

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Divorce)

SLUHMT2019/0127

BETWEEN:

KENDALL OWIN DORNELLIEN

Petitioner

and

DYANE DORNELLIEN (nee SEBASTIAN)

Respondent

BEFORE: Her Ladyship, the Honourable Justice Kimberly Cenac-Phulgence
(A JUDGE IN OPEN COURT)

APPEARANCES:

Mrs. Wauneen Louis-Harris Counsel for the Petitioner
Ms. Cleopatra Mc Donald of Counsel for the Respondent

2019: December 2, 16;
2020: January 29, 30.

JUDGMENT

Background

[1] **CENAC-PHULGENCE J:** By petition filed on 29th July 2019, the Petitioner, Kendall Owin Dornellien (“Mr. Dornellien”) seeks a divorce on the ground that his marriage to the respondent, Dyane Dornellien nee Sebastian (“Mrs. Dornellien”) has broken down irretrievably because Mrs. Dornellien has behaved in such a way that he cannot reasonably be expected to live with her pursuant to section 4(1)(b) of the **Divorce Act**.¹

¹ Cap. 4.03, Revised Laws of Saint Lucia.

- [2] Mr. and Mrs. Dornellien at the date of the petition had been married for seventeen years having married on 17th March 2002. They have two children of the marriage, namely: Simeon Shaquan Kendall Dornellien born on 18th August 2004 and Seth Kayden Dornellien born on 2nd October 2014.
- [3] Mrs. Dornellien filed an acknowledgement of service in which she indicated her intention to defend the matter and on 22nd August 2019 filed an answer to the petition in which she admits that her marriage to Mr. Dornellien has broken down irretrievably but denies that it is as a result of her behaviour. She prays that the petition be dismissed and the divorce be granted based on the fact that the petitioner is the one who has behaved in such a way that she cannot be expected to live with him.
- [4] The trial in this matter took place on 2nd December 2019 with both parties being cross-examined. The Court directed that closing arguments be filed by 16th December 2019 with which the respondent complied. As at the date of writing this decision, the petitioner had filed no submissions.

The Law

- [5] The case of **Buffery v Buffery**² confirms that the specific fact³ of behaviour on the part of the respondent such that the petitioner cannot reasonably be expected to live with him or her must be proven independently of irretrievable breakdown. In **Katz v Katz**,⁴ the Court said:

“Behaviour is something more than a mere state of affairs or a state of mind. It is an action or conduct by one party that affects the other. Such conduct may either take the form of acts or omissions or may be a course of conduct and it must have some reference to the marriage. ... It is for the judge, not the petitioner alone, to decide whether the behaviour is sufficiently grave to fulfil that test, that is, to make it unreasonable to expect the petitioner to endure it, to live with the respondent. Also, it is for the judge to say whether the marriage has irretrievably broken down. The

² [1988] 2 FLR 365.

³ i.e. That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

⁴ [1972] 3 All ER 219 at 223.

court must consider the effect of the behaviour on this particular plaintiff
..."

[6] In **Rayden & Jackson on Relationship Breakdown, Finances and Children**,⁵ the learned authors state that the behaviour itself does not have to be unreasonable, but instead it must be of such gravity that the petitioner or applicant cannot reasonably be expected to live with the respondent.⁶

[7] The words 'reasonably be expected' in the statute prima facie suggest an objective test. Nevertheless, in considering what is reasonable, the court will have regard to the history of the marriage and to the individual spouses before it in assessing what is reasonable.⁷

[8] In order for the Court to decide the question whether the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, it is necessary to make findings of fact as to what the respondent actually did and the impact of that conduct on the particular petitioner. In this sense there is a subjective element in the assessment of the totality of the facts that are relevant, but when that has been evaluated, the questions falls to be determined on an objective test. Each case must be looked at in light of its own facts.

[9] In the recent 2018 case of **Owens v Owens**,⁸ Lord Wilson analysed the six leading cases⁹ in respect of the behaviour fact in order to determine what the law requires the petitioner to prove. Lord Wilson said at paragraph [28]:

"As in effect the Court of Appeal in the present case has held, and as Mrs Owens now concedes, these six old authorities continue to provide a

⁵<http://lexisweb.co.uk/sources/rayden-jackson-on-divorce-and-family-matters?contentonly=true>.

⁶ At paragraph 6.81.

