

0/5/05

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN - *Civl.*

3  
4 D160 OF 2000

5  
6  
7 BETWEEN: DENZIL ANTHONY CLARKE

8 PETITIONER

9  
10  
11 AND: SANDRA JEAN CLARKE

12 RESPONDENT

13  
14 Appearances: Mr. David McGrath of Quin & Hampson  
15 for the Petitioner  
16 Ms. Keva Reid of McKinney Reid & Company  
17 for the Respondent

18  
19 Before: Hon. Justice Henderson

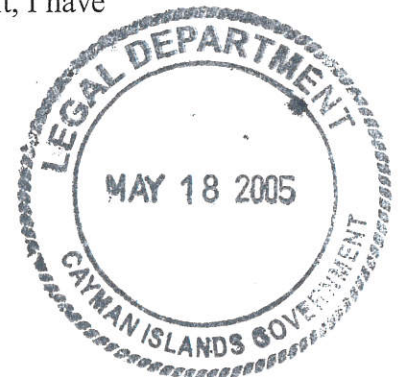
20  
21  
22 Heard: April 27 & 28, 2005



23  
24  
25 RULING

26  
27 On January 10, 2005 I restrained the respondent, Sandra Jean Clarke from assaulting,  
28 harassing, molesting or otherwise interfering with the petitioner, her husband, Denzil  
29 Anthony Clarke at his matrimonial home or at his place of work.

30  
31 Mr. Clarke, who has been acting for himself until recently, sent a letter to the Clerk of the  
32 Court dated April 12, 2005 alleging that his wife, Sandra, had breached my injunction.  
33 Included in that letter was a description of the alleged breach. As a result, I have  
34 conducted a contempt hearing.



1 The order must be read in conjunction with a later order of January 18, 2005 in which I  
2 ordered Sandra Clarke not to go within 100 yards of the matrimonial home at 68 Fern  
3 Circle in George Town, but also granted her permission to go there for ninety minutes to  
4 retrieve her personal effects when Mr. Clarke is absent.

5

6 To find someone guilty of a civil contempt, I need to be satisfied only on the balance of  
7 probabilities that the act of contempt has occurred. Where the allegation of contempt is  
8 criminal in nature, and particularly where penalties analogous to those applied in criminal  
9 offences may be imposed, the burden of proof requires proof beyond a reasonable doubt.

10 If I was to find Sandra Clarke guilty of an intentional breach of my injunction, I consider  
11 that that breach would be criminal in nature. I therefore instruct myself that before I may  
12 find her guilty of contempt, there must be proof beyond a reasonable doubt; that is to say,  
13 I must be sure of her guilt.

14

15 Mr. Anthony Clarke has testified that the event in question happened around 1:00 p.m. at  
16 the matrimonial home on April 12, 2005. His children: Ryan, aged 15 and Bo, aged 12,  
17 were in the house. When asked if anyone else was present he said he thought there was  
18 but he didn't know who. He said he was home and his wife Sandra called him on the  
19 phone. She asked him to come by her place. He told her he was at work and he could  
20 not come there. She then asked "how come your truck is at home?" and he said "I left the  
21 truck there and went to work with a co-worker". He said he then hung up. In other  
22 words, he did not want to encourage contact with her.

23

1 About half an hour later, he said, he was in his bedroom watching television. He saw his  
2 bedroom door lock fly off. Sandra came inside, grabbed him by the collar, and broke off  
3 his necklace. She also grabbed a bracelet from his right arm. At this point he took up the  
4 phone and called the police. He said, "I was so frightened I didn't know what she said. I  
5 said nothing. She bashed the phone out of my hand and the phone dropped to the ground.  
6 She then boxed the cleaning lady in her face".

7

8 He explained that a piece of a lock on the bedroom door had flown off when Sandra  
9 entered. He said she must have entered the house through a window. He went into the  
10 kitchen a found a window screen broken out and on the ground. Prior to her entry, the  
11 screen was in the window and it was half open.

