

**IN THE SUPREME COURT OF BELIZE A.D. 2014
(DIVORCE)**

ACTION NO. 251 of 2014

BETWEEN

JODY WAGNER

Petitioner

AND

HESTON RORY WAGNER

Respondent

Before: The Honourable Madame Justice Griffith
Date of Hearing: 12th November, 2015; 30th November, 2015 (on written submissions)
Appearances: Ms. Darlene Vernon, Vernon & Lochan for the Petitioner; Mrs. Deshawn Arzu-Torres, Young's Law Firm, for the Respondent.

DECISION

Divorce petition – adultery and cruelty – standard of proof – facts amounting to proof – single act amounting to cruelty.

Introduction

1. The parties Jody Wagner and Heston Wagner were married in Belize in February, 2006. The petitioner was a single woman without child at the time and the respondent twice divorced with six children from his earlier marriages and other unions. The parties cohabited after the marriage in Punta Gorda Town, in southern Belize and there was one minor child of their marriage. The Petition was presented on the grounds of the Respondent's adultery and cruelty. The Respondent opposed the dissolution of the marriage, thus denying the matrimonial offences alleged. The Court is to determine whether the Petitioner has established the grounds of divorce pleaded so as to grant a decree dissolving the marriage.

The Evidence

The Petitioner's Case

2. The Petitioner, a Jehovah's Witness, met her husband, a local pilot in 2005. They courted and got married in February, 2006. The Petitioner described the initial stage of her marriage as happy and satisfying (after overcoming a challenging period where the Respondent's ex-wife lived next door to them), characterized by an active social life involving frequent travel and a healthy sex life with her husband. The Petitioner worked in her husband's business and says she felt wanted and secure. This happy state changed however, after the couple's child was born some three years after the marriage in October, 2009. The Petitioner alleges that one of the Respondent's exes, with whom he had a child, started bragging to the Petitioner's family that she and the Respondent were having an affair. The Petitioner moved out of the matrimonial home, but returned after a few days, as she said the Respondent begged her forgiveness. The Petitioner forgave him on condition that he would not repeat his behavior.
3. After reconciling however, the Petitioner said she began noticing changes to her husband's behavior which made her suspicious. The Respondent she claimed, lost interest in her sexually and the previously healthy sex life became almost non-existent. His disposition became miserable at home, as if he didn't wish to be there and he became moody and started speaking to her with disrespect, even using profanity. The Petitioner says she was no longer invited to accompany him to his staff functions as she previously did or the Respondent made excuses why she should not go with him to these functions.

4. In addition to the above, the Petitioner states that her husband started staying out later than usual and on occasion even overnighted instead of returning home. On more than one occasion the Petitioner noticed the Respondent undressing after returning home from work and his undershirt would be on the wrong side when she was certain it was on the correct side when he left home. Further, the Petitioner said she became infected with very painful yeast and urinary infections which she normally did not contract. The Petitioner asked the Respondent about his activities and he denied having an affair - but her gut instinct told her that he was having an affair.
5. With further reference to the question of an affair, in July, 2014, a young lady called her residence and told the Petitioner that the Respondent was having an affair with someone whom the young lady named. This information shocked and greatly upset her. She confronted the Respondent about it later that evening but he denied the allegation. Even though the Respondent denied the allegation the Petitioner said his response was out of character in that he looked visibly upset, was unable to eat, complained of heartburn and appeared worried for several days. As that week went on the Respondent said her husband began to talk down to her, declined to challenge the information about the affair and accused her of causing him undue stress thus putting him in danger of failing a professional exam he was due to take for his job.
6. The Petitioner stated that she did some investigation regarding the person with whom her husband was said by the caller to be having an affair and uncovered that that the young lady was 19 years old. Through assistance of her friends the Petitioner obtained a photograph of the young lady from facebook (the Petitioner herself did not have a facebook account).

The Petitioner also discovered that the young lady had recently had a miscarriage and it was rumored that the child was her husband's and that it was said that her husband had been financially supporting the young lady by leaving packages for her at his place of work. The Petitioner says around that time the Respondent began suffering from an acute throat infection, which according to her internet research matched the external symptoms of gonorrhoea in a male. When she informed the Respondent of that, he cursed her. Her investigation also showed that the Respondent spent a lot of nights away in San Pedro, Princess Hotel and another cheaper hotel in Belize City. With all this information in hand the Petitioner says she confronted her husband, he became very angry and finally admitted that her accusation was true.

