

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHMT 2013/0066

BETWEEN:

STEPHANIE A. JOSEPH

Petitioner

and

SELWYN P. JOSEPH

Respondent

Appearances:

Ms. Celia Edwards, Q.C. with Mr. Deloni Edwards for the Petitioner
Mr. Derick Sylvester with Ms. Cathisha Williams for the Respondent

2014: July 21, September 22

DECISION

[1] **MOHAMMED, J.:** On the 27th May 2013, Stephanie Joseph (“the Wife”) filed for divorce from Selwyn Joseph (“the Husband”) on the ground of the unreasonable behaviour of the Husband. The divorce which is now contested is still pending before the Court. In the meantime the Wife has filed two applications which have engaged the Court’s attention. They are the application filed on the 15th April 2014 (“the committal application”) to commit the Husband to prison for breach of certain parts of an order dated 23rd January 2014 (“the Order”). The Order entered by both parties was in the form of an undertaking until the hearing of the substantive matter or until further order for each party to “refrain from

molesting, harassing, besetting, intimidating and/or threatening and carrying out physical or other abuse of the other”.

- [2] In the second application filed 26th May 2014 (“the injunction application”) the Wife is asking the Court to order the Husband to pay the arrears of electricity, reconnection fee and the monthly sum for the upper floor of the matrimonial home where the Wife and the children of the family reside. The Husband has vigorously opposed both applications.

The Committal Application

- [3] The Wife contends that the Husband has breached two aspects of the Order:
- (i) By verbally harassing her on 30th January 2014; and
 - (ii) By sexually molesting /abusing her on 5th March 2014.
- [4] The Husband has denied breaching the Order, instead contending that it is the Wife who has been verbally harassing him and that the Wife consented to sexual relations on the 5th March, 2014. The sole issue is whether the Wife has proven that the Husband has breached the aspects of the Order as alleged.
- [5] An undertaking given to the Court in pending proceedings on the faith of which the Court sanctions a particular course of action or inaction has the same force as an injunction made by the Court, and a breach of the undertaking is misconduct amounting to contempt. As in the case of disobedience to an order of the Court, the breach of an undertaking is punishable by committal or by sequestration¹.
- [6] To show that a person is in contempt, it must be established that the alleged conduct was intentional and that the contemtor knew of all the facts which made that conduct a breach of that order². The test which the Court is to apply in

¹ Halsbury's Laws of England 4th ed Vol 9(1) para 482

² Blackstone's Civil Practice 2012 at 1293

determining whether the Wife has proven that the Husband is in contempt was described in **Blackstone's Civil Practice 2012**³ as:

"The court will not commit a person for civil contempt unless the allegations of contempt is proved beyond a reasonable doubt... Where more than one breach is alleged, the court must consider whether each of them has been proved beyond a reasonable doubt, but in deciding whether the breaches justify committal, the court must consider the whole picture to see whether it portrays a respondent seeking to comply with the Orders of the Court or one bent on flouting them (**Gulf Azov Shipping Co Ltd v Idisi** [2001] EWCA Civ 21, LTL 16/1/2001, at [18])."

[7] The Wife set out the verbal assault at paragraph 7 of her affidavit filed 15th April 2014 as:

"7. On the 30th day of January 2014 the Respondent verbally harassed me in the following way:-

- a) About 1:00 pm I returned home to drop off empty food containers for my catering business having gotten a ride from a gentleman;
- b) I unpacked the gentleman's van of the said container while the driver of the vehicle stood outside near to his van;
- c) He has to wait on me because I was also getting a ride from him to pick up my daughter at school;
- d) The Respondent came home at the same time and as I was stepping out of the house the Respondent uttered loudly in the presence of myself and the gentleman "Go with he, she is for sale, she is a fucking whore" and "She want to ride in big money van because she want big money man".
- e) I said nothing to the Respondent and left."

[8] The Husband's denial is set out at paragraph 7 of his affidavit filed 29th April 2014. According to the Husband, on the morning of the 30th January 2014, without any provocation from him the Wife made an insulting remark to him before leaving the house to attend to her catering business. He stated that he did not respond to her. However, when the Wife returned to the home he took the opportunity to reply to her with an equally disparaging comment. He denied calling the Wife a whore but

³ At page 1293

he admitted that he did see a van parked at the front of the yard but he was unaware if the Wife had alighted from it. He denied mentioning anything about the van and admitted that he knew the gentleman who was in the van since they both went to school together. His position is the Wife instigated the verbal attack on 30th January 2014 and his comments were made in response to the unprovoked verbal attack in an attempt to defend his honour.

