

IN THE SUPREME COURT OF BELIZE, A.D. 2015

ACTION NO. 129 of 2015

JODY WILLIAMS

PETITIONER

AND

CARISA WILLIAMS

RESPONDENT

BEFORE the Honourable Madam Justice Sonya Young

Hearings

26th November, 2015

14th December, 2015

Written Submissions

3rd December, 2015 by both Parties

Mr. Kevin Arthurs for the Petitioner

Ms. Samira Musa-Pott for the Respondent.

Keywords: Family Law - Divorce - Pleading Grounds - Discretionary bars to divorce decree - Enquiry into Counter Charge after Proof of Ground in Petition - The Supreme Court of Judicature Act Cap 91 (The Act)

JUDGMENT

1. This is a petition for divorce presented on two stated grounds as taken from the petition itself:

“7. That the respondent abandoned the matrimonial home in or about April 1, 2010 and has not returned.

8. That the marriage has broken down irretrievably.”

2. The Respondent in her answer denied abandoning the matrimonial home and counter charged adultery on the part of the Petitioner. There was no reply, no application to amend the petition, no discretionary statement no application to strike out the petition or the answer and no affidavits filed.

3. The court states early that the grounds as set out in the petition both fall short of any of the grounds outlined in section 129 of the Supreme Court of Judicature Act Cap 91 and do not comply with Rule 1(2) of the Matrimonial Causes Rules which directs that:

“In the body of the petition shall be stated:

(6) the matrimonial offences charged, set out in separate paragraphs.”

4. Just before trial began, Counsel for the Respondent raised the insufficiency of the pleadings but made no consequential applications. Counsel for the Petitioner did not then apply to amend. By filing an answer, the Respondent joined issue. They then proceeded to trial where both parties treated the issues as live. Although the court does have the power to allow a petition notwithstanding a deficiency in the required information, considerable time may have been saved if an application to strike out had in fact been made by Counsel. This would necessarily be considered in the costs order.

5. For expediency sake the issues will be listed in relation to the most similar statutory grounds available for a divorce.

6. **The Issues**

1. Did the Respondent desert the Petitioner without cause for a period of at least three years immediately preceding the presentation of the petition.

2. Whether the marriage has broken down irretrievably, the parties having lived separately for at least three years immediately preceding the presentation of the petition.

3. Whether the Petitioner is guilty of adultery.

4. If he is, whether such adultery is a bar to his being granted the relief he prays.

5. Whether the Respondent should be granted the relief she prays.

Did the Respondent desert the Petitioner without cause for a period of at least three years immediately preceding the presentation of the petition:

7. The Petitioner gave no evidence in chief pursuant to this ground. In fact he never referred to the Respondent's behavior at all and asked that the divorce be granted on irretrievable breakdown and living separate and apart for three years. That however does not effect an amendment to his Petition.

8. The evidence as it unfolded was that in April, 2011 the Petitioner (by his own admission) refused to move with the Respondent as they had discussed and agreed. At that time they lived with the Petitioner's parents and were expected to move to the home of the Respondent's parents. Moving arrangements had already been organized when he, at the last moment,

changed his mind. He said under cross examination that the move wasn't what he wanted. He gave no evidence of having any further discussions with the Respondent on the matter and volunteered that in any event by the time of the move their relationship was already going downhill. The Respondent, on the other hand, said the Petitioner and his mother organised the moving van to assist her and she left.

9. It is well known that one spouse's physical act of departure does not necessarily make that spouse the deserting party. Desertion is a withdrawal from a state of things and not a withdrawal from a place. Moreover, neither party is to dictate where the matrimonial home should be. That ought to be decided only through discussion and compromise and by mutual agreement. It is clear therefore that the Respondent did not desert the Petitioner or abandon the matrimonial home. This ground has not been proven and is therefore rejected.

Whether the marriage has broken down irretrievably, the parties having lived separately for at least three years immediately preceding the presentation of the petition:

10. Both parties agree that they have lived separately and apart since April 2011. They also agree that there was an order for legal separation (not on the ground of adultery) granted by the Belize Family Court in July 6, 2011. Such a legal separation is prima facie evidence that the parties have lived separately and apart. The Respondent, by also praying for a divorce in her answer undoubtedly admits that the marriage has broken down irretrievably. The salient ingredients of this ground have therefore been proven. However

judicial enquiry does not end here. The court is obligated to inquire, as far as it reasonably can, into any counter charge which is made against the Respondent - Section 133 of the Act.

