



In the Supreme Court of Bermuda

DIVORCE JURISDICTION

2010 No. 61

BETWEEN:

LEONARD SANTUCCI

Petitioner

-AND-

DONNA BELL-SANTUCCI

Respondent

JUDGEMENT
(In Court)

Date of Hearing: Monday, 12th September 2011
Date Judgement Delivered: Friday, 30th September 2011

Mr. Santucci
Mr. Adam Richards, Marshall Diel & Myers

for the Petitioner
for the Respondent

This is a husband's Petition under S(1) 2(5) of the Matrimonial Causes Act 1974 seeking dissolution of his marriage on the ground that the marriage has irretrievably broken down based on the fact that the Respondent wife has behaved in such a way that he cannot reasonably be expected to live with her under S(1) 2(b).

The wife, in her answer denies that the marriage has broken down irretrievably. She also denies that she has behaved in such a way, alleged by the husband in his petition, that he cannot reasonably be expected to live with her. She prays that the prayer of the Petitioner may be rejected. Both the husband and wife gave oral evidence.

The parties were married on the 8th day of August 1987, the husband being then 23 and the wife 25 years of age. There are two children, Kyle who was born on 20th December 1991 now 19 years and Tyler who was born on 6th August 1995, now aged 16 years. The children are living with their mother in the church parsonage in New Jersey, United States.

In seeking to establish that the marriage has broken down irretrievably the husband both in his petition and oral evidence says that throughout the course of the marriage he has attempted to make the Respondent and the children happy by providing fully for them which placed financial burdens upon him. He surrendered his own desire and dreams for that of the Respondent and children of the family continuously because he did not like confrontation.

He continued, that always he would give into the Respondent and not pursue his dreams and goals for the sake of satisfying her. This was done on a few occasions in relation to his political career in Bermuda and in respect of his religious and educational pursuits and his desire would always come second to the needs of the Respondent. The ongoing confrontation has caused him a great deal of emotional stress and tension in the household and has caused his health to deteriorate. He has been diagnosed and suffers from sleep apnea, severe stress, high blood pressure, and is constantly under his doctor's observation. Because of the wife's ongoing selfish behavior and her unwillingness to be considerate of his desires and concerns in the marriage he is of the view that despite his continuous efforts to salvage the marriage it is at an end.

The wife in her answer denies that the marriage has broken down irretrievably. She specifically denies each and every allegation of the husband. She says that she still loves the Petitioner and is willing to remain in the marriage and work on their relationship.

She states that in any event the majority of the allegations occurred at least six months prior to the presentation of the petition and the husband did not complain with respect to the events when they allegedly occurred and continued to live with her. The husband has only complained with respect to the alleged events and behavior since he withdrew from the marriage and family life in favour of his girlfriend and is attempting to retroactively justify his desire to end the marriage.

She denies that the husband provided the sole support to her or the children. She suffers from vision related medical problem and is classified as legally blind. The Petitioner knew this before he asked her to marry him. I accept the wife's evidence that this condition affects her ability to work. Despite this, she has worked during the marriage and contributed towards the family expenses. During the marriage her family has provided them with substantial financial assistance including payment of tuition, family vacations, and household bills. Additionally, her family assisted the husband with the cost of his Master's Degree. She allowed the husband to use their family's saving, which they had set aside to purchase a family home, to fund his Doctorate Degree. She has not prevented the husband from being involved in any organizations, religious pursuits and programs in the community. She requested that the Petitioner delay his involvement in politics in Bermuda while the children were young but once the children were older she supported his appointment as senator. She took whatever actions were necessary in the best interest of the family particularly the children of the family.

In 2005 the Petitioner was offered a position as a pastor at St. Paul's AME Church in New Jersey, United States. The Respondent returned to Bermuda to work from June 2009 to February 2010 in order to assist the family finances. The children remained with the husband while she returned to the matrimonial home in New Jersey during school breaks as agreed. The wife said that the Petitioner used her absence to form an improper association with another woman.

In February 2010 he informed the children of this improper association. The children protested and defended her; Their father became hostile and verbally abusive towards them. His unreasonable conduct towards the children escalated and they advised her and asked her to return home.

In *Livingstone-Stallard v. Livingstone Stallard* [1974] 2 All ER at pg 766, the Court in construing s 1(2)(b)^a of the Matrimonial Causes Act 1973 found that Bermuda's Matrimonial causes Act 1974 mirrors the UK Act. It is not appropriate to import notions of constructive desertion or to analyse the degree of gravity of conduct which would be sufficient to justify dissolution of the marriage. The proper approach is to determine as a question of fact whether the respondent has behaved in such a way that the particular petitioner before the court cannot reasonably be expected to live with him or her, taking into account the whole of the circumstances including the characters and personalities of the parties.

I have vigilantly examined the evidence placed before the court in order to determine whether the wife has so behaved that it is unreasonable to expect the husband to live with her. I must necessarily ascertain what the wife actually did and the impact of this behavior upon the husband. I do not propose to rehearse in detail the evidence of the incidents which occurred during some 24 years of marriage but will give a thumbnail sketch of these matters.

The parties' courtship began in 1981 while they were in college. They were married in 1987. In cross examination, the Petitioner admitted that he wanted to become a pastor and he realized that dream in 1991. He became the pastor of St. Luke's in St. David's in 1991 and the pastor of Heard Chapel in 1995 and the Respondent supported both moves.

