

1984 March 24

[PICKIS. J.]

MARINA CRIS ANTHIMOS TOOLEY.

Petitioner

v.

CRIS ANTHIMOS TOOLEY.

Respondent

(*Matrimonial Petition No. 24/82*)

Matrimonial Causes—Jurisdiction—Wife resident in Cyprus throughout her life—Court vested with jurisdiction to entertain her petition for divorce—Section 18(1)(b) of the English Matrimonial Causes Act, 1950.

5 *Constitutional Law—Marriage—Article 111 of the Constitution—Confined to cases where both parties are not only members of the Greek-Orthodox Church but domiciled in Cyprus as well.*

10 *Matrimonial Causes—Divorce—Cruelty—Legal cruelty—Meaning—Where conduct is of its character cruel, as serious acts of violence are, the Court may infer at least reasonable apprehension of danger to the life, limb or health of the victim—Husband habitually assaulting wife with his fists, occasionally kicking her at several parts of her body and locking her up in a room—Her traumatic experience such that she refused sexual intercourse—Husband guilty of acts of cruelty—Decree nisi granted.*

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20 The parties to this petition got married before a Registrar's Office in England in 1982. The petitioner was a Greek Cypriot born and raised in Cyprus. The respondent was a British subject resident and domiciled in the United Kingdom, born of Greek Cypriot parents and was born and grew up in England. Both parties adhered to the Greek Orthodox faith.

25 Upon a petition by the wife for divorce on the grounds of cruelty there was uncontradicted evidence that the conduct of the husband towards her was from the beginning brutal and progressively grew worse; that he was habitually assaulting her with his fists and occasionally kicking her at several parts of the

body; that violence was associated with other acts of ill-treatment that made cohabitation with the respondent impossible; that when in England he frequently locked her up in a room while he went out and amused himself with friends, often returning home drunk; and that such was her traumatic experience in the hands of her husband that she refused sexual intercourse notwithstanding the fact that such intercourse took place between them before marriage. 5

Held, (1) that since the petitioner has been a resident in this country throughout her life she satisfies the prerequisites for the assumption of jurisdiction, laid down by section 18(1)(b) of the English Matrimonial Causes Act, 1950 which conferred jurisdiction on the Court to take cognizance of a matrimonial matter if the wife was a resident of this country and had been ordinarily resident in Cyprus for a period of three years immediately preceding the commencement of the proceedings; accordingly the Court possesses jurisdiction to entertain the petition. 10 15

(2) That the application of the provisions of Article 111.1 is confined to cases where both parties are not only members of the Greek Orthodox Church but domiciled in Cyprus as well; and that since respondent is not domiciled in Cyprus the marriage is valid. 20

(3) That legal cruelty is 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; that where conduct is of its character cruel as serious acts of violence are, the Court may infer at least reasonable apprehension of danger to the life, limb or health of the victim; that on a review of the uncontested evidence the inescapable inference is that the respondent was guilty of acts of cruelty; accordingly a decree nisi of dissolution will be granted. 25 30

Decree nisi granted.

Cases referred to:

- Krzentz v. Krzentz* (1971) 1 C.L.R. 168;
Papasavva v. Johnstone (1984) 1 C.L.R. 38; 35
Hadjijovanni v. Hadjijovanni (1969) 1 C.L.R. 207;
Bastadjian v. Bastadjian, 1962 C.L.R. 308;
Morphi v. Mashini (1981) 1 C.L.R. 253;
Jabbour v. Jabbour (1981) 1 C.L.R. 315.

Matrimonial Petition.

Petition by the wife for the dissolution of the marriage on grounds of cruelty.

St. Stylianou, for the petitioner.

5 *Z. M. Ioannou*, for the respondent.

Cur. adv. vult.

10 ΠΙΚΙΣ J. read the following judgment. Marina Chris Tooley is a Greek Cypriot born and raised in Cyprus. Anthimos Tooley is a British subject born of Greek Cypriot parents who was born and grew up in England, a resident of the United Kingdom. Both adhere to the Greek Orthodox faith. They met during a trip of Anthimos to Cyprus in 1982. After a brief love-affair they decided to marry. They went to England where they got married a week later before a Register Office, on 9th

15 June 1982. The marital venture was short-lived and ill-fated. Within about ten days they returned to Cyprus apparently in the hope of striking a happier relationship. All in vain for not only their relations failed to improve but worsened considerably.

20 In about a month's time cohabitation ended in acrimony. The husband left what was, be it temporarily their matrimonial home. On their arrival they set up residence at Cris' parental home.

25 When the husband left it was the last his wife saw of him. Eversince relations between them were severed.

30 Marina petitioned the Court for a decree of dissolution of the marriage on grounds of cruelty. She alleged in her petition and testified before me, the conduct of the husband towards her was from the beginning brutal and progressively grew worse. He was habitually assaulting her with his fists and occasionally kicking her at several parts of the body. Violence was associated with other acts of ill-treatment that made; in her contention, cohabitation with the respondent impossible.

35 When in England he frequently locked her up in a room while he went out and amused himself with friends, often returning home drunk.

