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**IN THE FAMILY COURT
AT HAMILTON**

**I TE KŌTI WHĀNAU
KI KIRIKIROA**

FAM-2023-095-004959

[2024] NZFC 10636

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	KIRANJEET KAUR Applicant
AND	GURSEWAK SINGH Respondent

Hearing: 14 August 2024

Appearances: S Bhardwaj for the Applicant
S Kavanagh-Ward for the Respondent

Judgment: 14 August 2024

ORAL JUDGMENT OF JUDGE D A BLAIR

[1] This is a defended application for dissolution of marriage filed by Kiranjeet Kaur. The respondent is Gursewak Singh.

[2] The core issue in the case is whether the parties had been living apart for the period of two years immediately preceding Ms Kaur's application for dissolution filed on 18 July 2023.

[3] Section 39(1) of the Family Proceedings Act 1980 (“the Act”) provides:

An application for an order dissolving a marriage or civil union may be made only on the ground that the marriage or civil union has broken down irreconcilably.

[4] At subs (2):

The ground for the order is established in law if and only if the Court is satisfied that the parties to the marriage or civil union are living apart, and have been living apart for the period of two years immediately preceding the filing of the application for an order dissolving the marriage or civil union; and no proof of any other matter shall be required to establish the ground.

[5] Section 40 of the Act provides:

For the purposes of ss 24 and 39 of this Act, the parties to a marriage or civil union shall not be held to have ceased to live apart or to have resumed cohabitation by reason of having resumed cohabitation on one or more occasions for a period or periods not exceeding aggregate three months (whether or not there have been acts of sexual connection between the parties) where the court is satisfied that reconciliation was the sole or principal motive for the resumption of cohabitation.

[6] On the issue of living apart, his Honour Judge Callaghan noted in *McBride v McBride*:¹

Living apart for the purposes of s 39(2) of the Family Proceedings Act 1980 involves two ingredients; physical separation and a mental attitude adverse to cohabitation on the part of one or both spouses.

[7] It is not unusual for parties to live in different cities or countries including where work commitments make that necessary. It is the quality of that separation which come under scrutiny in an application for dissolution.

[8] In *SMMHD v KAHAG*, her Honour examined lengthy periods of times the parties had lived apart and concluded their long absences from each other, the respondent’s lack of engagement with the children and his limited financial support for the family – coupled with the fact the parties’ sexual relationship had ceased four

¹ *McBride v McBride* [1999] NZFLR 651.

years before the application was made – were all indicative of an irreconcilable breakdown in the marriage and order for dissolution was made.²

[9] Variations of the practical arrangements between parties could be limitless. I need to identify the situation as between these parties and assess it in an objective and common-sense way.

[10] The burden falls upon the applicant to establish beyond the balance of probabilities that the parties have had the requisite period of two years being apart, therefore, the marriage having broken down irreconcilably.

[11] Ms Kaur argues that the separation between these parties happened on 23 October 2019 in India. The parties had married in Punjab, India on 2 February 2019. Ms Kaur says they orally agreed to separate and she went to New Zealand.

[12] Ms Kaur says she was the subject of significant family pressure including from her own parents to continue with efforts in the marriage. She says her parents had pressured her to give Mr Singh one more chance, by way of her support for him to come to New Zealand on 2 January 2023. Mr Singh arrived in New Zealand on 2 January 2023 last having seen the applicant in person in October 2019.

[13] The parties resided together in the same house in Hamilton flatting with a third party named Parminder Dhattarwal. On or about 22 June 2023, Mr Singh left the home and he says this is when the parties separated. Mr Singh therefore says Ms Kaur was nowhere near the requisite period of two years of living apart prior to the filing of the application. On his evidence, the time would fall due for Ms Kaur to file an application on 22 June 2025. The parties are therefore at odds as to when the actual separation between them happened.

[14] Ms Kaur has acknowledged under questions during the hearing that when she went to New Zealand in October 2019, it was with some level of assistance by the respondent's parents. Her evidence was not completely clear but she resolved the

² *SMMHD v KAHAG*, FAMC Christchurch FAM-2010-009-1101, 17 January 2011.

respondent's parents assisted with study costs once in New Zealand. Ms Kaur says she sold jewellery to assist with payment of her airfares.

[15] Ms Kaur expressed that the purpose of her travel to New Zealand in October 2019 was because both parties would be going there, that she has family locally being a brother and thirdly, for study purposes.

[16] Various electronic messaging exchanges between the parties have been placed into the evidence spanning the period during which the parties were physically apart in separate countries. Ms Kaur challenges that the messages are demonstrative of a continuing marriage and she says throughout that period she remained subject to pressure from family about the marriage.

[17] A message exchange in May 2020 reveals an apparent exchange between the parties during which Mr Singh was asking for advice from India about clothes shopping and Ms Kaur giving it.

[18] Another exchange in December 2021 between the parties related to the sending of money by Ms Kaur to Mr Singh. Mr Singh apparently instructing not to send it. Ms Kaur acknowledges both parties were frustrated during that exchange.

[19] Mr Singh says there were telephone calls between the parties quite regularly. Ms Kaur emphasises that the exchanges between the parties were not romantic or intimate and were more about practicalities.