In 2005 the Petitioner was offered a position as a pastor at St. Paul's in New Jersey in the United States of America and he accepted. The Respondent also supported that significant change. The Petitioner admitted that moving to a new country would pose a significant adjustment for her but she adjusted well. He ran for Bishop and she supported that venture he says with "tongue in cheek". He explained this by adding that she was not comfortable or fully embraced the idea but accepted it. He needed to travel to be elected and she accompanied him. He obtained his doctorate in 1999 and he was required to spend savings from an account in joint names. He became a UBP Senator in 1999 for 3 years until 2002. The first time he was offered the position she was not accepting and he declined the opportunity. On the second occasion he said that she accepted with "tongue in cheek". The Petitioner added that the Respondent was neither accepting nor comfortable with politicians. I believe the wife's evidence in cross examination when she said that she asked the husband to delay entering politics until the children were older and he did so thereafter, she supported his appointment.

The husband admitted that in 1997 he asked his wife to assist him with the care of his niece who was then 12 years of age. The children of the marriage were six and two years at that

time. He agreed that that was going to be a significant change in the family dynamics and the Respondent supported that change. Their niece lived with them for six years.

The Petitioner says that after the move to New Jersey, despite his insistence that the wife remain in Bermuda in order to pursue employment through the educational system and commute to the U.S. while he remained there as a pastor, she was reluctant to do so and would do what she saw fit, even to the financial detriment of the family, which caused financial burdens upon him living from pay cheque to pay cheque. Because of immigration circumstances she could not work in the U.S. In June 2009 she came to Bermuda to initiate the process of finding work. The children were to stay with him in New Jersey and she would commute. In cross-examination the Petitioner said that he does not accept that what he was asking his wife to do was a huge undertaking. They had increasing expenses and because of immigration circumstances she could not work in the U.S. and he could not work outside the church. It is clear that the husband harboured some disquiet the wife did not accept a job at a school in Somerset. Nevertheless she accepted a position and was assisting financially.

The Petitioner accepted that while the Respondent was in Bermuda he formed a relationship with another woman. At this point the relationship with this woman is not platonic. He denied that this relationship is the real reason for the breakdown of the marriage as their marriage has been in trouble for a number of years. In response to a further question he agreed that the fact that he gave into his wife was a choice that he had made.

He accepted that he had told the children about the new relationship. The woman had sent him a letter in the post. He read the letter and dismissed it. His son Kyle saw the letter, read it and called his mother who returned to New Jersey immediately. There was a confrontation between his wife and the woman. He moved out of the parsonage in March 2010 under police escort. He said that he made the mistake of being too accommodating and he now regrets it.

The onus is on the husband to satisfy the Court that the wife's behavior has been so unreasonable as to cause the irretrievable break down of the marriage. . The core of the husband's complaint is that throughout the marriage the wife has been constantly uncooperative. He said that he tried to honour a commitment and would not besmirch the character of the Respondent, the mother of his children. I have had regard to all the facts and circumstances of this case and the husband's evidence does not support his various allegations that throughout the marriage the wife has not been supportive and he has surrendered his own dreams and desires for that of the wife and the children of the family.

The husband relies on the cumulative effect of the wife's alleged conduct but took no steps to bring any concerns to the wife's attention during the marriage. In *Katz v Katz* [1972] 3 All ER 219 at pg 224 Sir George Baker P, observed if the behavior has been forgiven , that is condoned in the old law, the [husband] cannot set it up as a reasonable excuse for [divorce]. The Court went on to say, I would like to forget condonation and substitute the concept of her having lived with him for a long time, or for an appreciable time after such behavior, for once she does that, and if nothing else is established against the husband, or

wife the court cannot or is at least unlikely to conclude that the Petitioner cannot reasonably be expected to live with him or her. Of course, the Court was to look at the husband's past behavior, the reaction of the wife, her fear of a recurrence and all the circumstance during her subsequent period of cohabitation.

I have concluded that the wife's behavior, making allowance for her legal blindness, was not of the quality that it reached the standard envisaged in s 2(1)(b) .

The Respondent's legal blindness which looms large in this matter is a fact and circumstance in the evidence which is under review in this inquiry whether the wife has behaved unreasonably and I am quite satisfied that the wife has not behaved unreasonably. I ask the question: would any right-thinking person come to the conclusion that this wife has behaved in such a way that the husband cannot reasonably be expected to live with her having regard to all the circumstances and the characters and personalities of the parties?

In my judgment, the husband failed to communicate to his wife any disquiet he may have harboured. His general attitude was one of not sharing any concern as he was going to provide for the family, and generally he failed to communicate any financial stress or otherwise to his wife. There is a paucity of specific evidence of the Respondent's alleged selfish behavior and unwillingness to be considerate of the Petitioner's desires and concerns.

I accept the Respondent's evidence that the Petitioner's complaint began after he withdrew from the marriage and his family after his association with his girlfriend.

Applying the test, I think any right-thinking person would conclude that this wife has not behaved in such a way that this husband cannot reasonably be expected to live with her. Accordingly, the Petitioner's prayer for a Decree Nisi under section 1(2)(b) of the Matrimonial Causes Act 1974 fails.

The Respondent will have her costs of these proceedings.

Dated 30th Day September 2011

Hon. Justice Norma Wade-Miller, JP
Puisne Judge