Whether the Petitioner is guilty of adultery:

11. Throughout the trial and for the most of his submissions counsel for the Petitioner seemed concerned that the no fault ground he applied under, if proven, ought to be the only issue of inquiry for the court.
12. The court has already stated in *Leroy Alvarez v Melina Alvarez No. 274 of 2014* that the absolute and discretionary bars to the pronouncement of a decree of divorce are relevant to no fault based petitions. In any event what distinguishes this case from the *Alvarez* case, is that the Petitioner here also raised a fault based ground in paragraph 7 of his petition (as stated earlier). By raising this issue he cannot now state that his only ground was a no fault ground.
13. The law as it relates to fault based divorces is clear. The court is not bound to pronounce a decree of divorce if it finds that during the marriage the Petitioner has been guilty of adultery. Moreover, where the Petitioner's relief is opposed by the Respondent on the ground of his adultery the court may give the Respondent the same relief to which he or she would have been entitled to, had they brought a petition.
14. The Respondent in this case has proven the Petitioner's adultery by the proof of the birth of a child on 16th November, 2011. A child, whom the

Petitioner accepts was conceived by April 2011. He also volunteered under re-examination that by the time of the planned move, his wife had already found texts arousing her suspicions of his infidelity. This court finds that the Petitioner is guilty of adultery.

If he is whether such adultery is a bar to his being granted the relief he prays:

15. The court's refusal to pronounce the decree in favour of the Petitioner is the exercise of a regulated but unfettered discretion. Counsel for the Petitioner in his written submissions presented the case of **Valdemar Andrade v Lourdes Andrade Action No 107 of 2004, Belize Supreme Court** and the decision in relation to unreasonable delay outlined at paragraph 15: *"I find that having known of the Petitioner's adultery for more than three years, there was unreasonable delay by the respondent in seeking a divorce on the basis of that adultery."*

16. Although there is no limitation to bringing a divorce claim the court ought insist on promptness. However, the law as it relates to unreasonable delay is that it is not only dependent on the lapse of time but rather on culpability and willfulness. The party who alleges the delay to be unreasonable must prove this and the other party must be given a sufficient opportunity to explain the reason for the delay. In the instant case delay was raised as an issue only in the submissions. It was never pleaded. Bars whether absolute or discretionary should be specifically pleaded. The court is duty bound to inquire into absolute bars (whether pleaded or not/and if proved to act on them). The same cannot be said of discretionary bars. Because it was not

pleaded it may take the Respondent by surprise. It equally raises issues of fact which do not arise out of the pleadings.

17. Dyson LJ in paragraph 21 of **Al-Medenni v Mars UK Ltd [2005] Civ 1041** stated:

".... It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in litigation, so that each has the opportunity of responding to the points made by the other. The function of the judge is to adjudicate on those issues alone...."

22. The starting point must always be the pleadings. In Loveridge v Healey [2004] EWCA Civ 173, Lord Phillips MR said this at paragraph 23:

"In Mc Philemy v Times Newspaper Ltd [1999] 3 All ER 775 Lord Wolf MR observed:

'Pleadings are still required to work out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties.'

It is on the basis of the pleadings that the parties decide what evidence they will need to place before the court and what preparations are necessary before the trial."

18. Since delay was never in issue, I decline to make a determination based on same where no evidence was called either to prove or disprove such an allegation.
19. I find the Petitioner's adultery can act as a bar to his being granted a divorce and I so hold.
20. Section 135 of the act states:

“If in any proceedings for divorce the respondent opposes the relief sought, in the case of proceedings instituted by the husband, on the ground of his adultery, cruelty or desertion or, in the case of proceedings instituted by the wife, on the ground of her adultery, cruelty or desertion, the Court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.”

21. Having considered the facts of this case I find that the Respondent ought to be given the relief she seeks. I therefore grant the decree nisi on the ground of the Petitioner’s adultery. The decree is to be made absolute in six weeks. Each party is to bear his or her own costs.

**SONYA YOUNG
JUDGE OF THE SUPREME COURT**