[20] Mr Singh has placed into evidence money transfer statements going from Ms Kaur to Mr Singh. One is on 3 February 2022 in the amount of \$496. Another on 2 September 2022 is for a little under \$1,500. Another on 13 November 2022 is in the sum of \$409.85. Ms Kaur says those payments were more of a demand from Mr Singh than a voluntary payment as between spouses.

[21] It seems common ground that the payments went into a joint account in India and were then utilised by Mr Singh for the purposes of him pursuing a partnership visa to come to New Zealand himself.

[22] Mr Singh has placed into the evidence a New Zealand immigration form headed “Form for Partners Supporting Partnership-Based Temporary Entry Applications”. The form is dated 3 October 2022, therefore, falling within the period that the financial payments were made to the respondent by the applicant. Ms Kaur has completed the form in support of Mr Singh. Implicit from the form is that she did so as his partner and in support of his application for the visa. Ms Kaur gave a declaration in the form on 3 October 2022 that the information supplied in the form and accompanying documents is true and correct.

[23] Message exchanges between the parties show Mr Singh’s advice about the visa being granted. The parties exchanged messages about Mr Singh’s booking of a flight. Ms Kaur’s responses apparently being more reflective of Mr Singh needing to sort out dates.

[24] Mr Singh arrived in New Zealand on 2 January 2023. I asked Ms Kaur during the hearing whether Mr Singh was then collected by her or something else. Ms Kaur and her brother apparently drove to Auckland to collect Mr Singh and he was brought back to the house.

[25] The parties agree that upon Mr Singh’s arrival they did not share the same bedroom. They were both downstairs in the accommodation, Mr Singh having the actual bedroom and Ms Kaur organising a bed in the downstairs lounge area. Ms Kaur advises they did not have sexual relations.

[26] The evidence of the person the parties lived with between January and June 2023, Parminder Dhatarwal, is that these parties did not demonstrate the interactions one would expect from husband and wife. There were arguments, including each with family. The parties did not sleep in the same room.

[27] Ms Dhatarwal gave evidence about Ms Kaur’s distress about things prior to Mr Singh arriving in New Zealand and she reported a conversation about Ms Kaur crying to her when Mr Singh had obtained the visa. Ms Dhatarwal says there were discussions about family pressure.

[28] I consider the following aspects of the evidence of particular relevance:

- (a) That the parties lived together in the state of marriage in India from February 2019 until about 23 October 2019 at which point Ms Kaur went to New Zealand.
- (b) Paternal family support financially for Ms Kaur's objectives in New Zealand, being to study.
- (c) That the parties were in relatively frequent contact electronically during the period of their absence from each other.
- (d) I take note of the dislocation caused to people internationally by the COVID-19 pandemic from 2020. I note Mr Singh's advice that he tried to get a visitor's visa in 2020 to come to New Zealand but was declined.
- (e) The financial transfers made by Ms Kaur to Mr Singh which went into the joint account in India in 2022.
- (f) The partnership visa support form signed by Ms Kaur on 3 October 2022. It was her statement that she was in a partnership relationship with Mr Singh and he had her support to come and be with her in New Zealand. It is very difficult to read or interpret that form and the signing of it any differently.
- (g) The collection of Mr Singh from Auckland when he arrived by Ms Kaur and her brother and the parties then residing together in the same home until June.
- (h) What were very concerning broader family dynamics, at least from Ms Kaur's view, and she says being pressured to act in the way she did. Ms Kaur says in her evidence, for instance, the sending of funds to India were to shut Mr Singh and his family up and to stop his family from abusing or blackmailing her parents. Possibly the parents of these parties see things quite differently. There is a police complaint in the

evidence supposedly signed by Mr Singh Senior expressing his concern about the actions of Ms Kaur's parents. Whoever's perspective is the more accurate, I can conclude there were challenging dynamics which probably both Ms Kaur and Mr Singh were attempting to navigate.

[29] On the evidence, I can conclude this was not a particularly happy or close marriage and one fraught with dynamics which perhaps I have a chance of only partially understanding. However, the parties were married on 2 February 2019 and in the evidence, there are reasonably strong signs that in one way or another, their status as husband and wife continued even if from a distance and through what were challenging circumstances.

[30] This is not a statement that the parties were close but I cannot conclude on the balance of probabilities they had separated at the point Ms Kaur submits. When she left India for New Zealand, Mr Singh's parents gave her some assistance financially. The parties kept in touch, money was sent and importantly, in my assessment, Ms Kaur signed the declaration in the visa on 3 October 2022 about her partnership support for her husband.

[31] I cannot find that the parties were, therefore, living apart for the essential period of two years prior to the filing of Ms Kaur's application on 18 July 2023. This will come as a disappointment to Ms Kaur but her application for dissolution is not therefore made out.

[32] In this decision, I have attempted to identify the relevant factors and I have made sure to identify the difficult dynamics she has found herself in.

[33] The application for dissolution is therefore dismissed.

[34] What will be apparent from both parties will be the reality that at the latest, Ms Kaur could bring an application for dissolution on 22 June 2025. To do so would comfortably match Mr Singh's own advice about a definite date of separation.

[35] In the difficult circumstances of this case, I decline from the outset to make any order for costs as between these parties. Costs will lie where they fall.

Judge DA Blair

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 19/08/2024