

COMMONWEALTH OF THE BAHAMAS

2020

IN THE SUPREME COURT

FAM/div/00291

FAMILY DIVISION

BETWEEN

D.R

Petitioner

AND

B.R

Respondent

Before: The Hon. Madam Justice G. Diane Stewart

**Appearances: Michael Saunders for the Petitioner
Nerissa Greene for the Respondent**

Ruling Date: 14th December 2022

JUDGMENT

Background Facts

1. The Petitioner, D.R was lawfully married to the Respondent B.R on 14th January 2008. There are two children of the marriage, namely B.L.R (male) born on 20th January 2009 and D.T.J.R (male) born 14th August 2012. The Petitioner is employed with The Royal Bahamas Police Force. The Respondent is employed as a Firefighter at the Airport Fire Department. The Petitioner filed a Petition on 30th June 2020 praying for the dissolution of the marriage on the ground that the Respondent has treated her with cruelty since the celebration of the marriage. The Respondent also filed an Answer and Cross Petition on the 25th September 2020 defending the Petitioner's Petition and seeking his own dissolution on the ground of the Petitioner's cruelty to him.
2. The Petitioner alleged that since the celebration of the marriage, the Respondent has consistently called her names such as "whore" and often telling her that he wished that she would die of breast cancer like her mother. The Respondent constantly told the Petitioner that he is glad that the children are not black like her and he constantly belittled her for not getting promoted.

3. The Petitioner suffered from depression, sleep loss and lowered self-esteem due to the constant verbal abuse of the Respondent. In or about 2011, the Respondent threatened the Petitioner by tapping a licensed shot gun while she was walking to a bus stop and he pulled up beside her causing her terror and dismay.
4. The Petitioner also claimed to have suffered physical abuse many times from the Respondent which ranged from consistent slamming of her hand, twisting and spraining her hand. He would also punch her. He broke one of her nails by his physical abuse. On one occasion, the Petitioner being in fear of her safety and well-being, stabbed the Respondent in self-defense after he had choked her. The Police had been called to the home on many occasions after physical altercations between the parties to handle the domestic disturbances. The Petitioner is currently undergoing psychiatric counselling.
5. There is no romance and intimacy in the relationship as the parties have lived in separate bedrooms in the home for the past four years.
6. In cross-examination she confirmed that she limited the complaints made to the police, and that she had never put the matter before the court prior to this action.
7. She never sought medical attention from his behavior and he was never arrested.
8. She denied using her fellow police officers to incite fear in the Respondent.
9. She admitted to being intimate with the Respondent after the incident of cruelty.
10. In the Respondent's Answer and Cross- Petition, he denies treating the Petitioner with cruelty as alleged and asserts that the Petitioner in fact treated him with cruelty and committed adultery during the course of the marriage.
11. The Respondent alleged that tensions were high throughout the marriage. The Petitioner would utter painful and hurtful words to him. The Respondent recalled the Petitioner telling him that she wished he was dead in front of the children of the marriage. The Petitioner has threatened to kill the Respondent and brags that she will get away with it because she is a Police Officer.
12. The Respondent was stabbed in the hand by the Petitioner in or about April 2020. The Petitioner would leave the matrimonial home on her days off and not return until the following morning leaving the Respondent to care for the children of the marriage on his own. The Respondent asserts that he heard the Petitioner on the phone having a sexual conversation with another man.

13. The Respondent adamantly denies that he told the Petitioner that he wishes she would die of breast cancer like her mother. He also denies telling the Petitioner that he is happy their children are not black like her. The Respondent also denies belittling the Petitioner for not being promoted on her job. He recalls always being supportive of the Petitioner.
14. During the twelve years of the marriage, the Respondent states that he has never been abusive towards the Petitioner. The Petitioner has spit in his face, punched him and sliced his hand with a butcher knife over the years. The Respondent also recalls that the Petitioner attempted to roll him over with his own vehicle after being caught in his car with another man.
15. The Respondent alleges that he and the Petitioner were last intimate in December 2019 and April 2020 before the stabbing incident.
16. The Respondent stated that the Petitioner would be out extremely late and he would have full responsibility for caring for the children of the marriage. When he would question the Petitioner on her whereabouts she would refuse to answer and stated that this made him feel less of a man.
17. The Respondent recalls that during the marriage, the Petitioner had always suffered from depression, sleep loss and low self-esteem. The Respondent stated that the Petitioner has been the aggressor in the marriage and as a result the Respondent has suffered extreme cruelty and cannot continue to endure it.
18. The Respondent also alleges that the Petitioner has behaved cruelly since the celebration of the marriage. The Respondent maintains that the Petitioner on one occasion got dressed up to carry food to another man. The Respondent followed her and when she noticed the Respondent she sped away damaging her vehicle.
19. The Respondent has found romantic notes from other men written to the Petitioner. He has also found sex toys which were never used between himself and the Petitioner. He also alleges that he found a pregnancy test on the table in their matrimonial home and a prescription for certain drugs which he alleges were for treatment of a sexual disease.

DECISION

20. I am tasked with determining whether the Respondent has treated the Petitioner with cruelty or in the alternative, whether the Petitioner has treated the Respondent with cruelty and has committed adultery.

21. The Matrimonial Causes Act, Ch. 125 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”
22. To establish cruelty, the behavior of one party must be so grave that it negatively affects the mental or physical health of the other should they be made to endure it
23. 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.
24. 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.
25. In Gollins v. Gollins [1963] 2 All E.R. 966 the House of Lords considered the meaning of cruelty and stated that:-
“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.”
26. Further 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.”

27. In Spencer v Spencer (2003) BHS 162, Thompson, J. stated:-

“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.”

28. It is evident from the evidence before the Court that the marriage has deteriorated. As stated in Spencer v Spencer, the Court is not interested in preserving a limping marriage however the offence must be proven to enable the Court to dissolve the marriage..

29. I am satisfied that each party has been cruel to each other. Their actions do not reflect the normal standard of kindness that partners should show to each other.

30. The Court also finds that the Respondent has failed to prove that the Petitioner has committed adultery since the celebration of the marriage. The allegations as alleged only support the finding of acts of cruelty by the Petitioner against the Respondent.

31. Decrees Nisi shall be granted on the ground of cruelty to each party on the ground that since the celebration of the marriage each party has treated the other party with cruelty.

32. The Decree Nisi shall not be made absolute for three months and all ancillary matters are adjourned to Chambers.

Dated this 14th day of December 2022



Hon. Madam Justice G. Diane Stewart