⁷ *Birch v Birch* [1992] 2 FCR 545, [1992] 1 FLR 564, CA; Paragraph 6.82 of *Rayden & Jackson on Relationship Breakdown, Finances and Children*.

⁸ [2018] UKSC 41.

⁹ *Pheasant v Pheasant* [1972] 1 All ER 587; *Livingstone-Stallard v Livingstone-Stallard* [1974] 2 All ER 766; *Thurlow v Thurlow* [1975] 2 All ER 979; *Stevens v Stevens* [1979] 1 WLR 885; *Balraj v Balraj* (1981) 11 Fam Law 110; and *Buffery v Buffery* [1988] 2 FLR 365.

correct interpretation of the subsection. The inquiry has three stages: first (a), by reference to the allegations of behaviour in the petition, to determine what the respondent did or did not do; second (b), to assess the effect which the behaviour had upon this particular petitioner in the light of the latter's personality and disposition and of all the circumstances in which it occurred; and third (c), to make an evaluation whether, as a result of the respondent's behaviour and in the light of its effect on the petitioner, an expectation that the petitioner should continue to live with the respondent would be unreasonable."

[10] The court will have regard to the cumulative effect of the behaviour. Conduct may therefore consist of a number of acts each of which are apparently reasonable in isolation, but which taken together are such that the petitioner or applicant cannot be expected to live with the respondent.¹⁰

[11] There is no need to prove injury to health.¹¹ The totality of the evidence of the matrimonial history must be considered. The outcome will depend on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view (after a consideration of any excuse or explanation which this respondent might have in these circumstances) the conduct is such that the petitioner or applicant ought not to be called upon to endure it.¹²

Burden of proof

[12] The burden of proof lies with the petitioner and the allegations made about the respondent must be proved on the balance of probability.¹³

The Evidence

[13] The particulars of behaviour pleaded by Mr. Dornellien are that Mrs. Dornellien:
(a) during the course of the marriage has shown a general lack of interest in the marriage;

¹⁰ Hadjimilitis (Tsaviris) v Tsaviris [2003] 1 FLR 81.

¹¹ Gollins v Gollins [1964] AC 644.

¹² See Sheldon J in Stevens v Stevens [1979] 1 WLR 885 at 887.

¹³ Blyth v Blyth and Pugh [1966] AC 643 at 669, 673–674.

- (b) has caused him to suffer wilful neglect and emotional hardship due to her behaviour and general attitude towards him;
- (c) always had difficulty communicating with him and communication was strained as a result;
- (d) insulted him and verbally abused him;
- (e) showed limited interest in being intimate with him;
- (f) would initiate quarrels with him and would maliciously call the police during these quarrels and alert them to the private discussions between them without his consent or authorization;
- (g) has ill-will and spite towards him as she constantly attempts to get him arrested based on false reports to the police;
- (h) has denied him access to the children which has caused him emotional trauma and suffering;
- (i) made several false reports to the police and this led to criminal charges against him as a result of words which he stated to Mrs. Dornellien in a state of frustration and anxiety over the children's welfare whom she had taken out of the home without his consent or authorization.
- (j) has spread false rumours against him to the effect that he does not provide for the children financially and this has caused him much emotional torment;
- (k) has made false reports to the Elders of the Church of God Seventh Day that he is guilty of not maintaining the children and as a result he was placed on probation and prohibited from preaching and teaching in the church;
- (l) made false reports to the Family Court that he is refusing to maintain the children;
- (m) damaged the family car by ripping out the stereo from it; and
- (n) despite all his efforts showed no desire to reconcile and work things out and refuses to communicate or interact with him despite his efforts to engage in conversation on several occasions;

[14] In response to the allegation at (m) above, Mrs. Dornellien in her evidence says that the car being referred to was a Toyota Blade which Mr. Dornellien had tinted

dark after the burn incident so that she could continue to drop the children to school inconspicuously. She says the finance company repossessed the vehicle in July 2019 and when the bailiff came, he asked her to remove all valuables. She says she knew that Mr. Dornellien had purchased the stereo and it was of some value, so she removed it from the vehicle and secured it and that Mr. Dornellien can have it.

