



Neutral Citation Number: [2019] EWHC 2101 (Fam)

Case No: 94D01656 Willesden County Court

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2019

Before :

MR JUSTICE MOSTYN

Between :

James Patrick Power
- and -
Maria Eugenia Vidal

Applicant

Respondent

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE MOSTYN

This judgment was delivered in public

Mr Justice Mostyn:

1. The petitioner and the respondent were married on 10 October 1987.
2. On a date in 1994 the petitioner issued a petition for divorce in the Willesden County Court which was given the cause number 94D01656.
3. Decree Nisi was pronounced on 12 November 1996. The Decree was made Absolute on 29 January 1997.
4. In January 2018 the petitioner wished to take steps to remarry. However, he could not locate his copy of the Decree Absolute certificate. On 19 January 2018 he wrote to the Willesden County Court seeking a copy of the Decree Absolute as he wished to remarry. On 17 April 2018 he made a formal application and paid a fee of £50.
5. The court was not able to locate a copy of the Decree Absolute certificate, nor was it able to supply the petitioner with the date on which the Decree Absolute was made. Specifically:
 - a. The original file appeared to have been totally destroyed in about 2013 notwithstanding that the agreed HMCTS record and retention policy, agreed by the President of the Family Division, is that the contents of divorce files are stripped and destroyed 18 years after the date of the final order (or resolution of any subsequent complaint) but that several key pieces of paperwork are retained longer, one of which is the Decree Absolute which is kept for an additional 82 years (thus ensuring it is kept for 100 years in total).
 - b. A search for the original file in the TNT archive storage depot in Branston yielded no trace of it.
 - c. The Office for National Statistics stated that they had checked their stores and all paper Decree Absolutes from 1997 had unfortunately been destroyed. Nor had they retained a microfiche copy of this Decree Absolute¹.
 - d. The Decree Absolute team at the Central Family Court was not, despite extensive searches, able to identify the Decree Absolute on the central index maintained pursuant to the Family Procedure Rules, rule 7.36(1) or its predecessor the Family Proceedings Rules 1991, rule 2.51(3). It would appear that the original Decree Absolute was either never sent in early 1997 to Somerset House for entry on the index, or that it was lost in the post.On any view, this is an extraordinary series of unfortunate mishaps.
6. The Willesden County Court contacted the respondent by email in Australia. She stated that she did not know if she had kept a copy of the Decree Absolute certificate. If she had, then it was in storage 1000 kilometres away from her in another part of Australia.
7. HMCTS arranged for the respondent to travel to her storage facility and, thankfully, she discovered that she had retained a certified copy of the Decree Absolute certificate. She has provided a copy of that certified copy. The certified copy bears an endorsement which reads:

¹ For the role of the Office for National Statistics in collating data about Decrees Absolute see *M v P* [2019] EWFC 14 at [11] – [13].

I certify that this copy has been
Examined with the original document
filed in this Court and is a true copy

[signature]

District Judge

Willesden County Court

8. The position therefore is that no office copy of the Decree Absolute exists. There is no longer an “original document filed in this court” which is capable of being examined, copied and certified as being a true copy.
9. It is therefore necessary for a declaration to be made by the High Court to put the position on a footing as close as possible to that which would obtain had the file not been destroyed and the original Decree Absolute lost.
10. In *Egeneonu v Egeneonu* [2017] EWHC 43 (Fam), [2017] 2 FLR 1181, [2017] 2 FCR 130 Sir James Munby P confirmed that the High Court possessed an “inherent declaratory jurisdiction”, in that case to declare whether or not the father’s conduct in abducting the children to Nigeria amounted to a criminal contempt of court. In *Mazhar v The Lord Chancellor* [2017] EWHC 2536 (Fam), [2018] 2 WLR 1304 Sir Ernest Ryder SPT was of the view that the power to grant declarations was statutory in origin. In *Bank Of New York Mellon, London Branch v Essar Steel India Ltd* [2018] EWHC 3177 (Ch) Marcus Smith J likewise identified the source of the power to grant a declaration as being statutory; he identified section 19 of the Senior Courts Act 1981. That provides at section 19(2)(a), as did its predecessors, that “there shall be exercisable by the High Court all such other jurisdiction as was exercisable by it immediately before the commencement of this Act”. Thus, there was vested in the High Court all the powers exercisable by the common law courts and the courts of equity prior to the enactment of the Judicature Acts. Those powers clearly included the power to grant declarations, which had originated in the Court of Chancery. I think this is what Sir James Munby P was referring to when he spoke of the High Court possessing “an inherent declaratory jurisdiction”. Plainly, the fact that for some reason CPR rule 40.20 is not replicated in the Family Procedure Rules does not detract from the clear existence of the declaratory jurisdiction.
11. The cause here was automatically transferred to the Family Court at Willesden on 22 April 2014 by virtue of article 2 of The Crime and Courts Act 2013 (Family Court: Transitional and Saving Provision) Order 2014, SI 2014 No. 956.
12. I order that the cause is transferred to the High Court for the purposes of exercising the declaratory jurisdiction. Immediately following the making of the declaration the cause will be transferred back to the Family Court at Willesden.
13. I am fully satisfied on the material before me, and I so declare, that:
 - a. the document produced by the respondent is an authentic and accurate copy of a certified copy of the original Decree Absolute; and

- b. the marriage of the petitioner and the respondent was, as shown by the copy of the certified copy of the decree absolute, dissolved on 29 January 1997.
 14. This judgment and the order recording the declaration will be placed on the substitute court file that has come into being, which will be returned to the Family Court at Willesden, where it will be kept safely until 1 February 2097.
 15. I record that I have been informed that the Decree Absolute has now been recorded on the central index maintained at the Central Family Court pursuant to the Family Procedure Rules, rule 7.36(1).
 16. Finally, I record that on 2 July 2019 an email was sent to the petitioner expressing on behalf of the entire system sincere apologies for the delay in providing him with the copy of the Decree Absolute and for the administrative failures that had been exposed.
 17. That concludes this judgment.
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