

Aurelia K. Garnett of the City of Monrovia APPELLANT Versus **Rufus M. Garnett** also of the City Of Monrovia APPELLEE

APPEAL

HEARD: MARCH 26, 2007 DECIDED: MAY 11, 2007

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

Rufus M. Garnett, Appellee, instituted an action of Divorce for Incompatibility of Temper against his wife, Aurelia K. Garnett, Appellant, in the Civil Law Court, Sixth judicial Circuit Court on April 22, 2005.

In his four-count complaint, Appellee alleged that he and Appellant were joined in a bond of holy matrimony on December 19, 1998, at the Philadelphia Church, Congo Town, Monrovia, Liberia; that not long after their marriage, Appellant became extremely quarrelsome and intolerably pugnacious to the Appellee that life between them became extremely dangerous for the Appellee. The Appellee maintained that because of the attitude of the Appellant, there no more exists active marital bonds between them therefore, they can no longer live together as husband and wife. Appellee prayed the Civil Law Court to issue a decree dissolving the marital bonds between them as though said marriage had not existed.

The Appellant filed a nine-count answer in which she said that the complaint is false, misleading, unfounded and cleverly designed to cover the Appellee's devilish desire. Appellant maintained that at no time since their marriage has she been quarrelsome and pugnacious to the Appellee, nor has she made life between them dangerous. Instead, Appellant said she has always been a loving, caring, quiet and respectful wife; that it is Appellee who has been unholy in his dealings and handling of their marital relationship to the extent that he engaged Appellant's younger sister into extra marital relationship, which brought shame and disgrace to Appellant; that because of this Appellee assumed an unfriendly posture towards Appellant to avoid discussion of his shameful action of having amorous affairs with her younger sister.

Appellant also stated that there is no situation of incompatibility of temper existing between them as she has always sought a quiet and honorable resolution of any problem arising between them; that she did not enter into holy matrimony with Appellee to divorce or be divorced, but to remain therein till death do them part; that she and Appellee have three children; and that she resists and protests any attempt by

Appellee to have their children brought up single-handedly by either of them or any third party because she is convinced that their children are accustomed to them and will have the requisite upbringing and training while in the joint custody and care of both of them. Appellant therefore prayed the trial court to deny and dismiss Appellee's complaint and refuse Appellee's request to have the bond of marriage between them dissolved.

On January 3, 2006, Appellant filed a petition for suit money in which she informed the court that she had retained the legal services of Legal Aid, Inc. to represent her in the divorce action filed against her by her husband, and that, Legal Aid, Inc. had charged her Fifteen Thousand United States Dollars (US\$15,000.00). Appellant prayed court to cause the Appellee to make the money available for her legal services.

Appellant also filed a motion for alimony pendente lite requesting court to have the Appellee make available to her and her children Thirty Thousand United States Dollars (US\$30,000.00) as support money while the divorce action filed by Appellee is being pursued in Court.

When the case was called for hearing on February 17, 2006, Counsel for Appellee requested to spread his resistance on the records of court to both the petition for suit money and the motion for alimony pendente lite and the request was granted. The resistance of the Appellee to the petition for suit money as well as the alimony pendente lite was essentially that the Appellee was still providing support for his wife and children and that in any event, the court should take into consideration the monthly salary of the Appellee in the amount of One Thousand, One Hundred and Eighty-Five Liberian Dollars and Fifty cents (L\$1,185.50) in determining the petition for suit money and the motion for alimony pendente lite.

On February 20, 2006, the trial court ruled granting Appellant's petition for suit money and the motion for alimony pendente lite, but the court reduced the amounts prayed for by the Appellant and at the same time ordered that the amounts be paid in Liberian dollars instead of United States Dollars as prayed for by the Appellant. The trial court decreed that the Appellee pays to the Appellant through the court, an amount of Five Thousand Liberian Dollars (L\$5,000.00) and a bag of rice monthly for the support, maintenance and upkeep of his wife and children excluding school fees and medication. The court further decreed that the Appellee pays to the Appellant through the court an amount of Five Thousand Liberian Dollars (L\$5,000.0) per month as house rent and an amount of Ten Thousand Liberian Dollars (L\$10,000.00) as Counsel fee for the legal defense of his wife in the divorce

case up to the Supreme Court. The court ordered that the counsel fee should be paid in two installments.

To the ruling, only the Appellant excepted and informed court that she would take advantage of the statute made and provided in such cases. The Appellee did not except; we assume therefore, that the judgment of the lower court was accepted by the Appellee and that he has fully complied with the said judgment. In fact, we recall that during the argument of this matter before us, the Chief Justice, His Honour Johnnie N. Lewis, specifically advised the Appellee's counsel to ensure that the lower court's decision on the petition for suit money and the motion for alimony pendente lite to which the Appellee did not except be fully complied with.

