



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FAMILY PROCEEDINGS DIVISION

Cause No. FAM 10 of 2020  
LACV 0003/20

BETWEEN

ERNESTINE SHERITA EBANKS-WALKER

Petitioner

AND

DWAINE LIVINGSTON WALKER

Respondent

IN CHAMBERS BY ZOOM

Appearances: Mrs. Margeta Facey-Clarke for the Petitioner  
Mr. Dennis Brady for the Respondent

CORAM: Ramsay-Hale J.  
Heard 30 July 2020  
Decision Handed Down 11 January 2021

HEADNOTE

*Divorce Proceedings – Costs - Petitioner legally assisted - Respondent impecunious – discretion to award costs*

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JUDGMENT ON COSTS

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1. Pursuant to the Legal Aid Certificate granted to the Petitioner in this matter, Counsel for the Petitioner, Mrs. Facey-Clarke, makes application for a costs order to be made in favour of the Petitioner against the Respondent. This is the decision on that application.

**Background**

2. The Petitioner had sued the Respondent for divorce by Petition dated 8 January 2020 on the ground that the Respondent had behaved in such a way that she could not reasonably be expected to live with him. The particulars of unreasonable behaviour pleaded in the Petition included allegations of violence, emotional abuse including threats to kill and financial abuse in that the Respondent collected and kept the rents paid by the Petitioner's tenants, causing her mortgage to fall into arrears and depriving her of income.



3. The Respondent filed an Answer to the Petition on 4 March 2020 with the leave of the Court (Williams J). In his Answer, he denied all allegations of unreasonable behaviour made against him.
4. The matter was heard on the 1 and 2 June 2020. The Court found the Petition proved and the matter was set down for a hearing of the final ancillaries on 9 July 2020. The parties reached a final agreement on that day with the assistance of the Court and a hearing was avoided. The matter was relisted for 30 July 2020 on the application of the Petitioner and this application for costs made.

### **Submissions**

5. Mrs. Facey-Clarke submitted that the Respondent's insistence on contesting the Petition for Divorce had unnecessarily inflated the costs of the proceedings, causing the costs incurred by the Legal Aid Fund on behalf of the Petitioner to exceed the original \$5000 cap for legal assistance. Counsel asserted that the Respondent had been warned by Williams J that there could be cost consequences if the matter proceeded to trial, but the Respondent refused to seek to agree a ground on which an amended Petition could be proved. In the circumstances, Counsel submitted that the Respondent should now bear the cost consequences of that decision.
6. Mrs. Facey-Clarke submitted too that the Respondent's conduct of the proceedings had also contributed to the significant increase in costs borne by the Legal Aid Fund. She drew the Court's attention to the Respondent's delay in filing his Answer to the Petition and providing a Statement of Means with insufficient information which required the Petitioner to seek Further and Better Particulars which he then failed to provide. Further, the Respondent furnished the Petitioner with an audio-recording of a telephone conversation between them on which he proposed to rely to show that the marriage had not broken down irretrievably but did not provide a written transcript, which caused the Petitioner to incur the costs of preparing a transcript for use at the hearing.
7. Mrs. Facey-Clarke also stated that the Petitioner had incurred additional costs in responding to Children and Family Services who made inquiries with respect to the child of the marriage in response to a complaint made by the Respondent that he was being denied access. Counsel submitted that for which he should be held liable as any delay or uncertainty with respect to access had arisen because the Respondent had failed to communicate with his attorney and failed to sign the Consent Order in which the provisions for access were set out. As a consequence, the matter was relisted which led to further costs being incurred in preparing for a second hearing.
8. Mr. Brady, in response, submitted that the Respondent's belief that the marriage was not irretrievably broken down was engendered by the Petitioner herself in the course of a telephone conversation between them. The nature of the call, and the Petitioner's request



that the Respondent not divulge the call to her attorney, led him to believe that she did not want a divorce, but was being influenced by others to take this step to end their marriage and it prompted him to defend the Petition. Mr. Brady asked the Court to consider whether the Respondent should be penalised in costs for trying to save his marriage, which was the first period of stability he had ever enjoyed in his life.

9. Mr. Brady also asked the Court to take into account when exercising its discretion that the Respondent is impecunious and that Counsel had represented him *pro bono*.

#### **ORDER 62**

10. The power to award costs is discretionary. The rules that guide the Court's exercise of its power are found in the Grand Court Rules provides at Order 62 rule 4 of the Grand Court Rules which provides, *inter alia*, that

*“(2) The overriding objective of this Order is that a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by him in conducting that proceeding in an economical, expeditious and proper manner unless otherwise ordered by the Court.”*

...

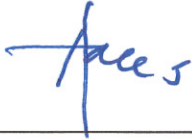
*“(5) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.”*

#### **DECISION**

11. The serious allegations of physical, emotional and financial abuse made against the Respondent by the Petitioner in her Petition for Divorce were borne out by the evidence. At least one incident of violence had been witnessed by an independent third party, who was a former tenant in the house in which the parties lived as husband and wife. The Respondent's decision to defend the Petition was as cruel as his conduct in the marriage, as the Petitioner has stage 4 metastatic breast cancer. She gave evidence from her sickbed and later observed the Respondent's testimony from the hospital where she was receiving treatment. It would not only have saved costs if the Respondent had sought to agree a ground of unreasonable behaviour on which an amended Petition could be proved, it would have spared the Petitioner a great deal of unnecessary distress.
12. Of course a respondent is entitled to defend a petition presented on grounds of unreasonable behaviour with which he does not agree, but then he must face the costs consequences if he is unsuccessful. Costs follow the event.

13. The Respondent in this case cannot say he was unaware that he might face an application for costs, given that Williams J. expressly addressed the possibility. The costs anticipated and provided for by the Legal Aid Fund were not only exceeded in consequence of the Respondent's decision to defend the Petition but were significantly increased as a result of his conduct in relation to the proceedings as outlined by Mrs. Facey-Clarke in her submissions.
14. Having considered the matter in the round, and making an allowance for the Respondent's financial position, I order the Respondent pays those taxed costs incurred by the Petitioner over and above the sum of \$5000 originally granted under the Legal Aid Certificate.

DATED THE 11 JANUARY 2021

A handwritten signature in blue ink, appearing to read 'Ramsay-Hale J.', is written over a horizontal line.

RAMSAY-HALE J