

1979 December 29

[A. LOIZOU, J.]

PAUL BENJAFIELD,

Petitioner,

v.

ELLI PAUL BENJAFIELD,

Respondent.

(*Matrimonial Petition No. 2/79.*)

*Matrimonial Causes—Divorce—Desertion—Constructive desertion—
Meaning—Onus and standard of proof—How to be pleaded when
conduct complained of is in the nature of cruelty—False accu-
sations of adultery—When do they constitute cruelty—Petitioner
5 has failed to prove his case beyond making out a picture of
some friction—Behaviour of respondent not such as to establish
requirements of constructive desertion—And no persistent false
accusations of adultery that have given rise to injury to the health
of the petitioner or apprehension of it—Petition dismissed.*

10 This was a husband's petition for divorce on the ground that
the wife did on or about the 15th July, 1975 drive out the peti-
tioner and/or by constantly accusing him of immorality and by
making false accusations of adultery against him caused and/or
15 forced him to quit her house; and that, moreover, on or about
the same date when the petitioner was afflicted with severe heart
disease she failed to help him and in addition told him that she
wished him to die in order to get rid of him. The respondent-
wife contested the proceedings and alleged that they had a usual
friction that all married couples have, their differences being
20 about financial matters and because of his staying out late at
night.

Held. (after dealing with the doctrine of constructive desertion
and onus and standard of proof—vide pp. 667–9 post) that if the
conduct complained of is in the nature of a case of cruelty, it
25 should be pleaded as such and not as constructive desertion;
that it is not possible to build up a case of constructive desertion
by what is really a case of unproved cruelty; that false

accusations of adultery do not constitute cruelty unless the persistence in such false charges gives rise to injury to health, or reasonable apprehension of it; that on the totality of the evidence—and this Court has no difficulty in preferring the version of the respondent—the petitioner has failed to prove his case beyond making out a picture of some friction in the relations of the parties because of his staying out late at night and his other conduct; that the behaviour of the respondent has not been such as to enable this Court to conclude that either the requirements of constructive desertion have been established, or that there have been such persistent false accusations of adultery that have given rise to injury to the health of the petitioner, or apprehension of it; and that, accordingly, the petition must be dismissed.

Petition dismissed. 15

Matrimonial Petition.

Husband's petition for divorce on the ground of constructive desertion.

S. Papakyriakou, for the petitioner.

A. Vassiliadou (Mrs.) for the respondent. 20

Cur. adv. vult.

A. LOIZOU J. read the following judgment. This is a husband's petition for divorce on the ground that the respondent—wife did on or about the 15th July, 1975, drive out and or by constantly accusing him of immorality and by making false accusations of adultery against him caused and or forced him to quit her house at 2, Laskareos street, flat 7, Nicosia. Moreover that on or about the same date when the petitioner—husband was afflicted with severe heart disease the respondent—wife failed to help him and in addition told him that she wished him to die in order to get rid of him.

The respondent—wife was duly served, entered an appearance and contested the proceedings.

The parties were on the 2nd February, 1956 married at the Commissioner's Office Nicosia under the Marriage Law, Cap. 116, now Cap. 279. 35

The petitioner—husband, is a member of the Roman Catholic Church and the respondent—wife a member of the Greek

Orthodox Church and their marriage was also celebrated in accordance with the rites of the Greek-Orthodox Church, on the 5th September 1956.

5 The petitioner has given evidence and stated that his wife has been unfoundedly accusing him of committing adultery with different women at different times since 1967 and that this disturbed him emotionally. On account of this he had to give up his business. The climax came on the 15th July, 1975 when the parties had an argument because of the respondent-wife's
10 accusation that he had a new girl-friend. In order to prove that this accusation of hers—wife, was not true, he took the said girl and her mother to his house to confront the respondent-wife and tell her that there was no foundation in her accusations. Because of the argument on that day he became ill and whilst
15 in a state of semiconsciousness he heard his wife saying to him that she wished he had a heart attack so that she would get rid of him. He concluded by saying that his feelings towards her had been completely destroyed on account of her conduct.

