

1968
May 20
Sept. 30

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YIANNOULLA
LAZAROU THEN
YIANNOULLA
DEMOSTHENOUS
v.
GEORGE LAZAROU
SAVVA

[JOSEPHIDES, J.]

YIANNOULLA LAZAROU THEN YIANNOULLA
DEMOSTHENOUS,

Petitioner,

v.

GEORGE LAZAROU SAVVA,

Respondent.

(Matrimonial Petition No. 20/67).

Matrimonial Causes—Divorce—Jurisdiction—Husband domiciled in Cyprus—Wife's petition for divorce on the ground of cruelty—Civil marriage under the Marriage Law, Cap. 116 in the Commissioner's Office, Nicosia, on January 24, 1958—No religious marriage—Wife, a Greek Cypriot and a member of the Greek Orthodox church—Husband, a Greek National and described as a Protestant—See, also, below.

Divorce—Cruelty—Whether wife should be called on to endure husband's conduct and whether such conduct is excusable—Husband's conduct of such a grave and weighty nature as to make co-habitation impossible—Wife's health affected—Decree nisi granted.

Matrimonial Causes—Child of the marriage—Custody—Welfare of the child—Welfare officer's report—Wife given the custody of the only child—The husband shall have access at all reasonable times—The Welfare Officer to make satisfactory arrangements as to access, failing agreement between the parties.

Cruelty—See above.

Custody of child—See above.

The facts sufficiently appear in the judgment of the Court.

Matrimonial Petition.

Petition for dissolution of marriage because of the husband's cruelty.

X. Clerides, for the petitioner.

Respondent absent. Not represented.

The following judgment was delivered by:

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JOSEPHIDES, J.: This is a wife's petition for divorce on the ground of cruelty. Although the husband originally entered an appearance, when the case came on for hearing his counsel appeared before the court and applied for leave to withdraw, and the proceedings were undefended.

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The parties were married under the provisions of the Marriage Law, Cap. 116, in the Commissioner's Office in Nicosia on the 24th January, 1958. There was no religious ceremony. Both parties had been previously married and separated. A child named Lazaros was born to the parties on the 17th August, 1958.

The petitioner (wife), who is a dressmaker, is a Greek Cypriot and a member of the Greek Orthodox Church. The respondent (husband) was born in Egypt fifty years ago, of a Greek Cypriot father and an Egyptian mother, and he was brought to Cyprus by his parents when he was about 12 year's old where he has lived ever since. He is a Greek National and he has been described as a Protestant. We have no further information as to his exact religion. He runs a self-drive car business.

On the evidence before me I am satisfied that the husband is domiciled in Cyprus and, therefore, this court has *jurisdiction* to hear and determine the present proceedings.

With regard to *cruelty*, we have the evidence of the wife, which is corroborated by two eye-witnesses and by medical evidence. Her evidence is to the effect that her husband is of an excitable and violent character, and that this was never a happy marriage. Right from the very beginning he used to go with other women and absent himself on two or three nights on end, excusing himself that he did not find sexual satisfaction in his wife. Throughout their married life he used to insult her and humiliate her in front of her own child, in addition to beating her occasionally. He wilfully failed to maintain his wife and child for 10 or 11 months a year, and at the time when matters came to a head in October, 1967, he had not slept with her or behaved towards her as a wife for about a year.

What eventually made the wife take proceedings for divorce was the terrible incident which took place in their home on

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the 29th of October, 1967, at about midnight. On that particular night they had neighbours and relatives dining with them and at about midnight the wife's brother-in-law, who lives in Limassol, was about to leave to return home. The husband offered to drive the brother-in-law to Limassol at that time of the night. The wife objected. Thereupon he slapped her on the face and smashed the glasses in the house and kicked her in the abdomen and her private parts. She tried to telephone the police but he prevented her and he again beat her in the yard of the house. All this happened in the presence of their guests and their child who was weeping and screaming all the time. The husband then locked up the child who continued screaming. The net result was that the wife received a black eye in the hands of the husband and was bruised all over the body and she had to stay in bed for three days. This incident is fully corroborated by the wife's sister, Kety Serghiou, and by the neighbour Androulla Polydorou. The sister Kety further stated that the wife was never happy with the husband who used to boast to this witness that he was going out with other women. The neighbour Androulla added that, for at least half of the time that she was their neighbour over a period of seven years, the parties were quarrelling.

The medical evidence comes from Dr. Thalys Michaelides F.R.C.S., who has been practising in Nicosia since 1952. *His evidence is to the effect that since 1961 he has been treating the wife for complaints of pains in the abdomen of a neurotic nature and for insomnia and dizziness. He was of opinion that if the living conditions of the wife with her husband did not improve her condition was likely to worsen. With regard to the particular incident, on the 29th October, 1967, the doctor stated that the wife had a haematoma in the left eye and bruising of the pubic area. She was swollen and had extensive bruising up to the labia of the genital organs. These injuries were consistent with beating or kicking. Finally, the doctor gave it as his opinion that the husband's behaviour towards the wife over a number of years caused her insomnia, dizziness, and pains and was such as to cause danger to her health.*

Having given the matter my best consideration I accept the wife's version as corroborated by the medical and other evidence, and I find the facts accordingly.

The question of cruelty is a question of fact in each case and the question which this court has to decide is whether this conduct by this husband to this wife is cruelty. I should, therefore, put to myself these questions:

- (a) ought this petitioner to be called on to endure the respondent's conduct? and
- (b) was the respondent's conduct excusable?

On the proved facts of this case I have no hesitation whatsoever in holding that the wife should not be called on to endure the husband's conduct nor was his conduct excusable. To my mind the husband's conduct was of such a grave and weighty nature as to make co-habitation impossible; and on the medical evidence I am satisfied that the husband's conduct was of such a character as to have caused danger to the life, limb and health of the wife. In these circumstances I find the petition proved.

With regard to the *custody* of the only child, Lazaros, I have before me the welfare report which speaks very favourably for the wife. According to this report, the wife seems to be doing very well as a dressmaker and that she owns the house in which she lives with the child. She is willing to bring up and educate the child and on the evidence I am satisfied that it will be to the welfare of the child if custody is given to her.

In the result a *decree nisi*, on the ground of cruelty, is granted to the wife (petitioner) who is also given custody of the only child of the marriage. The husband (respondent) shall have access to the child at all reasonable times. Failing agreement between the parties as to access, the welfare officer in charge of their area is to make satisfactory arrangements for that purpose.

Mr. Clerides: I claim costs.

JOSEPHIDES, J.: *Decree nisi* granted.

Custody order as above.

Respondent to pay the costs of these proceedings.

Orders in terms.

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