[15] In addition to the particulars of behaviour outlined above, Mr. Dornellien speaks of two specific incidents. In December 2018, he says he returned to Saint Lucia from Dominica where he is temporarily employed and Mrs. Dornellien refused to pick him up from the airport. When he got home, he says he spent some time with the children and left for a short while to purchase a meal. He says on returning home ("at about" and omits the time) he was shocked and dismayed to find that Mrs. Dornellien had taken the children and left without informing him or letting him know their whereabouts. He says he made repeated requests for Mrs. Dornellien and the children to return home or advise him of their location. He says he was worried and anxious and felt deserted as he was forced to be separated from his children with whom he shares a close relationship. All this, he says, demonstrates Mrs. Dornellien's lack of interest for his feelings.

[16] In response to this specific allegation, Mrs. Dornellien says in her evidence that on 21st December 2018, Mr. Dornellien returned to Saint Lucia without telling her he was going to visit. She says on 24th December 2018, Mr. Dornellien returned home at about midnight, banging on the door to let him in. She says he was extremely confrontational and aggressive and accused her of turning Simeon against him. That night in the presence of the children, Mrs. Dornellien says Mr. Dornellien told her that he would make sure she did not make it to 40 years. At the time Mrs. Dornellien was thirty-seven.

[17] Mrs. Dornellien says her son, Simeon told her he did not feel safe because of the threats of his father. Mr. Dornellien spent Christmas day out of the house and on

26th December she took the children to stay at a relative until things settled down. She admits that Mr. Dornellien called her several times but she did not answer. She says he then left a voice message demanding that she bring the children back or he would burn down the house and gave her one hour. She says she sought shelter at the Women's Support Shelter until 1st January 2019.

[18] Mr. Dornellien says Mrs. Dornellien forced him to reside out of the family home and this caused him to suffer embarrassment and humiliation over the state of the marriage and mental torment and exasperation over the well-being of the children.

[19] About 25th July 2019, Mr. Dornellien says he was informed that his younger son Seth had suffered a broken arm but Mrs. Dornellien never told him about the incident. He says this was heart wrenching and he continues to be deeply worried about Seth. In response, Mrs. Dornellien says that Seth fell while playing in the normal course of play and not because of her negligence in taking care of him. She says she responded immediately to the incident and took Seth to the Gros Islet Polyclinic where a cast was put. It was subsequently removed on 9th August 2019.

[20] Mr. Dornellien says that Mrs. Dornellien's actions have left him in a constant state of depression, melancholy and frustration. The Court has no way of assessing that save for its own observations.

Mrs. Dornellien

[21] Mrs. Dornellien's particulars of behaviour state that throughout the marriage Mr. Dornellien has been physically and emotionally abusive and cruel to her. Mrs. Dornellien says Mr. Dornellien has had difficulty with anger management, something she discovered she says after the wedding. Whenever he gets angry, he has difficulty controlling his temper and the slightest thing would make him irate. She gave the example of if she called him to ask of his whereabouts, he

would refuse to answer and shout at her. She says this behaviour eventually evolved into verbal and physical abuse of her often in full view of the children.

[22] Mrs. Dornellien says the physical abuse started around 2002 and in the early years when she felt under threat, she would seek refuge at the neighbours. She says when there were those incidents of abuse, Mr. Dornellien would apologise and later return with gifts. She says the emotional abuse continued unabated over the years and that he has made several threats on her life or safety, even during her pregnancy with the second son.

[23] Around July 2015 Mrs. Dornellien says Mr. Dornellien wielded a cutlass at her and threatened to strike her in full view of their son, Simeon. When Mr. Dornellien approached her, Simeon intervened to hold him back.

[24] After this incident, Mrs. Dornellien says she went to the Women's Support Shelter for two weeks with the children. After the two weeks, she returned to the family home as she did not believe she had any other alternative given that she had no income and no real work experience. She says it is for this reason and her concern not to expose the children to greater hardship, that she persisted in the marriage for so long. Mrs. Dornellien also says that Mr. Dornellien caused her to be estranged from her family which led her to believe that she would not have their support if she left the marriage.

[25] Mrs. Dornellien says that in March 2018, Mr. Dornellien took up employment in Dominica. She says between March 2018 and December 2018, Mr. Dornellien returned to Saint Lucia about every two weeks but these times were seldom happy as invariably something or other would propel him into fits of rage.

[26] Mrs. Dornellien recounts an incident which took place in April 2018 when Mr. Dornellien was visiting. During an argument with her, Mr. Dornellien began to break teacups in the kitchen. She said the children were both close by. In a fit of

rage, Mr. Dornellien threw the kettle of hot water at her, causing extensive burns to her shoulders, arms, chest and face. She exhibited photographs taken after the incident. Simeon intervened again. Two neighbours intervened and took her to the hospital where she was hospitalized for three days. She testified that she has a residual scar on her face and significant and prominent scarring on her shoulders, chest and back from those injuries. Mrs. Dornellien says Mr. Dornellien said the incident was an accident and requested forgiveness.

