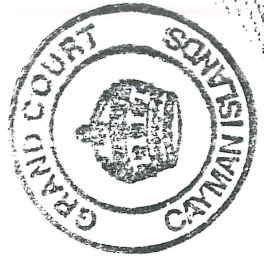


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IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE # D 75 OF 1995

BETWEEN
KEVIN DERRICK DEIGHTON BROWN
PETITIONER
AND
SYLVIA MAUD ARMSTRONG BROWN
RESPONDENT

For the petitioner: Mrs. G. E. Nervik
For the respondent: Mr. Steven Roy

HARRE C.J.
JUDGMENT

This is a husband's petition for divorce brought pursuant to section 10 (1) (b) of the Matrimonial Causes Law. It alleges that the respondent wife has behaved in such a way that the petitioner cannot reasonably be expected to live with her. The alternative ground that the parties to the marriage have lived separate and apart for at least two years immediately preceding the presentation of the petition and the respondent consented to the decree being granted was quite at variance with the evidence and was not pursued. The allegations of behaviour particularised in the petition, which the petitioner confirmed on oath, are, in substance, that the relationship between him and the respondent became strained after a few fairly happy years and there had been no physical relationship between them since about 1984. However, they remained living together in the same household as a matter of convenience and also to provide a home environment for the child of the marriage.

In 1990 the petitioner met a young lady from Thailand. As he described it "they were casual friends and corresponded with each other, but the friendship has grown over the years." On occasion he would visit Thailand to see this young lady and also to pursue an interest of his in the study of Eastern religions. On or about the 15th April 1993 the petitioner returned from such a trip to the Cayman Islands and, as he put it in his petition, "there were furious arguments which ensued and the respondent made false accusations against the petitioner because of his interest in Eastern religions such as Bhudism (sic)." As appeared from the evidence which he gave orally his interest in the East was not confined to that. The arguments and hostility continued although the petitioner says that he did his best to ignore them but matters came to a head on the 17th April when the respondent told him he could not visit or return to Thailand again and threatened to kill him. At one point she picked up a kitchen knife and lunged forward in an attempt to stab the petitioner. He said that he was in fear of his life but returned to the home later the same day when the respondent was a little more settled. During the next few days the petitioner received constant threats of physical abuse. He left the matrimonial home on the 28th of April 1993 while the respondent was away in Jamaica.

In about December 1993 the petitioner moved back into the matrimonial home. The reason he gave for this was to save the rent and cost of utilities of a separate apartment for himself and therefore being able to put his money aside for the expense of the child of the marriage. Nevertheless, he says, the parties continued living their separate lives, an arrangement made possible by the configuration of the matrimonial home.

During March 1994 the petitioner again visited Thailand. On his return to the Cayman Islands he says the he was shocked when he was regaled and falsely accused of taking part in witchcraft and of having stolen items of jewelry from the respondent and taken them to Thailand.

The parties then agreed that the matrimonial home should be put up for sale.

The petition particularizes two further incidents. The next was on the 23rd of April 1995 when the Petitioner says that he went to the Public Beach for a couple of hours with a lady and her female friend, whom he describes as social friends. The following day he received a call from one of them telling him that the respondent had visited the other in Windsor Park in order to track down his whereabouts. The petition continues as follows:

“On hearing this the petitioner was quite surprised and on his return to the matrimonial home the petitioner inquired of the respondent about the incident and explained to the respondent that she had nothing to be concerned about as they were merely social friends. Despite the petitioner’s statement a heated and unpleasant argument ensued. The petitioner was quite taken aback by this because the parties have been living separate and apart for a number of years and they have had no contact with each other. The parties have been living apart to the extent that the petitioner has been taking care of his own laundry and has never interfered with the respondent’s social life. The respondent found this

extremely distressing and embarrassing to know that his friends were being harassed by the respondent for no good reason.”

The final incident particularized took place on or about the 16th of May 1995. On returning home from a two week business trip the petitioner went out to dinner and returned to the matrimonial home at approximately 10:00 p.m. Another confrontation ensued and the petitioner alleges that as well as becoming verbally abusive and threatening the respondent threw the video and TV remote controls at him followed by a glass lamp. She expressed regret that she did not have a machete in hand so that she could “limb him” regardless of the outcome. The petitioner said that he was in fear of his life, retired to his room, and placed heavy furniture across the door for an abundance of caution.

