

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHMT2008/0163

BETWEEN:

MICHEL THOMAS

Petitioner

And

MARIE THERESA EDWARD-THOMAS

Respondent

Appearances:

Alvin St. Clair for Petitioner
Petra Nelson for Respondent

**2010 May 27
June 21**

DECISION

- [1] **GEORGES AG J:** This is a petition filed by a husband on 29 October 2009 for dissolution of marriage on the ground that the marriage had broken down irretrievably by reason of the fact that the Respondent wife had behaved in such a way that he could not reasonably be expected to live with her. On the other hand the Respondent in her Answer denies that the marriage has broken down irretrievably and that she has behaved in such a way that the Petitioner cannot reasonably be expected to live with her. She asserts that their differences are not by any means irreconcilable. She therefore seeks reconciliation and asks that the petition be dismissed.

- [2] The evidence shows that the parties who are both domiciled in St. Lucia married on the 13th October 2001 at the Pentecostal Church in Castries and had then been cohabiting at the Respondent's newly built residence at Monier for about three and a half years i.e. since about April 1998.
- [3] The evidence further revealed that the relationship between the parties began as an office romance. The petitioner had graduated from University in 1997 and was employed as an Industrial Engineer in the Ministry of the Commerce and worked in the same department as the Respondent an Industrial Officer where according to her she played a pivotal role in his orientation and had guided him in the work of the section.
- [4] The Petitioner maintains (although this is denied) that it was at the Respondent's instigation that he had taken up residence at Monier. He had been living hitherto at his uncle's house at La Croix Maingot as his uncle was in the United States.
- [5] The Court was told that at the time of the Petitioner moving to the Monier house it needed completion especially the surroundings. It was only partly furnished and access to it from the main road and public transportation was difficult. The Respondent could not afford a vehicle so the Petitioner began taking her home from work in his reconditioned motor car. The Respondent lived with her 18-month son and one of her sisters who cared for him.
- [6] The Petitioner testified that he took up abode with the Respondent on terms that he contributed his fair share towards its upkeep and running expenses including mortgage payments. He went on to emphasize that the fact that the Respondent owned her own home had in no way influenced his decision to live with her.
- [7] Indeed the evidence revealed and the Respondent fully agreed that soon after moving in the Petitioner assumed the role of the man in the house and set about completing construction of the house with friends and relatives and enhancing its general surroundings and access thereto largely at his own expense.

- [8] But all was not smooth sailing for very early during their cohabitation it was mutually agreed that the Respondent would have a loop inserted by a specialist physician to prevent conception yet shortly thereafter she in fact became pregnant but withheld telling him until he was away on a training course in Singapore – so embarrassed was she the Respondent confessed.
- [9] This put a new dimension to the relationship the Petitioner declared as unreasonable demands were now being made of him to get more money than he could afford to buy things for the expected baby. It appeared to him that the Respondent wanted him to give her a lump sum so that she could get almost everything needed at once when he only had a meagre salary and was paying for a vehicle loan and also providing for the home. He could save nothing he added and lived from pay cheque to pay cheque. He was soon thereafter required to procure an engagement ring at Pointe Seraphine for US\$400.00 which he charged to his credit card.
- [10] The Respondent gave birth to a girl Tara Michelle on 13th January 1999 at the hospital where curiously the Respondent put her sister's name as the person to be contacted in case of emergency instead of him. He nevertheless took out a health insurance policy for the entire family including the Respondent's son. The Petitioner who came from a large family was strongly family oriented and strived within his limited means to financially assist his younger siblings by paying for their private Maths lessons. That proved to be a source of discord with the Respondent and much unhappiness with the Petitioner.
- [11] It is against that background that the parties eventually tied the nuptial knot on 13th October 2001 which the Petitioner now seeks to sever. And it is to the facts and circumstances as they continued to unfold from that date that the Court must focus its attention in determining whether the marriage has broken down irretrievably by reason of the Respondent's unreasonable behaviour and that the Petitioner cannot in the circumstances be reasonably expected to live with her. The Petitioner was at the time 30 years of age and the Respondent 37.