[27] She admitted that she did not make a report to the police at the time, but the incident caused her tremendous psychological pressure and she had to seek counselling. She says she also sought the intervention of the Elders of the Church of God, their family church hoping that Mr. Dornellien could benefit from their counselling. She says she knows they made attempts to, but it was to no avail. After the burn incident, the Elders put Mr. Dornellien on probation so that he was no longer able to preach or teach in the Church. Mrs. Dornellien says that this was why Mr. Dornellien was placed on probation and not because of any complaint by her about him not maintaining the children as he alleged in his particulars set out in the Petition.

[28] Mrs. Dornellien's evidence is that between April 2019 and November 2019, Mr. Dornellien returned to Saint Lucia about four times for a maximum of four days each time. She says his absence did little to allay her fears because most telephone conversations would descend into arguments. Mrs. Dornellien says as a result she restricted her communication with Mr. Dornellien only to matters concerning the children.

[29] Mrs. Dornellien after the incident in December 2018 made applications to the Family Court for Occupation and Protection Orders and interim orders were granted but by the return date, Mr. Dornellien had returned to Dominica. She also lodged a complaint against Mr. Dornellien in respect of the threat on her life.

- [30] Both parties appeared before the Criminal Court on 10th July 2019 in relation to the criminal charge against Mr. Dornellien. Mrs. Dornellien says two days after that hearing she was forced to make a report to the police as Mr. Dornellien on meeting her, her sister and the children in Castries, followed them around quarrelling and making further threats to the effect that he would kill her for his children while pulling Simeon towards him.
- [31] Mrs. Dornellien denies the allegations of neglect, ill-will, and emotional hardship made by Mr. Dorneillien which he says he suffered because of her. She says the relationship between the parties disintegrated as a result of Mr. Dornellien's physical and emotional abuse of her and him withdrawing his emotional and financial support for the family and for no other reason. She says she never refused Mr. Dornellien access to the children. She says it is his behaviour which has caused the children especially Simeon to fear him and withhold affection from him.
- [32] I highlight the following testimony from cross-examination. Mr. Dornellien attempted to portray the model caring husband in cross-examination. He attempted to show that he did everything with his wife by agreement. He denied that he ever wielded a cutlass at Mrs. Dornellien as she alleged. He said specifically 'I have no means of violence in my house. I have never raised a finger on my wife.' He denied that he threw any hot water on Mrs. Dornellien which resulted in burns to her body. He said instead that she got burnt. He completely denied Mrs. Dornellien's account of what transpired.
- [33] This is his account of what happened. He said the incident happened when they were having breakfast and Mrs. Dornellien insisted that he call his father. He says she started insulting him and then he said,
- "Sometimes I would break a plate or teacup to get her attention. After I broke the teacup, my wife kept on insulting me and I broke the kettle. I took the kettle and I broke it on the floor. She said she was just coming around and the water fell on her. She said to the doctor that it was not deliberate. ...I did everything to try to nurse her wounds...."

- [34] When he was asked what he meant by 'break a teacup to get her attention', his response was 'I want to allow her to see that she is affecting me.'
- [35] That account is more telling than any other evidence of Mr. Dornellien's. It is highly supportive of Mrs. Dornellien's evidence that Mr. Dornellien has an anger problem and reacts violently to things he is upset about. Breaking teacups to get your wife's attention is far from normal behaviour. His account of how Mrs. Dornellien got burnt is incredulous. I am not sure how breaking a kettle on the floor could possibly result in burns to Mrs. Dornellien's face, shoulders, chest and arms to the extent that she got burnt. Her burns are more consistent with the water being thrown at her. Even if I accept Mr. Dornellien's account, there is still cause for concern. He obviously did what he did because he was upset. He wanted to get her attention. Is that how one lets someone know that they are being affected? By breaking things and breaking a kettle filled with hot water? I do not think so at all.
- [36] Mr. Dornellien in cross-examination admitted that he left the message on Mrs. Dornellien's phone demanding that she return the children to the house in one hour. Again, he says he did it so she could 'bring it to the police like she always does'. He blamed Mrs. Dornellien for his behaviour and said it was she who provoked him and if he did not react, she would try to get him to.
- [37] Mr. Dornellien in cross-examination said there has never been a breakdown in communication with his wife although in the particulars pleaded, he specifically said that she hardly communicates with him which to me signals an obvious breakdown in communication.
- [38] I believe Mrs. Dornellien's account of what happened that day. I believe her when she says that he told her it was an accident. Her behaviour of not making a report to the police at the time is consistent with the behaviour of persons in tumultuous

relationships especially where after the incident the individual spouse is penitent and seeks to do all that they can to assist and to suggest that this was an accident. In the face of this, the real incident (in this case the burns) becomes obscured.

