

IN THE SUPREME COURT OF BELIZE, A. D. 2014

Action No. 115 of 2012

BETWEEN:

(JOSE HUMBERTO RAMOS

PETITIONER

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(And

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(EDITH RAMOS

RESPONDENT

BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA

Ms. Rachel Montejo of Montejo and Company for the Petitioner

Mrs. Peta-Gay Hewitt Bradley of Belize Legal Aid for the Respondent

D E C I S I O N

1. This is a Petition for Divorce brought by the Petitioner, Jose Humberto Ramos against the Respondent Edith Ramos on the grounds of cruelty. He is also seeking custody of the minor child of the marriage. The Respondent has filed an Answer to the Petition whereby she denies the allegations of

cruelty made against her. She is also asking for a divorce based on the Petitioner's cruelty and is seeking sole custody of the minor child. The Petitioner in his Reply denies the allegations made against him and reiterates his plea for a divorce based on her cruelty to him, as well as full custody of their daughter to him with visitation and access to the Respondent.

The Evidence

2. Jose Humberto Ramos and Edith Ramos nee Morales were married on September 14th, 2001 in Belmopan, Cayo District. There are three children of the marriage, two of whom are adults at the date of this petition, and the youngest being a girl born on the 16th October, 2001, the subject of this custody dispute. Mr. Ramos states that he builds decorative cement products for a living. He says that he and his wife lived at his home in Camalote for two years and then moved to the matrimonial home which he had built for them. The couple lived there for ten years. He told the court that he used to work as a security guard and later as a mason building cement spindles, cement wash basins, etc.

Mr. Ramos testified that on January 15th, 2012 while he was working at his security job in the night, he said that he called his daughter at around 8:30 p.m. to check on how she was doing. She answered him saying she was in fear and alone at home. The witness said that on the 17th January his wife left their daughter at home alone again. She left her alone again on the 25th January, 2012. Jose Ramos said he tried to talk to his wife about her leaving the child at home alone but Mrs. Ramos reacted angrily. He explained that he felt sad because he could not help his child and he was worried because they lived in an isolated area where there are individuals of bad reputation. This behavior of his wife caused him a lot of stress.

Mr. Ramos went on to explain that he had to leave Belize on business for a week in February 2nd, 2012 and when he returned he discovered that his wife had moved out of the matrimonial home. He was also served with Interim Occupational Order, Interim Protection Order and Interim Custody Order. He says he was not allowed to speak with his daughter for a week. The frustration he felt at this situation caused him health problems especially elevated blood pressure levels. He said he worked two jobs to provide for his family but his wife was never satisfied. She was always demanding more money from him and refused to show him any affection.

When he would ask her for romantic encounters, she would complain of headaches or pick a quarrel with him for no reason. He said he felt frustrated and abandoned from December 2011 when his wife refused to sleep in their bedroom and chose to go sleep in their daughter's room. She never returned to sleep in their bedroom. He is asking the court for a divorce based on his wife's cruelty as he finds it intolerable to live with her.

3. Mr. Ramos was cross examined extensively by Learned Counsel for Mrs. Ramos, Mrs. Bradley. It was put to him that there was only one occasion on which the child was left alone in the house by her mother. He disagreed. Mrs. Bradley asked him whether on the sole occasion that the child was left at the home whether a young man who worked on the premises was downstairs at the time. He disagreed and said the child was left alone. It was also put to him that when he left to go to the United States, he left a young man in charge of collecting money generated from his business. He agreed but said he instructed the young man to hand over the money to the lady in the evenings. He was asked by Learned Counsel who is Reina Castro. He said, "She is my sister-in-law, my girlfriend's sister." He admitted that he had been involved with his girlfriend for one year. He denied the allegation that he had called his wife garbage and that he told

her he didn't want to have anything to do with her in front of their child. He also denied that he had knocked Mrs. Ramos in her face twice. Under re-examination, Mr. Ramos said that he started the relationship with Ms. Castro six months after he was legally separated from his wife. That was the case for the Petitioner.

