



The Court of Appeal for Bermuda

CIVIL APPEAL No. 13 of 2017

B E T W E E N:

DINELL SMITH-BEAN

Appellant

-v-

WENDY BEAN

Respondent

Before: Baker, President
Bell, JA
Clarke, JA

Appearances: The Appellant appearing as Litigant in Person
The Respondent appearing as Litigant in Person

Date of Judgment: 14 March 2018

EX TEMPORE JUDGMENT

Leave to present petition for divorce within three years of marriage – section 7 Matrimonial Causes Act 1974 – Claim to exceptional hardship suffered by husband

BELL, JA

Background

1. The parties to this appeal were married on 17 June 2015 when both were in their forties. On 24 March 2017, which is just about a year ago, the Appellant (“the

Husband”) made an application for leave to present a petition for divorce within three years of the marriage, in accordance with the provisions of section 7 of the Matrimonial Causes Act 1974.

The Husband’s Claim for Exceptional Hardship

2. The affidavit supporting the application, to which the Husband exhibited a draft petition, contained 8 pages of narrative which failed to identify which parts of the conduct complained of constituted exceptional hardship suffered by the Husband, and which constituted exceptional depravity on the part of the Respondent.
3. That position was clarified in the proceedings which took place before Stoneham J, when Mr. Bean confirmed that he relied on grounds of exceptional hardship, and particularly, he relied at that point on a contention which appears at page 14 in the transcript, that he had lost his right to travel. He said:

“...I was deprived of my right to travel, throughout this...”

4. The learned judge said:

“Explain that further for me?”

5. Mr. Bean then confirmed that his passport had been left in the former matrimonial home, and that in fact, this had been returned to him in November 2016.
6. The learned judge then tried on a number of occasions to establish what was the exceptional hardship of which Mr Bean complained, saying at page 17 of the transcript:

“So tell me about the exceptional hardship that you allege you have suffered, or are suffering?”

7. At Page 20 of the transcript the learned judge made it clear that it was a matter for the Husband to support his application and establish that he had indeed suffered exceptional hardship.
8. At page 26 of the transcript the Husband contended that his wife's lies had caused him stress, and at page 33 of the transcript the Husband said that he is still living in the barracks – that is to say the Police Barracks – and that his life is on hold because of this matter and he cannot move on until the divorce is granted.

The Decision of the Court Below

9. At page 49 of the transcript the learned judge found that exceptional hardship had not been made out. She dealt with that in the following terms:

“...for the purposes of your Application today, the question is whether or not what I have heard today has assisted me in determining whether or not you have actually suffered exceptional hardship. It's not just hardship. Parliament, in its wisdom, chose that it must be exceptional. And in my view, having heard the two of you and having read the affidavit evidence, on this application for leave, I'm not satisfied that the evidence before the Court makes out an application -- makes out a case of exceptional hardship.”

10. Accordingly, the learned Judge held that the Husband failed to prove exceptional hardship, and the Judge proceeded at page 50 of the transcript saying:

“There's nothing before the Court. And so I must -- it's my duty to, in exercise of the law, to refuse your Application.”

Conclusion

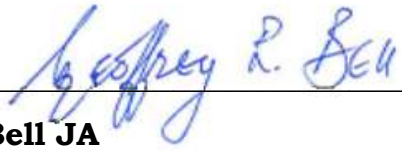
11. On that basis, this Court seeing no fault in those findings on the part of the learned judge would dismiss the appeal.

BAKER, P

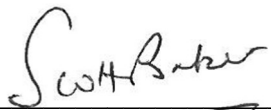
12. I agree.

CLARKE, JA

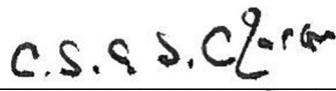
13. I agree.



Bell JA



Baker P



Clarke JA