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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
[2021] EWFC 80



No. BV21D06357
and 27 other related cases

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 10 September 2021

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT 1973

Before:

MR JUSTICE MOOR

(In Private)

B E T W E E N :

THE MARRIAGE OF GIA CELINE-SHELBY AND ALFIE DAVID YORSTON
AND TWENTY-SEVEN OTHER RELATED CASES

Applicants

- and -

iDivorces

Interested Party

THE APPLICANTS did not appear and were not represented.

THE INTERESTED PARTY appeared via its director, Mr Eastham acting in person.

J U D G M E N T

MR JUSTICE MOOR:

- 1 I listed these twenty-eight divorce petitions for hearing in open court after they were all referred by Deputy District Judge McHardy, the judge who is, on a day to day basis, in charge of the Divorce Unit at Bury St. Edmunds, to Her Honour Judge Roberts, who is the lead judge for divorce in this country. She referred them on to me.
- 2 I accept that, in April 2022, the law is going to change when the Divorce, Dissolution and Separation Act 2020 comes into force. From then onwards, there will be "no-fault" divorce. Until then, however, the law of divorce as it operates in this country is absolutely clear. Whilst the sole ground for divorce is the irretrievable breakdown of the marriage (now Matrimonial Causes Act 1973 s.1(1)), it has to be proved by establishing one of five facts (s.1(2)). These are (a) adultery and the petitioner finds it intolerable to live with the respondent; (b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent; (c) desertion for a continuous period of at least two years; (d) separation for a continuous period of at least two years and the respondent consents to the grant of a decree; and (e) separation for a continuous period of at least five years. I am concerned today with (b), which is colloquially referred to as "unreasonable behaviour."
- 3 Prior to the passing of the Divorce Reform Act 1969, the business of the Probate, Divorce and Admiralty Division was dominated by contested divorce cases and the need to be satisfied that a petitioner had proved his or her case. Over the years, it is fair to say that much of the heat has been taken out of the process, particularly following the introduction of special procedure divorces in the 1970s. Indeed, the procedure has now changed again with the ability to apply online but, the simple fact of the matter is that the petitioner, at present, still has to prove the unreasonable behaviour of the respondent.
- 4 Unreasonable behaviour can, of course, be proved by a very wide range of possible factual situations, although I accept that, over the years, there has been a concerted effort by the legal profession to encourage petitioners to plead only what is strictly necessary to satisfy the requirements of the section. The need, however, to satisfy the requirements of the section was stressed in the Supreme Court in *Owens v Owens* [2018] UKSC 41. Mrs Owens had failed to prove at first instance that her husband's behaviour was such that it was unreasonable to expect her to live with him. She was therefore denied a divorce decree. It may well have been that this case was the catalyst that led to the change in the law to be found in the 2020 Act but the law remains, as at today's date, that the petitioner must prove his or her case.
- 5 Each case must, of necessity, be different. Different spouses behave in different ways. It is quite impossible for each of 28 respondents to have behaved in exactly the same way as the other 27.
- 6 In these twenty-eight cases that I am concerned with the particulars of behaviour were found to be absolutely identical in each petition, namely:-

"For about a year prior to the separation the respondent would become moody without justification and argumentative towards the petitioner. He/she would behave in this way on at least a couple of days every week, which would cause a lot of tension within the home thereby making the petitioner's life very uncomfortable. During the same period the respondent would also often ignore the petitioner and decline to communicate with him. He/she would also behave in this way on about two days every week, which

would also cause a lot of tension within the home and make the petitioner's life very difficult. The respondent showed no interest in leading the life of a married woman/man for about a year before the separation. For example, he/she would go out socially on his/her own and basically exclude the petitioner from his/her life thereby making him/her feel very dejected."

- 7 I make it absolutely clear that those particulars are exactly the sort of particulars that I would expect to see in a divorce petition and I would not have blinked an eyelid. If proved to be true, I am satisfied that they would be sufficient to found a decree of divorce on the basis of the law as it is at present. It is, however, quite impossible for all twenty-eight respondents to have behaved in exactly that way. I regret to have to conclude that, as a result, these petitions are improper.
- 8 All these twenty-eight petitions were drafted by and filed on behalf of the twenty eight petitioners by iDivorces, although technically each petitioner was acting in person. I make no criticism of that. I accept that Mr Eastham, a director of iDivorces, has apologised to me profusely. He accepts that iDivorces used this standard wording. He tells me that they sent the wording to each petitioner and asked them if there was anything in there that was wrong, although it is tolerably clear that not one of the twenty-eight made any amendments to the draft. I am, however, clear that this is not the correct way to proceed. Each petitioner has to put, in their respective petitions, their own particulars, which are true and which actually occurred. The respondent can then accept the petition, seek to amend the allegations, or to defend the divorce if he or she wishes to do so.
- 9 As all these particulars are absolutely identical and cannot, therefore, all be true in each of the twenty-eight cases. If I needed to give an example, it would be to say that it would be incredible if all twenty-eight respondents ignored the twenty-eight petitioners and declined to communicate with them on about two days per week. It follows that I have no alternative but to dismiss all twenty-eight of these divorce petitions. The petitioners will simply have to start again. I hope it will be possible for them to proceed relatively quickly.
- 10 I indicated in my previous order and told Mr Eastham over the telephone last Friday that I was considering a reference to the Director of Public Prosecutions on the basis that this could potentially amount to the crime of perverting the course of justice. Mr Eastham has apologised to me in court. He has said that it was a misunderstanding and that he thought it was acceptable if he told the petitioners to correct anything that was wrong in the petition. He has confirmed that it will never happen again.
- 11 As a result, I have come to the conclusion that there would be insufficient public benefit in referring these cases to the Director of Public Prosecutions. I consider it would be disproportionate to do so on this occasion, but, if it was ever to happen again, I would have no hesitation in making a referral.
- 12 Although the cases were listed in open court, there was no attendance by the Press. I have therefore decided that I should place this judgment on the BAILII website to ensure that nobody else decides to do exactly the same as has happened in this particular case.
- 13 It follows that all twenty-eight divorce petitions as read out at the beginning of this hearing stand dismissed.
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CERTIFICATE

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This transcript has been approved by the Judge.