[39] Mrs. Dornellien was forthright in her testimony and clearly appeared to be somewhat submissive in her demeanour. I believe that she may have made several reports to the police, but they appeared to be well-warranted. That perhaps was her only recourse. It is be noted that in cross-examination when counsel for the petitioner sought to elicit an admission from Mrs. Dornellien that it was she who initiated the arguments and provoked the petitioner, the response was immediate and direct. She said, "My husband gets angry very quickly and he cannot control it." She also said it was not true that she used to pick fights with him. Later in the cross-examination, counsel for the petitioner suggested to Mrs. Dornellien that it was she who had anger issues and was the one constantly provoking Mr. Dornellien. Again, Mrs. Dornellien responded immediately and said that she had no anger issues and then said, "No, I would never provoke a man who had that temperament. All the things I have said are true."

[40] I find that Mr. Dornellien's evidence especially as it relates to what transpired in April 2018 was inconsistent and lacked credibility. I do not believe Mr. Dornellien's account of what transpired that day. His behaviour is inconsistent with the picture which he attempted to portray to this Court.

Analysis and Conclusion

[41] The Court must determine whether based on the facts presented, the marriage has broken down irretrievably. There is no dispute that Mr. and Mrs. Dornellien's marriage has indeed broken down irretrievably.

[42] In accordance with the approach outlined in **Owens v Owens**, I must make findings as to what Mrs. Dornellien actually did. A review of the allegations made

by Mr. Dornellien in the petition make it very difficult to make such findings. The allegations are for the most part very generally stated and are vague. He alleges against Mrs. Dornellien a general lack of interest in the marriage but fails to give any particulars. He has not shown how she caused him wilful neglect and emotional hardship and he fails to particularise the behaviour and general attitude towards him of which he speaks in the petition. Mr. Dornellien's allegations of insults and verbal abuse by Mrs. Dornellien are very bald and unaccompanied by any particularization which would assist the Court in assessing the gravity of the behaviour or even to establish what Mrs. Dornellien actually did. It must be remembered that part of the Court's duty is to determine the gravity of the behaviour and its impact on the petitioner none of which the Court can properly do with vague particulars.

[43] Mr. Dornellien's claims that Mrs. Dornellien maliciously called the police during their arguments and made them privy to private conversations are again vague. The Court has no information to be able to say with clarity what was the nature of the disclosures to the police to be able to assess whether that behaviour is sufficiently grave. He has not shown that Mrs. Dornellien made false reports to the police. In fact, in addressing this allegation, Mr. Dornellien as much admits to what Mrs. Dornellien complained of - the behaviour which gave rise to the criminal charges but says he stated the words in a state of frustration.

[44] His allegations that he was denied access to the children occurred at a time when the marriage had already broken down and cannot be said to be the reason the petitioner cannot be expected to live with the respondent. Again, the allegations that Mrs. Dornellien spread rumours that he did not provide for the children financially is not supported by any specific particularisation. Mr. Dornellien speaks to his efforts to reconcile and Mrs. Dornellien's lack of a desire to reconcile and that she refuses to communicate or interact with him. He again does not say what efforts he made and what specifically Mrs. Dornellien did or said.

