

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
DIVORCE

CLAIM NO. NEVHMT2007/0022

BETWEEN

LEONNE SKEETE

Petitioner/Applicant

And

KENNETH SKEETE

Respondent

Appearances:

Mrs. Belva Nisbett for the Applicant.

Mr. Oral Martin for the Respondent.

2009: September 23;

2010: November 11.

JUDGMENT

Introduction

- [1] **LEIGERTWOOD-OCTAVE J:** The Petitioner/Applicant Leonne Skeete [**"Mrs. Skeete"**] and the Respondent Kenneth Skeete [**"Mr. Skeete"**] were married on 18th October 1986. Their union produced two daughters, Shara Skeete born on 7th September 1987 and Shaniele born on 9th October 1992. On 14th October 2009, the court ordered that the Skeete's marriage be dissolved on the ground of Mr. Skeete's cruelty towards his wife.

[2] On 18th June 2009, Mrs. Skeete filed an application for Ancillary Relief supported by an affidavit of the same date. Mr. Skeete filed an affidavit in response on 21st September 2009 and Mrs. Skeete filed a response to that affidavit also on 21st September 2009, just in time for the hearing.

[3] In her Application, Mrs. Skeete sought orders that:

1. The court award her custody, care and control of their daughter Shaniele;
2. Mr. Skeete vacate the matrimonial home forthwith and she be allowed to live there with Shaniele unless she agreed to sell the house, or remarried or began to live with another man on a permanent basis;
3. The matrimonial assets be divided equally;
4. Mr. Skeete pay \$800 in maintenance for Shaniele and \$1000 as maintenance for her;
5. Costs of the Application be awarded to her.

[4] When the hearing commenced, Mr. Martin indicated that Mr. Skeete had no objection to orders being made in relation to custody and the division of matrimonial assets.

Should the court order Mr. Skeete to vacate the property?

[5] Mrs. Skeete has asked the court to exclude Mr. Skeete from the matrimonial property because of his continued cruelty towards her. She gave examples of his cruelty in both her affidavits.

[6] He continually did things to annoy and aggravate her like leaving the kitchen in a mess and every other day he left the dishes unwashed after she had cleaned them. If she was listening to the radio or looking at television, he would turn them off telling her that he was the one paying for the utilities and it was his television.

[7] She noticed that he had placed a cutlass under the matrimonial bed. He regularly returned to the matrimonial home early in morning, disturbing her sleep. Early one morning he came in to find their daughter sleeping with her in the master bedroom. He dragged the daughter off the bed and using expletives told them to get off the bed that he had bought at Four Seasons. Mrs. Skeete refused to get up and he pulled a night lamp and raised it as if to hit her. She pushed him and he boxed her

in her face. Their daughter intervened and tried to stop him boxing her. She made a report to the police, who spoke to him.

- [8] The continued cruelty was affecting her physical and mental health. It had taken a toll on her body. She had lost fifteen pounds in the just a few months and she was under her doctor's care. She felt unstable living in the same house with him.
- [9] In his response, Mr. Skeete denied being cruel to his wife. He admitted keeping a cutlass under his bed but he insisted that he had never used it or threatened to use it against his wife. He kept it there out of concern for his family's safety and it was his defence against potential intruders. Mrs. Skeete he stated was aware of that.
- [10] He admitted turning off the television but only when he came home late at night to find Mrs. Skeete and their daughter sleeping with the television on.
- [11] As far as he was concerned it was Mrs. Skeete who was behaving unreasonably. She had taken his keys to the house and vehicle and he has difficulty accessing the house. She had also taken his glasses and he had been forced to replace them at a cost of \$2,000.00, which could have gone to household expenses or the children's education
- [12] His view was that parties could live in peace in their home provided that the terms of any their living arrangements are clear and mutually agreed and he was prepared to give an undertaking to that effect.
- [13] The first authority that Mrs. Nisbett referred to in support of her argument that Mr. Skeete should be excluded from the matrimonial home is **Jones v Jones**¹. Davis LJ described the facts of this case as a very sad story². After twenty years of marriage, and two children, the wife had left the council house in which her husband was a tenant. The wife said she had decided to leave after her husband had told her that he intended to introduce a young woman into their home. The young

¹ [1971] 2 All ER 737

² Ibid at 738

woman actually did come into the house not too long after the wife had left. The wife petitioned the court for a mandatory injunction ordering the husband and the young woman to leave the matrimonial home and restraining him from preventing her return to the home.

[14] The wife was unsuccessful at first instance but the Court of Appeal granted the injunctions holding that although the husband was the legal owner or tenant of the matrimonial home, as he had been guilty of adultery or cruelty, he could be compelled to leave as the court would protect the right of the wife to live in the matrimonial home as well as her right to maintenance³.

