IN THE SUPREME COURT OF BELIZE A.D. 2020

CLAIM NO. 185 of 2020
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(MATTHEW MILES HULSE **PETITIONER**
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(AND
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(CRESLYN ANN HULSE **RESPONDENT**
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(KAMILA NABET-BERNARD **CO-RESPONDENT**

Before: The Hon Westmin R.A. James (Ag)
Date: 15th July 2021
Appearances: Ms Stacey Castillo for the Petitioner
Ms Audrey Matura for the Respondent
No appearance of the Co-Respondent

JUDGMENT

1. The Petitioner and the Respondent were married on 8th July 1995. The marriage produced three children all over the age of 18. The parties had previously to this Petitioner entered in an agreement relative the settlement of property dated 23rd June 2017.

2. The Petitioner seeks a divorce on the grounds of irretrievable breakdown of the marriage and separation for upwards of three years immediately preceding the presentation of the petition, while the Respondent cross-petitions for divorce on the ground of adultery and cruelty.

The Law

3. Section 129 of the Supreme Court of Judicature Act states

(1) A petition for divorce may be presented to the Court either by the husband or the wife on the ground that the respondent,

(a) has, since the celebration of the marriage, committed adultery;

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition;

(c) has, since the celebration of the marriage, treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition, and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.

(2) Notwithstanding the provisions of subsection (1) of this section, a petition for divorce may be presented to the Court by either party to a marriage on the grounds that the marriage between them has broken down irretrievably, and that they have been living separately for at least three years immediately preceding the presentation of the petition.

4. According to ***Action No. 21 of 1991 Quan v Quan***, the Petitioner need only to satisfy the Court on a balance of probabilities that (i) there is evidence that the marriage between him and the Respondent has broken down irretrievably, they are separated for more than three years before the Petition in June 2020, which would be June 2017 and there is no possibility of reconciliation in the marriage. Both parties gave evidence that the marriage have broken down irretrievably with no prospect of reconciliation. The parties have not been cohabitating since at least 2015 and the Petitioner and the Respondent even executed an agreement on 23rd June, 2017 in which they agreed that were living separate and apart from each other and made certain arrangements for them to live separate lives. I therefore find as a matter of fact on a balance of probabilities that the marriage has broken down irretrievably and the parties have been separated and apart for at least three years with no possibility of reconciliation.

5. Having regard ***Action No. 274 of 2014 Alvarez v Alvarez*** per Justice Young, where a petition is proven on the no fault ground, the Court must still enquire into any counter charges of adultery or cruelty and may exercise its discretion if the circumstances demand, I will now consider the cross petition.

6. The Respondent's cross petition is based on adultery and cruelty. The first question to be considered is the standard of proof of matrimonial offences in Belize. Madam Justice Griffith in ***Claim No 251 of 2014 Wagner v Wagner*** evaluated the standard of proof required in matrimonial proceedings in Belize. She held that "*the standard applied to proof of matrimonial offences in Belize is that beyond reasonable doubt. The adultery and cruelty alleged by the Petitioner thus now fall to be considered against this standard."*

Adultery

7. In setting out to prove adultery the Respondent has undertaken an onerous task. The proof required is strict. The Court must be satisfied that the evidence adduced is conclusive and beyond a reasonable doubt. The question which this Court must decide is whether after having heard all the evidence the Respondent has succeeded in establishing her case to the satisfaction of the Court.

8. With the standard of proof required as proof beyond reasonable doubt, it is immediately observed that the evidence put forward in support of the allegation of adultery did not raise to that level. It is accepted that direct evidence (an act in time or place or by name) is not required to prove adultery, for direct evidence, given the nature of the act itself, will seldom be available. What suffices, as prima facie evidence but rebuttable, is evidence of strong inclination along with opportunity. The Petitioner's evidence as set out in her Affidavit and cross examination in all the circumstances to me was not sufficient to discharge the burden of proof.

9. The Respondent allegation of adultery were at first rumours and him associating with people at his work. The most serious allegation of adultery was with the Co Respondent. The Respondent recounts one incident where after 9pm the Co-

Respondent was at the Petitioner's home. She said that the Co-Respondent was driving towards the gate to leave the property but turned around and went to another part of the property. The Respondent scaled the fence and then the Petitioner got out of the car and approached the Respondent. The Co-Respondent was in the car driving. The other incident was after the parties had separated

10. The fact that the Co-Respondent opts not to defend this suit cannot be taken as an admission of adultery contrary to the submissions of the Respondent. (see ***Inglis v Inglis and Baxter*** 1968 P. 639) the Respondent still has to prove her case beyond a reasonable doubt.

