

**IN THE COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Family Division**

**2024//FAM/div/00036**

**B E T W E E N**

**L.A.M.**

**Petitioner**

**AND**

**O.L.W.**

**Respondent**

**Before:** The Honourable Justice C.V. Hope Strachan

**Appearances:** Kelley Bostwick-Toote for the Petitioner

Bridget Ward for the Respondent

**Hearing date:** 3<sup>rd</sup> March, 2025

*Matrimonial Causes Act; cross petitions of parties on cruelty; meeting the threshold definition; grounds for dismissal of petition.*

**RULING**

## C.V.H. STRACHAN, J

### BACKGROUND FACTS:

[1.] The Petitioner, L.A.M. (“the wife”) and the Respondent, O.L.M. (“the husband”) were married on 23<sup>rd</sup> April, 2017. The wife filed a Petition to dissolve the marriage on 26<sup>th</sup> January, 2024 just shy of six (6) years of the marriage. One child, a male, was born to the couple namely O.A.W. on 30<sup>th</sup> May, 2014. The child was born to the couple prior to the marriage.

[2.] The couple are currently not co-habiting as man and wife. The wife says she is living with her mother since 2023 when she left the matrimonial home out of fear for her life at the hands of the husband. The husband avers that they both always resided with the wife’s mother and family but was not clear as to where he actually resides presently.

[3.] Since the parties have cross-petitioned, both on cruelty, and since neither is automatically entitled to a divorce decree the factual circumstances will determine whether either or both of them or neither of them satisfies the court of cruelty.

### THE LAW;

[4.] The Matrimonial Causes Act, Chapter 125, Statute Laws of the Commonwealth of the Bahamas (“MCA”) or (“the Act”) and the Matrimonial Causes Rules (“MCR”) or (“the rules.”) S 2. of the Act provides a definition which must be satisfied for a Decree Nisi to issue.

s. 2 of the Act provides – “

“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;

### THE WIFE’S EVIDENCE

[5.] The wife’s allegations against the husband ranged from consistent physical beatings such as pushing, choking, punching and dragging to threats like I will kill you. I am not afraid of the police. I would do time for you. I am not afraid to do that.” thus putting the wife in fear

for her life and although he tries to brush it off after by saying; “You know I am joking, you are the mother of my child.” “Why would I kill you?” the wife says she is convinced that he is serious and is capable of doing so and she is afraid to be alone with the husband and to leave her mother’s house to reside with him.

[6.] One of the instances of physical abuse where the husband shoved her so hard her body broke through the closet doors, the wife says resulted in her lodging a complaint with the police. In fact, she says that she made a total of Three (3) such complaints to the police. It is common ground that an incident occurred on that occasion and that the police were in fact called. What is disputed about the incident is whether the husband held the wife hostage on that occasion. She said the husband had locked the front door with a key, took the key, took her car keys, and took the clothes she had ironed to leave. All of this was denied to the police by the husband and he continues to deny it even now. The wife also emphasized the lack of help from the police who on that occasion eventually told her “You’ll work that out, you are married.” The wife says she asked the police to stay with her to gather her things to vacate the home on that occasion.

[7.] The wife contends that the husband stalks her and tells of realizing that the husband hid outside her nail salon and waited for her to emerge. She also told of the husband creating a fake profile and tying it to her friends to monitor the persons who interacted with her and resorted to accusing her of indiscretions with men and women who communicated with her. Another stalking incident the wife said was the husband secretly placing a recording device in her vehicle. The husband has denied these incidents entirely. Further, the husband denies the wife’s allegation that he wakes in bed at night and sits up making choking gestures at the wife and commandeering her hand to open her cell phone ostensibly to spy on her messages.

[8.] The wife’s account of how/why the husband left the matrimonial home is disputed by the husband. She says she issued him an ultimatum that unless he went to counselling she was going to leave the marriage. The husband claims that he left because he felt threatened by the wife who ordered him out of the house or be forced out. He alleges that he returned to the home in 2023 when the wife broke her leg. The wife’s response; he had already returned when she broke her leg.