[15] Mrs. Nisbett referred particularly to the paragraph in the judgment where the court approved this passage by Lord Denning MR in **Gurasz v Gurasz**⁴:

“Some features of family life are elemental in our society. One is that it is the husband's duty to provide his wife with a roof over her head; and the children too. So long as the wife behaves herself, she is entitled to remain in the matrimonial home. The husband is not at liberty to turn her out of it, neither by virtue of his command, nor by force of his conduct. If he should seek to get rid of her, the court will restrain him...In an extreme case, if his conduct is so outrageous as to make it impossible for them to live together, the court will order him to go out and leave her there. This right is a personal right which belongs to her as a wife. It is not a proprietary right. It is not available against third persons. It is only available against the husband. No matter whether the house is in the wife's name or in the husband's name, or in the names of both jointly, nevertheless she has this personal right which the court will protect. So long as she has done nothing to forfeit that right, the court will enforce it by making an injunction to restrain the husband from interfering with the exercise of it...”

[16] Mr. Martin accepted Mrs. Skeete's entitlement to a roof over her head and maintenance as set out in **Jones**⁵ but he was quick to point out unlike the husband in **Jones**, Mr. Skeete was not asking his wife to leave the matrimonial home.

[17] Mrs. Nisbett also referred to **Cook v Cook**⁶. In this case after a petition for divorce was filed a wife alleged acts of cruelty against her husband. He subsequently gave an undertaking to the court that he would not make advances to her for sexual intercourse and then gave a further undertaking not to molest or interfere with her pending the hearing of the suit. The wife filed further petitions and

³³ Ibid at 742

⁴ [1969] 3 All ER 823 at 824

⁵⁵ Supra Note 1

⁶⁶ [1961] 2 All ER 791

alleged that her husband had breached the undertakings, the court accepted this and a decree nisi was granted in her favour. The court also found that breaches did not amount to grave and serious assaults, they were assaults which caused distress and suffering to the wife and they had caused her on one occasion to go to the doctor and Lloyd-Jones J was satisfied that she is in a low state of health and in a highly nervous condition.

[18] In considering whether to exclude the husband from the property, Lloyd-Jones J stated⁷:

"I appreciate that to keep a husband out of his property ...is not a course that one would take unless one felt that it was the only sure means of preventing the wife from being molested."

[19] The Judge went on to consider whether or not he should go so far as to keep the husband out of the matrimonial home. He concluded that given the history of the matter and the fact that he could not accept that the husband would behave himself if he were allowed to go back home he granted the order to exclude him.

[20] Although the undertakings in **Cook**⁸ were breached by the husband, Mr. Martin held to the position that in the case at bar satisfactory arrangements could be made to allow Mr. and Mrs. Skeete to co-exist in the same house. He did not agree that Mr. Skeete's conduct could be considered outrageous in the context of the cases that were relied on. Mr. Skeete, he indicated, was prepared to observe any arrangements agreed by the parties or ordered by the court. Mrs. Nisbett would not hear of this, Mrs. Skeete wanted Mr. Skeete out of the house because she was not comfortable having him there.

[21] Mr. Martin also argued that excluding Mr. Skeete would have the result of giving Mrs. Skeete the property exclusively despite the fact that he had been making the mortgage payments entirely on his own for a period of five years or more and such an order could not be fair.

[22] The authorities establish that Mrs. Skeete has the personal right to come to this court and seek an order excluding Mr. Skeete from the matrimonial home provided that she has not done anything to forfeit that right⁹.

⁷ Ibid at 796

⁸ Supra Note at 6

⁹ Supra at Note 4

[23] To succeed in getting the order, she must satisfy the court that:

- 1) Mr. Skeete's conduct was so outrageous that it makes it impossible to live with him; and
- 2) His exclusion is only way of preventing him from molesting her.

[24] Let us examine Mrs. Skeete's evidence in relation to the first limb. She has described how he turned the television and radio on and off while she was using them. He messed up the kitchen after she cleaned it. He came in early in the morning and disturbed her sleep. He keeps a cutlass under the matrimonial bed. Then there was the physical altercation which took place on 2nd August when he boxed her in her face and which was direct violent contact. Can this behaviour collectively or as individual instances be considered to be outrageous?

[25] There can be no doubt that the turning off the radio and the television and messing up of the kitchen and disturbing a person's sleep is clearly upsetting, irritating, annoying, aggravating and inexcusable behaviour. This is conduct which could easily "drive you up the wall" and perhaps that could actually even be the intention, but I do not think that collectively or individually it meets the threshold of being so outrageous that it makes it impossible to live with someone.

