

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

(Family Court Division)

FH01985/2019

BEWTEEN

ANTHONY BAILEY Petitioner

And

KOREEN ALICIA TRIMM-BAILEY Respondent

On the 21st day of March 2022

Before the Hon Madam Justice Allyson Ramkerrysingh

Mrs. Jennifer Farah-Tull (*Hove and Associates*) for the Petitioner

Mr. Alexei N. Mc Kell for the Respondent

Ms Rachel Thurab (*Instructed by Dominique Bernard and Candice Alexander*) Child
Advocates

(Hearing date: 14.03.2022)

J U D G M E N T

1. The rarity of fully contested divorces moved me to write this judgment as opportunities to adjudicate in such instances are few. I also wanted to highlight the obscurity of holding on to fault-finding facts when the grant of a decree nisi is almost guaranteed. It may even be considered absurd where, as in the case before me, it is obvious that the marriage is ended, but one party insists on dragging the marriage on to its inevitable demise, and if the Petitioner fails to satisfy the court that the Respondent's actions amounted to desertion, intolerable behaviour, or adultery, the years it can take to qualify for the five-year separation fact, seems wastefully long and bitter indeed.
2. The hearing presented a minor challenge in the presentation of the evidence. Unlike the CPR, the FPR do not provide for the filing of Witness Statements or summaries. Consequently, the evidence was heard, as in the pre-FPR/CPR era, with Evidence-in-Chief, cross-examination and Re-examination of the witnesses. The process was a bit time consuming (since it has become commonplace for petitions, and cross-petitions if filed, to be disposed on in five to ten minutes), but we managed the task in a little under two hours.
3. The Petitioner in this matter ("the Husband" – for convenience) filed his petition based on the behaviour of the Respondent ("the Wife"). The Wife filed an Answer, which complained about the conduct of the Husband, but she insisted that the marriage could be saved. In the end I was satisfied that the Wife's behaviour was such that the Husband could not be expected to live with her and the decree nisi of divorce was granted.

The Pleadings

4. The parties married in 2003. The marriage produced three children – A, now 13 whose 14th birthday is two months away; I, who turned 12 just prior to the delivery of this judgment; and nine-year-old G. At the time of the filing of the petition the family still lived at Edward Street, Princes Town. The Husband has since left the matrimonial home. In his pleadings the Husband returned to the early days of the marriage (2005) when the Wife left the marriage accusing him of infidelity and went to Texas in the United States. He denies being unfaithful. He sold his house and belongings and travelled to America to meet her. They lived there until 2009 during which time A was born.

5. The Wife worked for the international accounting firm Ernst and Young and while they lived in Texas her employers attempted to find work for the Husband but were unable to do so. He remained unemployed for the three and a half years or so that they lived in the States. While he accepts that he did not work during that period, the Husband said that he utilised the funds raised from the sale of the house, which he sold for \$750k (TTD) and the sale of personal items, from which, if I understand his case, he raised a further \$100k. He used these monies to put himself through university in Texas and to meet some of the household expenses. He does concede that during the Texas years he was partially supported by the Wife.

6. According to the Husband, stirrings that marked the beginning of the end of the marriage, began shortly after their return to Trinidad in 2009, when the Wife insisted that the Husband meet all the household bills and the expenses for the family, although she earned considerably more than he. From around June 2013 and for the next several months she would spend prolonged hours away from the matrimonial home during the night and not tell the Husband, of her whereabouts. She would leave home at around 9pm and return at 12am. By 2016 she was returning home at 4/5am. Her response was that on some of those occasions she would go to an all-night gas station to fill her car with petrol and on three other occasions met the Husband's brother for a meal. She did not bring the brother to substantiate this, nor did she (perhaps reasonably) produce receipts for the gas and on a balance of probabilities, it is difficult to accept that the only time she could fill up her gas tank was at night, or that it would take several hours to accomplish this task, so I place very little weight on the explanations given for her late-night outings.

7. The Wife spends little or no time with the Husband and has kept the children away from him. The former matrimonial residence is a short distance away from her parents and he pleads that before he left the matrimonial home, the Wife and the children spent inordinate amounts of time there. After school, the children are taken to her parents' home, they have dinner, do homework and on Fridays watch a movie before returning home at around 9pm to 10pm, when all he can do

is kiss them goodnight. He states that the Wife has brainwashed the children against him resulting in them being alienated from him.