20 The respondent-wife gave evidence and stated that her husband was always staying out late at night. Her version as to the last incident is that her husband used to take his girl-friend and his daughters out, leave the daughters at the place of entertainment and disappear with that girl for an hour or two and then return to meet his daughters, who on account of such
25 conduct accused him of improper behaviour, that she further stated that they had a usual friction that all married couples have, their differences being about financial matters and because of his staying out late at night, she denied accusing him of having relations with that girl, but admitted that she told him that his
30 behaviour could be misunderstood and it was a shame to take out a girl who had the same age as that of his daughters.

No other evidence has been called by either side in support of their respective versions.

35 The doctrine of constructive desertion invoked in this case on behalf of the petitioner-husband, is that if one spouse is forced by the conduct of the other to leave home it may be that the spouse responsible for the driving out is guilty of desertion. As stated in Rayden on Divorce 8th edition p. 170, "There is no substantial difference between the case of a man who intends

to cease cohabitation and leaves his wife, and the case of a man who compels his wife by his conduct, with the same intention, to leave him.”

As further explained therein in constructive desertion the intention may be proved by applying the presumption that the expelling spouse intends the natural consequences of his or her acts.

Regarding the onus and standard of proof and under the heading of Grave and Weighty Conduct in this textbook at p. 171 it is stated:

“ The wish or intention must be accompanied by conduct which is of a grave and weighty character, and which the Court can properly regard as equivalent to expulsion in fact. It is also said, however, that when the fact of separation is proved, the intent to bring the home to an end can be inferred, amongst other things, from words so plain, that the spouse using them may be taken to mean what he says: if there is no background of ill-treatment, it may well be more difficult to prove that mere words of expulsion were intended to be final, conclusive and effective, than if there is such a background. Conduct short of a matrimonial offence might be sufficient to justify the other party in leaving, but it is essential to examine the actual facts in order to see whether the conduct of the spouse who is to blame can fairly and clearly be said to have crossed the borderline which divides blameworthy conduct causing unhappiness to the other spouse from conduct equivalent to expulsion from the matrimonial home. The ordinary wear and tear of conjugal life does not in itself suffice, nor does one of the risks that a man or woman takes on entering into the condition of matrimony. Sluttishness alone does not constitute a sufficient ground for constructive desertion.”

Moreover at p. 175 it is stated:

“ If the conduct complained of is in the nature of a case of cruelty, it should be pleaded as such and not as constructive desertion: it is not possible to build up a case of constructive desertion by what is really a case of unproved cruelty. This proposition does not cover the whole area of constru-

ctive desertion, for grave and weighty matters might be alleged which are quite different in kind and quite as serious as, if not more serious than, cruelty. As between cruelty and constructive desertion, the latter may in circumstances be the lesser offence of the two, but both involve conjugal ill-treatment of a serious kind. If the conduct relied on as constituting constructive desertion amounts to some other matrimonial offence, the need to plead constructive desertion is obviated, because that other offence would give a right to relief. A spouse who is entitled to relief on the ground of cruelty ought not on the same facts to be liable to be held guilty of desertion."

False accusations of adultery do not constitute cruelty unless the persistence in such false charges gives rise to injury, to health, or reasonable apprehension of it. (See Rayden on Divorce *supra*. p. 134).

This is the legal situation relevant to the present case. On the totality of the evidence before me—and I have no difficulty in preferring the version of the respondent—wife, the petitioner has failed to prove his case beyond making out a picture of some friction in the relations of the parties because of his staying out late at night and his other conduct.

The behaviour, however, of the respondent—wife has not been such as to enable me to conclude that either the requirements of constructive desertion have been established; or that there have been such persistent false accusations of adultery that have given rise to injury to the health of the petitioner—husband, or apprehension of it.

For all the above reasons the petition is dismissed with costs.

Petition dismissed with costs.