- [12] I pause to state that the proceedings in this cause were badly drawn. The petition which was filed 29th October 2008 was duly served on the Respondent with the usual ancillary documents on 12th January 2009 in which she signified her intention to defend in her acknowledgement of service filed 20th January 2009.
- [13] A request for directions for trial dated 16th February 2009 was duly filed by the Petitioner's attorney on 20th February 2009. Directions for trial of the cause for 6th April 2009 pursuant to Rule 27 of the Divorce Rules 1976 (the 1976 Rules) were issued by the Registrar on 4th March 2009 whereupon the Respondent's attorney filed an answer on 24th March 2009. This clearly infringes Rule 15(2) of the 1976 Rules which stipulates that an answer may be filed at any time **before directions have been given for trial**. And Rule 17 states that no pleading shall be filed without leave after directions for trial have been given.
- [14] Worse still following the filing of the Respondent's answer the Petitioner's attorney on 22nd April 2009 filed a witness summary by the Petitioner consisting of no fewer than 216 paragraphs followed by a witness statement which is a replica of the witness summary. The Respondent replied with a witness statement of her own comprising 216 paragraphs as well and filed on 5th May 2009. In their witness statements each of the parties purported to have unburdened their souls. There are also four additional witness statements by persons including the Pastor of Bethel Tabernacle Sans Souci supporting the Respondent's case none of whom turned up at trial.
- [15] It is manifestly plain that an attempt was being made to marry the 1976 Rules with the Civil Procedure Rules 2000 (CPR) Rule 2.2 (3)(a) of which states that those Rules do not apply to family proceedings. Further Rule 18 of the 1976 Rules enjoins that where an answer reply or subsequent pleading contains more than a simple denial of facts stated in the petition answer or reply as the case may be the pleading shall be set out with sufficient particulars only the facts relied on but not on the evidence by which they are to be proved.
- [16] There is I venture to say a growing tendency for the 1976 Rules to be honoured more in their breach than in their observance by some practitioners. Those Rules provide useful

guidelines which regulate the practice and procedure of divorce proceedings in the High Court and ought to be followed as circumstances require.

[17] At the inception of his testimony the Petitioner (Mr. Thomas) told the Court: "My marriage has broken down. There is no possibility of the marriage being salvaged. And the reason for that is the unreasonable behaviour of the Respondent as set out at paragraph 11 of my petition dated 27th October 2008 the contents of which he confirmed were true and correct."

[18] The particulars of the Respondent's unreasonable behaviour as set out at paragraph 11 of the petition are revealing and are set out below in their entirety:

1. The Respondent from the onset had a problem with members on my family in particular my brother whom she refused to allow to spend a weekend at our home, notwithstanding that she had a sister living with us. The Respondent then reminded me that our home belonged to her, as she was the one in whose name it is legally recorded.
2. As a result of this incident I started saving money to purchase my own home notwithstanding that I had contributed significantly towards the construction of the house upon the land owned by the Respondent. The Respondent was the one who said that I should purchase the land so that I could have something on my name. It was clear then that the Respondent did not see me as owning the house with her.
3. However even after this was done the Respondent complained that I had purchased land without putting her name on it, when she was never keen on putting my name on the house and land.
4. All this time I continued making payments towards the upkeep of the home and the mortgage.

5. One time I paid for a fridge and her television set for the house at a combined cost of \$6,300.00 from an account which I had set up as an emergency account in case something happened to anyone of us. Subsequently the Respondent was indemnified by an insurance company for the destruction of a retaining wall in the sum of \$8,000.00. I then requested that at least \$5,000.00 be paid back to the account. I was hurt by the Respondent's response which was "Thomas what are you thinking? You think I am fucking with you for nothing? You bought a fridge for the house and you expect me to give you back the money for it?"
6. One time I asked the Respondent to put my name on her life insurance as a beneficiary. She responded by saying that it was her sister's name that was on the policy before she met me and she is not going to change it.
7. The Respondent to this day remains the beneficiary of my life insurance together with my daughter.
8. The Respondent is clearly selfish, self absorbed and feels no compassion towards me and simply intends to get as much from me as she can.
9. When I moved to Barbados to work the Respondent never called me and was only concerned with how much money I was making, whenever I would call.
10. One time when I came home from Barbados the Respondent made it abundantly clear that she did not want to sleep with me for she would lock herself and the children in our bedroom at night.
11. The Respondent then made it obvious that she no longer wanted our marriage when she said to me "Thomas I don't want to be with you

anymore, I want a divorce, so please proceed to file for it because I don't have money to do so." I decided to leave.

12. The Respondent's main concern was the vehicle which I had purchased and she wanting to be put in possession of the vehicle. When I returned to Barbados the Respondent kept calling me complaining about the fact that I had not left the vehicle with her, as I had left it with my sister to be sold.
13. The Respondent was complaining saying that things are bad and I decided that maybe I should attempt reconciliation as I still had strong feelings for the Respondent. So I asked the Respondent whether she would consider reconciliation, her response was why not for the sake of the children. The Respondent did not love me that much was obvious.
14. The Respondent one time told me that I had to pay her for sex. Since I wanted to have sex I did and the Respondent accepted it.

The Respondent's behaviour, her whole attitude towards life is not one which is conducive for marriage.

- [19] In cross-examination the witness denied that the fact that the Respondent had declined to put his name as a co-owner of the property which she owned and occupied was an issue between them. Having regard to the totality of the evidence before it the Court does not incline to the view that that per se was an issue between the parties. The issue in my opinion was far more fundamental in that the Respondent did not seem to share the vision and the hopes and aspirations which the Petitioner nurtured and to which he aspired for the sake of himself and his family. I am satisfied that he was prepared to give and indeed at times did give his all but felt excluded in things that really mattered. He was being used and misused and worst still he was unloved.

