

20th February,
1980

ROYAL COURT (MATRIMONIAL CAUSES DIVISION)

1980/6

Before: Mr. P.L. Crill, Deputy Bailiff.
Jurat R.H. Le Cornu.
Jurat J.H. Vint.

Between

Lesley Doris Lowman - Petitioner

and

Herbert Griffiths - Respondent

Advocate P. Mourant for the Petitioner

Advocate W.J. Bailhache for the Respondent

This case has presented the Court with one of its most difficult decisions that the Court has had to adjudicate. Each party has asked for a decree on the grounds of cruelty. They are both middle aged, have been married for some thirty-three years and live apart. It is clear to us that the marriage had broken down irretrievably and cannot be revived in spite of the emotions which each exhibited towards the other, both in the box and when the other spouse was giving evidence. It is a sad case. On the one hand is an able hard-working man (the respondent) who until the tragic illness of his wife (the petitioner) in December, 1974, had lived harmoniously with her, apart from the usual ups and downs common to all married couples. On the other hand there is an apparently placid woman who loved her home and its country surroundings with great passion and who was struck down, first in 1973 with cancer necessitating a mastectomy, and secondly, in December, 1974, with a stroke which at first severely incapacitated her. If we are critical of her actions during the ensuing months that must not be taken to detract from our admiration, endorsed by her husband and by all who came into contact with her, of the very high degree of courage and determination that enabled her to overcome her disabilities to a very great extent. As if that were not enough she suffered, and still does, from asthma and arthritis. Only one child of the marriage, Bronwen, played a significant part in the relations between the husband and wife, but she was not called

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by either party. She appears to have been a source of worry to her parents but to a different degree and from a different angle. The husband clearly adored her and refused to believe that she could go astray. The wife was more realistic but her warnings to the husband were resented and taken as nagging, and when some troubles arose, we were not told what they were, which involved the daughter, great distress was caused to the husband. What the psychological relationship between all three was we do not know except that it affected the emotions of the husband and his feelings for his wife. It certainly caused some strain between the parties.

The family home was Ringwood, St. Lawrence, where the petitioner and the respondent lived until June, 1978. The property abuts a steep lane and is itself on the side of a hill. There are a front and back door and a number of steps lead to each entrance. There was a small room below the main house, a boiler room reached through the garage; also underneath the house, and an outside W.C., not far from the small room. It is not necessary to go into the relationships between the parties before December 1974 in any detail.

When the wife had her operation in 1973, the husband was teaching near Southampton and she was running a kindergarden at Colomberie House School where she had moved it from the small room. The husband's attempts to run Colomberie House School had failed and he had returned to teaching in the United Kingdom, hoping in the meantime to sell the school. The parties could live but had little to spare and the husband had a keen sense of his duty to provide for his family and, therefore, commuted from Southampton to Jersey, after failing to find employment in the Island. There is nothing to show that he did not care lovingly for his wife after her operation and particularly when she went to Southampton for radium treatment. At the time of the wife's stroke in December, 1974, the husband was employed at Quennevais School in a post of responsibility. He is now a lecturer at Highlands College.

We will return to the conversion of the small room later but it will suffice to mention here that the wife withdrew from the main house

and moved into the small room before she went on holiday with a Mrs. Jordan in the summer of 1976. When she returned she found building work in progress to convert the room into a flat incorporating the outside lavatory and she, therefore, went back to live in the main house.

Since her stroke both had had separate bedrooms and sexual relations had not been resumed, so that the question of condonation does not arise. But apart from that one facet of condonation we are satisfied that relationships between the parties gradually deteriorated in spite of good intentions.

In September, 1977, the husband moved into the flat as the small room had now become, and remained there until he left the property for good on the 13th June, 1978, to live in a small cottage in St. Helier which he had bought on a mortgage. He told us that his mother lives with him for three out of the four seasons of the year. The wife remains in Ringwood. Although we only have to determine the issue of a decree today, we were told that the value of the property is about £60,000 and, therefore, it is the only substantial asset of the parties since it is owned jointly.

Earlier in June, 1978, the husband moved from the attic of the main house some furniture belonging to the daughter, Bronwen, and, eventually, after storing it at his flat, took it to her lodgings. On the 24th May his Advocate sent a list of furniture and other items in the property to the wife's Advocate. The husband had marked a number of them with an asterisk and claimed them for himself. No acknowledgement was received and the husband was left with the impression from his Advocate's office that he could remove the items he had marked. The wife, on the other hand, said that she had been advised that the division of the furniture and other items could wait until the main issue of divorce had been settled and that the Court would apportion the furniture and other items. The petition was not sworn until the 31st July, 1978. The husband helped himself to some of the asterisked items on two occasions and the manner of his so doing

forms part of the allegations of cruelty by the wife.