12

13 He swore that he had no contact, except by telephone, with Sandra Clarke between  
14 January 10, 2005. In cross-examination, he was pressed on that. He was asked if there  
15 had been any significant contact since March 25. He said "no". He then added, "I did  
16 call her once, as I saw from my phone she called me".

17

18 He swore unequivocally that he had never been to where Sandra lives in Bodden Town  
19 since January 10, 2005, He was asked, "Has she ever stayed at the matrimonial home  
20 since March 25"? He replied "no". He was asked, "Did she stay there the night of April  
21 9 and 10"? He said "no". He was asked the same question again and repeated his  
22 answer.

23

1 He denied absolutely that Mrs. Clarke had caught him in bed with a woman when she  
2 entered on April 12.

3

4 Sandra Clarke gave a starkly contrasting narrative.

5

6 She said that, since January 10, her husband has been trying to get into contact with her  
7 through people and has been calling her. "On Valentine's Day he came to me looking for  
8 reconciliation." She said that, on the weekend of Valentine's Day, "we were intimate  
9 together". "Up until the Easter weekend and the week after that we were intimate  
10 together. He stayed with me the whole Easter weekend every night at 117 Sitwell Road  
11 in Bodden Town where Mrs. Clarke was living."

12

13 She said that on April 9, which was a Saturday night, Mr. Clarke asked her to meet him.

14 She did. They stayed at the matrimonial home at his invitation. On Sunday she remarked  
15 "I had a wonderful time with the kids". On April 12, she said she had called and said she  
16 was coming over to the matrimonial home and asked if it was a good time. He said he  
17 was not home and at work.

18

19 She did go to the home and found that her key would not work in the front door so she  
20 went around the back and entered that way. Upon entering the bedroom she found her  
21 Husband naked in bed with a woman who was unknown to him. She said, "I caught them  
22 in the act". "He called her 'Pat' in front of me." Sandra said she asked her husband,

1 “how come you are reconciling with me and you are in our own bedroom with a different  
2 woman?” She said she wanted her jewellery and she took the chain and the bracelet.

3

4 Given the chasm between the factual assertions of the parties, I adjourned the case and  
5 invited both sides to call independent supporting and confirming evidence if it was  
6 available. A number of witnesses were called.

7

8 Bo Clarke, aged 12, gave unsworn evidence; because I was not satisfied he appreciated  
9 the nature and quality of the oath. I was not able to find that I could put much weight on  
10 Bo’s evidence. I consider him highly suggestible.

11

12 Ryan Clarke, aged 15, gave sworn testimony. He said, “I live at Fern Circle with my  
13 father”. He said, “my mother came to the house around Easter. She woke me up around  
14 7:00 in the morning. She was wearing the clothes that you would sleep in. I never saw  
15 her the night before, though”.

16

17 He recalled an incident in which his mother rubbed his brother’s back and put some  
18 cream on it. He also said he saw his mother come out of his father’s bedroom. “She  
19 walked through that area into my room.” He said he saw his father also. “He was in the  
20 room with us (meaning Ryan and his brother). My father was wearing the same clothes  
21 you would sleep in.”

22

1 In cross-examination, he said that when his mother left Ryan's bedroom, "she went  
2 through the door to my father's room". There are two doors to the bedroom, only one of  
3 which leads to the parents' bedroom.

4

5 He also said that on one recent occasion his father had had a lady in the bedroom with  
6 him. "I had to wait until he opened the door and then I talked to him. I recognise the  
7 woman – it was the helper, Pat."

8

9 Thus, the evidence of Ryan provides significant corroboration for the evidence of Sandra  
10 Clarke. I found Ryan to be an honest witness. I consider his evidence reliable. It is also  
11 noteworthy that, since he lives with his father, he would, if anything, have had a motive  
12 to shade his evidence in the direction of his father's evidence; Ryan did not do so.