7. It was alleged that the Respondent admitted to having an affair with the person named in the telephone call and told the Petitioner where and when he had committed his acts of adultery. He admitted to not using a condom and the Petitioner said she started suffering from acute sexually transmitted diseases which could only have been transmitted by the Respondent. A friend of the Petitioner's also reported having seen the Respondent in San Pedro with the young lady in question. As a result of the Respondent's admissions, the Petitioner left the matrimonial home in July, 2014 with their child, along with some belongings and never returned. The Respondent tried on several occasions to reconcile, calling the Petitioner, offering to attend counselling but the Petitioner was resolute that her marriage had ended.
8. Prior to gaining knowledge of the Respondent's adultery, the Petitioner says he began to treat her with cruelty. He was angry at her without reason and contrary to the behavior that she always insisted on, began cursing at her and making derogatory remarks.

The Respondent demanded that the Petitioner perform sexual acts which she found to be perverse and belittled her when she refused, telling her that he would satisfy himself elsewhere. As a result of his affair, the Petitioner says she contracted acute urinary and yeast infections which were very painful and the Respondent was aware of these infections as she told him and he would obtain the medicine to treat them. The Respondent she says, actually would get angry at her when she contracted those infections and made her feel ashamed about it. Because of the Respondent's behavior towards her the Petitioner says she went into a depression, and her sleeping and eating habits were affected.

9. In particular, the Petitioner says that after she rebuffed one of his many attempts at reconciliation, the Respondent with her concurrence borrowed her vehicle (a vehicle he provided and still had a key) and two days after he borrowed it the Petitioner was pulled over by the Gang Suppression Unit at a police checkpoint, saying that they received a tip that there was ammunition in her vehicle. The police officers searched the vehicle and in the glove compartment found 2 bullets. The Petitioner was arrested and taken to the police station for possession of the two bullets without a firearms licence. She was told by the police that she would have to own up to the bullets or go to jail. The Petitioner said she was horribly afraid and began sobbing uncontrollably.
10. According to the Petitioner, she suspected that the Respondent had 'set her up' by deliberately leaving the bullets in the glove compartment and tipping off the police about it. Her suspicion as to his role was alerted when she considered that all of the persons before her at the check point were waved on by the police and that the officer said he received a tip as to the presence of the ammunition and that the officer who searched the vehicle went directly to where the bullets were found.

The Respondent was called and came to the police station where he clarified that he was a registered gun holder and had accidentally left the bullets in the glove compartment. The Petitioner was released without charge but then she says the Respondent told her 'see...if I wanted I could have you arrested and sitting at jail'. The Respondent further asked her whilst leaving the station to drop the divorce petition which by then she had already filed.

11. The Petitioner says she refused accede to the Respondents requests for reconciliation and he continued to verbally abuse her by telephone and financially, by withholding support. The Respondent offered financial benefits, the Petitioner said, such as part ownership of his business, in order to lure her back to the marriage. The Petitioner refused and moved from the South back to Belize City where she now resides with her daughter, in her parents' home.

The Respondent's Answer

12. The Respondent opposes the petition for divorce. His position is that he loves his wife and is desirous of reconciling and continuing with his marriage. The Respondent's overall view on the divorce proceedings is that his wife has been negatively influenced by friends and her parents and has chosen to accept rumors as truth. He denied all allegations of adultery or cruelty and put the Petitioner to strict proof of same. In particular, the Respondent denied that he had an affair with his ex-girlfriend, the mother of one of his children in 2009. His response to this allegation was that the Petitioner chose to be led astray by malicious gossip and that there was absolutely no evidence that he had such an affair. Also, that the Petitioner always had a difficulty with that ex-girlfriend whom she openly disliked and accused him of being inappropriate with her, given the Respondent's status as a married man.