11. The incidents set out by the Respondent do not disclose affectionate behaviour between the Petitioner and the Co-Respondent nor as anyone ever caught them together in a compromising situation. There was no confession by the Petitioner of such an affair. The incident the Respondent describes of seeing them in a car together when the Petitioner left his car at his parent's home where he said they were talking about somebody's problems does not rise to the level of the conclusion of adultery. Even though they were caught associating with each other by the Respondent it did not to me put beyond a reasonable doubt that they were more than friends at the time. On the whole therefore the Respondent's adultery has not been proved by the Respondent and would be dismissed.

Cruelty

12. I agree with the submissions of the Petitioner, this relief was not pleaded in the reliefs of the Respondent and so no remedy could be granted as such. If I am wrong on this point, I also do not find that there was cruelty made out on the evidence after cross examination of the Respondent.

13. The House of Lords examined the ingredients of cruelty in the case of ***King v King [1952] A.C. 124***, where a husband petitioned for divorce from his wife on the ground of cruelty consisting of constant nagging by complaints of his adultery. It was held by Earl Jowitt, and Lords Oaksey and Reid that conduct amounting to cruelty had not been established. They said at p. 125:

a. *"In considering a charge of cruelty by nagging the right approach is not to ask first whether the conduct of the respondent spouse was cruel in fact and then to examine whether it could in any way be justified. The question whether a spouse has behaved cruelly is a single one and can only be answered on a consideration of the whole matrimonial relations."*

14. Lord Normond had this to say at pages 129, 130:

a. *"The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. Wilful accusations may be made that are not true and for which there are no probable grounds, and yet they may not amount to cruelty. … There is in many cases no easy rule, no clear line of demarcation which divides cruelty from something which does not amount to cruelty. The issue may become one of great difficulty in which the decision must be largely a matter of the discretion of the judge who saw and heard the witnesses and who has considered the conduct of both parties, and the whole circumstances in relation to the temperament and character of the respondent spouse. … In Usmar v Usmar1 Willmer J, said … that a judge [sic] must, before coming to a conclusion, consider the impact of the personality and conduct of one spouse upon the mind of the other; and he weighed all the incidents and quarrels between them from that point of view. In my opinion, that is the proper approach to the issue and the method which ought to be followed. …It therefore becomes necessary to inquire whether, on the whole facts and in all the circumstances, the husband has proved that his wife was guilty of injurious, willful and inexcusable conduct towards him."*

15. Malicious intent was necessary to prove cruelty. In the case of ***Kaslefsky v. Kaslefsky [1950] 2 All E.R. 398*** the English Court held that in the absence of evidence that the wife's conduct was due to her intention to wound the husband's feelings, or that it had resulted in injury, or reasonable apprehension of injury to his health, the neglect of her husband and the child could not be held to be cruelty.

16. In this jurisdiction Madam Justice Griffith in ***Wagner v Wagner (supra)*** set out the definition of cruelty and relevant principles of general application in this determination. She stated:

> Cruelty
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> *26. Rayden's on Divorce cites the case of Russell v Russell in its opening definition of cruelty. This definition, also referred to by both Counsel in their submissions on the law, reads thus – "conduct of such a character as to have caused danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger." There are a number of principles which have emerged from the many cases decided on the issue of cruelty over the years, some of which are of general application and can serve as guides in assisting the Court in the determination of individual cases. As many of those cases have found however, the Court must at all times be wary of any approach based on generalities, as each case will at all times depend upon the peculiarities of parties and their circumstances. Some relevant principles are as follows:-*
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> *(i) The fact that a marriage has broken down is no reason in itself for a finding of cruelty16*
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> *(ii) In the words of Willmer LJ in Windeatt v Windeatt17 (No. 2) "the conduct complained of must be looked at as a whole and it must be looked at in the light of the sort of people the parties are".*
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> *(iii) Similar decisions are useful but a comprehensive definition of cruelty should never be attempted - as stated in Jamieson v Jamieson18. The following paragraph from Lord Tucker is extracted in full, as it is considered highly applicable in the instant case:-*
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> *(iv) "…judges have always carefully refrained from attempting a comprehensive definition of cruelty for the purposes of matrimonial suits, and experience has shown the wisdom of this course. It is my view equally undesirable – if not impossible – by judicial pronouncement to create certain categories of acts or conduct as having or lacking the nature or quality which render them capable or incapable in all circumstances of amounting to cruelty in cases where no physical violence is averred. Every such act must be judged in relation to its attendant circumstances, and the physical or mental*

condition of the offending spouse and the offender's knowledge of the actual or probable effect of his conduct on the other's health (to borrow from the language of Lord Keith) are all matters which may be decisive in determining on which side of the line a particular act or course of conduct lies."