13

14 Winsome McIntosh called, but gave no evidence I consider significant.

15

16 Constable Green gave some evidence, but it has no substantial bearing on the issue before  
17 me.

18

19 Mr. Eddie Ebanks is the brother-in-law of Sandra Clarke, and thus, may not be an  
20 independent witness. I was, however, satisfied with the credibility of his testimony.

21

22 He said he recalls seeing Anthony Clarke during Easter in Mr. Ebanks' living room. "He  
23 came in my house and hugged me and said 'you all right?'" Mr. Ebanks said Mr. Clarke

1 was sitting on the settee with Sandra Clarke. On another night he brought jerk chicken  
2 over for the four of them: Mr. and Mrs. Ebanks, Mr. and Mrs. Clarke. That provides  
3 some corroboration for the assertion of Sandra Clarke that there was a reconciliation  
4 attempt in progress. It tends to refute the evidence of Mr. Clarke that there was no  
5 contact during the relevant period.

6  
7 Finally, there is the evidence of Mrs. Marvia Ebanks, who is the sister of Sandra Clarke.  
8 Again, one must approach her evidence with some caution as she would be expected to  
9 have a bias in the matter. However, I found her to be a credible witness. Significantly,  
10 she said in her cross-examination that her only real interest in the matter is in seeing the  
11 couple reconcile.

12  
13 Mrs. Maria Ebanks said that the last time she saw Anthony Clarke was on Holy Thursday  
14 before Easter Sunday. He drove past her home at 117 Sitwell Road slowly. Mr. Ebanks  
15 called him over to the yard and they spoke. She said "he's been there one of two times".

16  
17 On another occasion, he knocked on Mr. Ebanks' window and asked if she could let him  
18 in. She did so. She let him into the sitting room, which is the room in her house  
19 occupied by Sandra Clarke. Mrs. Ebanks swore that Mr. Clarke was there for the whole  
20 weekend. She said that she (Mrs. Ebanks) was in the habit of getting up during the  
21 evening to go to the bathroom and she could hear him in the bedroom coughing, et cetera.

22

1 She was satisfied that he was there all through Friday, Saturday and Sunday nights. She  
2 said they were getting back together.

3

4 Finally, some telephone records were entered. It will be recalled that Mr. Clarke swore  
5 that he had contacted Sandra by telephone on a single occasion in response to her call.

6 The records show otherwise. Commencing March 2, 2005, there are a very significant  
7 number of calls both from Mr. Clarke to Mrs. Clarke and from Mrs. Clarke to Mr. Clarke.

8 Many of these calls are short, indicating that there was no response or perhaps a brief  
9 message was left on voice mail. Not all of them are. There was a two and-a-half minute

10 conversation March 27, a seven minute 45 second conversation on the same day, and

11 three more brief conversations that day. On March 29, there was a two minute 20 second

12 conversation, a great many calls on subsequent days, totally consistent with the notion

13 that the parties were attempting reconciliation and staying in touch with each other for

14 that purpose. Those records are an exhibit.

15

16 The weight of the evidence is all one way. I am entirely satisfied, given the confirming

17 and supporting evidence from the witnesses, that Mrs. Clarke is telling the truth about

18 what happened and Mr. Clarke is lying.

19

20 It follows that the allegation of contempt must be dismissed.

21

22

23

1 Submission on Costs

2

3 I have found affirmatively that this was a false accusation. I am not merely dismissing  
4 the allegation because there is a reasonable doubt or because I am not sure. I am  
5 dismissing it because I am satisfied that he is not telling the truth. It follows that he must  
6 pay costs on an indemnity basis. I award those now. Is there anything else to be done  
7 today?

8

9 Submission on Access to House

10

11 Mrs. Clarke is permitted to enter for 90 minutes during normal business hours in the  
12 presence of a police officer to get her things. With that exception, the injunction stays in  
13 place.

14

15 Dated this 6<sup>th</sup> day of May, 2005

16

17

*Henderson, J.*

18

Henderson, J.

19

Judge of the Grand Court

20

21