- [45] As I understand the **Owens** approach the petitioner's case must be examined and if the facts are supportive of a finding that the respondent has behaved in such a way that the petitioner cannot be expected to live with her, then the petition would be granted. Where, as in this case, the alleged behaviour is stated in vague and general terms with no specificity or detail to allow the Court to make the necessary findings of fact as regards the behaviour, to assess the gravity of the behaviour and to determine its impact on the petitioner, then the petition must fail. The result is that where as in in this case, the respondent has filed an answer praying that the petition be dismissed and the divorce be granted on the basis that the petitioner has behaved in such a way that the respondent cannot reasonably be expected to live with him, the Court must undertake the **Owens** exercise in relation to the answer as well.
- [46] The Court is satisfied on the evidence and based on the analysis of the evidence above that (1) the petitioner made threats to the respondent on more than one occasion; (2) threw a kettle of hot water at the respondent causing her to suffer burns to her body; (3) broke teacups when angry or felt he was insulted; (4) the petitioner showed signs of control over the respondent. This is evident from the language of his allegations at paragraph 9(4) where he speaks of Mrs. Dornellien going to the police and divulging private discussions 'without his consent or authorisation'.
- [47] The Court has already indicated that it accepts Mrs. Dornellien's evidence over Mr. Dornellien's. Counsel for the petitioner questioned why Mrs. Dornellien would travel to Dominica in July/August 2018 with the children even after the April 2018 burn incident. However, that does not seem to be inconsistent with abusive relationships where the relationship is always made to look good.
- [48] The cumulative effect of Mr. Dornellien's behaviour has taken a toll of Mrs. Dornellien who has suffered abuse at the hands of her husband who without even realising it, gave the Court a good insight into who he is. The hot water throwing

incident alone to my mind is sufficiently grave behaviour to warrant the grant of the petition on the basis that Mr. Dornellein has behaved in such a way that Mrs. Dornellein cannot reasonably be expected to live with Mr. Dornellien. The Court therefore finds that Mr. Dornellien has behaved in such a way that Mrs. Dornellien cannot reasonably be expected to live with him.

Application for sole custody by Mr. Dornellien

- [49] Both Mr. Dornellien and Mrs. Dornellien made application for sole custody, care and control of the children of the family by way of summons filed on 30th July 2019 and 22nd August 2019 respectively. From Mr. Dornellien's application, the motivating factor behind this request appears to be his stated desire to exercise and enjoy his rights to full and unfettered access to the children, spend significant and quality time with them and have regular and constant contact with the children towards achieving a better and stronger relationship between him and the children. Mrs. Dornellien's application is based on the history of physical and emotional abuse meted out to her by Mr. Dornellien, although in cross-examination, she did say that the abuse was not directed at the children. She only said in her evidence that he would sometimes shout at them.
- [50] The Court was of the view that in order for the respective applications for custody of the children to be dealt with properly, a social enquiry report would have to be obtained especially in light of the obvious strain in the relationship between Simeon and his father. Mr. Dornellien's application does not allege any wrongdoing or inability on the part of Mrs. Dornellien to care for the children. Despite the evidence of Mr. Dornellien's alleged behaviour, the Court was of the view that Mr. Dornellien should be able to see and spend time with the children although taking into consideration the strain in the relationship with Simeon, no order as regards access to Simeon has been made. Mrs. Dornellien did not wish to have any contact with Mr. Dornellien and so it was agreed that the Court would make provision for access to the younger son, Seth with the assistance of two independent persons but the status quo would remain and they would continue to

reside with their mother. The matter of custody of the children is to be dealt with on ancillary matters. The Court therefore made the following order as regards custody:

“In the interim, the children of the family shall remain in the care, custody and control of the respondent and the petitioner shall have access to the younger child of the family, Seth Dornellien on one day in each weekend alternating between Saturdays and Sundays from 9 a.m. to 8 p.m. The child shall be transmitted to the petitioner by either the petitioner’s sister, Garcia Barnard or the respondent’s sister, Keturah Springer alternately and returned to the respondent via the same procedure. This arrangement shall remain in effect until further Order of the Court.¹⁴

Application for maintenance by Mrs. Dornellien

[51] As regards maintenance, Mrs. Dornellien in her summons filed on 22nd August 2019 prayed for an order that Mr. Dornellien pay interim payments for the maintenance of the children in the sum of \$500.00 for each child and she also seeks maintenance for herself in the sum of \$600.00 monthly. She also asks that Mr. Dornellien continue to pay the household utility expenses of the electricity, water, cable and internet and expenses of the vehicle registration PL965 and that she have sole possession of the said vehicle until further order of the Court.

[52] Maintenance pending suit is provided for in section 21 of the **Divorce Act**. It allows the court to order a party to pay maintenance to the other party in such sum as the court thinks fit until the determination of the suit. In making a determination, the Court must take into consideration the marital standard of living prior to the separation. Though the court will not try to replicate this standard of living, it will be one of the factors taken into consideration.

