Judgment 57/2004 **F v. F – Royal Court (Divorce file 6524) – 22 November, 2004**

Matrimonial law – contested divorce – wife/petitioner's complaint of unreasonable behaviour – provisional decree of divorce granted.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Before Rosalyn Le Couteur Brelsford, Lieutenant-Bailiff.

On the 22nd day of November, 2004.

Between:

F

Petitioner

and

F

Respondent

On the application of the Petitioner for a Provisional Order of Divorce, and having heard Advocate C. M. Fooks, Counsel for the Petitioner, and the Respondent in person, THE LIEUTENANT-BAILIFF GRANTED the said Application.

C. S. WEETMAN
Her Majesty's Deputy Greffier

Extract from Approved Text

IN THE ROYAL COURT OF GUERNSEY
MATRIMONIAL CAUSES DIVISION

Between:

F **Petitioner**

And

F **Respondent**

BEFORE Rosalyn Le Couteur Brelsford, Lieutenant Bailiff

Date of Hearing: 16th and 17th November, 2004
Date Judgment handed down: 22nd November, 2004

Advocate for the Petitioner: C.M. Fooks.
The Respondent represented himself.

[**Lieutenant Bailiff Brelsford summarised the legal principles as follows: -]**

Grounds for divorce

2. The sole ground on which a petition for divorce may be presented to the Court by either party to the marriage is that the marriage has broken down irretrievably. The court, hearing a petition for divorce, shall not hold a marriage to have broken down irretrievably unless the petitioner satisfies the Court on one or more of the following facts, that is to say:

(a) that the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) that the respondent has deserted the petitioner for a continuous period of a least two years immediately preceding the presentation of the petition;

(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to a decree being granted;

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.

3. As the Respondent has refused a consensual divorce under (d) which of course is his right so to do, the Petitioner has proceeded on the allegation of unreasonable behaviour.

The legal principles

5. The words "reasonably be expected" prima facie suggest an objective test. Nevertheless, in considering what is reasonable the Court (in accordance with its duty to inquire, so far as it reasonably can into the facts alleged) will have regard to the history of the marriage and to the individual spouses before it, and from this point of view will have regard to *this* petitioner and *this* respondent in assessing what is reasonable: allowance will be made for the sensitive as well as for the thick skinned; or as it used to be put in cruelty cases the conduct must be judged up to a point by reference to the petitioner's capacity for endurance, and in assessing the reasonableness of the respondent's behaviour the court would consider to what extent the respondent knew or ought reasonably to have known of that capacity. The approach can thus been summed up:- The Court has to decide the single question whether the respondent has so behaved that it is unreasonable to expect the wife to live with him: in order to decide that, it is necessary to make findings of fact as to what the respondent actually did, and findings of fact as to the impact of that conduct on the Petitioner: there, of course a subjective element has been evaluated but at the end of the day the question falls to be determined by an objective test. It has been said that the correct test to be applied is whether a right thinking person looking at the particular husband and wife, would ask whether the one could reasonably be expected to live with the other taking into account all the circumstances of the case and the respective characters and personalities of the two parties concerned. It is the effect or reasonably apprehended effect of the Respondent's behaviour that has to be considered, behaviour of such gravity that causes the Court to come to the conclusion that this petitioner cannot reasonably be expected to live with the respondent.

6. Any and all of behaviour whether active or passive may be taken into account: the court will have regard to the whole history of the matrimonial relationship but behaviour is something more than a mere state of affairs or a state of mind. Behaviour in this context is action or conduct by the one which affects the other. It may be an act or omission or course of conduct: but it must have some reference to the marriage. While in most cases it is behaviour after the marriage that is solely to be considered, cases can be envisaged where after the marriage the respondent behaves unreasonably in relation to pre-marriage matters: such unreasonable behaviour may, for example, relate to breaking promises made before

the marriage, or to the disclosure to the petitioner after the marriage of facts which ought reasonably to have been disclosed to the petitioner before the marriage. The behaviour in question may occur when the parties are living together or when they are separated. Regard will be had to the cumulative effect of behaviour, for while conduct may consist of a number of acts each of which is apparently reasonable in itself, the conduct may well be even more effective if it consists of a long continued series of minor acts no one of which could be regarded as serious if taken in isolation, but which, taken together, are such that the petitioner cannot reasonably be expected to live with the respondent.