8. The Wife refutes the Husband's statement that she prevents him from seeing the children. She replied that in 2016 when the Husband was taking a course at the University of Trinidad and Tobago, he generally came home at around 10pm. Although she admits taking the children to her parents' home after school, they usually get home by 7pm, not between 9pm and 10pm as he averred. On Fridays they get home between 9pm and 10pm and on Saturdays they spend the better part of the morning at her parents' home and attend various activities; spend between 12pm and 3pm at home then they eat lunch and prepare for evening church service and generally return home again at around 10pm after church.
9. The Sunday routine also saw the Husband spending little time with the children, but according to her when he is there, he spends his hours on his tablet and would leave the home between 11am and 1pm and not return until around 8pm.
10. The Husband further pleaded that the Wife treats him coldly and without love and has remained "*emotionally and verbally distant*" from him. They have not shared a room since 2016 and had not engaged in sexual intercourse in almost two years. She responded by saying that as the two-bedroomed home was cramped (one of the bedrooms was used for storage) they had agreed that he would sleep on a couch in the drawing room and that she bought a bed for him which he never assembled. The Husband also claimed that the Wife was aggressive and verbally abusive towards him. He highlighted an occasion when the Wife threw water on him and punched him during an argument. The Wife admitted throwing the water, but said that the jug or glass of water was tepid, while he said it was cold and comprised two glasses. She denies punching him.
11. Then there are the incidents that were referred to in trial as the Valentine's Day incidents. The first took place in 2018 when the Husband bought roses for two co-workers including his secretary, whom the Wife had always suspected of having an affair with the Husband. He also had roses delivered to the Wife and informed the Wife that he purchased the roses for his colleagues. She

believed that he did this so as not to attract suspicion on his secretary. The Wife was particularly upset because at the time, they were moving into a new home and were in need of several items of furniture and equipment and the Husband said that he had no money to acquire them.

12. The following year, the Husband bought Valentine's Day gifts for the children which the Wife prevented them from enjoying. She stabbed the balloons that accompanied the gifts with a pair of scissors, which she then threatened to stab him with. She denies that she threatened him but admits puncturing the balloons in frustration, because she felt that he had spent money wastefully, as two weeks before, she had asked him for school contributions for A and G, which he had not made and on the day of the incident, he chided A when she tried to remind him about the contribution.
13. He pleads that he is under tremendous financial strain as he continues to meet the full responsibility for the family, while the Wife keeps her salary for her personal use, even though her salary exceeds his by more than \$7k. She denies this and lists the expenses she has paid for over the years, for the benefit of the family.
14. It is undisputed that for the three years they lived in Texas, the Wife was the only wage-earner. The Husband claims that he used the sale proceeds of the house and his personal belongings to meet his needs and assist the family. This may be balanced out by the first two years of their return to Trinidad when he was the only one working. In any event this seesawing of financial responsibility will be of more significance in any financial application to follow.
15. In her Answer the Wife outlined several instances of the Husband's behaviour which prompted her to take a vacation to the United States, presumably to settle her emotions. She claimed that the Husband:
 - a. confessed to her that he had been unfaithful and gave examples of her suspicions that he was involved in an intimate relationship with his secretary;
 - b. left her on mornings to take a taxi to work while he used the family car;

- c. left her at her parents' home for long periods before picking her up to take her home;
- d. berated her for not earning as much as he did and not being able to drive;
- e. slept in the matrimonial bed while she slept on a plastic chair;
- f. spent inordinate amounts of time on his tablet on a Sunday;
- g. left the home late on Sunday mornings or early in the afternoon and stayed away until 8pm;
- h. barely interacted with the children in the home; and
- i. declined to attend special events with the children despite their pleas.

16. The Wife does not accept that the Husband sold the matrimonial home and his possessions simply to meet and reconcile with her in Houston as he implies. She pleads instead that he had fallen behind in mortgage payments and was forced to sell the property and migrate.

17. When the Husband could not secure employment in Texas, he enrolled as a full-time student at university. During this time, she was the sole breadwinner and met all the household expenses, their personal needs and the needs for A when she was born. The Wife denies that her attitude changed when they returned to Trinidad. They continued to live as a married couple, expanded their family and attended church services together and he never complained to her that he was experiencing difficulties in the marriage.

18. As to his behaviour the Wife said that the Husband refused to spend time with her, but later said that they were sexually intimate.

Analysing the facts

19. On a broad scale I do not accept the evidence of the Wife. She has made a number of contradictory statements which I find difficult to reconcile. She has also made some made questionable comments from which she is asking the court to draw inconsistent conclusions. On a balance of probabilities, I find that the Husband's evidence is much more credible than the Wife's. My reasons for drawing that conclusion follow.

