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

IN THE HIGH COURT OF JUSTICE
(DIVORCE)

SUIT NO. GDAHMT2019/0007
BETWEEN:

KIERAN EMMANUEL TELESFORD

Petitioner

and

MAUREEN ANN TELESFORD nee FRANK

Respondent

Appearances:
Ms. Jasmin Redhead for the Petitioner
Mr. Derick Sylvester for the Respondent

2019: May 20th
2019: May 23rd

DECISION

[1] **Smith J**: The parties were married on the 19th February 1994. On 10th January 2019, the petitioner ("the husband") petitioned the court for a dissolution of marriage on the ground that he and the respondent ("the wife") have lived apart for a continuous period of at least five (5) years immediately preceding the presentation of the petition, that is, sometime from 2007 to the present.

[2] On the 15th February 2019, the wife filed an answer to the petition stating that the marriage has not broken down irretrievably and is still subsisting for all intents and purposes.

[3] On 24th April 2019, the husband applied to strike out the wife's answer on the ground that it disclosed no reasonable ground to oppose the petition. In her affidavit in response to the strike out application, the wife made reference to the fact that the **Civil Procedure Rules** ("CPR") do not apply to matrimonial proceedings in Grenada. At the hearing of this application, however, counsel for the wife, Mr. Derick Sylvester informed the court that he was not pursuing that objection. That was the proper course to have taken. While there are no specific legislation or rules in Grenada governing divorce and matrimonial causes, the **West Indies Associated States Supreme Court (Grenada)** Act[1]provides at section 11(1) that:

> "The jurisdiction vested in the High Court in civil proceedings, and in probate divorce and matrimonial causes shall be exercised in accordance with the provisions of this Act and any other law in operation in Grenada and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in the High Court of Justice in England."

[4] The applicable law in Grenada is therefore the **Matrimonial Causes Act 1973** (United Kingdom) (hereinafter "the Act") which provides at section 1 (2) (e) that:

> "The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say –
>
> (e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition (hereinafter in this Act referred to as "five years' separation")"

[5] Part 4.4 of the **Family Proceedings Rules 2010**[2] currently in force in the High Court of Justice in England confers on the High Court the power to strike out a statement of case, which includes an answer to a petition. This Court therefore has the jurisdiction to hear and determine an application to strike out an answer in matrimonial proceedings in Grenada.

[1] Chapter 336 of the Continuous Revised Edition of the Laws of Grenada.

[2] 2010 No. 2955 (L.17)

Issues

[6] The issues arising for determination are:

(1) What is the proper interpretation to be given to the phrase "lived apart" for the purposes of the Act?

(2) Does the wife's answer disclose a reasonable ground for opposing the petition that has a chance of success at trial?

[7] In his petition, the husband states that the parties have lived separate and apart for a continuous period of at least five years immediately preceding the presentation of the petition, that is, from sometime in 2007 to the present.

The Wife's Answer

[8] Given that much turns on whether the wife's answer to the petition discloses a reasonable ground for opposing the claim, it is perhaps best that the relevant part be set out in full. This is what she stated:

(a) In or about the year 2007, after the birth of the Petitioner and Respondent's grandchild, the Petitioner begun spending time in Windsor Forest, St. David and would return to the matrimonial home once or twice a week.

(b) The reason given by the Petitioner for same is that he was assisting "Joe" with repairing a house and it was a bit strenuous having to make several trips. As such he would stay throughout the week and return on weekends.

(c) However, this became habitual and the Petitioner stayed at his house in Windsor Forest permanently and would visit the matrimonial home periodically. On every occasion the Petitioner visited we shared intimate relations as husband and wife. This continued to the present day.

(d) During the year 2015, the Petitioner had an accident wherein he damaged his foot and was unable to walk. The Respondent would visit the Petitioner to attend to him. The Respondent cooked, cleaned and did the Petitioner's laundry and ensured he had groceries and other supplies.

(e) This continued for a few months, after which the Respondent came to the conclusion that there were other persons staying with the Petitioner.

(f) In 2016 the Petitioner visited the Respondent regularly and in 2017 he visited every three months. On most occasions when the Petitioner visited with the Respondent they would be intimate.

(g) Although the Petitioner resides in a separate home he assisted the Respondent with the utilities for the matrimonial home and they converse weekly via telephone.

(h) On 10th December, 2018 the Petitioner visited the Respondent at the matrimonial home, this was 9 days after their son's nuptials, wherein they were intimate.

(i) The marriage is still subsisting for all intents and purposes and the allegations as alleged by the Petitioner are false.

[9] In response to the wife's answer, the husband admitted that he did visit her at her home on occasions and there were times of intimacy; however, they continued to live separate and apart and maintain separate households and he always returned to his home in Windsor Forest.

What does "lived apart" mean?

[10] Do the periodic, intimate visits by the husband to the wife at the matrimonial home (as recently as 10th December 2018) and his support of her suggest that they have not been living apart for the purpose of the Act?

[11] Ms. Redhead, counsel for the husband, contends that they do not. She referred the court to section 2 (6) of the Act, which provides that a husband and wife shall be treated as living apart unless they are living with each other in the same household.