The main case was ruled to trial and after the conduct of a regular trial, the jury brought a unanimous verdict of "not liable" in favour of the Appellee. A motion for new trial was filed, heard and denied. The trial judge, on August 25, 2006 entered final judgment confirming the unanimous verdict of the jury. We quote excerpt from the trial judge's final ruling:

"After a careful review of the evidence adduced at the trial, this court is of the opinion that the verdict of the trial jury conforms with the evidence as well as court's instruction to the Jury. Hence, this court hereby confirms and affirms the trial jury directing the Plaintiff his divorce.

However, consistent with the information that this Court received during a conference with the parties on August 11, 2006, which established that the union between Rufus McDonald Garnett and Aurelia Karpee Garnett was blessed with three (3) children that are now [of school] attending ages who are currently in the custody of the Defendant and also, the information received from the parties as to property acquired by the couple during the time of their marriage, this Court hereby decrees that the Defendant in these proceedings, in consideration of the fact that she has in her custody the three (3) children mentioned supra hereby decrees that the following property/ies acquired during the marriage of the party/ies be turned over to the Defendant with all necessary documents indicated of conveyance of the titles of the said property. Two master beds, one double mattress, one double bed, one ice box, two mattresses, one large freezer, two dressers, one living room set, one dinner room set, one standing fan, one 24 inch t.v., one dvd player, $\frac{3}{4}$ lots with a story building foundation, lying and situated in Oldest Congo Town, a kitchen set, to include cups, knives, forks, spoons and the joint account of the parties at ECOBANK, and one four door Toyota Car. The Plaintiff is hereby ordered to allow the Defendant to take delivery and possession of all of the chattels named above. As to the quarter lot to which they had joint ownership, the Plaintiff is hereby ordered to issue Quit Claim Deed in Favour of the Defendant.

WHEREFORE AND IN VIEW OF THE FOREGOING, this court hereby declares and decrees that the contract of matrimony once existing between Plaintiff and the Defendant is hereby dissolved, annulled, and made null and void as though such contract never existed thereby making Plaintiff and Defendant separate and distinct persons both in law and in equity. The Government tax fee, when paid as evidenced by receipt, the Clerk of this Court is ordered to prepare a Bill of Divorcement, declaring the marriage between Plaintiff and Defendant null and void and they shall live as separate and distinct as though such contract of matrimony never existed. AND IT IS HEREBY SO ORDERED."

This case is before us on appeal announced by both the defendant and the plaintiff; the defendant excepted to the entire ruling and announced an appeal to the Supreme Court, while the plaintiff excepted to the portion of the ruling awarding properties to the defendant and announced an appeal to this Court. Even though both the defendant and the plaintiff appealed from the final ruling of the Court below, it was only the defendant who perfected her appeal. Thus she has been designated, and rightfully so, as the Appellant while the Plaintiff remained the Appellee, since he did not pursue and complete his appeal announced. This means he cannot contest the ruling of the trial judge.

Several issues were raised in the briefs filed by the parties and argued by their respective counsels, but we have determined that the lone issue determinative of this Case is- whether or not the verdict of the empanelled jury is contrary to the weight of the evidence adduced at the trial?

This is a divorce suit filed on the ground of incompatibility of temper. Our jurisdiction recognizes incompatibility of temper as a ground for divorce, unlike other jurisdictions where incompatibility does not constitute an independent ground for granting a divorce. Domestic Relations Law, Grounds for Divorce, Section 8.1(d).

"Incompatibility does not refer to petty quarrels and minor bickering which are merely evidence of normal human frailty." 24 AM JUR 2d., Divorce and Separation, Section 30. A state of incompatibility for which a divorce is granted "refers to conflicts in personalities and dispositions which are so deep as to be irreconcilable and irremediable, and which render it impossible for the parties to continue to live together in a normal marital relationship. It has been held that either party may sue for a divorce without showing that the defendant is guilty of any misconduct or fault, or that defendant is responsible for the state of incompatibility; that the court may grant a divorce without determining whether either, both, or neither of the parties is

responsible for the incompatibility; and that it is only incumbent upon the plaintiff to show that a state of incompatibility exists." Ibid.

These principles of common law were upheld by this Court in the case: Korkoya vs. Korkoya, 37 LLR 553,556 (1994).

Now, let us see whether, according to the records before us, there exists a state of incompatibility so deep and irreconcilable that makes it impossible for the couple in this case, to remain living together as husband and wife.

During trial, the Appellee testified that not long after their marriage, things started to go wrong. He said that although they married with the understanding that his wife will "move" to his church, she refused to attend church with him. He said that his wife also refused to accompany him to visit his family members, and to go to social gatherings and other occasions with him. He narrated that when his sister-in-law, the Appellant's sister became pregnant for an unknown person, he insisted that the person responsible for the pregnancy be invited to take her with him. When he made that decision, according to the Appellee, his wife became his "enemy" and refused to talk to him; he also said that she refused to have conjugal relationship with him for nine months. He further said that his wife had the constant habit of bringing a group of her relatives to stay at their matrimonial abode. The Appellee also testified that at one time when his wife had returned from the village, and while they were on the table having dinner, he discovered a "medicine" wrapped in a newspaper on the table and when he questioned her, she did not give any convincing answer. On another occasion, according to the Appellant, his wedding ring mysteriously disappeared from their home and two weeks later, it appeared on their dresser. He said that when these "strange things" happened, he feared for his life and stopped eating the food that his wife prepared. He said he moved out of the room shared by he and his wife into another room in their house and eventually left their home. He further said that his wife had sued him on at least two different occasions and at one such time, he was put in jail much to his disgrace and embarrassment.

Mrs. Roseline Sundway Lawrence, the Appellee's mother, testifying for Appellee said that relationship between her son and his wife had worsened; that many family meetings to resolve differences between them had failed. She confirmed the story of her son's wedding ring mysteriously disappearing and reappearing; she also confirmed the "medicine" story. She further testified that her daughter-in-law had accused her on many occasions of taking her name to "medicine" man.

The Appellant gave a lengthy testimony. The synopsis of it is that she and her husband were married on September 19, 1998; that from the very beginning her husband's mother did not like her and refused to take family photo with them on their wedding day saying: "I do not want to take picture with country people"; that her mother-in-law, acting in cohort with her husband, took her picture to one medicine man with the aim of causing her to contract what she referred to as "yangafo" (skin disease). Appellant claimed that she met the said medicine man who confirmed the story to her; that as a result of that problem, her husband sided with his mother and beat her, causing her to flee to County Attorney, Montserrado County, who arrested her husband and her mother-in-law. She testified further that her husband had extra marital affairs with her younger sister and other women; that at the moment, the Appellee is seriously having an affair with a woman whom he has planned to marry.

We have summarized the testimonies of the Appellee and Appellant, as well as the testimony of Mrs. Roseline Sundway Lawrence who is very close to the couple to underscore that there exists a serious state of incompatibility so deep and irreconcilable that it is in the interest of the couple to go their separate ways. It is clear that relationship between Appellee and Appellant has been damaged to the point that it cannot be salvaged as many efforts to do so through family meetings and other means have failed to yield result. Both Appellant and Appellee have indicated sufficiently that they have fear and apprehension living together as husband and wife. We hold, therefore that the lower court's ruling confirming the empanelled jury's verdict granting divorce to the Appellee is legal and proper, and serves the best interest of the parties and may we add, the State, since marriage is a triangular arrangement between the husband, the wife and the State.

We see that from the union of Appellant and Appellee were begotten three children; Rufus Garnett, Jr., five (5) years old; Roosevelt McArthur Garnett, one year nine months old; and Roshelle Aurelia Garnett seven (7) months old. No issue of custody for either or all of these children was raised and decided in the court below. Therefore, we assume that they are still in the custody of their mother, the Appellant, when they were at the time of granting the divorce in the lower court, according to the recordings before us. That being the case, we hold as follows:

1. That the ruling of the trial judge, awarding certain items and properties to the Appellant dated August 25, 2006 is hereby confirmed;

2. That the children shall remain in the custody of their mother until a property case of custody is made by their father, should he elect to do so: at such time, the lower court shall take into consideration, the best interest of the children;

3. That the Appellant shall have visitation right to his children whenever he chooses to do so all such visits should, however, be paid at reasonable hours; and

4. That the Appellant shall provide support for the welfare of his minor children; he shall pay, through the law court, Twenty Thousand Liberian Dollars (L\$20,000.00) and a bag of rich each and every month for their support and maintenance while they are in the custody of their mother until each child attains the age of Twenty-one (21) years; the amount of Twenty Thousand Liberian Dollars (L\$20,000.00) shall not include school fees, clothing, and cost of medication.

WHEREFORE, and in view of the foregoing, the ruling of the trial judge confirming the verdict of the empanelled jury granting divorce to the Appellee is hereby confirmed with the above modification. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction over this case and give effect to this ruling. AND IT IS HEREBY SO ORDERED.

Judgment Affirmed.