[9.] The wife also alleges that the husband treats her like a possession; that he does not even want her to fraternize with her family. This was refuted by the husband. However, the wife says that whenever she spoke with her mother to the exclusion of the husband he would slam doors, leave the house without saying anything, text lengthy messages on his phone, or stand in the hallway staring at her until she would join him. She describes that he made his presence overbearing in this instance.

## THE HUSBAND'S EVIDENCE

[10.] The husband alludes to the fact that the wife is argumentative and instigates arguments and altercations to force him out of the matrimonial home. This is denied by the wife: she says that any time she disagrees with the husband he perceives it as her arguing or being argumentative.

[11.] The husband further alleges that the wife refuses to carry his last name and she has removed her wedding ring and flung it away. The wife said that right before the couple got married she had just renewed her passport in her maiden name. She felt unsettled about taking the husband's name given his argumentative posture.

[12.] Another allegation the husband makes is that the wife was disrespectful to him and would cuss and carry on and tell him "this is my mother's house." The wife in responding did not deny this but stated that she indeed had to ask the husband to lower his voice in her mother's house. While answering the husband's charge that he shouldered all the financial burden of building the home the wife explained that while residing in the mother's house she and her sister paid all of the bills inclusive of the utilities and that this was to free up the husband to devote his income to building their home.

[13.] The husband believes the wife is deceptive and that she is possibly involved in an extra-marital affair. Aside from the bald allegation he presented no evidence of the same. He alluded to the wife blocking him from her cell number for an extended period of time and that this was cruel.

## DISCUSSION AND ANALYSIS

[14.] The legal definition of cruelty provides for certain elements in their behaviour to be present to meet the threshold of cruelty. I have no doubt that the physical acts of cruelty whereby the husband pushed, choked, punched and dragged the wife and threatened that he would kill her are divergences from any semblance of connubial harmony. Likewise is holding the wife hostage and stalking her. I accept the wife's account of the incidents.

[15.] As for the husband's allegations that the wife instigates arguments, and is argumentative: It's difficult to characterize this behaviour that is a departure from the normal standards of conjugal kindness because he failed to illustrate such instance.

[16.] I accept the wife's explanation for not assuming the husband's surname and in any event I do not see how her determination can be considered an act of cruelty unless this was contrary to a decision that they had made as a couple before getting married. He did not say that.

[17.] The wife's failure to contribute towards the building of their home if the agreement between the husband and wife was that she was to do so could in certain circumstances amount to cruelty, but the question remains whether she was in the financial position to do so when, as she said, she and her sister were paying all of the utilities at the mother's home they were residing in, to the exclusion of the husband, with the objective being to free up his resources to put into the building. Moreover I suspect that whenever the wife had to resort to saying to the husband that

“this is my mother’s house” that it came as a result of argument(s) they were having and while in the heat of the moment it may have been unkind, it was a statement of irrefutable fact used to convey the need for consideration and respect for the mother. I accept the wife’s explanation for the statement.

[18.] I dismiss the husband’s allegation that the wife may have been committing adultery outright. This bold accusation without expanding on the premise is entirely without merit.

[19.] It is insufficient for either the husband and/or the wife to give an account of the actions of their spouse which they contend are acts of cruelty perpetrated against them. The behaviour must be unacceptable or inexcusable or to use the precise term as defined in s. 2 MCA, it must be reprehensible in nature:

In **Saunders v. Saunders** [2005] 1 BHS J. No. 66 - Copy Citation - Bahamas Supreme Court, Common Side 2004/FAM/div/00429 – *Justice Claire Hepburn* referenced several authorities saying;

"The voluntary conduct complained of must be reprehensible in nature. It 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, **McEwan v McEwan** 919640 108 Sol Jo 198, CA, per *Lord Denning*, or simple manifestations of incompatibility of temperament. **Allen v Allen** [1951] 1st February (unreported) CA (referred to in *Simpson v Simpson* [1951] 1 All ER 955 at 957, 958, DC 11."