[53] As regards maintenance of the children, at the conclusion of the trial, the Court made an interim order as regards maintenance of the children as follows:

“In the interim, the Petitioner shall pay to the respondent the sum of \$800.00 monthly for the maintenance of the two children of the family, through Chambers of Counsel for the respondent commencing 31st

¹⁴ Paragraph 2 of the Order dated 2nd December 2019.

December 2019 and continuing at the end of every month until further order of the Court or until determination of the ancillary proceedings.”¹⁵

[54] As regards the other aspects of the maintenance sought, Mrs. Dornellien’s evidence was that since she brought the criminal charges and made applications for the protection and occupation orders, Mr. Dornellien stopped sending money from Dominica except for the sum of \$500.00 and \$1,000.00 in the months of March and April 2019 respectively transmitted via a third party. Mrs. Dornellien says she has no marketable skills or other form of financial support, hence her attempt to apply for maintenance in the magistrate’s court. Mrs. Dornellien says that the monies which Mr. Dornellien says he remitted via Western Union were on his instructions applied to payment of his loans and to add to his savings. She says after applying the monies sent as instructed, she was left with \$700.00 monthly.

[55] Mrs. Dornellien details her monthly expenses as \$700.00 for groceries, \$400.00 for utilities, \$290.00 for pre-school fees for Seth, \$400.00 for gas and maintenance in relation to the vehicle which she refers to as Mr. Dornellien’s vehicle. Seth is now in kindergarten so the pre-school fees are no longer being paid.

[56] Mrs. Dornellien’s evidence is that from prior to the marriage, Mr. Dornellien asked her not to take up employment and to be a full-time housewife. She says that she has never been in employment outside of the home and will not easily find gainful employment now. Mrs. Dornellien also asks for Mr. Dornellien to pay her legal costs. In cross-examination, Mrs. Dornellien revealed that she had worked with SSDF as a cleaner for one month sometime in 2018.

[57] Mr. Dornellien’s evidence is that he does send money from Dominica regularly for the maintenance of the children. He exhibited copies of Western Union and Money Gram receipts for a total sum of \$22,000.00 over five remittances. I do not believe that all these monies were for the children’s maintenance but I accept that

¹⁵ Paragraph 1 of the Order dated 2nd December 2019.

monies were sent. There is no evidence of any further payments by Mr. Dornellien via Western Union or Money Gram after December 2018.

[58] In cross-examination, when asked whether he had sent any monies between May and August 2019, Mr. Dornellien said he remembered sending monies in May 2019. He said he bought clothes for the children in St. Marteen which he gave to an Inspector for Mrs. Dornellien. He says he came with \$500.00 but he had to use it to pay for a guest house. Mrs. Dornellien confirms receiving the bag of clothes and the fact that she gave someone to sell those belonging to Simeon as he refused to wear them.

[59] When it was put to her that Mr. Dornellien never told her not to work and it was she who refused to work, Mrs. Dornellien said this was untrue. She said Mr. Dornellien believed that he was the man of the house and it was his job to take care of the family. She recounted one occasion where she got a job and he told her he did want her to take it because people would say he could not care for his family. She was asked whether she could not teach music to bring in extra income and she responded that she had no qualifications to teach music.

Analysis

[60] The Court did not have the benefit of Mr. Dornellien's monthly income to be able to assess what may be reasonable interim maintenance to award. He did not provide any evidence of what his earnings are. The issue of maintenance for the children has already been addressed.

[61] Currently, Mrs. Dornellien is unemployed having spent the better part of her youthful years tending to her home and her children. However, she appears to be an intelligent young lady and I think with some effort she may be able to find a job. She may also wish to take up a skill through the National Skills Development Programme which would increase her chances of getting a job. In the meantime, though, Mrs. Dornellien has always had to be dependent on Mr. Dornellien to meet

her, the children's and the household needs and expenses. Therefore, Mr. Dornellien must continue to provide some support for her in these areas until the Court makes a final determination of all ancillary matters and is able to consider all relevant factors. I would therefore order that Mr. Dornellien pay maintenance to Mrs. Dornellien through her counsel, Deterville, Thomas & Co. in the sum of \$300.00 monthly commencing 28th February 2020 and continuing at the end of every month until further Order or until the determination of all ancillary matters.