[9] Apart from the 30th January 2014 verbal attack, the Husband accused the Wife of initiating verbal attacks on him as early as two days after the Order.

[10] The Wife brought forward her son, Tevin Joseph, who in his affidavit⁴ refutes allegations made by the Husband about the Wife and her friend Donna Baptiste who in her affidavit⁵ denies allegations made by the Husband about her and instead makes an allegation about another incident. However, their evidence is irrelevant since they were not present when the alleged verbal abuse of 30th January 2014 took place and as such do not corroborate the Wife's allegation. Indeed both the Husband and Wife have stated that the driver of the van was present on the 30th January 2014 when the alleged incident occurred but the Wife has not presented any evidence by this person to corroborate her evidence. In the absence of corroborating evidence of the incident complained of, I am not satisfied beyond a reasonable doubt that the Husband committed the said act of verbal abuse on 30th January, 2014.

[11] The second breach of the Order which the Wife alleges is an incident of sexual molestation which happened on 5th March 2014. The Wife's allegation is set out at paragraph 8 of her affidavit filed on 15th April 2014. She stated that on that day at about 11:00 am she was in the master bedroom of the matrimonial home, the children had left for school and she did not know that the Husband was home. The Husband came into the master bedroom while she was getting dressed. She immediately asked him what he was doing in her room since she was changing her clothes. The Husband then informed her that the wheels on her motor vehicle

⁴ Filed 12th May 2014

⁵ Filed 12th May 2014

needed "grooving" and he would "groove" it today since it was her birthday. She further stated that the Husband then told her "give me a suck on that salt fish" and she replied "leave me alone and get out of my bedroom". The Husband then pushed her down on the bed used his hands to push her legs in the air over her head forcefully pushing his mouth on her vagina and she started to scream to "get off" her. The Husband then and forcibly inserted his erect penis into her. Although she was struggling and called for help, no one was home. She further stated that after several minutes the Husband finally took out his penis, she passed her hand over her vagina and realised that he had ejaculated over her vagina and stomach. She then told him that she was going to the police, to which he replied "Yes! Call your f.....g police man and tell him", and "I took what is mine". She further stated that she made a report to the police, which she exhibited, and at the General Hospital she was examined by a doctor who performed a rape kit and gave her antibiotics. She also exhibited a copy of the medical report.

- [12] The Husband has denied the allegation of rape⁶. He stated that he and the Wife have engaged in sexual intercourse on more than one occasion after the Order. He stated that a few days prior to the alleged rape the Wife complained to him that the tyres to her motor vehicle were smooth and since tyre repair is his field of expertise, he offered to repair them. On the day before the alleged rape he began work on the tyres. After making an assessment he went to the inside of the house to inform her that the work cost \$120.00, but he did not intend to charge her. He proceeded upstairs where the Wife had left the master bedroom wide open and he could see from the hallway that the Wife was naked and lying on her back on the bed. He entered the bedroom and sat next to her. He told her that he had finished plugging the back tyre, and in response she touched him on his left leg. Afterwards they had consensual sexual activity which started around 11:10 a.m and finished at 11:30 a.m. After this the Wife got ready for work and left.

- [13] The Husband further stated that on the 5th March 2014, the date of the alleged rape, the Wife instructed him to finish "regrooving" the two front tyres, which he did

⁶ See paragraph 8 of his affidavit filed 29th April 2014

in the yard while the Wife looked on from an upstairs bedroom window. When he was finished at about 11:10 a.m the Wife called him upstairs where the door to the master bedroom was again left wide open and the Wife was lying on her back on the bed naked. The lower half of her body was positioned near the edge of the bed. He entered the room and stood in front of her. The Wife sat up in the bed, grabbed his head and put it between her legs, where he performed oral sex. He tried to stand up but the Wife held his head to her vagina and told him she was about to have an orgasm so he should not stop. After the Wife climaxed, they had vaginal intercourse during which time the Wife told him not to ejaculate inside her because her attorneys advised her that if she got pregnant she would lose her case. As he was about to ejaculate he started to pull his penis out from the Wife's vagina but he did not do so in time, resulting in some semen falling onto the Wife's vulva region. This caused the Wife to become angry whereby she stated that if she became pregnant she would lose her case. They then got dressed and he went into the kitchen to help carry her food to the van and upon returning to the house for his second trip he observed the Wife on the telephone. After he placed the second batch of food in the van, the Wife told him she was leaving, and she left. The Wife did not return home at her usual time between 2:30 p.m to 3:00 p.m but between 5:00 p.m to 6:00 p.m. Before the Wife arrived home he received two phone calls from the Wife's mother; in the first one she accused him of rape, and in the second she cursed him.