13. With respect to the alleged affair with the other young lady which arose in July, 2014, the Respondent denied knowing that young lady or the person who allegedly called the Petitioner and volunteered the information about the affair. He did admit to knowing a young lady with the same first name as the alleged uncited co-adulterer but as having only met her by the way and certainly denied that he financially supported such a person or that the person had a miscarriage of his child. Again, the Respondent pointed to the lack of physical evidence of any affair and asserted that the Petitioner had allowed herself to be led astray by rumours. Particularly, the Petitioner's witness who had alleged to have seen the Respondent in San Pedro with the alleged co-adulterer did not appear to give evidence at the hearing.
14. As regards the Petitioner's testimony that his alleged affairs caused her to contract sexually transmitted diseases, the Respondent answered that the Petitioner had long suffered from gynecological issues and contracted urinary and yeast infections on a regular basis over several years. That the Petitioner suffered from gynecological issues, the Respondent said, was borne out by her difficulty in conceiving which was made possible only with surgical intervention (as was confirmed by the Petitioner) in order to enable the conception and birth of their daughter. The Respondent denied that he had mood swings or that his disposition changed towards the Petitioner. Instead he averred that his occupation as a pilot was a stressful one and it was not uncommon for him to return home tired after a long day of flying and further, that whilst he would have had arguments with his wife he never verbally abused her or belittled her.

With respect to the second allegation of adultery after the Petitioner said she received the phone call with the information of one 'Christie', the Respondent states that he was worried, he was anxious, he was stressed but that was because he was preparing for an important exam which he had registered to take overseas.

15. The Respondent categorically denied having admitted any affair to the Petitioner or her parents as alleged. He stated that the Petitioner was emotionally fragile which caused her to succumb easily to rumors about his infidelity, her idea of sexual perversions was actually normal sexual behavior which was coloured by her religious beliefs – in this regard the Respondent said that before their marriage the Petitioner had no difficulty engaging in the very sexual activities that she now termed perversions. The Respondent attributed the stress the Petitioner claimed to have suffered as a result of the pressure of classes she was taking whilst furthering her education and which also resulted in her having less time to socialize with him than she used to. The Respondent described the Petitioner as a person of generally fragile emotional state who had difficulty with her weight after giving birth to their child. The emotional instability and insecurity about her weight caused the Petitioner to be prone to her constant suspicions and fears relating to his fidelity.
16. As far as the Petitioner's refusal to reconcile, the Respondent maintained that he continues to financially provide for his wife and daughter and that contrary to what the Petitioner wants the Court to believe about their marriage, they remain on very good terms as evidenced by the numerous telephone calls he makes (the Petitioner stated that these calls are for the most part for the Respondent to speak with their daughter) and that he has visited the Petitioner at her parents' home and they have shared meals together.

The Respondent believes that the Petitioner's faith as a Jehovah's Witness is causing her to want to end her marriage even just on her unconfirmed suspicion of adultery and that she disapproves of his involvement in politics which is also against her religious beliefs.

The Court's consideration

The Applicable Law

17. The first question to be considered is the standard of proof of matrimonial offences in Belize. The Supreme Court of Judicature Act Cap. 91 ('SCJA'), section 129 provides the grounds upon which a marriage may be dissolved. The Petitioner has based her case on the grounds of adultery and cruelty (sections 129(1a) & 129(1c)). Section 133 of the SCJA thereafter provides that the Court's duty is to enquire into the facts alleged by the petition and if satisfied that the facts have been proven, to grant the order for dissolution of the marriage. The standard to which the Court must be satisfied is not specified in the legislation. The applicable standard of proof however, is taken from judicial precedent, which in Belize, pursuant to section 18 of the SCJA, would be the same as that in England up to a certain period.
18. Learned Counsel for the Petitioner cited (and learned counsel for the Respondent did not oppose), the dicta of Alcantara J in Belizean authority **McKoy v McKoy**¹, to the effect that proof of adultery (requiring more than a balance of probabilities), was to be established on a *preponderance of probabilities*. Learned Counsel also referred² to *Halsbury's Laws of England, 4th Ed.* where it was stated that '*adultery must be proved to the satisfaction of the Court'...meaning...'on a preponderance of probability'*.

¹ Belize Supreme Court Action No. 39 of 1981

² Para 8 of Submissions of Counsel for Petitioner, referencing Halsbury's Laws of England, 4th Ed. Vol 29(3), para 410.

It was further submitted, that *'divorce is a civil proceeding and the analogies of criminal law are not apt'*. The Court is also aware of the decision of the Belize Supreme Court in **Pitzhold v Pitzhold**³ per Muria J, where his finding of adultery was expressed to have been made on a balance of probabilities.

19. Reference is however made to the Belize Court of Appeal's decision of **Roe v Roe**⁴ which does not support the standard of proof as the civil standard of a balance of probabilities. In considering the specific question of what standard of proof was required in Belize's law to prove cruelty, Smith JA⁵ examined the legal position in the UK including the House of Lords' decision in *Blyth v Blyth*⁶, (which is actually the decision from which the above Halsbury's reference cited by learned Counsel for the Petitioner is taken⁷). Starting with the jurisdictional basis of the SCJA as acknowledged by the Court herein (then section 17), Smith JA referred to the similar provisions then found in the English Matrimonial Causes Acts of 1950 and 1956, which required cruelty to be proven beyond a reasonable doubt. Smith JA then considered the submissions of Counsel, to the effect that proof beyond reasonable doubt (in relation to cruelty) continued to be the law until the House's decision in *Blyth*. Counsel in **Roe**, had relied upon the decision of Lord Denning in *Blyth*, that *'so far as the grounds of divorce are concerned, the case, like any other civil case may be proved by a preponderance of probability, but the degree of probability depends on the subject matter...'*.

³ Belize Supreme Court Action No. 101 of 2009, per Muria @ para 37

⁴ 35 WIR 92

⁵ Roe v Roe supra @ pg 95 *et seq.*

⁶ [1966] AC 643

⁷ para 109 on the standard of proof in Rayden on Divorce, 10th Ed. makes reference to *Blyth*.

20. It was then stated by Smith JA however, that the issue in *Blyth* was whether condonation of adultery had to be proved beyond reasonable doubt and it was decided on a majority decision that it did not have to be so proved. The question of the standard of proof for a matrimonial offence was then also considered, and Smith JA agreed with the analysis of *Blyth* made by Willmer LJ in *Bastable v Bastable*⁸ who pointed out that on the issue of the applicable standard of proof to a matrimonial offence, the House was divided 2-2 in *Blyth* and the remaining Lord Pearson adopted an intermediate position. As it pertained to proof of a matrimonial offence, the decision in *Blyth* was further said by Willmer LJ to have been *obiter* and until such time as further considered by the House, he would retain the earlier applicable standard as proof beyond reasonable doubt.
21. Smith JA then referred to a Belizean 1976 unreported case of *Sikaffy v Sikaffy* where the standard for proof of cruelty was held to be beyond a reasonable doubt. It was stated by Smith JA that the position in England was settled by the **Divorce Reform Act 1969** which introduced the concept of irretrievable breakdown as the basis for divorce whilst doing away with the matrimonial offences. The standard of proof required was then settled as the civil standard of a balance of probabilities. With respect to the position in Belize however, Smith JA⁹ stated as follows:-

"Perhaps the time may come when the legislature may consider changing the basis upon which a divorce may be granted in Belize to that of the concept in the English Divorce Reform Act 1969. But so long as our law of divorce continues to be based on the concept of the matrimonial offence, the required standard should continue to be proof beyond reasonable doubt."

⁸ [1968] 2 All ER 701

⁹ *Roe v Roe* supra @pg 98

In the absence of the legislative change referred to by Smith JA above, and subject to any further pronouncements by the Belize Court of Appeal, the standard applied to proof of matrimonial offences in Belize is that beyond reasonable doubt. The adultery and cruelty alleged by the Petitioner thus now fall to be considered against this standard.

Adultery

22. With the standard of proof required as proof beyond reasonable doubt, it is immediately observed that the evidence put forward in support of the allegation of adultery was very poor - being based as it were, entirely on hearsay. In the first instance, the submission of learned counsel for the Petitioner is accepted, that direct evidence (an act in time or place or by name) is not required to prove adultery, for direct evidence, given the nature of the act itself, will seldom be available. What suffices, as prima facie evidence but rebuttable, is evidence of strong inclination along with opportunity¹⁰. The Petitioner's evidence is considered as follows:-

- (i) The 2009 allegation of the Respondent's adultery concerns an ex-girlfriend of the Respondent's with whom he has a child. This gave rise to a fact of opportunity for contact between the two, but any presumption of that contact being adulterous is easily rebutted by the fact that the Respondent continues to raise a child with this person. Aside from this opportunity for contact, what existed was an apparent mutual dislike on the part of the Petitioner and the ex-girlfriend, a situation which is all too common and reports of bragging by the ex-girlfriend - a situation once again, all too common. This does not suffice as proof of adultery beyond reasonable doubt.

¹⁰ Rayden on Divorce, supra, para 110.

- (ii) The July, 2014 allegation was said to be delivered via a cell phone call by a third party, not known to the Petitioner. That person did not come before the court. The Petitioner had never seen the person said to be the co-adulterer, nor did the Petitioner have any other physical evidence that she came upon as to the alleged co-adulterer's existence or any contact between that person and her husband. Everything put forward by the Petitioner was supplied by hearsay evidence of the Petitioner's friends of which she had no independent verification. The alleged sighting of the Respondent with the young lady in San Pedro on Valentine's Day 2014, remained hearsay (as the bearer of that information did not appear to be cross examined on the affidavit that was given). Additionally, the facts alleged regarding the Respondent's conduct on that Valentine's Day were refuted with proof by the Respondent with the result that the facts alleged were redirected to have happened in a different year. The mix up in the year may have been a genuine error, but in those circumstances could not amount to proof of adultery beyond reasonable doubt.
- (iii) With respect to the other evidence submitted in support of the charge of adultery, an allegation of a sexually transmitted disease can substantially go towards proof of adultery. However, the Petitioner had absolutely no medical evidence of having suffered an STD. She failed to even name what was allegedly contracted, its symptoms or the course of treatment prescribed. Instead, the evidence was that the Petitioner had a history of gynecological issues and not infrequently suffered from yeast and urinary infections, which she was content to have treated by tablets her husband provided to her.

As a matter of very common knowledge, urinary or yeast infections in women are not STDs, and whilst they may arise from sexual contact they can commonly be caused by many other reasons independent of sexual contact. Additionally, the Petitioner testified to concluding that from her research on the internet, the Respondent's throat infection matched men's external symptoms of gonorrhoea. This bit of evidence is quite unacceptable for any standard of proof.

(iv) With respect to the urinary and yeast infections, it is the Court's view, that if the Petitioner was content to self-diagnose and never once go to the doctor, to investigate what she might have thought to be infections contracted as a result of her husband's infidelity and furthermore allow her husband to hand her tablets to clear up those infections, it is not conceivable how this evidence is supposed to suffice or assist in a finding of proof beyond reasonable doubt of adultery. This evidence amounted to bald assertions, which were countered by bare denials, the latter of which had an advantage because of the Petitioner's gynecological history and inaction in relation to her own health.

23. The most viable aspect of the charge of adultery was the alleged confession. Rayden on Divorce says that a spouse's confession of adultery should be corroborated¹¹. The case of **Warren v Warren**¹² states that "*...The Court regards with suspicion evidence of a petitioner or respondent if uncorroborated and examines closely evidence of a confession or admission of adultery...*" This notwithstanding, the Court may nonetheless act on an uncorroborated confession where satisfied beyond a doubt that the confession was made and is true.¹³

¹¹ Supra, para 113, pgs 180-181

¹² [1925] P. 107 per Swift J @ 110

¹³ Ibid.

One example given is by a spouse anxious for forgiveness. This example could have applied in this case, but the Court is nonetheless driven to act with caution because of several reasons. The Petitioner has remained friendly with the Respondent, albeit resolute in her refusal to reconcile and did at some point engage with the Respondent to reconcile.

24. Additionally, the Petitioner did not deny the legitimacy of a list prepared by her in the course of undergoing instruction or assistance towards such reconciliation. That list contained no indication of adultery. Rather, the list made reference to the Respondent 'keeping a distance' from the ex-girlfriend with whom an affair was suspected and from 'others' the Respondent may have 'had an interest in'. It is however believed, having seen and heard the Petitioner, that if what she wrote were meant to refer to adulterous affairs which the Respondent confessed to, that fact would have been made clear in that list. It is thus found that the Respondent's confession should be corroborated. Such corroboration could have been made available insofar as the Petitioner alleged that the Respondent confessed to her parents. No such evidence was submitted to the Court and this does not assist the Petitioner.
25. With respect to the cases referred to on confession - In **Williams v Williams & Padfield**¹⁴, uncorroborated evidence of the Respondent's confession was accepted, but that was a written admission. In **Warren**, the Respondent wife confessed to adultery which was condoned by her husband and several years later she once more confessed adultery to her husband and that she was pregnant. These statements were made orally and in writing and also proved by the evidence of a relative to whom the wife also confessed. The wife did not defend the divorce suit by the husband.

¹⁴ [1865] LR 1P&D 29

The above two circumstances are considered much differently than the circumstances of the case at bar, where the confession alleged is oral only and a person to whom it was allegedly repeated has not been brought before the Court. The absence of corroboration of the Respondent's oral confession is viewed as fatal in light of the requirement for proof beyond reasonable doubt of the charge of adultery. On the whole therefore the Respondent's adultery has not been proved by the Petitioner.

Cruelty

26. Rayden's on Divorce cites the case of **Russell v Russell**¹⁵ in its opening definition of cruelty. This definition, also referred to by both Counsel in their submissions on the law, reads thus –

“conduct of such a character as to have caused danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger.”

There are a number of principles which have emerged from the many cases decided on the issue of cruelty over the years, some of which are of general application and can serve as guides in assisting the Court in the determination of individual cases. As many of those cases have found however, the Court must at all times be wary of any approach based on generalities, as each case will at all times depend upon the peculiarities of parties and their circumstances. Some relevant principles are as follows:-

- (i) The fact that a marriage has broken down is no reason in itself for a finding of cruelty¹⁶.

¹⁵ [1897] A.C. 525

¹⁶ Rayden, supra @ pg 145

(ii) In the words of Willmer LJ in **Windeatt v Windeatt**¹⁷ (No. 2)

“the conduct complained of must be looked at as a whole and it must be looked at in the light of the sort of people the parties are”.

(iii) Similar decisions are useful but a comprehensive definition of cruelty should never be attempted - as stated in **Jamieson v Jamieson**¹⁸. The following paragraph from Lord Tucker is extracted in full, as it is considered highly applicable in the instant case:-

“...judges have always carefully refrained from attempting a comprehensive definition of cruelty for the purposes of matrimonial suits, and experience has shown the wisdom of this course. It is my view equally undesirable – if not impossible – by judicial pronouncement to create certain categories of acts or conduct as having or lacking the nature or quality which render them capable or incapable in all circumstances of amounting to cruelty in cases where no physical violence is averred. Every such act must be judged in relation to its attendant circumstances, and the physical or mental condition of the offending spouse and the offender’s knowledge of the actual or probable effect of his conduct on the other’s health (to borrow from the language of Lord Keith) are all matters which may be decisive in determining on which side of the line a particular act or course of conduct lies.”

(iv) As was stated in **Gollins v Gollins**¹⁹ which is considered the primary authority on cruelty–

“In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence.

¹⁷ [1963] P. 25

¹⁸ [1952] A.C. 525

¹⁹ [1963] 2 All ER 966 H.L. per Lord Reid @ 970

We are dealing with this man and this woman and the few a priori assumptions we make about them the better."

(v) Further, per **Gollins** – intention to injure, where it causes actual physical or mental harm, would be a clear case, but such an intention is not necessary for there to be a finding of cruelty.

(vi) The conduct complained of must be grave and weighty so as to make cohabitation virtually impossible and it is the effect of the conduct rather than its nature which is of paramount importance in assessing a charge of cruelty.

(vii) Per Lord Merriman in **Jamieson**²⁰, regarding the legal concept of cruelty –

"it comprises two distinct elements: first, the ill-treatment complained of, and, secondly, the resultant danger or the apprehension thereof. Thus it is inaccurate, and liable to lead to confusion, if the word "cruelty" is used as descriptive only of the conduct complained of, apart from its effect on the victim."

(viii) It is possible for the Court to pronounce a decree on a single act of cruelty²¹ if it falls within the conduct described in **Russell v Russell**.

27. With respect to the conduct complained of in the instant case, the Court is of the opinion that the standard of cruelty is not met for almost all the allegations. Deliberately allowing or inducing a spouse to a belief of adultery can, even if adultery is unproven, amount to cruelty, if the effect of so doing is proven as cruel.

²⁰ Supra @ pg 545

²¹ Barker v Barker [1949] P 219 per Lord Merriman @ 221

That however, is not the situation in this case, as the Petitioner's belief in the allegations of adultery were not assisted or induced by the Respondent. Additionally, causing a sexually transmitted disease can qualify as cruelty but this allegation was entirely unproven. The allegations of the Respondent verbally abusing and belittling the Petitioner were nothing more than bare allegations. There was no specific example given of precisely what the Respondent is alleged to have said. The sexual perversions said to be asked of the Petitioner were never described whilst the Respondent hinted that the Petitioner was referring to oral sex which she had no difficulty performing prior to the marriage. With respect to the Petitioner's testimony of feeling weak, worthless and ashamed as a result of the Respondent's conduct, it is difficult to accept that testimony because the conduct complained of was not described by the Petitioner.

28. The allegation concerning the Respondent planting ammunition inside the Petitioner's vehicle however is able to be differently considered. The incident first of all was accepted as having occurred by the Respondent – who says that he inadvertently left the ammunition inside the vehicle. The Court considers the allegation that the police who stopped the vehicle indicated that they received a tip off of the presence of the ammunition in the vehicle. The Court considers that there was no evidence that any other person besides the Respondent and Petitioner had access to the vehicle. This means that on the evidence, the opportunity for some other person to have been aware of the ammunition being inside the vehicle and alert police of this fact, was limited if not non-existent. Insofar as the Respondent says he left the ammunition in the vehicle inadvertently, the question is begged, of who could possibly have told the police about the ammunition other than the Respondent.

29. The circumstances in relation to this incident are regarded by the Court as follows - the Petitioner - being a law abiding, gainfully employed citizen, female, travelling alone, was unlikely in the usual course of things, to be stopped on suspicion of carrying ammunition. There was no evidence of any other person having access to the vehicle besides the Petitioner and Respondent and the Respondent admitted to being responsible for leaving the ammunition in the vehicle, albeit inadvertently. The Petitioner was told that the police had acted on a tip off and the police found the ammunition located in the glove compartment of the vehicle without much searching. The Respondent borrowed the vehicle just 2 days before the incident and the Petitioner had lately rebuffed the Respondent's invitations for reconciliation.
30. It is found by the Court that the Respondent deliberately placed the ammunition in the Petitioner's vehicle and alerted the police. In this regard the Court accepts the Petitioner's testimony that the Respondent told her after she was released from police custody that he could get her arrested if he wanted, thus acknowledging his responsibility in placing the ammunition in the vehicle and tipping off or arranging the search by the police. It is not the Court's belief that the Respondent ever intended for the Petitioner to be locked up, but he did intend to scare her and to demonstrate the power he held with a view to intimidating her. The degree of calculation required to carry out such an act however and the emotional harm that the Petitioner would have suffered as a result of coming into contact with the law in the circumstances that she did, renders the Respondent's actions as falling within that described as grave and weighty.

31. As a matter of fact, the Court goes further and finds that this act by the Respondent was a dangerously calculated and cruel act, carried out with the intention of terrifying the Petitioner to a point of bending her will to him. It is found that the Petitioner was in fact terrified and traumatized by the ordeal of being stopped by police and found with ammunition in her vehicle. It is also found the Petitioner was terrified by being arrested and taken to the police station and thinking for however long (before the Respondent came to her rescue), that she was liable to be locked up for something she did not do. In this regard, the average citizen in Belize, much less an educated person such as the Petitioner would be aware of the harsh penalties of imprisonment for firearm offences and thus her apprehension at being in trouble in the law, would have been considerable. After all the trauma she experienced, the Petitioner was told by the person she loved (at least at some point), cohabited and lay with and shared a child with, that he put her through that ordeal deliberately - just because he could. This conduct is found to be grave and weighty conduct that caused emotional harm to the Petitioner, so that she ought not to be expected to live with the Respondent thereafter. The matrimonial offence of cruelty is found proven as charged on this single act of cruelty and the Petitioner is granted an order for the dissolution of her marriage.

Final Disposition

32. On conclusion of the matter, the following orders are made:-

- (i) The Petitioner is granted a decree nisi dissolving her marriage on the basis of the Respondent's cruelty, to be made absolute three months from the 13th January, 2016.

(ii) Ancillary matters are to be dealt with separately by originating summons and until such time the status quo remains which is that parties are vested with joint custody of the minor child, Bree.

(iii) Costs are awarded to the Petitioner to be assessed by the Registrar if not agreed within 21 days of the date of this judgment.

Dated the 16th day of February, 2016.

Shona O. Griffith
Supreme Court Judge.