

**IN THE SUPREME COURT OF BELIZE, A. D. 2013
(DIVORCE)**

ACTION NO. 133 OF 2012

(PAUL GILBERT TILLET	PETITIONER
(
BETWEEN (AND	
(
(AVA DIANA TILLET	RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Mrs. Robertha Magnus-Usher for the Petitioner

Mrs. Magali Marin Young for the Respondent

R U L I N G

1. This is a ruling on a preliminary objection where the Petitioner, Mr. Paul Tillett, is seeking a divorce on the basis of the Respondent's adultery. The Respondent, Mrs. Ava Tillett, has admitted adultery in her Answer to the

Petition, and seeks the exercise of the Court's discretion alleging that the Petitioner was cruel to her throughout the marriage and that the Petitioner's cruelty to her was the cause of the breakdown of the marriage. At the start of the hearing of the petition, Mrs. Magnus-Usher for Petitioner raised the objection that the Court should not look any further than the wife's admission of adultery and grant Mr. Tillett the divorce on that basis. Mrs. Marin Young on behalf of Mrs. Tillett contended that while her client admitted adultery, the court was duty bound to inquire into the allegations of cruelty raised by her in order to determine what the true cause of the marital discord was.

The Issue

2. Should the court grant the divorce to the husband on the basis of the wife's admission of adultery, or should it enquire into the allegations of cruelty made by the wife against the husband in order to determine the ground on which the divorce should be granted?

Submissions

3. Learned Counsel for the Petitioner, Mrs. Magnus-Usher argues that since the Respondent has admitted on the pleadings that she committed adultery, there is no need for the court to enquire into the matter further, and the court is bound to grant the divorce to the Petitioner on the basis of the wife's adultery since that adultery is proven by her admission. In support of this argument, Mrs. Usher cites the case of ***Grenfell v. Grenfell*** [1978] 1 All ER 561 where the Court of Appeal upheld the Registrar's decision to strike out the Petitioner Wife's Reply and granted the divorce based on the admission that the parties had been separated for five years. Learned Counsel also relies on Section 8 of the ***Evidence Act*** Chapter 95 of the Laws of Belize which provides as follows:

"No fact need be proved in any civil cause or matter which the parties thereto or their agents admit at the hearing or which they have

admitted before the hearing with reference thereto, by their pleadings, express admissions, in answer to interrogatories, agreements between the parties or on notice to admit facts.”

She also cites the case of ***Riverol v. Riverol*** No. 23 of 2011 where this court held that where the Petitioner failed to file a Reply to the Respondent's Answer, he implicitly admitted the grounds of adultery and cruelty alleged against him by the Respondent. The Court granted the divorce in that case on the basis of the Petitioner's failure to deny the counter charges made against him. Mrs. Magnus-Usher further argues that there should be no distinction between admissions made to marital fault and those made to no fault (as on the ground of three years separation and irretrievable breakdown of marriage). She submits that once there is an admission, the case of the Petitioner or the Respondent has been proven, and the decree can be granted.

4. Mrs. Marin Young on behalf of the Respondent submits that firstly, the objection was raised orally and that that objection was procedurally in breach of Rules 40, 41, 42 and 95 of the Matrimonial Causes Rules which require that there should have been an application to the court by way of summons:

“Matrimonial Causes Rules”

- “40. The Court may direct and any petitioner and any party to a cause who has entered an appearance may apply on summons to the Court for a direction for the separate trial of any issue or issues of fact, or any question as to the jurisdiction of the court.*
- 41. All applications under these Rules may be made upon summons to the Court.*
- 42. A summons may be taken out by a party or at the discretion of the Court by any other person having or claiming right to be heard in the cause or matter.*

95. *In any matter of practice or procedure which is not governed by statute or dealt with by these Rules, the Rules of the Supreme Court in respect of like matters shall be deemed to apply.”*

Mrs. Marin Young also submits that granting the divorce on the basis of the Respondent’s admission would be premature because both the Petitioner and the Respondent rely on marital fault in seeking a divorce from the court. Neither of the parties rely on the no fault ground of irretrievable break down of marriage and for that reason there are facts of this case that this Court needs to enquire into in order for the Court to be in a position to fully exercise its discretion. She further submits that in determining the ground on which the divorce should be granted, this court must weigh the fact that the Petitioner has been found to be persistently cruel toward the Respondent by the Family Court which granted the Respondent a legal separation order on that basis on January 9th, 2012. She argues that where a party is relying on a marital fault ground, it is vital not only that the

Respondent be guilty of a marital fault, but also that the Petitioner should be justly aggrieved by the Respondent's wrongdoing and has not in any way committed any serious marital fault to have caused the real breakdown of the marriage **Sikaffy v Sikaffy** BZ 1976 SC 1. In support of this, Learned Counsel cites Section 133(2)(ii) of the **Supreme Court of Judicature Act** Chapter 91 of the Laws of Belize Revised Edition:

“(2) If the Court is satisfied on the evidence that:-

- (a) the case for the petitioner has been proved; and*
- (b) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to, or connived at, or condoned the adultery, or where the ground of the petition is cruelty, the petitioner has not in any manner condone the cruelty; and*

(c) *the petition is not presented or prosecuted in collusion with the respondent or either of the respondents, the Court shall pronounce a decree of divorce, but if the Court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the petition.*

*Provided that the Court shall **not** be bound to pronounce a decree of divorce if it finds that the petitioner has during the marriage been guilty of adultery or if, in the opinion of the court, 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) *....”*

Mrs. Marin urges this court not to strike out the cross-petition but to hear the matter on both sides since there are allegations by both parties that can only be resolved by the Court enquiring into them.