[14] In response the Wife denied asking the Husband to do any work on the tyres of her van since she went to one Patterson Tyre shop to get a quotation; she denied the sexual activity as being consensual and of instructing her mother to do anything. She stated that the mother did call her while she was making the report at CID⁷.

[15] An allegation of sexual molestation in any form is very serious and the onus is on the Wife to prove to the Court beyond a reasonable doubt that the Husband breached the Order by committing the acts of sexual molestation as alleged. The Wife has failed to discharge this burden for the following reasons:

⁷ Paragraph 6 of the Wife's affidavit filed 12th May 2014

- (a) There was no evidence from any corroborating witness. The police report and the medical report do not amount to corroboration. The police report is not corroborating evidence since it is a record of the Wife's version of the incident. At best it confirms the allegation and the fact that she made such a report. It does not go to the truth of its contents.
- (b) There was no evidence from the doctor who examined the Wife, so there was no medical evidence before the Court to support the Wife's allegation. The maker of the report is the doctor, not the Wife. At best it confirms the fact of the medical examination but its contents were not explained. Further, the medical report does not conclude sexual assault. It states "I have examined the above-mentioned person and find the following – dangerous harm... Other remarks. 41 years old woman who alleged to have been sexually assaulted by her husband in the process of divorce around 11 a.m today. Incident occurred as she was exiting the bathroom after bathing. She sustained minor bruise (indecipherable) thigh, swabs taken as per standard sexual assault."
- (c) The veracity of the Husband's version was not tested. Both parties chose not to cross-examine the deponents who swore to the affidavits in the committal application, depriving the Court the opportunity to determine the veracity of the Husband's statements and his credibility. In the circumstances, the Husband's version of the events on 5th March is equally plausible as the Wife's.

[16] For the aforesaid reasons, I do not find that the Husband is in contempt of the Order. I dismiss the committal application and order the Wife to pay the Husband costs in the sum of \$750.00.

The Injunction Application

[17] In the injunction application the Wife has asked the Court to order the Husband to pay the arrears owing to GRENLEC for electricity supply with respect to the upper storey of the matrimonial home ("the upper storey") which she and her children

occupy, in the sum of \$1,696.00; for him to pay the reconnection fee of \$369.00 to enable the restoration of the electricity supply; and for him to maintain the account at GRENLEC for the said upper storey. Although the Wife had paid some of the arrears at the date of hearing of the injunction application, she also seeks a reimbursement. Both parties have contended that due to their limited financial means and existing financial commitments they are unable to pay the arrears, the reconnection fee and to maintain the current payments.

[18] The Wife stated that her gross monthly income from catering food is \$4,000.00 and after her expenses related to catering her profit is \$1,200.00⁸. She listed her monthly expenses⁹ as:

(a)	Insurance	\$ 190.25
(b)	Tevin School fee	\$ 325.00
(c)	Sierra School fee	\$ 217.00
(d)	Daily allowance for children	\$ 200.00
(e)	Loan payment for van	\$ 350.00
(f)	Groceries for family	\$1,000.00
(g)	Gas for vehicle	<u>\$ 160.00</u>
	Total expenses	\$ 2,442.25

[19] She has denied the Husband's assertion that her catering business has caused the electricity bill for the upper storey to increase since she stated that she purchases four cylinders of cooking gas per month. She has also denied that the Husband has given her the use of a RBTT credit card to purchase groceries. She stated that she constantly borrows money from family and friends to supplement her income. She contended that the Husband has not disclosed that he receives income from animals which he rears and has slaughtered weekly¹⁰, and income from two buses which he owns and operates, one in Grenada, registration number

⁸ Paragraphs 4 and 5 of the Wife affidavit filed 30th June 2014

⁹ Paragraph 11 of the Wife's affidavit filed 30th June 2014

¹⁰ Paragraph 16 of the Wife's affidavit filed 30th June 2014

H4331 income of \$250.00 per month, and one in Carriacou, registration number PJ 499¹¹.