[62] As regards the household expenses, whilst Mrs. Dornellien may very well secure a job at some point, Mr. Dornellien will have to continue to contribute to the expenses associated with the utilities and the vehicle used to transport the children to school and elsewhere. He would have had to meet these expenses in any event as the sole breadwinner by design. However, Mrs. Dornellien's evidence of the monthly expenses is not supported by any documentary evidence to allow the Court to make a full assessment of the needs. In the circumstances and given that the children reside with Mrs. Dornellien at the matrimonial home, I will make an order that Mr. Dornellien is to pay the additional sum of \$600.00 monthly towards the household expenses until further Order of the Court. The Court also orders that Mrs. Dornellien shall continue to have use of the family car for the purposes of transporting the children.

[63] Whilst I am obliged to assess the case at bar in accordance with the relevant provisions and case law, I find this passage from the case of **Owens v Owens** to be instructive as it puts these matrimonial proceedings in their proper perspective. In matrimonial matters, the ultimate goal is to settle matters amicably and I would commend to legal practitioners the approach suggested in the report titled: **No Contest: Defended Divorce in England and Wales**, published in 2018 by the Nuffield Foundation in which Professor Trinder and Mark Sefton make a report on their detailed study of recently defended suits. This is what they had to say:¹⁶

¹⁶ Pages 7-8.

“While respondents are typically focused on defence as a means to establish their “truth” of why the marriage broke down, the family justice system is predicated on settlement and compromise. That settlement orientation applies even in cases where a formal defence has been issued, with encouragement to settle at each stage of proceedings, up to and including, contested hearings. The very active promotion of settlement at each stage, with lawyers and judges working in concert, reflects the dominant family justice perspective that agreed outcomes are less costly and damaging, that 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.” (my emphasis)

[64] Having said this, there are a few cases where it is necessary to defend a petition to ensure that proper justice and balance is achieved. I am of the view that the instant case is one of those. I urge counsel for both parties to seek to engage the parties in attempts to settle the ancillary relief matters. The Court is of the view that a social enquiry report is necessary and would request that the parties be engaged so that on the filing of any ancillary relief application, consideration can be given to appointment of a suitable person to undertake such an exercise.

Conclusion

[65] Based on the foregoing, the Order of the Court is as follows:

IT IS ORDERED AS FOLLOWS:

1. That the petition filed on 29th July 2019 is dismissed.
2. This Court holds that the Petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with the Petitioner;
3. That the marriage solemnized on the 17th day of March 2002 at the Church of God Seventh Day, Entrepot, Castries in the State of Saint Lucia between the Petitioner and the Respondent has broken down irretrievably.
4. The Court decrees that the said marriage be dissolved unless sufficient cause be shown to the Court within three (3) months from the making of this Decree why such Decree should not be made absolute.
5. That the Petitioner do pay the costs incurred by the Respondent in the cause in the sum of \$1,500.00.

6. That Court declares that it is satisfied that for the purposes of section 41 of the **Divorce Act** Cap. 4.03, there are two children of the family to whom the said section applies, namely (a) **Simeon Shaquan Kendall Dornellien** born on 18th August 2004 and (b) **Seth Kayden Dornellien** born on 2nd October 2014.
7. The Court confirms the Orders made on 2nd December 2019 as regards interim maintenance and custody and access arrangements for the children of the family pending the final determination of ancillary relief matters.
8. That the petitioner shall pay maintenance to the respondent in the sum of \$300.00 monthly as a provisional financial order commencing 28th February 2020 and continuing at the end of every month until further Order or until final determination of all ancillary relief matters.
9. That the petitioner shall pay to the respondent the sum of \$600.00 monthly towards household and vehicle expenses commencing 28th February 2020 and continuing at the end of every month until further Order or until final determination of all ancillary relief matters.
10. That pending the determination of ancillary relief matters, the respondent shall continue to have full use of the motor vehicle registration number PL965 for the purpose of transporting the children and herself.
11. That all payments to be made to the respondent shall be made to the Chambers of counsel for the respondent, Deterville, Thomas & Co.
12. That all ancillary relief matters are adjourned for hearing in Chambers upon application by either party.

Postscript

- [66] On notification being given of the delivery of the judgment by the clerk of court on the morning of 28th January 2020, counsel for the claimant, Mrs. Wauneen Louis-Harris decided to file her closing submissions on the day after, 29th January 2020 at 2:32 p.m. This is not only disrespectful to the Court but in clear violation of the Court's order which cannot be countenanced in any way. Nevertheless, I have taken the time to read the submissions and do not find that they in any way change the final outcome on this judgment.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar