

IN THE SUPREME COURT OF BELIZE, A.D. 2005

ACTION NO: 219

	(ELENA USHER	PETITIONER
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BETWEEN(AND	
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	(OSBERT ORLANDO USHER	RESPONDENT

Coram: Hon. Justice Sir John Muria

Ruling: 5 November 2007

Ms Lois Young S.C. with Mrs. Magali Marin Young for Petitioner
Mr. Fred Lumor S.C. with Mrs. Robertha Magnus-Usher for Respondent

Ruling

MURIA J.: At the end of the hearing of the divorce petition in this case, a decree nisi was granted on 31 October 2007 together with an order for joint custody of the minor issue to the marriage. The question of costs was adjourned for the court to consider.

The petitioner filed her petition for divorce on the grounds of adultery and cruelty against the respondent on 17 November 2005. The respondent filed his answer to the petition for dissolution of marriage on 12 January 2006 denying the allegation of cruelty and pleading the defence of condonation to the allegation of adultery.

The case first came before the court on 19 April 2006 during which it was ordered that Action Nos. 220 of 2005 and 219 be merged into one action, renaming both actions as Action No. 219 of 2005.

In addition to her petition for divorce the petitioner also filed a petition for maintenance pending suit on 17 November 2005. The respondent filed an answer to that petition also on 12 January 2006.

The Case Management Conference was held on 23 July 2007 at which the trial date of 31 October 2007 was agreed. The Pre-trial Review was dealt with on 17 October 2007. On that same date, the court dealt with the petitioner's application for maintenance pending suit following which, the respondent was ordered to pay \$2,500.00 per month interim maintenance pending suit.

Notably, throughout the conduct of these proceedings, the respondent maintained his position that he would defend the petition. I have no doubt that the attorneys for both parties had prepared for the show down in this petition on 31 October 2007. The court was informed when the case was called on 31 October 2007, that the petition would be undefended and it was so dealt with accordingly.

Ms. Lois Young asked for costs in the sum of \$8,000.00. Counsel argued that as the matter was understood to be defended, a lot of work had gone into preparation for the trial and that the concession came at the eleventh hour.

Mr. Fred Lumor, whilst not disputing that the respondent must pay the petitioner's costs, suggested that the question of costs can be dealt with when the court comes to deal with Claim No. 420 of 2005 which is the application by the Petitioner for ancillary relief. Counsel further contended that \$8,000.00 costs is far too high in this case. Counsel counter-suggested the amount of \$4,000.00 as reasonable costs in this case.

Neither Counsel referred the court to any Belize case law authority on the question of costs in an undefended divorce petition in Belize, more so, in the circumstances of this case. However, the general rule is that costs are in the discretion of the Court. See *Howell -v- Howell* [1953] 2 All ER 628.

The exercise of that discretion depends on the facts of each case and there is no magic in this exercise. The Judge has to weigh in the balance the interest of both parties in the light of the circumstances of the case presented before him, in order to arrive at what is fair and just between the parties.

In an undefended divorce petition itself, the question of costs very often presents less difficulty, since the amount of work and other preparations by the attorneys is less demanding. Unlike in a defended divorce proceedings where the costs involved can be, and very often is, high. In other words, the sky is the limit, depending on the amount of work that the attorneys have put into preparing for the trial.

In the present case, since the petition had been served on the respondent in December 2005, the respondent had taken the stand to defend the petition at all costs. Consequently, the petitioner was obliged to treat her petition as being defended, necessitating preparation to meet the line of defence and issues to be pursued by the respondent at the trial. As it transpired, the respondent had backed out from defending the divorce petition at the eleventh hour. Although the concession by the respondent was, in my view, the right choice to make, it was needlessly delayed in coming. All that I can say is that it was a meritless tactical posturing for which a delinquent party can expect a penalty by way of costs. See *GW -v- RW* [2003] EWHC 611 (Fam.) (18 March 2003).

Thus the fact that the respondent had decided at the “door of the court” to concede the petition does not, in my view, relieve him of the burden of shouldering part of the costs of preparation for trial undertaken by the petitioner due to his conduct of the case, up to the last minute when he changed his mind. There is, therefore, justification for treating this case as undefended but with a penalty of costs. Of course, each case stands on its own merits, depending on the views taken by the judge who is considering the case.

That being said, compared with other jurisdictions, such UK, the costs of undefended divorce cases can range between £800-£1000. In the case of defended divorce proceedings, I can only presume that the sky is the limit, having read some of the decided English cases that came before the Family Division of the High Court in England.

In our case in Belize, I do not have before me any matters that I can adopt as a guide in a case such this, but I am convinced that sum of \$8,000.00 costs as suggested by Counsel for the petitioner, would be about the maximum for an undefended petition, where senior Counsel is involved, even if an element of penalty is already added to it. I can appreciate the reasons given by Counsel to justify seeking such an amount as costs in this case. However, maximum amount

to be imposed as penalties are normally reserved for the worst cases. I have my doubts if the present case is one of such cases.

On the other hand, I am of the view that a truly undefended divorce petition would incur costs in the region of \$1500.00 to \$3,000.00 and with a penalty element added, it should rise above that range but below the figure suggested by Counsel for the petitioner. Doing the best I can, in the circumstances, I feel the appropriate amount as costs to be imposed on the respondent is one of \$6,000.00. I do so bearing in mind that the amount imposed is not the price of severing a relationship but a penalty for throwing in the towel at the eleventh hour.

No doubt the question of costs will again be determined when Claim No. 420 of 2005 is dealt with. The Court can, nevertheless deal with the question of costs sought that in this divorce petition separately and I have now done so.

As the parties are about to meet again on the battle ground of Claim 420 of 2005, I would encourage the parties not to lose sight of the useful hints found in cases such *Calderbank –v- Calderbank* [1976] Fam. 93, (1975) FLR Rep. 113, [1975] 3 WLR 586, [1975] 3 All ER 333. They may help to alleviate unnecessary costs. The

Calderbank offer had been adopted in many cases since then and had shown to be useful in cases of this nature.

In the circumstances the proper amount of costs against the respondent would be one of \$6, 000.00.

Order accordingly.

(Justice Sir John Muria)