[26] The boxing of the face is wholly unacceptable and should be abhorred. Mr. Martin suggested that there was another version to the incident but as none was given, I accept Mrs. Skeete's evidence. This is one incident of violence. The police spoke to Mr. Skeete and there has not been a repetition. The fact that Mr. Skeete keeps a cutlass under the matrimonial bed might cause Mrs. Skeete some alarm but with the explanation that has given being one which cannot wholly be discredited, would also not meet the threshold of outrageous conduct. The fact that there has not been any attempt at repetition supports the conclusion that he does not need to be excluded to prevent him from molesting her.

[27] The power to exclude a husband from his matrimonial home is one which should be exercised extremely cautiously as courts will always have to be on notice that a wife who is intent on having the exclusive use of the matrimonial could quite easily concoct a story of outrageous behaviour on

the part of her husband. The evidence in this case however does not in anyway suggest that such a situation obtains in this case.

- [30] Mrs. Skeete has satisfied me that she is extremely uncomfortable and unhappy having to live in the same space as her husband but not that his behaviour is so outrageous that it is impossible for her to live with him and for that reason I will not order that he be excluded from the property. What Mr. Skeete has done comes nowhere close to the husband in **Jones** who told his that he was moving another woman into his matrimonial home or to the husband in **Cook** who constantly assaulted his wife after giving undertakings to the court. They exhibited outrageous behaviour. In light of the incident involving violence, I will make an order restraining him from interfering or molested her and some consequential orders.

The Application for Maintenance

- [31] Mrs. Skeete is seeking an order that Mr. Skeete pay maintenance of \$800 in relation to the minor child of the family and \$1000 for maintenance for herself. Mrs. Nisbett submitted that in accordance with section 13[4] of the Divorce Act the court must take into consideration the means and needs of the parties and any other relevant circumstances.
- [32] With regard to her ability to maintain herself, Mrs. Skeete stated that she only works occasionally as a housekeeper and earns \$120.00 monthly. She contributes \$100.00 towards a joint savings account she holds with the Mr. Skeete. She now has no savings as they have been used for the upkeep of the home and the children. In the past, he paid their daughter's orthodontic bills and was only reimbursed just over \$2,000.00 on a \$9,000.00 bill. She had previously paid a substantial portion of the mortgage on the matrimonial home. She contributed significantly to the purchase of their jeep.
- [33] As far as Mr. Skeete's ability to pay maintenance is concerned, she acknowledges that he pays the mortgage instalments and the utilities. In his affidavit, Mr. Skeete stated that his income from all sources is \$1860.00 per month being his net salary from his employment. He placed the figure for his monthly expenses at \$2,422.00. He insists that he is entirely unable to pay the maintenance

amounts applied for. Mr. Martin submitted that to so would likely result in his being unable to meet the mortgage commitments.

[34] The fact that Mr. Skeete has helped his family with renovating a property and his name is recorded as the joint owner of property cannot go unnoticed. He must provide for his immediate family as he would for his extended family. I am satisfied that he is not being frank with the court as to his assets and it is likely that he has not disclosed his full financial information.

[35] Mrs. Skeete is entitled to maintenance and so is the minor child Shaniel. I have considered what Mr. Skeete has had to say in relation to his financial situation and I have similarly considered what I find to be Mrs. Skeete's financial circumstances. I order that Mr. Skeete will pay maintenance to Mrs. Skeete in the sum of \$800.00 per month and \$500.00, with the first payment to be made by the

ORDER

[36] In light of my findings at paragraphs [30] and [35], I make the following orders

- 1) The Petitioner/Applicant is awarded custody, care and control of the minor child, Shaniele Skeete.
- 2) The matrimonial assets are to be divided equally.
- 3) The Petitioner/Applicant's application to have the Respondent vacate the matrimonial home is refused.
- 4) The Respondent is restrained from interfering with or molesting the Petitioner/Applicant in any way whatsoever.
- 5) The Respondent is restrained from entering any bedroom or any other personal space occupied by the Petitioner/Applicant, without her express consent.
- 6) The Respondent is directed to remove any weapons from any spaces in the matrimonial home frequented by the Petitioner/Applicant and the minor child of the family.
- 7) In the event that the court is satisfied that the Respondent has breached any of the orders at paragraphs 4) and 5), he shall vacate the matrimonial home forthwith.
- 8) Mr. Skeete will pay maintenance to Mrs. Skeete in the sum of \$800.00 per month and \$500.00 per month with the first payment to be made by on or before the 20th December 2010
- 9) Mr. Skeete is to pay the Petitioner/Applicant's costs of these proceedings in the sum of \$750.00.

Ianthea Leigertwood-Octave

High Court Judge