The wife's case may be summarised in her own words when she told us that after the stroke the husband "wrote her off". This meant that he did not encourage her to recover by taking her for walks, by taking her shopping, by driving her about, and by generally allowing the world to see that he was standing by her. In fact, she said, he became ashamed of her and shut himself off from her in the evenings by withdrawing to his study after eating his supper which he had cooked for himself. She did not allege any violence or any irregular sexual behaviour towards her or other persons; in fact nothing other than a persistent course of conduct which the husband knew would affect her adversely and hinder her recovery, including persistent attempts early on after her stroke to persuade her to enter a home. The manner of his taking the furniture had upset her as well as a debt disclaimer notice in the Jersey Evening Post. She had to turn to friends for help in getting out and starting to lead a normal life. The husband's cross petition relies on a continuous barrage of denigration of him to others and constant nagging. The wife called the family doctor, Dr. Finlaison. The husband did not call a doctor as he had not consulted one.

We have approached the evidence in this case in the light of the observations of the Royal Court in a number of previous cases dealing with cruelty. In *C v D & E*, Unreported Jersey Judgments (16.10.1978), the Court said this:

" ... "The law on cruelty as it has evolved in this jurisdiction has followed the pattern of Decisions in English Courts. The Jersey Court of Appeal has cited with approval, in *Urquhart v Urquhart*, J.J. at page 2484 the four ingredients which must be established. They are -

- (i) Misconduct must be of a grave and weighty nature; it must be more than mere trivialities, though there may come a point at which the conduct threatens the health of the other spouse. In which event the Court will give relief;
- (ii) It must be proved that there is a real injury to health or a reasonable apprehension of such injury;

(iii) / ...

- (iii) It must be proved that it is the misconduct of the spouse against whom the complaint is made which has caused the injury to the health of the complainant; and
- (iv) Reviewing the whole of the evidence and taking into account the conduct of one party and the extent to which the complainant may have brought the trouble on himself or herself the Court must be satisfied that the conduct can be properly described as cruelty in the ordinary sense of the term.

However, as regards the standard of proof, this Court, and it was not overruled on this point, has decided in Knight v Knight and others, reported in J.J. Vol.2 at page 367, that it may look at the evidence on a balance of probabilities. The Court also referred to Rabet and Rabet J.J. 1568 (to which it might have added the case of Roberts v. Roberts and Cunliffe Owen, J.J. 131) and, because as in this case, the petitioner (here the respondent) relied on a series of events over a period of time, adopted the words of Lord Reid in King v. King (1953) A.C. at page 140 (as had the Court in Rabet v. Rabet) Lord Reid said:

The question whether the respondent treated the petitioner with cruelty is a single question only to be answered after all the acts alleged and the whole of the matrimonial relations have been taken into consideration. ' "

We may add that intention to harm is not an essential ingredient of cruelty. Paragraph 1269 of Vol. 13 Halsbury (4th Edition) says this:

" If the Court finds that one spouse has, by reprehensible conduct or departure from the normal standards of conjugal kindness, caused injury to health or a reasonable apprehension of it on the part of the other spouse then it is cruelty if a reasonable person, after taking due account of all the circumstances of the case, would consider that the conduct complained of is of so grave and weighty a nature that the complainant should not be called upon to endure it. "

In this case was the husband's conduct responsible for the wife's condition and did he depart from the usual standards of conjugal kindness under the circumstances in which, through no fault of his own, he found himself? Even if he did, was the wife's health endangered thereby or was there a reasonable apprehension of danger? Was her unfortunate condition to blame, and if so to what extent?

Although Dr. Finlaison had told us that depression, which was the main affliction from which the petitioner suffered, followed her

stroke / ...

stroke, as she very courageously and successfully fought her way back to near normality, we felt it might be helpful to hear the evidence of a psychiatrist, and, accordingly, we asked Dr. Fogarty to assist us as well. What the wife said was that her depression was aggravated by the husband, if indeed he was not entirely responsible for it. We are not satisfied that the wife's depression could be attributed solely to the husband's actions. The medical evidence showed that depression can follow a stroke and we heard nothing to suggest that the wife's case was exceptional. Dr. Fogarty said that there were two sorts of depression that appeared after strokes: endogenous and reactive. The first was not affected by surroundings, the second was and tended to be the normal shallow reactive depression that could afflict a person after a stroke. Unfortunately we were not told by Dr. Finlaison which sort the wife's was. Dr. Fogarty had not treated her so he was unable to help us. However, Dr. Finlaison said that depressed persons tend to mention many things as causes of their depression. As regards the rest of the doctor's evidence it showed that the wife had been treated for depression with valium both before and after the husband left and, in particular on two occasions when he had removed furniture. Since the husband had left, Dr. Finlaison had seen the wife somewhat less often, but in answering a question about the possible danger to the wife's health he said that he had never felt it necessary to advise that the husband should leave the wife or that the wife should leave the husband.

Nevertheless, if we were to find that the husband's behaviour might possibly be said to have contributed to the wife's condition that might be sufficient to allow relief if the other criteria of cruelty were satisfied.

Both parties called a number of witnesses who had been mutual friends. Mrs. Ward saw the state of Ringwood when the husband had entered the premises to fetch some furniture. The husband admitted that on the first occasion, in June, 1978, he had left the living room in

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rather a mess and that on the second occasion, he had had to break open a bedroom door as some of the items he had marked with an asterisk in his list, and which he had not removed on the first occasion, had been stored in a bedroom and new locks had been put on the bedroom door. The wife had been distressed by these events.

