually intimate with the Petitioner prior to 2019 as the pain is not constant and he is still able to function on his job.

[10.] The Respondent also says the Petitioner's menstrual cycle deterred him being sexually intimate with her. Further, the Petitioner refused to take baths at a reasonable time or did not take a bath as soon as she arrived home. He accepted that there were times that times when she would exercise and completing work at home before she took a bath.

[11.] The Petitioner also says that the Respondent avoided being intimate with her by sleeping in another bedroom without her consent and he would return to the master bedroom when she suggested he move out. The Respondent denies that he sleeps outside the master bedroom. He states that although he keeps his clothing in another bedroom and occasionally slept there because the Petitioner's low temperature setting of the air conditioner the master bedroom made him painful. Under cross-examination, the Respondent confirmed that he is required to perform his duties in a cool environment and it does not affect his work performance.

[12.] The Petitioner says that the Respondent did not purchase any gifts for her or celebrate special occasions. The Respondent admitted that he did not purchase any gifts for the Petitioner or celebrate occasions because she had access to his accounts.

[13.] Since 2019 the Respondent stopped contributing to the majority of household bills such as the utilities and groceries; he pays the electricity bill and purchases cereal for himself. The Petitioner bears the additional financial burden as well as paying for mortgage, service charges and house insurance.

[14.] The Petitioner states that the parties agreed to have children, she underwent a surgical procedure towards achieving this goal, but the Respondent refused be medically examined in regard to any possible infertility issues. The Respondent states that he researched the issue of infertility, but it did not occur to him that he needed to be evaluated.

[15.] The Respondent says that the Petitioner would travel for one week or two weeks at a time. The Petitioner says that due to the nature of her job her vacation time is during the summer months, and she would travel for a few days or a week annually. On one occasion she travelled for two weeks to undergo a medical procedure.

[16.] The Respondent states that the Petitioner stopped cooking for him. The Petitioner says she never ceased maintaining the home, or cooking for the Respondent, which sometimes included the Respondent's granddaughter. Under cross-examination, the Respondent admitted that up to the date of the hearing the Petitioner still cooks in the home and he sees pots on the stove, but he never looks in them. Further that, in his opinion she did not cook for him because *"My wife would bring me my food and serve me. She did not cook for me because she did not serve me my food"*.

[17.] That Respondent says he did not want to be sexually intimate with the Petitioner because she was disrespectful to him in public. Under cross-examination he recalled that she embarrassed him in public before the marriage; and a second time was in 2022. The Petitioner denied disrespecting the Respondent in public. She recalled one occasion when the Respondent accused her of disrespecting him after she left him in a store while he was engaged in a lengthy conversation his ex-girlfriend and her father. The Respondent accused her of disrespecting him, took away her car keys and threatened to sell the car.

[18.] That under cross-examination the Respondent acknowledged that: *"My wife treated me like a king"; "I used to brag to my friends about how well my wife treats me"; "She helped me out tremendously" and "She is a very nice and lovable person"*.

Issues

[19.] The Court must determine whether:

- (i) the Respondent deserted the Petitioner;

- (ii) the Respondent has treated the Petitioner with cruelty; and
- (iii) the Petitioner treated the Respondent with cruelty.

Law and Discussion

[20.] The grounds of Cruelty and Desertion are defined under Section 2 of the Matrimonial Causes Act (“the MCA”) as follows:

“**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.] The Court must evaluate the parties’ evidence and consider the factors outlined in Section 18 MCA to determine whether to dismiss a Petition:

- (a) it is **not satisfied on the evidence that the case for the Petitioner has been proved;** or
- (b) it finds that the Petition is **presented or prosecuted in collusion with the Respondent** or either of the Respondents; or
- (c) it finds **that the petitioner has during the marriage been guilty of adultery;** 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 wilful neglect or misconduct as has conduced to the** adultery or **desertion.**

[Emphasis added]

Desertion

[22.] The Court must be satisfied that was a pattern of behaviour by the Respondent which led the Petitioner to conclude that the Respondent intended to bring the marriage to an end. Further such behavior must have existed for “*a continuous period of at least two years immediately preceding the presentation of the petition*” (see Section 16(1) (c) MCA).

[23.] The elements of desertion are set by the learned authors of Rayden and Jackson's Law and Practice in Divorce and Family Matter, 17th Ed. Vol.1:

8.34 To establish the fact of desertion there must **two elements present on the side of the deserting spouse, namely the factum, i.e. the physical separation, and the *animus deserendi*, ie the intention to bring the cohabitation permanently to an end;** and **two elements present on the side of the deserted spouse, namely absence of consent and absence of conduct reasonably causing the deserting spouse to form his intention to bring cohabitation to an end.** ... **Desertion is a question of fact, and so is the continuance of desertion, it is also a question of fact whether any particular conduct is reasonably capable of having the necessary deserting or expulsive meaning; desertion may be inferred from certain acts in one case which in another would not justify the same inference; the acts draw their significance from the purpose with which they are done as revealed by conduct or by expressions of intention.**

8.35 ...Further, there may be *animus deserendi* without the factum of separation, as where the parties live not as two households under the same roof, but as one household.