20. Firstly, until the Husband's departure from the matrimonial home in August 2019, the parties lived two houses away from the Wife's parents' home, so to say that the Husband left her there for long hours before picking her up to take her home is dubious. Nothing prevented her and the children from walking the short distance to their home. Save for the period in 2016 when the Husband was studying at UTT, I do not accept the Wife's justification for staying away from the home with the children until way beyond nightfall.
21. Secondly, her explanations for her bi/tri-weekly night departures from the house to go for gas and on three occasions out to dinner with the Husband's brother are also shaky. I find it improbable that the Wife would frequently leave home during the night to fill her tank with gas. She did not dispute that this activity takes her some time to complete but there is no explanation why this should be so. The other reason she gave for going out at night was to have dinner with the Husband's brother, which was neither corroborated nor amplified in her pleadings or at trial to give some measure of credibility. I reject her evidence as to those being the reasons for her going out so often at night.
22. Thirdly, from her pleadings and from what she said at the trial, it is my finding, that the Wife went out of her way to keep the children away from the matrimonial home in an attempt to limit the amount of time they would spend with the Husband. Her denial at the trial that she deliberately withheld the children from the Husband was unconvincing.
23. Fourthly, on several occasions during the trial the Wife cleverly tried to dodge questions that threatened her credibility. One example is the Husband's claim that she did not tell him that she was leaving the country to go to Houston. During her cross-examination she maintained that she did tell him, saying: *"It is not correct that he did not know that I had left the home. When I was at the airport I called him and told him that I was leaving the country."* Informing the Husband that she was leaving the country as she was about to embark a plane, is marginally different from not telling him at all.

24. Fifthly, she agreed that they did not engage in sexual intercourse for nearly two years but said that this was because of a religious practice which called for 40 days of fasting during which they were forbidden to have sexual intercourse and at the end of this period she had her period. But that only accounts for 45 to 46 days of religious abstinence, which leaves a significant portion unaccounted for. She also said that she and the Husband had agreed that he would sleep on the couch while she and the children slept in the available bedroom, but if that were part of an agreement between them, his failure to put the bed together is baffling. The only reasonable conclusion I can draw from his failure to assemble the bed, was that he was against the idea of being forced to sleep in the drawing room.

25. The Wife said that she *“had become exhausted with the Petitioner’s behaviour regarding other women and the Petitioner’s endless excuses about not having money for the benefit of the family’s needs”*, but how “exhausted” could she have been if she wished the marriage to continue? I am not convinced that the Wife’s true motive was/is to reconcile with the Husband.

26. Finally, and most puzzling of all is the Wife’s statement in open court that she told the Husband that she was okay with him having a girlfriend and that no-one had to know what went on behind closed doors. This is the same girlfriend who, it is her case, might have been the object of the Husband’s disloyalty, but she is now, only at the trial (for she did not plead this as part of her case), willing to accept as part of his life. Once more I find it difficult to believe the Wife. I can only conclude that this was a last-ditch effort on the part of the Wife to justify her otherwise unusual stance.

The Law

27. Returning to my introductory paragraph, s4(1)^[1] of the Matrimonial Proceedings and Property Act must be strictly applied. In relation to the fact^[2] relied on in the instant case, the court must be satisfied that the behaviour complained of is unbearable to the extent that the Petitioner before the court cannot reasonably be expected to live with the Respondent. This statutory adherence is strict to the extent that even if it is clear that the marriage is at an end, and the fact that the petition is fully contested, as in this case, which is a sure sign that there is little likelihood that the parties will

remain married and if the Petitioner fails to persuade the court that he or she cannot live with the Respondent, or has otherwise failed to prove his or her case, then the petition must be dismissed^[3]. This rather draconian outcome will be upheld if the statutory responsibility of s. 4(1) is to be met.

28. Thankfully, the scenario before me does not happen often, but it presents the argument for doing away with fault-finding facts altogether, so as to avoid the emotional or perhaps psychological torment of remaining in a marriage that is nothing more than a shell, for how many years it would take to meet the requirements of the five-year separation term (a reluctant respondent is hardly likely to consent to a divorce). It seems pointless to delay an outcome that is inevitable. According to Trindar and Sefton:

“Trying to apportion blame is a fruitless and inherently non-justiciable task and that defence is futile where one party has decided that the marriage is over.”^[4]

29. Until Parliament does away with fault-finding facts, we have to live with this less than desirable reality.

30. Over the course of time, there has been a steady lowering of the factual and evidential bar for the granting of a decree nisi based on any of the fault facts. The general expectation is that for even the most contentious divorce suits, almost every Petitioner succeeds and in most cases in which the Respondent files a cross-petition, both parties are encouraged (and indeed need only the slightest nudge) to seek mutual decrees. This feeling of mutual satisfaction, that each side exits the divorce stage with trophy in hand, leaves neither party feeling that he/she has trumped or triumphed over the other, and usually sets the tone for a more conciliatory approach for the financial battle ahead.

31. In the face of a contested petition filed on a fact of adultery or behaviour the court’s task is to examine the parties while considering the particulars of the facts pleaded, to determine whether it

is reasonable for the Petitioner standing before the court, to continue living with the Respondent. It is a subjective exercise, with an objective outcome.