[20.] Considering the totality of the respective complaints of the husband and wife the most egregious behaviour is the physical abuse the wife suffered at the hands of the husband. I also find the instances of stalking to be pretty alarming. However, the acts complained of by the husband can be attributed to the fair wear and tear of marriage or, as in the case of the wife using her maiden name, even trivial.

[21.] There are degrees and thresholds for human behaviour and they vary with each individual’s personality. However, there is an element of subjectivity to be established which comes out of the definition of cruelty in s. 2. of the Act. A spouse can complain of the actions of another spouse ad infinitum but if they are unable to show that they have been negatively impacted or affected physically or mentally, the claim of cruelty will fail.

**Gollins v Gollins**, [1962], 3 All E.R., 797, 901-902:

"... I would venture to propound the relevant propositions of law as follows:

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**, [1897] AC 395

The effects of the husband's behaviour on the wife aside from the physical hurt inflicted by his abusive behaviour is of the mental variety. Fear and the apprehension of further acts, created by the lack of help given by the police, in helping to resolve the couple's issues.

[22.] Emphasis is again placed on the onerous degree of culpability which must be established by one spouse against the other to obtain a decree of divorce. The gravity or weight of the behaviour is momentous to the decision and in applying the established test which is as follows;

“Cases founded on mere trivialities and incompatibility do not satisfy the grave and weighty test. Nor do cases in which there is no evidence of injury to health or reasonable apprehension of injury. (See **Gollins v Gollins** [1964] AC 644 at 686-687 per *Lord Pearce*.)”[Emphasis mine].

In **K v. B** [2013] 1 BHS J. No. 198, per *Milton A Evans J*;

“In arriving at this conclusion I have given due regard to the comments of the learned Chief Justice *Sir. Michael Barnett* in the case of **S v M** 2009/FAM/DIV/193 as follows:-

"It must be emphasized that not every act or series of acts of conjugal unkindness constitutes cruelty. The acts complained of must be of a grave and weighty nature which has caused or is likely to cause injury to health. Mere rudeness is not cruelty. Parliament has not yet enacted 'unreasonable behaviour' as a ground for divorce and the Court must be astute not to elevate what is simply unreasonable behavior to an act or acts of cruelty. Such would be a transparent form of impermissible judicial legislation." [Emphasis added].

[23.] Again I am satisfied that only the physical abuse and the mental fear created by the husband's behaviour satisfies the grave and weighty test. I am also satisfied that the husband's behaviour was deliberate and extended far beyond mere rudeness or unreasonable behaviour, thus speaking to the intention of the offending party as a contributing factor to the overall consideration;


*Bucknill, LJ*, in **Kaslefsky v Kaslefsky**, at pp 401, 402, that the statute speaks of the 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.

When the wife recounts how the husband would threaten to kill her then later on would say to her “You know I am joking. You are the mother of my child. Why would I kill you?” tells me that the husband was not only aware of the impact such a statement would have on his wife but that he set out to deliberately cause her to be negatively affected by his statement. A cruel act.

**CONCLUSION AND DISPOSITION;**

1. The husband's Answer and Cross-Petition is dismissed.
2. The wife is granted a Decree Nisi on the grounds that since the celebration of the marriage the husband has been cruel to her. The Decree is not to be made absolute until Three (3) months from the making hereof.
3. Ancillaries are adjourned to chambers.
4. Costs to the wife to be taxed if not agreed.

Dated the 28<sup>th</sup> day of April, 2025



---

The Honorable Madam Justice C.V. Hope Strachan  
Justice of the Supreme Court of the Commonwealth of The Bahamas