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THE HIGH COURT

Matrimonial

1983 No.14M

BETWEEN:-

R.

Petitioner

.v.

R.

Respondent

Judgement of Mr. Justice Costello Delivered the 21st December, 1984

Nullity. Decree granted on ground that at the time of the marriage the respondent was suffering from a psychiatric illness and as a result was unable to enter into and sustain a normal marriage relationship with the Petitioner.

In 1976 the Respondent was diagnosed as suffering from paranoid schizophrenia and he continued to suffer from this illness up to the time of his marriage with the Petitioner on the 4th December 1981 and since then. He and his wife lived together for only a short while. The Petitioner now seeks a decree of nullity on three distinct grounds; (a), that the Respondent had fraudulently concealed his medical and mental condition and fraudulently misrepresented that he was of sound mind and of good and normal health mentally and physically; (b), that the Respondent was unable to understand the nature, purpose and consequences of the marriage contract by reason of mental incapacity; and (c):-

"that the husband was suffering from such disease of the mind on the date of the marriage that he was unable to maintain and sustain a normal relationship with your Petitioner or any children there might be of the proposed marriage and that he was thereby incapable of contracting a valid marriage with your Petitioner."

Originally the Respondent's solicitor wrote stating that the Respondent would not contest this application but at the hearing Counsel on his behalf sought leave (which I granted) to file an answer which denied the Petitioner's right to relief . By agreement I decided to consider initially only the evidence in relation to the third ground of alleged invalidity, it being understood that the Petitioner would be at liberty to adduce evidence in support of the other two if she failed on this one. In this event, it was unnecessary for her to do so.

Counsel are agreed on the legal principle which I have to apply. In D. .v. C. (1984) ILRM 173 I reached the conclusion (basing it on observations of Mr. Justice Kenny in S. .v. S. (unreported: 1st July 1976) and Mr. Justice Barrington in R.S.J. .v. J.S.J. (1982) ILRM 263) that the High Court has jurisdiction to declare null a marriage where one of the spouses at its date was through a psychiatric disability unable to enter

into and sustain the normal inter-personal relationship which marriage required and in that case I made such a declaration on that ground. Mr. Justice Hamilton also considered in M. (otherwise O) .v. O (unreported: 24th January 1984) that this was a ground on which a nullity decree could be granted (but on the facts declined the relief claimed) and subsequently Mr. Justice Barrington in W. .v. P. (unreported: 7th June 1984) declared a marriage to be null and void "because the Respondent, at the time of the marriage, was suffering from such psychological or emotional disability or incapacity as made it impossible for him to enter into and sustain a normal marriage relationship with the Petitioner". In the present case it is accepted that if the Respondent's psychiatric illness meant that at the time of his marriage he was incapable of entering into and sustaining a normal marriage relationship with the Petitioner then the Court could make a nullity decree.

Before referring to the medical evidence I will briefly outline the salient facts of the sad and short history of the parties' courtship and marriage. They went out together for the first time in May of 1981, the Respondent then being 38 years of age and the Petitioner seven years his junior. By the following September they were engaged and were married on the 4th December 1981. Their months of courtship and engagement were happy ones and the Petitioner was completely unaware of the Respondent's illness. They went abroad on their honeymoon and the marriage was consummated. It was shortly after their return to Ireland (on St. Stephen's Day to be precise) that the Petitioner began to notice that something was wrong. The Respondent became very quiet and introverted. He had difficulty in sleeping and his attitude to his wife began to undergo a dramatic change. In addition to

being cold and distant towards her he commenced to accuse her of having an affair with the best man at their wedding and of putting drugs in his food. On several nights about the middle of January the Respondent packed his clothes into a bag and informed his wife he was leaving her, and finally did so at the end of the month. The Petitioner was of course deeply disturbed and distressed at her husband's conduct and tried to ascertain from him what was wrong. Early in February he told his wife some of the truth, informing her that he was going to go to Limerick to see a psychiatrist; that he had suffered from "depression" in the past and that he had been hospitalised in 1976 for a couple of months; that he had been taking tablets for some considerable time but that he had recently given them up. He returned after a few days and the Petitioner learnt a little more about his pre-marriage illness when the Respondent informed her that he had received an injection from his psychiatrist whilst he had been in Limerick and that he in fact had been receiving injections once a month for some years past.