[Emphasis added]

[24.] Counsel for the Petitioner submits that the Respondent's refusal to engage in sexual intimacy with the Petitioner without cause or excuse for over three (3) years prior to the commencement of the action amounts to desertion within the context of the MCA. Further, the Respondent has failed to present any credible reason why he ceased sexual intimacy with the Petitioner.

[25.] Counsel for the Respondent submits that his evidence bears out why he no longer engaged in sexual intimacy with the Petitioner. Further, his refusal to engage in sexual intimacy does not constitute desertion as contemplated in the MCA.

[26.] Desertion requires both the fact of separation and the intention to permanently end cohabitation without the consent of the other spouse. The refusal of one party to engage in sexual intimacy alone does not amount to desertion in circumstances where parties continue to reside in the same home. The refusal to engage in sexual intimacy along with other conduct, such as lack of communication or indifference, may constitute desertion.

[27.] Counsel relies on the case of **Scotcher v Scotcher** (1947) P. 1 at p. [10-11] in which *Willmer, J.* examined the question of refusal of sexual intimacy as a basis for desertion:

... in the long run the question which I have to decide in this case is one of fact, namely, **whether the conduct of the respondent, taken as a whole, including her refusal of sexual intercourse, constituted such a total disregard of the fundamental obligations of matrimony as to afford evidence of an intent to desert.** ... **the respondent must be taken to intend the natural and probable consequences of her acts, and if she behaves with a reckless indifference to the natural and probable... consequences of her conduct, this would be sufficient evidence of an intention to desert.**

[Emphasis added]

[28.] The Court accepts that in or about 2019, the Respondent refused to be sexually intimate with the Petitioner. He ceased being sexually intimate with the Petitioner due to her lack of hygiene, odor and emissions of pus and blood from skin lesions, her refusal to communicate with him about her menstrual cycle. Further he was deterred from engaging in sexual activity because of pain in his back.

[29.] The Court rejects the Respondent's explanation for refusing sexual intimacy with the Petitioner. Further, he never made the Petitioner aware of his concerns. The Court notes that despite the Respondent's behaviour the Petitioner continued to reside in the same household, and make attempts to engage the Respondent in sexual intimacy.

[30.] The Court finds that lack of sexual intimacy may be a contributing factor, it is not accompanied by separation on the part of the Respondent or separation on the part of the Petitioner as a result of the lack of sexual intimacy to bring cohabitation permanently to an end.

Cruelty

[31.] The Petitioner alleges that the Respondent has treated her with cruelty, the Respondent countered that the Petitioner has treated him with cruelty. The Court must consider all the circumstances of the case to determine whether either party has established the ground of cruelty, namely:

- (i) That the alleged behaviour was voluntary reprehensible conduct or a departure from normal standards of conjugal kindness;
- (ii) There is a correlation between the alleged behaviour and injury or reasonable apprehension of injury on the part of the other spouse; and
- (iii) That the alleged behaviour was so grave and weighty that it would be detrimental to the other spouse's health

[32.] Counsel for the Petitioner submits that the Respondent's (i) refusal to engage in sexual intimacy with the Petitioner, (ii) refusal to take steps to be tested for infertility thereby depriving the Petitioner of the prospect of having a biological child (iii) threats to sell the vehicle operated by her and (iv) refusal to assist with household expenses constitutes cruelty as defined by the MCA.

[33.] Counsel for the Respondent submits that the Petitioner (i) embarrassed the Respondent in public, (ii) refused to communicate with him about her menstrual cycle, and (iii) lack of hygiene constitutes cruelty towards him.

[34.] The Court must determine based on the evidence of this Petitioner and this Respondent whether the threshold for cruelty has been met by either party. In ***Lockhart v. Lockhart*** 1995

BS SC 22 *Hall, CJ* at para.141 of his decision described the role of a judge hearing contested divorces:

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.

[Emphasis added]

[35.] The parties married in 2013 and sometime in 2019, within six (6) years of marriage, sexual intimacy between them ceased. The Petitioner continued to carry out common tasks associated with a cohabiting married couple. She continued to take care of the house and provide meals for the members of the household. The Respondent refused to partake of those meals, as the same were not served up to him. The Respondent still regarded the Petitioner as a “nice” and “kind” person. The Petitioner expressed hurt that the Respondent no longer engaged sexual intimacy with her or share her goals to start a family; and withdrew his financial support from the family save and except for paying for electricity.