7. It is "behaviour" to which the court must have regard, not "intentional behaviour". Intent may aggravate the effect of the behaviour of which the petition complains, and intent may make behaviour unreasonable that without such intent would not have been unreasonable. There may be conduct which it is difficult, prima facie, to assess as reasonable or unreasonable, and in this category the question of intention may be the decisive factor. Knowledge that the petitioner regards certain conduct as unreasonable may make behaviour by the respondent unreasonable, whereas absence of such knowledge might result in the respondent's conduct not being stigmatised in that way. It is a question of fact in every case and there may be circumstances where the respondent is in a sense completely blameless but nevertheless his *behaviour* entitles the petitioner to a decree. Negative as well as positive behaviour is capable of forming the basis of a decree of divorce. The court is not in a sense concerned with putting conduct into categories but in investigating the facts of the particular case before it and deciding the reasonableness of the respondent's behaviour.

I also fully appreciate that as the Respondent stated in his Answer he "has strong religious beliefs which prevent him from consenting to a divorce". Under our matrimonial law this of course is only a defence to a petition based on five years separation and if the Petitioner can prove sufficient of her allegations to convince me that the Respondent did act unreasonably towards her in such a way that she could not continue to live with him, then she is entitled to a divorce.

Burden of proof

8. The burden of proof is on the person alleging that the other spouse has behaved in such a way that he or she cannot reasonably be expected to live with the respondent. It is for the person making the allegation to prove the behaviour by the other party *and* that he or she cannot reasonably be expected to live with the respondent, and, unless he or she satisfies the court of both these matters, the court will not hold that the marriage has broken down

irretrievably. Divorce is a civil matter, and the allegations may be proved by a preponderance of probability.

Corroboration

9. Corroboration of the petitioner's evidence is not required as an absolute rule of law, but in matrimonial cases corroboration is desirable, although much, much less so than in former times. Any fact will be corroboration which renders it more probable that the witness's testimony is true on any material point.

Has the marriage irretrievably broken down

10. The first matter I must consider is whether the marriage has irretrievably broken down. The parties were married in November, 1976, and lived together for some twenty-six years before separating in 2002. […..] In 2002 the Petitioner left the matrimonial home and has since changed her name by deed poll back to her maiden name and is cohabiting with another man. The Petitioner is quite adamant that the marriage is over. The Respondent, on the other hand, feels that the marriage still has a chance. In an impassioned plea he argued that reconciliation was possible, that "where there is life there is hope" and that he considered that if the Petitioner had to wait for a further three years before she could petition for divorce on five years separation, that reconciliation could be effected during that time.

11. I refer to the words of Sir Jocelyn Simon P (as he then was) in the Riddell Lecture of 1970:

"If even one of the parties adamantly refuses to consider living with the other again, the court is no position to gainsay him or her. The court cannot say, "I have seen your wife in the witness-box. She wants your marriage to continue. She seems a most charming and blameless person. I cannot believe that the marriage has really broken down." The husband has only to reply, "I'm very sorry; it's not what you think about her that matters, it's what I think. I am not prepared to live with her any more." He may add for good measure, "What is more, there is another person with whom I prefer to live." The court may think that the husband is behaving wrongly and unreasonably; but how is it to hold that the marriage has nevertheless not irretrievably broken down?"

12. While I have every sympathy with the Respondent's obviously genuine wishes to save his marriage I must reluctantly accept that the marriage has broken down irretrievably.

Whether allegations proved

13. If the marriage has broken down irretrievably then the next question I must consider is whether the Respondent's behaviour has been such that the Petitioner cannot reasonably be expected to live with him.

14. This is one of the most difficult cases I have encountered in that the Respondent sees himself as an ideal husband which in some ways he has been. Being married and having a home together with his wife was the most important part of his life. As he said "I took care of her the best I could……. I wanted to keep pressure of life off her…… Everything I did, I did for her benefit.".

15. At the end of the day, however, as I have already stated in considering what is reasonable I must have regard to the history of the marriage and the individual spouses before me. I must have regard to this particular Petitioner and this particular Respondent in assessing what is reasonable and asked myself whether this particular husband and wife can be reasonably expected to live with the other taking into account all the circumstances of the case and the respective characters and personalities of the two parties concerned.