The Respondent's condition worsened and very shortly after this he declared that he would have to return to Limerick again. This time the Petitioner accompanied him. There she met her husband's psychiatrist and was told by him that her husband was a very sick man, that he would have to be immediately hospitalised, and that he was a schizophrenic. He was kept in hospital until the following Easter (visiting his wife on short periods with his doctor's permission) but his return to his wife was a short-lived one. On the 23rd April he rang her at her work in great distress and said that he would have to see a psychiatrist. He and his wife saw Dr. M. who advised immediate hospitalisation and the Respondent once again returned to hospital in Limerick. The Petitioner visited

him there, but his attitude to her became more and more distant and eventually he told her that he didn't want to see her anymore and that he did not wish ever to return to their home. When he was discharged on the 23rd June he came with a priest friend to the family home and took all his belongings away. When the Respondent visited him at his new residence he told her to get out. When she 'phoned him on the 15th July to tell him of her mother's death he banged the 'phone down.

The unfounded and bizarre allegation made by the Respondent against his wife and his unjustifiable rejection of her is fully explained by the medical evidence. Three experienced and qualified psychiatrists were called on the Petitioner's behalf. Dr. M. who had first examined the Respondent on the 23rd April 1982 was able to give his medical history. The Respondent had been first hospitalised in 1976 when he had undergone ECT treatment. He then began to take a long-acting injection of a drug known as modicate as treatment for his schizophrenia. On his own initiative the Respondent discontinued the injections shortly before his marriage and a few weeks after his wedding he regressed, becoming depressed and being unable to sleep. He began to suffer from delusions about his wife, believing that she was being unfaithful to him and that she was putting drugs in his food. When Dr. M. saw the Respondent on the 23rd April he was tense and restless and demonstrated a marked thought disorder, his behaviour being consistent with a diagnosis of paranoid schizophrenia. In Dr. M.'s opinion the situation was then a potentially dangerous one and he referred him to his doctor in Limerick for hospitalisation. When he saw him again on the 16th November 1983 the Respondent's mood was better but there was still some evidence of thought disorder. Dr. M.'s opinion was that the medication he had been taking was marginally

able to control the Respondent's illness but that he was not capable of entering into a stable marriage relationship with his wife. This too was the opinion of Dr. S. and of Dr. K., and their evidence confirms the conclusion that it was the relationship with his wife that caused his paranoia to deteriorate.

The Respondent, as I have said, changed his attitude to his wife's claim and has now instructed solicitor and counsel to contest it. But he has met it very fairly. Dr. F. who has treated him since 1976 travelled from Limerick to give evidence and his testimony was made available to the Court even though it confirmed the Petitioner's case. He outlined the Respondent's medical history establishing that he had been hospitalised in 1976 when suffering from persecutory delusions; that he had been diagnosed as suffering from paranoia schizophrenia; that he continued to be treated up to 1981; that Dr. F. had not been aware that the Respondent intended to get married and that his opinion was that the Respondent should not have done so. Like the other doctors who have examined the Respondent his opinion was that the Respondent's illness disabled him from carrying on a stable normal marriage relationship with his wife.

It does not follow from the decision I have reached on the facts of this case that every unfortunate sufferer from paranoid schizophrenia is as a matter of law incapable of entering into a valid ceremony of marriage. But here there has been very persuasive evidence that this particular Respondent was suffering from a psychiatric illness at the date of his marriage and as a result was unable to enter into and sustain a normal marriage relationship with this particular Petitioner, and so the Petitioner is entitled to have a declaration that her marriage is and was null and void, and I will so Order.