Such was her traumatic experience in the hands of her husband that she refused sexual intercourse notwithstanding the fact that such intercourse took place between them before marriage.

In his defence the respondent refuted the charges of cruelty. In his allegation he was himself the victim of cruelty resulting from fits of jealousy of the petitioner. He admitted there was no sexual intercourse between them after marriage implying, if one reads his defence as a whole, that fault laid with the petitioner.

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At the trial he withdrew his defence. Counsel stated on his behalf he does not oppose the petition. Neither the evidence of the petitioner nor that of her father directed towards establishing cruelty, was challenged in cross-examination. Another development that has taken place since the institution of the proceedings is that respondent left Cyprus and moved back to the United Kingdom where he presently resides.

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The following questions must be answered in order to determine the petition; (a) the existence of jurisdiction to entertain the proceedings in view of the fact that respondent is a domiciliary of the United Kingdom; (b) the validity of the marriage in view of the provisions of Article 111.1 of the Constitution and in the event of holding that the Court is possessed of jurisdiction and the marriage is a valid one; (c) adequacy of the evidence to sustain charges of cruelty.

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The jurisdiction of the Supreme Court in matrimonial matters is governed and regulated by sections 19(b) and 29(2)(b) of the Courts of Justice Law. The Law applicable is the Law that was in force on the day preceding independence in relation to matrimonial causes. One such Law was section 18(1)(b) of the English Matrimonial Causes Act, 1950 that conferred jurisdiction on the Court to take cognizance of a matrimonial matter if the wife was a resident of the country and had been ordinarily resident in Cyprus for a period of three years immediately preceding the commencement of the proceedings. (See *Ellada Krikor Krzentz v. Krikor Krzentz* (1971) 1 C.L.R. 168). The petitioner in this case satisfies the aforesaid prerequisites for the assumption of jurisdiction having been a resident of the country throughout her life. Hence the Court possesses jurisdiction to entertain the petition.

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The validity of the marriage depends on the applicability of the provisions of Article 111.1 to the marriage under consideration. That both parties are members of the Greek Orthodox

Church is not, in my view, conclusive. Recently I had occasion to examine the applicability of the provisions of Article 111 to civil marriages contracted abroad between members of the Greek Orthodox Church where one of the parties was not domiciled in Cyprus. I decided the application of the provisions of Article 111.1 is confined to cases where both parties are not only members of the Greek Orthodox Church but domiciled in Cyprus as well. Any other construction would offend the rule of Private International Law that lays down that the laws of the country of domicile define personal status. Also, it could lead to some strange results that could not have been intended by the makers of the Constitution, such as nullification of marriages contracted in distant parts of the world between a Greek Cypriot member of the Orthodox Church of Cyprus and a Greek Orthodox domiciled on that part of the world. (See *Papasavva v. Johnstone* - Matrimonial Petition 20/83, decided on 23rd January 1984, not yet reported* - see also *Hadjiovanni v. Hadjiovanni* (1969) 1 C.L.R. 207).

In my judgment the marriage of the parties was valid and for the reasons earlier given the petition is cognizable by this Court. There remains to decide whether allegations of cruelty were substantiated by the uncontradicted evidence of the petitioner and her father.

The legal definition of cruelty was debated by Vassiliades, J., as he then was, in *Angeliki Bastadjian then Angeliki Riyou v. Krikor Bastadjian*, 1962 C.L.R. 308. From the authorities it appears that a variety of acts may constitute cruelty in the context of Matrimonial Law. The definition of legal cruelty supplied by Rayden on Divorce is apt to embrace most acts that give rise to cruelty in Law "legal cruelty may be defined as 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." *5th Edition* p. 80**. Where conduct is of its character cruel as serious acts of violence are the Court may infer at least reasonable apprehension of danger to the life, limb or health of the victim. Following the quotation of legal cruelty in Rayden above, the author gives examples of conduct that evidently amounts to cruelty in Law. Such con-

* Now reported in (1984) 1 C.L.R. 38.

** Referred to by Vassiliades J., with approval in *Bastadjian* supra.

duct includes severe assaults, kicking at various parts of the body and striking at sensitive parts of the body.

The learned Judge in *Bastadjian* above, expressed the opinion that even isolated act of physical violence may support a petition founded on cruelty if such inference is justified in the light of the matrimonial history of the parties. By way of reference to examples of legal cruelty, one may usefully refer to two decisions of A. Loizou, J., in *Morphi v. Mashini* (1981) 1 C.L.R. 253 and *Jabbour v. Jabbour* (1981) 1 C.L.R. 315.

On a review of the uncontested evidence before me the inescapable inference is that respondent was guilty of acts of cruelty in the sense explained. The petitioner was not only the victim of serious assaults in the hands of the respondent, but life was made impossible in view of his tendency to isolate her in her misery as well. The evidence of her father tends to support her allegations of cruelty. Her disinclination in consequence of his conduct to have sexual intercourse with him is but an indication of her mental strain and suffering. And all this at the outset of the marriage when she could look with confidence to a relationship of love and affection. I find the petition proven. A decree nisi of dissolution of marriage is granted. Order accordingly.

Decree nisi granted.