Decision

5. I have read the submissions and supporting authorities provided by both Counsel for the Petitioner and for the Respondent and I am grateful to both Counsel for their diligence. I fully agree with the submissions made on behalf of the Respondent on this issue. As I had stated in ***Riverol v. Riverol*** cited above, Belize is still a fault based jurisdiction so even where the Petitioner in that case implicitly admitted cruelty and adultery by his failure to file a Reply to the Respondent's Answer, the court still had to enquire into the facts set out by the Respondent in deciding whether the evidence warranted the court granting the Respondent a divorce on the allegations she had made against the Petitioner. What the ruling in ***Riverol*** did was to state that the

Petitioner would not be allowed to contest the divorce because of his failure to file a Reply as mandated by Rule 23 of the Matrimonial Causes Rules. In the present case, in the face of the Respondent's admission of adultery, where she has alleged cruelty on the part of the Petitioner, the court is still duty bound to enquire into the facts claimed by each party in order to determine what was the true cause of the breakdown of the marriage. Each party is alleging that the other is guilty of a marital fault so the court must now delve into the evidence to see who is entitled to the decree. If it finds that the Petitioner was guilty of cruelty which caused the breakdown of the marriage, then the court may exercise its discretion in favour of the Respondent and grant her a decree on that basis, in spite of her admission of adultery. If on the other hand, if the Court finds that the Respondent failed to establish cruelty on the part of the Petitioner, then the Court may grant the Petitioner the decree if it finds that the Respondent's admitted adultery was the cause of the divorce. As rightly pointed out by Learned Counsel

Mrs. Marin Young in her submissions, neither of the parties are relying on a no-fault ground so it is necessary for the Court to enquire into the evidence in order to determine which allegations are substantiated by the evidence. In the case of **Grenfell v Grenfell (1978) 1 All E R 561** cited by Mrs. Magnus-Usher (which was referred to in **Khon Hoon Eng v Wong Kien Keong and Another** [2005] SGDC 148 also cited by Mrs. Magnus-Usher in her arguments), Ormrod LJ commented as follows:

*“There is no point as I see it in a case like this to conduct an enquiry into behaviour merely to satisfy hurt feelings, however genuinely and sincerely held by one or other of the parties. To do so would be a waste of time of the court and, in any event would be running, as I think, counter to the general policy or philosophy of the divorce legislation **as it stands today**. The purpose of Parliament was to ensure that where a marriage has irretrievably broken down, it shall be dissolved as quickly and as painlessly as possible under the Act, and attempts to*

recriminate in the manner in which the wife in this case appears to wish to do should be, in my judgment, firmly discouraged.” (emphasis mine)

It is clear from the above quotation that His Lordship was addressing the situation where a party is seeking a divorce based on a no-fault ground **in England**. It is in those circumstances that the court would not look at other allegations of behaviour which the other party seeks to put forward. His Lordship clarifies the rationale behind the attitude of the courts in that case as reflective of the thinking of the English Parliament in 1978. In Belize, for better or for worse, the situation is very different especially where each party is claiming that the other is guilty of marital fault as our divorce legislation in 2013 is still based on the ancient Matrimonial Causes Act of England 1857. As such, once a marital fault is alleged by both parties, our courts are obligated to examine the evidence presented by each spouse to

determine whose behaviour caused the marriage to disintegrate. This is so even where one spouse admits adultery as illustrated by the case of *Joyce. v. Joyce* [1966] Probate 84. where a wife brought a petition for divorce against the husband alleging cruelty. The husband defended the suit and by his Answer denied cruelty and cross-prayed for divorce alleging adultery by the wife with a named party cited. The wife later amended her petition so as to ask for the discretion of the court in respect of her own adultery with an unnamed man whom in her discretion statement she did not wish to name as he was married. Her solicitors showed the discretion statement to the husband's solicitors and the husband then amended his answer to charge the wife with adultery with a person and at a time and place unknown to him. The trial judge refused to exercise discretion in favour of the wife or the husband and dismissed both the petition and the answer. On appeal by both parties, the Court of Appeal (Lord Denning M.R., Danckwerts and Salmon L.JJ.) held that as each side had proved a

matrimonial offence and the court had a discretion to refuse each of them a decree, and as there was no prospect of reconciliation, the discretion of the court should be exercised in favour of both parties and a decree nisi granted to both husband and wife.

This application by the Petitioner to strike out the cross petition is hereby dismissed. The Court will proceed to hear both parties in this divorce.

Costs of this application awarded to the Respondent to be paid by the Petitioner in the sum of \$1,000.00

Dated this 25th day of October, 2013

**MICHELLE ARANA
SUPREME COURT JUDGE**