

1981 December 29

[A. LOIZOU, J.]

EDITH CHRISTODOULOU,

Petitioner,

v.

DEMETRIS KYROU CHRISTODOULOU,

Respondent.

(*Matrimonial Petition No. 3/81*).

Matrimonial Causes—Divorce—Desertion—Constructive desertion—Principles applicable—Mere wish or intention that other spouse should leave not by itself sufficient to constitute constructive desertion—Such wish or intention must be accompanied by conduct of grave and weighty character—Conduct of respondent—husband of grave and weighty character—Decree nisi granted to wife.

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The parties to this petition were married on the 27th June, 1960, under the provisions of the Marriage Law, Cap. 279. They lived together in Nicosia until March, 1977 when the petitioner wife was forced to leave the conjugal home on account of the behaviour of the respondent—husband, which included physical violence on her person coupled with his telling her to go. All these incidents lasted for some time until it was no longer possible for the petitioner to remain and she left the matrimonial home.

Upon a petition by the wife for dissolution of the marriage:

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Held, 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; that a mere wish or intention that the other spouse should leave is not by itself sufficient to constitute constructive desertion; that such 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; that the conduct of the respondent, a man of irritable and violent temper, has been shown to be of a grave and weighty character; that, moreover, there has been proved

a separation and the intention to bring the home to an end can be inferred from the words used, which could not but be taken to mean what the husband was saying, if coupled, in particular with the circumstances of ill-treatment, and the fact that since then the wife has not been accepted back to the conjugal home in spite of her efforts; that, therefore, the conduct of the respondent-husband, 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; accordingly a decree nisi, on the ground of desertion will be granted to the wife (see Rayden on Divorce, 8th ed. paras. 129, 131, 132). 5 10

Decree nisi granted.

Matrimonial Petition. 15

Wife's petition for dissolution of marriage on the ground of the husband's desertion.

A. Papakokkinou (Miss), with M. Stamataris, for the petitioner.

Respondent absent, duly served. 20

A. LOIZOU J. gave the following judgment. This is a wife's petition for divorce on the ground of desertion. The respondent husband, though duly served, failed to enter appearance or contest the proceedings.

The petitioner is an Austrian, member of the Roman Catholic Church and the respondent a Greek Cypriot belonging to the Greek Orthodox Church. They were married on the 27th June, 1960, under the provisions of the Marriage Law, Cap. 279 in the office of the District Officer, Nicosia. Out of this marriage there have been three issues, namely Alexandra, born on the 14.1.1961, Evelyn born on the 20.4.1962, and Aris born on the 23.10.1965. 25 30

The parties lived together in Nicosia until March 1977 when the petitioner wife was forced to leave the conjugal home on account of the behaviour of the respondent/husband, which included physical violence on her person and conduct, coupled with his telling her to go. All these incidents lasted for some 35

time and until it was no longer possible for the petitioner to remain. The petitioner wife gave evidence herself and called one witness a neighbour, who witnessed on the wife's body the marks of the husband's brutality and whose testimony
5 corroborated that of the petitioner in all material respects.

As stated in *Rayden on Divorce*, 8th Ed., p. 170, para. 129, with regard to the doctrine of constructive desertion: "Desertion is not to be tested by merely ascertaining which party left the matrimonial home first. If one spouse is forced by the
10 conduct of the other to leave home, it may be that the spouse responsible for the driving out is guilty of desertion. 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
15 intention to leave him. This is the doctrine of constructive desertion".

It should be born, however, in mind that a mere wish or intention that the other spouse should leave is not by itself sufficient to constitute constructive desertion. Such wish or
20 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.

No doubt from the evidence before me the conduct of the respondent/husband, a man of irritable and violent temper
25 has been shown to be of a grave and weighty character. Moreover there has been proved a separation and the intention to bring the home to an end can be inferred, *inter alia*, from the words used, which could not but be taken to mean what the husband was saying, if coupled in particular with the circum-
30 stances of ill-treatment, and the fact that since then the wife has not been accepted back to the conjugal home in spite of her efforts.

As further stated in *Rayden On Divorce (supra)* paragraph 132, "Where conduct of the required nature is established, the
35 necessary intention is readily inferred, for prima facie a person is presumed to intend the natural and probable consequences of his acts, and it is not necessary to show in a case of constructive desertion some definite evidence of a clear intention on the part of one spouse to drive the other away. The maxim

does not express an irrebuttable presumption of law, and it is only to be applied in connection with conduct which can fairly be described as ill-treatment. This presumption is not rebutted by evidence that the spouse guilty of expulsive conduct in fact had no desire to cause the other spouse to leave, or even desired that spouse not to leave".

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Bearing in mind all the circumstances of the case, I have come to the conclusion that the conduct of the respondent/husband "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". See *Rayden on Divorce (supra)* paragraph 131.

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For all the above reasons a decree nisi on the ground of desertion is granted to the petitioner/wife, but there will be no order as to costs as none are claimed.

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Decree nisi granted. No order as to costs.