4. On behalf of the Respondent, Mrs. Ramos then testified that she works with her sister-in-law in Belmopan at Morales Party Supplies. She said in February 2014 will be two years since she started working there. She said that it is not true that she left their child alone on three occasions. She said that it was only one time when they were having marital problems. Mrs. Ramos said that her husband always chased her from their house that they were living in when they were fighting so she took two persons from her church to come and talk with her and her husband. They went to another house that belonged to them and she stayed there talking with these people for about thirty or forty minutes. She said the child was not alone because a young man that worked for her husband was downstairs at the time. She said that their problems started in 2011 because she worked by his side for 17 years mixing cement like a man and he never gave her any money. She said she felt like a slave. Mrs. Ramos told the court that her

husband did not make arrangements for her when he left Belize. Instead he told her that if she needed food or anything, she must ask the young boy that he left in charge of his business for the money. He left her with no money for herself or for her daughter. She testified that on the morning of the same day when she saw that he left another person in charge of everything, she asked him what was wrong with him and he told her that he was leaving because he did not want any more discussions and that she was garbage. She said that she stopped having sexual relations with Mr. Ramos because he called her garbage and told her he did not want to have sex with her. She also said that he knocked her face twice and one time was in front of their second son but she did not report the incidents to the police.

5. Mrs. Ramos was cross-examined by Learned Counsel for the Petitioner, Ms. Montejo. It was put to Mrs. Ramos that the account held by her husband was a joint account with her. She replied that she did not take any money from his account. It was put to the witness that nothing prevented her from withdrawing money from the account. She answered that she never took any money from his account. She agreed that her name was also

on the bank account along with her husband's name but she repeated that she did not use the account.

The Issues

6. (1) Has the Petitioner proven the allegations made in his Petition or has the Respondent proven those made in her Answer? Should the divorce be granted, and if so, on which ground?

(2) To whom should the court grant custody of the minor child of the marriage?

The Law

7. The Supreme Court of Judicature Act Chapter 91 of the Laws of Belize Part XI Matrimonial Causes and Matters contain provisions relating to Matrimonial Causes. The grounds for a petition for divorce are as follows:

"129(1) A petition for divorce may be presented to the Court either by the husband or the wife on the ground that the respondent-

(a) has, since the celebration of the marriage, committed adultery, or

(b) has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or

(c) has, since the celebration of the marriage, treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition,

and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.

(2) Notwithstanding the provisions of subsection (1), a petition for divorce may be presented to the Court by either party to a marriage on the grounds that the marriage between them has broken down irretrievably, and that they have been living separately for at least three years immediately preceding the presentation of the petition.”

The duty of the court upon presentation of a petition for divorce under Section 133 of the Supreme Court of Judicature Act is to inquire so far as it reasonably can into the facts alleged by the petitioner, and also to inquire into the countercharge made by the respondent, to determine whether the allegations have been proven by the evidence.

Ruling on Grounds for Divorce

8. I have listened to the evidence provided by the Petitioner and the Respondent in this divorce. I am also grateful to learned Counsel for both parties for their written submissions. The Petitioner has made allegations of cruelty against his wife, claiming that she verbally abused him and denigrated him and caused him emotional stress. He said that she was never satisfied with his efforts to provide financially for his family and

constantly wanted more. He said that she caused him stress when she repeatedly left their young daughter alone in their home at night on three occasions and their home is in an isolated area where dangerous people live. The emotional stress caused his blood pressure to elevate to dangerous levels and he is claiming this stress amounted to cruelty, especially when coupled with the fact that his wife also refused to have sexual intercourse with him. He claims that she left the matrimonial bed and went to sleep in their daughter's bed for several months prior to their actual legal separation. He also claims he was distressed by his wife's actions in seeking and obtaining several orders from the Family Court while he was away on a trip to the United States.

While it would have been infinitely more helpful to the court to produce medical evidence (e.g., a receipt for medication or a doctor's report) to substantiate the effect of the stress on his health, I find that the husband has proven the allegations of cruelty he has made against his wife. For one thing, Mrs. Ramos does not deny leaving the child at home unattended and alone, she just disagrees on the number of times she did so. In fact, in seeking to defend her actions of leaving the child by herself at their home, she explained to the court that the girl was not alone because there was a

young man present downstairs in the house who was working for them at the time. I also find that the fact that she admits under cross-examination that she knew she was a signatory on her husband's joint account at the bank goes to prove that he did provide for her and that she knew that she had access to funds during their marriage. I also find that withholding sex from her husband was another aspect to the allegations of cruelty and she admitted that fact too under cross-examination but she claimed that she only did so after he insulted her verbally.