[20] Now on contract as an investment officer with the Caribbean Development Bank for the past two and a half years he earned significantly more than he had hitherto. From his professional training and calling he had always exercised prudence in the fiscal management of his finances. The Respondent described him as being mean and stingy. She however had generous access to his bank accounts and was lavish to the extent that when time and again she sought to obtain a loan from the bank by increasing her mortgage it was denied because her debt ratio was too high and her spouse was required to assist.

[21] On the whole Mr. Thomas impressed as a witness of truth and spoke with remarkable candour. The Respondent's answer and her evidence under cross-examination mainly consist of a series of bare denials unsupported by credible evidence for example paragraph 2 of her answer reads thus:

"The Petitioner has made several false statements in filing for this divorce which the Respondent think needs to be clarified. The Respondent loves the Petitioner very much and does not believe that the false statements made warrant a divorce. The Respondent begs the court to consider counseling. The Respondent does not believe in divorce and the Respondent strongly believes that the court should give the Petitioner and the Respondent the opportunity to reconcile their differences instead of granting a divorce. The Petitioner is very angry at the moment and the Respondent strongly believes that with time the Petitioner will overcome his anger. The Petitioner is a kind and loving husband and father and regardless of the Petitioner's mistakes, the Respondent still wants to continue the marriage and stabilize our family. On that basis the Respondent pleads that reconciliation is sought instead of a divorce."

[22] And at the end of paragraph 5 of her answer the Respondent agreed that it was a fact that the Petitioner had spent approximately \$40,000.00 on the house but from 1998 up until August 2008 the Petitioner husband never paid anything towards the mortgage.

- [23] Under cross-examination the Petitioner explained that he did not stop paying the mortgage before he got the CDB post because he was not paying it then. He was not then paying the mortgage. He declared that he began paying only after joining CDB and not before that. By then his salary had increased significantly. He stopped paying the mortgage he further explained because the Respondent had led him to believe that his name was on the property document as co-owner when they had refinanced the mortgage at the lawyer's office and that is why he took the decision to start paying. On later discovering that that was not in fact the case and that the Respondent had misled him into believing so he took the decision to stop paying.
- [24] That to the Court seems eminently plausible and credible and I accept that explanation to the Respondent's testimony on that issue. The evidence reveals that she was plainly deceitful and manipulative and as stated at paragraph 11.8 of his particulars of unreasonable behaviour in his petition the Respondent was clearly selfish, self-absorbed and felt no compassion towards him and simply intended to get as much from him as she could. Small wonder that he became frustrated and the marriage drifted on the rocks.
- [25] In cross-examination the Respondent agreed that it was true that the Petitioner placed money into an account to which her sister alone had access. He himself did not have access to any of her accounts whilst she enjoyed full access to his. The evidence discloses that she was a lavish spender with a high debt ratio. He on the other hand was and had always been frugal and circumspect. They evidently did not share a common vision and in short were not evenly yoked inspite of his valiant efforts to make the marriage work. It was already irreparably rent asunder.
- [26] As he himself put it in concluding his testimony if perchance they would get together again (which for him was hopeless) she would have to be a totally different person and have to do things differently but he did not want her and that is why he was here (in Court) today. He had evidently reached the end of his tether.

[27] By that he pointed out that he did not necessarily mean that she would have to put his name on her insurance policy because there were so many other issues nor was he specifically alluding to her putting his name on her property. When asked if he had outgrown his wife he replied yes and further added that the only thing they now had in common was a child. When pressed to explain what he meant by his having outgrown the Respondent he replied he did not love her and had no feelings for her.

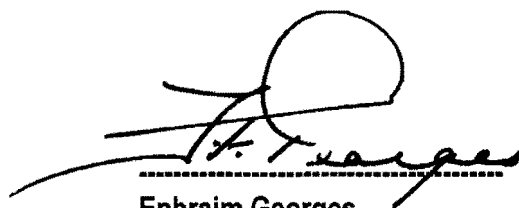
[28] I have given anxious consideration to the Respondent's fervent and seemingly earnest desire for reconciliation and to make amends but I am satisfied from the evidence as a whole that that is just not a possibility. To my mind the marriage has broken down irretrievably and I am equally satisfied that it is largely on account of the Respondent's unreasonable behaviour so that the Petitioner cannot reasonably be expected to live with her as man and wife. He could take no more.

[29] The Court accordingly decrees that the said marriage be dissolved on the ground and for the reasons aforesaid unless sufficient cause be shown within three months from the making of this decree why such decree should not be made absolute.

[30] And the Court declares that it is satisfied that for the purpose of Section 41 of the Divorce Act 1973 there is only one child of the family namely Tara Michelle Thomas born on the 13th day of January 1998 to whom the said section applies.

[31] There will be no order as to costs.

[32] All other ancillary matters are adjourned to Chambers with liberty to either party to apply.



Ephraim Georges
HIGH COURT JUDGE (AG)