Mrs. Holt had known the wife through the W.R.V.S., when she had been asked to take her for walks. She felt that the husband ought to have helped his wife to walk. We feel that the husband was slow to appreciate that his wife was so determined to make rapid progress and wanted to protect her, when the fact was, she did not need cossetting but rather positive encouragement, which could only have been given if the husband had believed that, in fact, she was capable of making that progress. Mrs. Holt did say that the wife had been less nervous since the husband had left.

Mrs. Daghorn knew the parties because she had worked in the house as a Home Help. It was clear from her evidence that even during the first two years after the stroke when she was employed that the parties hardly spoke to each other more than was necessary. She did not hear any rows or arguments; nor did the wife complain to her about the husband.

Mrs. Kirkham had known the Griffiths for 20 years. Her evidence was directed mainly to the effect that any suggestion of moving the wife to a home from the General Hospital would have terrified her and upset her. On one occasion she thought that the husband had made such a suggestion and that upset the wife. As for the husband himself, he had been very confused at the beginning after the stroke. He had not known what had hit him, but he could have done more for the wife such as taking her for drives and teaching her to drive again. He was not as sympathetic as he could have been. The wife did not denigrate the husband to her. At the end of the June break-ins she had been very distressed. She felt that the husband had put his head in the sand over his wife's condition.

Mr. Kirkham /

Mr. Kirkham corroborated his wife's evidence about the husband speaking to the wife in Hospital concerning placing her in a home. At the same time he had always found the attitude of the husband in the house, when they visited the parties, to be polite and proper. The real problem he felt was that here one had two very strong willed people. This in our view was the nub of the matter. The husband had acquired professional qualifications after leaving the R.A.F. and without earlier advantages, had made a success of these by his own efforts. The wife had been a very active person and found it very frustrating to have to accept some limitations on her former way of life. Inevitably some friction arose and both contributed to the unhappy state in which the marriage had arrived in 1977. The parties appear to have lived some areas of their lives apart even before the stroke; for instance, each would do his or her own washing and, sometimes, cooking. That may have tended to steer them into separate channels. When the husband gave evidence he told us that he refurnished the wife's bedroom when she was in hospital, had fixed a rail in the bath, arranged to instal a special mat and a device to assist his wife in the bath and, as we have said, fitted up the small room to allow a living in help. It was true that he had been dilatory in fixing a rail to the back steps. The impression we gained was of a man who tried very hard to provide what he thought the wife needed to help her in the house but whose imagination as to the psychological matters between them lacked something. The wife rejected the idea of having anyone to live in because she felt that they could not afford it.

Mrs. Travers was called by the husband. She had met him through the R.A.F. Association's Welfare Work. She kept a diary of the time when she helped at Ringwood in 1975. She had been told by the husband to do all she could to help his wife, who on many occasions said what Mrs. Travers described as "horrid things" about the husband so that, in the end she had to leave. She was not prepared to take any more. When the husband came home in the evenings she would leave, but she did hear the husband talk with the wife over tea which she shared with them.

He was thus not totally taciturn as alleged by the wife.

Mrs. Kalber met Mrs. Griffiths through the mutual interest in riding shared by their children. She had frequently visited the home. She felt that Mrs. Griffiths had no feeling for her husband; the animals came first. She was bringing the petition because she wanted his name blazoned on all the papers. On the second break-in she had spoken to Mrs. Griffiths and thought that she was suffering more from temper than from shock.

When Mr. Griffiths finally left the flat in June, 1978, he wrote to his wife. The first part of which is as follows:

"It is Colin's thirty second birthday today. I also come out of the R.A.F. thirty two years ago today. It is with a heavy heart that I move out today.

We have had some good times together and we must think more of these than the not so good times in order to have any satisfaction from life at all. Some satisfaction is still available from the children. The last three years have been a bit of a nightmare for both of us and it is better that we live apart than continue to cause so much unhappiness to each other. There is no point in this letter in trying to say why it all happened: I don't think there is anything new that can, anyway, be said.

I had hoped that we could have parted with dignity, the initial bitterness assuaged and an agreement at least to be civilized in sorting things out - both personal and financial".

We think this shows the true position. Both parties had made each other unhappy. We find, however, that the conduct of the husband was far from that grave and weighty sort, even taking the whole of the evidence, which we have not thought it necessary to set down in further detail, to entitle the wife to succeed. The petition is dismissed.

As to the answer we are satisfied that the wife grumbled about her husband and, in her efforts to get well made her resentment known when the husband was continuing to bring school work home, but again, her conduct fell very short of that type of nagging which would entitle the husband ^{to} relief. That he had enough and left in June, 1978, we don't doubt but just as it would be wrong to attribute the wife's depression solely to the husband. it would be wrong also not to take

into account her condition when assessing her attitude to the husband. The cross petition is dismissed.

This case appears to us to have been one for which the new divorce provisions of what has been called the "no fault" type of divorce were designed to end a broken marriage.

Each party will pay his or her own costs.