Even though I have found that Mr. Ramos has proven his ground of cruelty, I cannot grant him the divorce on that ground because during his evidence he admitted under oath that he is presently in an adulterous relationship with another woman. He said the relationship started six months after he and his wife legally separated. However, his adultery is a bar to his obtaining relief in his petition, and there has been no discretion statement filed on his behalf asking the Court to exercise its discretion in his favor despite his adultery.

I now turn to the allegations of cruelty made on behalf of the wife. Mrs. Ramos claims that her husband was cruel to her by not providing financially for her and their child. I have already found as a fact that this allegation is not proven by the evidence since she admitted under cross-examination that she knew she was a signatory on her husband's joint account at the bank. She insisted that she never used money from the account. That may be true, but the point is that she had access to those funds and she admitted that she knew that she had access. I have seen photographs of the house as tendered in evidence and it appears to me that the house built by the husband to provide shelter for his family is quite habitable, a fact also borne out by the home study report conducted by the Social Department who actually visited the premises. Mrs. Ramos also claims that her husband was verbally and physically abusive to her. It is unfortunate that these allegations were not reported to the police or that the adult son who she claims witnessed one of these physical attacks by Mr. Ramos on her was not brought to testify on her behalf. The court is not saying the attacks did not happen, but the evidence presented by Mrs. Ramos is woefully inadequate to substantiate the allegations made.

Under section 135 of the Supreme Court of Judicature Act Chapter 91, where a respondent opposes the relief sought by the petitioner on the ground of the petitioner's marital fault, 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 the petition. I find that the Mr. Ramos having admitted his existing extra marital affair under oath, this is clear proof of adultery and he is therefore barred from obtaining a divorce on his ground, since he has not produced a discretion statement. I also find that there is no evidence of condonation or connivance of Mr. Ramos's adultery by Mrs. Ramos. I therefore grant the divorce to Mrs. Ramos not on the ground of cruelty that she claimed, but on the basis of Mr. Ramos' admission and therefore proven adultery.

Ruling on Custody

9. It is trite law that in deciding any question regarding the upbringing of a child, a court must bear in mind that the welfare of a child shall be the paramount consideration. This principle is embodied in the First Schedule of the Families and Children's Act, Chapter 173 of the Laws of Belize.

Section 3 of the First Schedule to the Families and Children's Act sets out the factors that must be considered by the court or any other authority in

determining any question relating to the welfare of a child. These are as follows:

- (a) "The ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;*
- (b) The child's physical, emotional and educational needs;*
- (c) The likely effects on any changes in the child's circumstances;*
- (d) The child's age, sex, background and any other circumstances relevant in the matter;*
- (e) Any harm that the child has suffered or is at risk of suffering;*
- (f) Where relevant, the capacity of the child's parents, guardians or others involved in meeting his or her needs."*

Bearing in mind these guiding principles, I now make my decision on the issue of custody of the minor child. The child is female and is presently 13 years old. I spoke with the child in private and she appeared to me to be mannerly and pleasant. She expressed great love for both her parents and is deeply distressed at the divorce but understands that she is still loved by each of her parents. The child attends primary school and is preparing to sit her exams to enter secondary school. She is doing well academically but there is room for improvement.

I have taken into account the Home Study Report prepared by the Department of Social Services and the evidence of both parties through oral evidence, photographs, etc. Each parent is gainfully employed and able to provide financially for the child.

I order that joint custody of the minor child be granted to both parents Jose and Edith Ramos with care and control of the child awarded to Edith Ramos. Liberal visitation and access with the child is granted to Jose Ramos to be agreed with Edith Ramos. I also order that the family seeks and obtains professional counseling to assist the child in dealing with issues arising from the divorce.

10. Decree Nisi granted to be made absolute in four weeks.

11. Each party to bear own costs.

Dated this Friday, 23rd day of May, 2014

Michelle Arana
Supreme Court Judge