[12] Ms. Redhead also relied on the following passage in the English case of **Piper v Piper**:[3]

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[3] [1978] EWCA Civ JO223-2.

"The starting point for considering that relationship must be, as I think, the fact that in February 1970 the married life, as ordinarily understood, came to an end; the parties then separated (it does not much matter who left whom) and sold the house, and so the consortium at that time clearly came to an end. Then, if one accepts the wife's evidence, the husband began (to use a neutral phrase) to come to her room and stay there from time to time. Were they at that time living in the same household? All we have is that these visits were frequent and that sometimes sexual intercourse took place between them,that is all we have in the way of evidence. The learned Deputy Judge who heard the whole case and saw the parties and heard the wife's evidence concluded that the right way of describing the relationship between these two parties in this period was that the husband was visiting the wife; the phrase the Judge himself uses is that he was "visiting" her on a number of occasions, retaining his own room or flat or whatever it was, and simply coming as a visitor and friend – intimate friend – of the wife. Could they be said, in ordinary language, to be "living together" at such weekends, leaving out the question of the same household? For my part I would say no, they could not be said to be living together in the sense in which that phrase is now almost universally used if he were merely visiting at weekends ...Consequently, he held, as I think he was bound to hold, that they were maintaining two separate households. In those circumstances there is only one possible conclusion, namely that the husband – maybe unjustly as far as the wife is concerned – has established his case." (underlining mine)

[13] Based on section 2 (6) of the Act and its interpretation in **Piper v Piper**, a relevant question I must ask myself is whether the parties are maintaining two separate household. The answer to this question, as I see it, was given in the answer filed by the wife. She stated that the husband "stayed at his house in Windsor Forest permanently and would visit the matrimonial home periodically." She further stated that "the Petitioner resides in a separate home". Based on her own statement of case, then, there can be no doubt that the parties maintain two separate households. Mr. Sylvester points out that in **Piper** the parties sold the matrimonial home and separated while, in the case at bar, they have not sold the matrimonial home. This observation, while true, falls short of the critical point, which is whether they currently maintain separate households.

of harmonious coexistence. In the case at bar, there is a permanently established separate household, not the sleeping in separate rooms in the same household as was the case in **Dooris.**

[20] Mr. Sylvester placed considerable reliance on the Jamaican case of **Muir v Muir**[9] in which Sykes J stated that: (1) living apart had two components, namely, physical separation and the intention of at least one of the parties to terminate the marriage; (2) the critical thing is to see if one or both parties have separated from a state of affairs (i.e. the marriage); (3) drifting apart may not be enough; (4) what amounts to a separation will vary from couple to couple; (5) it is legitimate to look at the behavior of the parties before and during the period of the alleged separation to see if the physical and mental elements are satisfied.

[21] I therefore ask myself whether anything put forward by the wife in her statement of case could possibly negate or put in doubt the physical and mental elements of which this Court must be satisfied. In examining the wife's statement of case, it is clear that, by her answer, she has admitted to both the physical separation and the intention of the husband that the state of affairs is at an end. I am left in no doubt that, by her answer, the wife has shown that the husband has separated from the "state of affairs", that is, the marriage. There simply is no getting around her admission that the husband has maintained a permanent separate household in Windsor Forest since 2007. The acts of the husband in assisting the wife with utilities, talking to her regularly on the phone and visiting her and engaging in acts of intimacy from time to time cannot negate the fact of the physical separation and the clear intention that the marriage is at an end. Those acts might amount to evidence that he continues to care for her and is concerned about her welfare, not that he considers the marriage to be subsisting. These circumstances do not fit the **Santos** scenarios of the husband working abroad, convalescing abroad or serving a prison term. He resides in Grenada in a separate household at Windsor Forest.

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[9] (unreported) FD 00144 of 2004.

[22] Finally, Mr. Sylvester submitted that under section 5 of the Act, the court can refuse a petition on the basis of grave financial hardship to the respondent. He contends that the wife has detailed the financial hardship that would befall her if the petition is granted. Having considered all the evidence that is before this court and all the circumstances, including the conduct of the parties, as set out in the affidavits, I am not persuaded that there is any real evidence of financial hardship.

Disposition

[23] I remind myself of the settled principle of law that the striking out of a party's statement of case is a draconian step to be exercised sparingly and only in very clear cases where a party has no prospect of succeeding, even if further evidence is adduced. I am constrained to conclude that, by the wife's own answer and affidavit evidence, it is clear that she has no reasonable prospect of successfully opposing the petition. She stated in her evidence that she loves her husband dearly and when she took her marital oath she meant it to be for life and, if the divorce is granted, she will no longer be referred to as Mrs. Telesford. While this Court recognizes the love, devotion and commitment on the part of the wife to the husband and the emotional distress that being divorced from him might bring upon her, there is no tenable legal grounds for opposing the petition.

[24] I therefore make the following orders:

(1) The Respondent's answer is struck out.

(2) No order as to Costs.

Justice Godfrey P Smith SC
High Court Judge

By the Court

Registrar