[20] The Husband stated that he is the owner and manager of "Tyre Doctor", a tyre repair business situate in Calivigny, St. George, where he works as a mechanic and tyre repair man. Like the Wife, he too is self-employed. He stated his gross monthly income as \$2,000.00¹². His approximate personal expenses are:

(a) Groceries	\$800.00
(b) Gasoline for vehicle	\$400.00
(c) Two Water bills	\$300.00
(d) Electricity bill (downstairs)	\$400.00
(e) Internet and telephone bill (upstairs)	\$150.00
(f) Cable bill (upstairs)	\$ 52.16
(g) Repayment on mortgage loan (Communal Co-operative Credit Union)	\$2,205.00
(h) Repayment of loan for purchase of tyres (CCCU)	\$ 973.00
(i) Repayment on mortgage loan (Republic Bank)	\$2,000.00
(j) Life insurance policy	\$ 96.27
Total (approx.)	\$7,376.43

[21] Apart from the aforesaid monthly expenses, he stated that he has three items of unpaid debts. The motor vehicle insurance for H4331 due on 28th July 2014 in the sum of \$778.05 for half year. He also stated two other items, personal loan from RBTT for the purchase of tyres and personal loan with RBTT to extinguish credit card debt, for which he provided no sums.

¹¹ Paragraph 15 of the Wife's affidavit filed 30th June 2014

¹² Paragraph 2 of the Husband's affidavit filed 7th July 2014

- [22] He has not refuted the Wife's allegation that he rears animals from which he earns an income, and his position with respect to the bus (he stated bus and not buses) is it is not roadworthy and insurance is due.
- [23] On a balance of probabilities I accept the Wife's evidence on her income and expenses and I find that the Husband has misstated his position and has been less than truthful to the Court about his income for the following reasons:
- (a) The Husband failed to disclose his income earned from the rearing of animals. Although this was raised by the Wife, the Husband remained silent and failed to deny this. I therefore accept that this is a source of undisclosed income.
 - (b) The explanation provided by the Husband that he does not earn an income from the buses is not accepted by the Court. He did not initially disclose this but when confronted by the Wife his explanation of lack of roadworthiness was not accepted since the statement from the insurance company stated that insurance was due in July 2014 and January 2015 which, to me, suggests that insurance was being paid and therefore the vehicle was being used.
 - (c) The Husband failed to disclose any savings yet his own evidence¹³ shows "collateral cash as \$15,000.00".
 - (d) The Husband's evidence was not consistent with the documentary evidence. Although the Husband stated the electricity bill for the upper storey has been increased due to the Wife's catering business, the payments made in 2012 and 2013 for the upper storey and lower storey in total were \$843.62¹⁴ and \$739.16¹⁵ respectively, which is consistent with the Wife's evidence that it has been approximately \$300.00 for the upper storey.
 - (e) The totality of the Husband's evidence was not credible. He attempted to paint a picture of financial desperation yet he said he had a mortgage, loan to purchase tyres and has even entered into discussions with a bank to

¹³ "C" to the Husband's affidavit filed 7th July 2014

¹⁴ Exhibit SJ 4 to the Wife's affidavit filed 16th July 2014

¹⁵ Exhibit SJ 4 to the Wife's affidavit filed 16th July 2014

consolidate his debts. In my view, it was difficult to accept that a financial institution would lend the Husband funds for mortgage, loan to purchase tyres and to even enter into discussions with him for consolidation of debt where the repayment sum is at least double what he stated as his gross income.

- [24] For the aforesaid reasons, I grant the relief requested by the Wife in the injunction application and order the Husband to pay the arrears of electricity, reconnection fee and the monthly sum for the upper floor of the matrimonial home where the Wife and the children of the family reside. The Wife has already spent certain sums on securing the reconnection of the electricity, he is to reimburse this sum to her and any other related sums concerning the electricity.
- [25] I also order the Husband to pay the Wife the costs of the injunction application in the sum of \$750.00.

Margaret Y. Mohammed
High Court Judge