



**CIVIL COURT
(FAMILY SECTION)**

**THE HON. MR. JUSTICE
NOEL CUSCHIERI**

Sitting of the 11 th December, 2008

Citation Number. 219/2008

Number on list: 28

**A B C
vs
D B**

The Court,

Having seen the sworn application by virtue of which plaintiff premised: that the parties contracted a civil marriage on the 15th August 1993 after having known each other for about a year, during which time they contacted each other mainly through letters and by phone since at that time defendant, a french national, was still living in France; that after three months from the marriage, defendant made manifest, for the first time, his intention of not having children from this marriage and this came as a surprise to plaintiff who had entered into this

marriage with the intention of having children and starting a family; that on the 12th January 2001 the parties signed a contract of personal separation; that no children were born from this marriage. On the strength of the above, particularly in the light of the fact that defendant had, by a positive act of his will, excluded an obligation essential to married life, plaintiff is requesting that her marriage to defendant be declared null, with costs against defendant;

Having seen the sworn reply filed by defendant who, whilst agreeing with plaintiff that their marriage is null, attributes this to both parties in terms of paragraph [d] of article 19 of Chapter 255;

Having seen all the acts of the case, including the affidavits presented by the parties;

Having examined the evidence of the parties;

Having considered;

Action

That by virtue of the present action plaintiff is requesting this court to declare null and void her civil marriage with defendant contracted on the 15th August 1993 on the basis that the matrimonial consent of defendant was vitiated in terms of paragraph [f] of article 19[1] of Chapter 255 of the Laws of Malta. On his part, defendant is pleading that the nullity is imputable to both parties in terms of paragraph [d] as afore stated.

Facts

Plaintiff, a maltese national, had come to know defendant, a french national, during the two years preceeding the marriage. However, since defendant was at that time living in France, personal contact was very limited, and used to take place only during the festive seasons of the year, and during the summer months. Eventually the parties got married.

Plaintiff explains that she has one daughter from a previous relationship, and when she accepted to marry

defendant, she did so with the intention of starting a family and of having children from the marriage. She states that, had she known before the marriage that defendant excluded the possibility of having children, she would not have agreed to marry him.

She explains that, after the first three months of marriage, defendant, who at that time was using the withdrawal method in the act of marriage, suggested that she takes the contraceptive pill so that the act could be done in a proper manner. It was at this point that defendant had made manifest his intention not to have children from the marriage. This, together with the fact that verbal communication between the couple was very poor since plaintiff could not speak french well, whilst defendant's english was bad, as well as defendant's inability to build good relations with plaintiff's teenage daughter, brought about a rupture in the matrimonial relationship which widened with time, to the extent that the parties eventually separated on the 12th January 2000.

On his part, defendant, explains that he had been married twice previously and was divorced twice, that he has one child from the first marriage and three children from his second marriage, and that "before marrying A, we never discussed having children. I did not want any children from this marriage, because the situation regarding the money was not good. I did not speak about children [before the marriage] because she already had one child, and I already had four children."¹

Considerations by the Court

From the above, it emerges quite clearly that defendant entered into this marriage with the positive exclusion of having children. This has been admitted by him in his evidence, and in the circumstances, the court has no reason to doubt the veracity of this assertion, considering that he had already four children from two previous failed marriages.

¹ Depos. fols,29 *et seq.*

On the strength of the above, the Court is of the opinion that the matrimonial consent of defendant was tainted by the defect contemplated in paragraph [f] of the aforementioned article.

Decide

For these reasons, the Court decides this case by acceding to plaintiff's request; and declares null and void the marriage contracted by the parties on the 15th August 1993. Expenses are to be borne solely by defendant.

< Final Judgement >

-----END-----