The respondent filed an answer. She was not well served by the drafter. She denies that the marriage has broken irretrievably and that she has behaved in the way alleged and also that the parties have lived separate and apart for a continuous period of at least two years immediately preceding the presentation of the petition and that she consents to a decree being granted. Paragraph 10, which contains the particulars to which I have referred was not admitted but the answer then continues by saying that save where herein before expressly admitted the respondent denies each and every statement of fact contained in the petition. So her position on these matters is unclear and no facts are pleaded in relation to them.

At the hearing both parties gave evidence. The petitioner confirmed the truth of the particulars to which I have referred.

Cross-examined, he said that his visits to Thailand were for recreation, that he did know Bangkok had a reputation for a sex industry and that he did go to bars in Thailand where there were dancers or performers. However, he denied that he met young ladies in Bangkok. He did so, however, in another part of Thailand, and there met the young lady in question. They met about twice a year and he had had sexual intercourse with her. He said that he did not do that with anyone else during his visits to Thailand. He reiterated that he had not slept with the respondent since about 1984 and acknowledged that the incidents in April 1993 and March 1994 related to his visits to Thailand.

At the conclusion of his evidence he said that one reason for him and his wife growing apart was that their education level was so far apart. That did not matter at the earlier stage of the marriage, but later it did. Their interests were basically different.

As the respondent began her evidence the obvious point was taken that the function of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issues disclosed by them, and the respondent's answer did not achieve this. After argument I was constrained to disallow questions concerning the respondent's version of the facts surrounding the particular incidents pleaded but she gave evidence that in her view also the first years of the marriage were happy, and she wanted the petitioner to take her to Bangkok. She also said that she thought that she and her husband could get back together in spite of where they then found themselves and that he still loved her. She gave her brief evidence with dignity and left me with the impression that her belief was genuine.

It is on this evidence that I have to make my decision.

The legal principle is clear and it is set out in the following passage from the judgment of Roskill L.J. in O'Neill v. O'Neill [1975] 3 All E.R. 289 at 295-

“I would respectfully adopt as correct what Dunn J said in Livingston-Stallard v. Livingston-Stallard would any right thinking person come to the conclusion that this [spouse] has behaved in such a way that [the other] cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and the personalities of the parties?”

The petitioner did not make a good impression on me. His account of how the parties grew apart seems to me to be quite fairly expressed in shorter if more brutal terms. He got tired of his wife. Eventually he found solace elsewhere. He found it convenient to say that his own indifference towards his wife was reciprocated by her. The evidence of the various incidents of which he complains points the other way. They seem to me to be manifestations of the jealousy, anger, and frustration of a wife whose husband is carrying on an adulterous affair. For him to say patronisingly that he found her behaviour rather sad as well as embarrassing reinforces my impression that his demeanour when giving his evidence was that of a thoroughly self-righteous individual.

Because of the poor pleading effort to which the respondent has been subjected she has been denied the opportunity of giving her own evidence as to facts.

The onus is on the petitioner to prove his petition. It may very well be that this marriage has irretrievably broken down, but I am not prepared to find that the cause of the breakdown is the behaviour of the respondent. That is on the basis of my accepting, as I have to accept, on the evidence, that the particulars of the petition are true. Four major incidents are alleged. Two relate directly to the petitioner's visits to Thailand. One relates to his going to the beach with two other ladies without the respondent, and one to his spending the evening out after an overseas business trip.

There is no evidence that the trip to the beach and this business trip were not entirely innocent. But the effect of these matters on the respondent's behaviour must be judged in the light of the petitioner's evidence of his own.

Taking into account the whole of the circumstances and the characters and personalities of the parties I am unable to come to the conclusion that the wife has behaved in such a way that the husband cannot reasonably be expected to live with her. Although incidents involving threats and physical violence are always serious, my view is that the husband brought these upon himself.

For these reasons I decline to find the grounds in the petition proved and it is dismissed.



G. E. Harre
Chief Justice