32. In **Gollins v Gollins**^[5] Lord Reid described the court's function in considering intolerable behaviour thus:

“A judge does, and must, try to read the minds of the parties in order to evaluate their conduct. In matrimonial cases we are not concerned with the reasonable man as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better.”

33. And Cumming-Bruce LJ in **Balraj v Balraj**^[6] amplified a bit more when he said:

“In behaviour cases ... the court has to decide the single question whether the husband (for example) has so behaved that it is unreasonable to expect the wife to live with him. In order to decide that, it is necessary to make findings of fact upon the impact of his conduct on that particular lady whose conduct and suffering are under scrutiny, there is of course a subjective element in the totality of the facts that are relevant to the solution but, when that subjective element has been evaluated, at the end of the day the question falls to be determined on an objective test.”

Conclusion and Order

34. Having read the pleadings, examined the parties on the facts and observed them in court, even from the distance of virtual world, I am satisfied that although the details of the Wife's behaviour as pleaded by the Husband amount to moderate conduct at most (and decrees have been pronounced on less), I am satisfied that this Husband who, by his demeanour in court seems to exemplify his description in the pleadings as somewhat mild-mannered and non-combative, cannot reasonably be expected to live with this Wife, who, by contrast at the trial, demonstrated traits of the very retaliatory conduct of which she is accused.

35. The facts pleaded by the Husband are not really in dispute. The Wife has iterated a lot of what the Husband has said about her conduct, but she attempts to justify her actions, which I have found only succeeded in throwing her credibility and motive for filing the Answer into question.
36. By her Answer and cross-Petition the Wife pleaded particulars of conduct which, if she were seeking to dissolve the marriage, could amount to intolerable behaviour on the Husband's part. She concludes that the marriage can be saved. She said as much at the trial, although the parties have now been separated since August 2019; the Husband is vigorously pursuing his petition; and there is no indication that he has had a change of heart in relation to the marriage. Moreover, by admitting that she has kept the children away from the Husband, depriving him of contact with them, does not signify, compliment or demonstrate a genuine intention on her part to reconcile.
37. From the circumstances presented, it is my judgment that the Wife is deluding herself if she genuinely believes that the marriage can be saved. However, it is my finding from the trial and from the Wife's own words that she is not being sincere when she says that she wishes to reconcile with the Husband. In my view, she wishes to have the Husband wait until 2024 (when they will have separated for five years) before he can obtain his decree nisi. Unless I am satisfied (and I am) that Husband cannot reasonably be expected to live with the Wife based on her behaviour then the petition would have to be dismissed and he will have to try again in 2024.
38. For reasons outlined above, I am however persuaded by the facts pleaded by the Husband. Neither he nor the Wife filed evidence to substantiate their positions, nor did they call upon witnesses to testify on their respective behalf but, from what I have read, seen and heard from the parties, I am satisfied that this Husband cannot reasonably be expected to live with this Wife.
39. It is my finding that the Wife does not deny what she has done, but simply makes quantitative distinctions, which I am satisfied does not lessen the impact her behaviour has had on the Husband. I am satisfied that the Wife's behaviour is enough to reasonably conclude that the Husband should not be expected to continue living with her; I am prepared to grant the decree nisi in his favour.

40. As I have mentioned earlier, I am also satisfied that the Wife had sufficient basis for a decree to be pronounced in her favour had she sought one. In my view this approach would have presented her in a more truthful light. But trying to convince the court that the Husband's behaviour as she has described, still provides her with hope for a reconciliation presents a skewed version of reality, which in the circumstances I find wholly unreasonable. That is not to say, that cross-petitioning for divorce would have diminished the Husband's success. The Wife has failed to successfully rebut or otherwise satisfactorily answer the Husband's case and so her Answer must fail and is dismissed.
41. In the circumstances a decree nisi is granted to the Husband based on the fact that the Respondent has behaved in such a way that the Husband can no longer reasonably be expected to live with her.
42. As to costs, I order that the Respondent pay the taxed costs of the Petitioner in default of agreement.

Allyson Ramkerrysingh
Judge

^[1] The Matrimonial Proceedings and Property Act, Chap. 45:51; s.4(1) "The Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the Petitioner satisfies the Court of one or more of the following facts."

^[2] The Matrimonial Proceedings and Property Act, Chap. 45:51; s.4(1)(b) "that the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent."

^[3] Owens v Owens [2018] 4 All ER 721

^[4] No Contest: Defended Divorce in England and Wales 2018; published Nuffield Foundation; Professor Trindar and Mark Sefton

^[5] Gollins v Gollins [1964] A.C. 644 @ 660

^[6] Balraj v Balraj (1981) 11 Fam Law 110 @ 112