[36.] Counsel for the Petitioner submits that the asserting party must sufficiently prove the claims made in his or her Petition. However, the Court finds that it must determine, did these circumstances constitute a reasonable cause or excuse for the Respondent's persistent withdrawal from sexual relations, and was the withdrawal sufficiently grave and weighty, in all the circumstances, to satisfy Section 2 of the MCA.

[37.] The test was expounded in *Saunders v Saunders* [1965] 1 ALL ER 838 by *Scarman, J.* at p.846, paras. D-I.

Counsel for the wife, appreciating the difficulties that his client might have to face in her case, was bold enough, if he will permit me to say so, to submit that the test which the courts have recently been most careful to apply in assessing the quality of conduct alleged to be cruel or to be just cause for withdrawal from cohabitation was a wrong test. That test is commonly known as the “grave and weighty” test. Counsel for the wife, relying on one passage from the speech of Lord Pearce in *Gollins v. Gollins*, submitted that that was not really the test, but that the test really was first, whether the conduct of the spouse was reprehensible conduct or a departure from the normal standards of conjugal kindness; and secondly, if it was, whether a reasonable person, after taking due account of the temperaments of the spouses and all the other particular circumstances, would consider that the conduct complained of was such that the spouse should not be called on to endure it. If it was such conduct and was accompanied by injury to health or reasonable apprehension

thereof, it would be cruelty; if not so accompanied, it would at least afford just cause for withdrawal from cohabitation. I think, with respect, which counsel for the wife has misunderstood the passage of Lord Pearce's speech in Gollins v. Gollins on which he relied. It is clear to my mind that Lord Pearce was substantially in agreement with the other members of the House, whose opinion was that the appeal should be dismissed. *Lord Pearce*, at the beginning of his speech, emphasized that since the days of Lord Stowell it had been acknowledged that to support a finding of cruelty the matter must be grave and weighty. He then, mentioned *Russell v Russell*, in which it was laid down that, **when the charge was cruelty, there must be evidence of injury to health or reasonable apprehension of injury**, and he said:

Thus there have long been two safeguards against any extension of relief to cases founded on mere trivialities and incompatibility.

The **truth is that Lord Pearce was recognizing that the 'grave and weighty' test of alleged matrimonial misconduct remains in full force and effect as one of the great safeguards against matrimonial relief being given on mere trivialities or incompatibility.**

[Emphasis added]

[38.] The Court examined the pleadings, affidavit evidence filed herein, the parties' oral testimony at the hearing. The Court also observed the demeanor and behaviour of the parties throughout the hearing. The Petitioner's evidence did not differ from her Petition and largely remained unchallenged under cross-examination. The Respondent's evidence under cross-examination contradicted his allegations of cruelty as he repeatedly praised the Petitioner and stated that she "*treated him like a king*".

[39.] The Court is also guided by the observation of *Thompson, J.* in *Spencer v Spencer* 2003/FAM/div/00232 at para. [9] thereof:

...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.

[Emphasis added]

[40.] Where cruelty is alleged as a ground for divorce, the Court must also consider whether the conduct relied upon has been condoned by the party seeking to rely upon it. Section 19(1)(b) of the MCA provides that:

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;**

[Emphasis added]

[41.] The Court is not persuaded that the evidence given by the parties rises to the level contemplated by the statutory test. Matrimonial discord, disappointment, or conduct which may cause hurt or resentment does not, without more, constitute cruelty. The conduct must be of such a character, and of such gravity and weight, that continued cohabitation would reasonably be apprehended as detrimental to the health of the complaining spouse. That threshold has not been crossed by either party. The Petitioner's continued conduct toward the Respondent is inconsistent with the alleged severity of the circumstances.

[42.] The evidence of the Petitioner is particularly difficult to reconcile with the degree of gravity alleged. Despite the matters of which she complains, she acknowledged that she continued to make efforts to engage the Respondent in sexual relations and continued to cook and clean for him, to the extent that the Respondent described himself as being treated "*like a king*". Those circumstances do not, in the judgment of the Court, demonstrate a matrimonial relationship in which the conduct complained of had assumed the grave and weighty character required by the statute. Nor has the Respondent demonstrated that the conduct of the Petitioner upon which he relies attained that threshold. In the circumstances, neither party has discharged the burden of establishing cruelty.

Disposition

[43.] In all the circumstances of the case, the Court finds that:

- (i) The grounds of desertion and Cruelty as set out in the Amended Petition have not been proven;
- (ii) The ground of cruelty as set out in the Answer and Cross-Petition has not been proven by the Respondent.

[44.] Accordingly, the Amended Petition and the Answer and Cross-Petition are hereby dismissed.

[45.] Each party to bear their own costs.

Dated the 1 day of October 2026

[Original signed and sealed]

Constance Delancy
Justice