(v) *As was stated in Gollins v Gollins19 which is considered the primary authority on cruelty–*

(vi) *"In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence.*

(vii) *We are dealing with this man and this woman and the few a priori assumptions we make about them the better."*

b. *(v) Further, per Gollins – intention to injure, where it causes actual physical or mental harm, would be a clear case, but such an intention is not necessary for there to be a finding of cruelty.*

c. *(vi) The conduct complained of must be grave and weighty so as to make cohabitation virtually impossible and it is the effect of the conduct rather than its nature which is of paramount importance in assessing a charge of cruelty.*

d. *(vii) Per Lord Merriman in Jamieson20, regarding the legal concept of cruelty –*

(i) *"it comprises two distinct elements: first, the illtreatment complained of, and, secondly, the resultant danger or the apprehension thereof. Thus it is inaccurate, and liable to lead to confusion, if the word "cruelty" is used as descriptive only of the conduct complained of, apart from its effect on the victim."*

e. *(viii) It is possible for the Court to pronounce a decree on a single act of cruelty21 if it falls within the conduct described in Russell v Russell.*

17. The incidents of the Petitioner gave evidence for his mother in a case against the Respondent that he would not intervene in attacks from his family, have affairs and go on trips and events without her.

18. The Respondent alleged that she became depressed as a result of the alleged emotional and psychological abuse of the Petitioner. However, under cross-examination, the Respondent admitted that she was diagnosed with depression after the breakdown of marriage and the parties stopped living together.

19. In relation to harm in ***King v. King [1953] A.C. 124*** Lord Normand in the course of his judgment in the House of Lords stated:–

    a. *"Barnard J. leaves no doubt about the principle which guided him in deciding whether, on the facts proved by the husband, the charge of cruelty was made out. Before he began his consideration of the evidence he said that the best guide for this class of case was a passage in the judgment of Bucknill J. in Horton D Horton. That passage, which he cites, as follows: "Mere conduct which causes injury to health is not enough. A man takes the woman for his wife for better, for worse. If he marries a wife whose character develops in such a way as to make it impossible for him to live happily with her, I do not think he establishes cruelty merely because he finds life with her impossible. He must prove that she has committed wilful and unjustifiable acts inflicting pain and misery upon him and causing him injury to health"*

20. He later said *"The injury to Mr. King was not serious, and as can as readily be attributed to the breakdown of the marriage brought about by the conduct of both parties as to the cruelty of the Wife."* Lord Reid echoed the sentiments of Lord Normond when he surmised at page 137 in King's Case that "*There was no other really material evidence, so the question is whether the Husband's evidence is sufficient to prove his case. … The real difficulty is to decide whether in the circumstances of this case it was cruelty."* Similarly, there is not enough material evidence before me as I have said already, for the Husband to prove his case.

21. With respect to the conduct complained of in the instant case, the Court is of the opinion that the standard of cruelty is not met for all the allegations as during the marriage. The Respondent could not use the breakdown of the marriage as cruelty in of itself and the stuff she complains of from her cross examination occurred after the breakdown. The Respondent acknowledged that the Petitioner never engaged in any conduct which resulted in danger being caused to her life. I therefore having regard to the burden in any event would dismiss this relief.

22. Although the acts of the Petitioner in this case may not always show a proper appreciation and regard for the feelings of the Respondent and in this regard there was a departure from the normal standard of conjugal kindness. In all the circumstances of the case I cannot say that his conduct was of such a grave and weighty nature as required for cruelty. Additionally there was no medical evidence produced by the Respondent to verify that the respondent's actions were the cause of any injury to the Respondent or that there is a reasonable apprehension of it occurring.

23. 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:–

    a. *"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 behaviour to an act or acts of cruelty. Such would be a transparent form of impermissible judicial legislation."*

24. In all of the circumstances of this case I do not find that the Respondent has lead evidence which I accept on which I can find that the Petitioner has been guilty of cruelty. I therefore dismiss this ground of the Cross Petitioner.

Final Disposition

In the premise, the following orders are made:-

(i) The Petitioner is granted a decree nisi dissolving his marriage on the basis of irretrievable breakdown of the marriage, to be made absolute three months from the 15th July, 2021

(ii) The Respondent's cross petition is dismissed.

(iii) Costs are awarded to the Petitioner to be assessed by the Registrar if not agreed within 21 days of the date of this judgment.

/s/ WJames
Westmin R.A. James
Justice of the Supreme Court (Ag)