

1980 November 26

[A. LOIZOU, J.]

ANDREAS G. ORPHANIDES,

Petitioner,

v.

CHRISTINE-ANTONIA MICHAEL,

Respondent.

(*Matrimonial Petition No. 10/80*).

5 *Matrimonial Causes—Practice—Divorce petition—Leave to present within three years of marriage—Exceptional hardship suffered by petitioner—Exceptional depravity on part of respondent—No reasonable probability of reconciliation—Leave granted—Section 2 of the English Matrimonial Causes Act, 1950.*

Matrimonial Causes—Practice—Service—Substituted service of divorce petition—Respondent’s whereabouts unknown—Rule 12 of the Matrimonial Causes Rules.

10 *Matrimonial Causes—Divorce—Cruelty—Repeated use of physical violence—And mental cruelty to such an extent that petitioner’s health was affected—Petitioner-husband not expected to endure the inexcusable conduct of the respondent—Decree nisi granted.*

15 This was an undefended petition for divorce by the husband on the ground of the wife’s cruelty. The evidence of the husband, which was corroborated in all material respects by a family friend, was to the effect that there was repeated use of physical violence and also mental cruelty by the wife to such an extent that his health was affected; and had to be seen and treated by a doctor and was given sedatives and other drugs
20 because of his mental condition.

25 As by the date the husband sought to file this petition three years had not passed since the date of the marriage, an application for leave to file the petition was, also, made as provided by section 2 of the English Matrimonial Causes Act, 1950. Moreover an application for substituted service was made since the respondent’s address was unknown and personal service could not be effected.

Held, (I) on the application for leave to file the petition:

That the case is one of exceptional hardship suffered by the petitioner and of exceptional depravity on the part of the respondent who had left the matrimonial home with the issue of the marriage and kept her whereabouts unknown; that, moreover, the conduct of the respondent showed that there was no reasonable probability of reconciliation between the parties before the expiration of the prescribed period of three years; and that, therefore, leave for the filing of the petition will be granted.

(II) *On the application for substituted service:* That as personal service cannot be affected, because the respondent keeps her whereabouts unknown leave for substituted service will be granted (p. 529 *post*).

(III) *On the merits of the petition:* That the overall conduct of the respondent complained of comes within the definition of cruelty as known to the law, that is conduct of such a character as to have caused to the petitioner danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger; and that, therefore, the petitioner is entitled to the decree of divorce prayed for as in no circumstances he should be expected to endure the inexcusable conduct of the respondent.

Decree nisi granted.

Cases referred to:

Dunne (No. 2) v. Dunne (1965) 1 C.L.R. 344;

Peratikos v. Peratikos (1979) 1 C.L.R. 41.

Matrimonial Petition.

Petition by the husband for dissolution of marriage on the ground of the wife's cruelty.

A. Poetis, for the petitioner.

Respondent absent, duly served.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. This is an undefended husband's petition for divorce on the ground of cruelty. As on the date the husband sought to file this petition three years had not passed since the date of the marriage, as provided by section 2 of the English Matrimonial Causes Act of 1950, an application for leave to do so was made to the Court. Having

been satisfied that the case was one of exceptional hardship suffered by the petitioner and of exceptional depravity on the part of the respondent who had left the matrimonial home with the issue of the marriage and kept her whereabouts unknown, leave was granted for the filing of the present petition, as more-over the conduct of the respondent showed that there was no reasonable probability of reconciliation between the parties before the expiration of the prescribed period of three years (see *Dunne (No. 2) v. Dunne* (1965) 1 C.L.R., p. 344 and the English authorities therein referred to).

Furthermore, as personal service could not be effected, leave for substituted service was granted under rule 12 of the Matrimonial Causes Rules. The first mode directed for such service was by means of double registered post sent to her last known address in Paris, France, in which city she claimed to be when she spoke once to the petitioner on the phone. On failing to reach her, a second application for substituted service was made and in the circumstances I directed service by advertisement in an English newspaper of general circulation in Cyprus and that failing appearance within 30 days from the last publication, the petition to proceed in default of appearance and any other notice in the petition should be considered as duly served by posting up a copy thereof on the Court's notice board for 10 days. Although the directions for substituted service were duly complied, the respondent failed to put in an appearance or defend the proceedings.

The petitioner is a member of the Greek Orthodox Church and the respondent a member of the Roman Catholic Church. They were married on the 25th November, 1978, under the provisions of the Marriage Law, Cap. 279, in the office of the District Officer of Limassol. The marriage was never celebrated in accordance with the rites of either Church. After their marriage the parties lived together at Limassol. The only issue of the marriage is a girl, Cheryl-Georghina who now lives with the respondent outside Cyprus.

It appears that this marriage has not been all along a happy one. In fact, there was repeated use of physical violence and also mental cruelty by the respondent on the petitioner to such an extent that his health was affected. He had to be seen and

treated by a doctor and was given sedatives and other drugs because of his mental condition.

The overall conduct of the respondent complained of as appearing from the evidence of the petitioner, the unpleasant details of which I need not reproduce here and in material respects corroborated by the evidence of a family friend, Androulla Tseriotou, the credibility of which could not be doubted, comes within the definition of cruelty as known to the law, that is, conduct of such a character as to have caused to the petitioner danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger. 5 10

I need not go any further into the question of legal cruelty as I had the opportunity of reviewing the authorities recently in the case of *Peratikos v. Peratikos* (1979) 1 C.L.R., p. 41, and no useful purpose will be served by such repetition. 15

On the evidence before me, I have come to the conclusion that the petitioner is entitled to the decree of divorce prayed for as in no circumstances he should be expected to endure the inexcusable conduct of the respondent.

In the result a decree nisi on the ground of cruelty is granted to the petitioner—husband. The custody, however, of the only child of the marriage will be considered under section 2 of the Matrimonial Proceedings (Children) Act 1958, together with the arrangements that have been made or are to be made for its care and upbringing, when examining the application for the making of this decree absolute. 20 25

The respondent is also ordered to pay the costs of these proceedings.

Decree nisi granted with costs against respondent. 30