



Civil Court – Family Section

Mr. Justice Robert G. Mangion LL.D.

Dip.Tax (MIT), P.G.Dip. Mediation (Melit.)

- ARTICLE 19 (1) (D) CHAPTER 255 (MARRIAGE ACT) -

**- MARRIAGE NULL: CONSENT VITIATED BY A SERIOUS PSYCHOLOGICAL ANOMALY
(ASPERGER'S SYNDROME) WHICH MADE THE FULFILMENT OF THE ESSENTIAL
OBLIGATIONS OF MARRIAGE IMPOSSIBLE -**

Today the 3rd day of December 2015

Sworn Application No. 87 / 14RGM

Number on list: 17

**A B C
vs
DE C and
Director Public Registry**

The Court,

Preamble.

On the 29th April 2014, plaintiff filed an application before this Court whereby he submitted and requested the following:

1. That applicant A B C and respondent DE C were married on the third (3rd) of September of the year two thousand and eleven (03/09/2011) at the Metropolitan Cathedral of St. Paul, Mdina;
2. That no children were born of the said marriage, and that the parties are de facto separated from each other;
3. That the marriage in question is void, due to the fact that applicant extorted respondent's consent by fraud about some quality of the applicant which could - and did - of its nature seriously disrupt matrimonial life;
4. That applicant's consent was vitiated by a serious defect of discretion of judgment on the matrimonial life, and on its essential rights and duties, as well as by reason of a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage;
5. That such consent was further vitiated by applicant's positive exclusion of marriage itself, or of anyone or more of the essential elements of matrimonial life;
6. That for these reasons, the said marriage is void and without any effects in terms of Article 19 (I) (c), Article 19 (I) (d) and Article 19 (I) (f) of Act XXXVII of 1975 - Marriage Act.

That the respondent shows cause as to why this Honourable Court should not:

1. Declare and decide that the marriage contracted by the applicant and the respondent is void and without any effects in terms of Article 19 (1) (c), Article 19 (1) (d) and / or Article 19 (1) (f) of Act XXXVII of 1975 - Marriage Act;
2. Consequently order and register the necessary amendments to the act of marriage held with the Public Registry;
3. Order a ban on publication of the names of the parties due to the sensitive nature of this case, and order also that the case be heard *in camera*;
4. Order that all proceedings in the case be held in the English language, as well as all related documentation being prepared in such language, due to the respondent not being fluent in the Maltese language.

With costs against the applicant, with respondent from now referred to the oath.

On the 23rd May 2014, respondent filed a reply, whereby she submitted and confirmed on oath as follows:

1. That respondent feels that there exist reasons valid at law for the granting of this annulment;
2. That respondent was deceived by plaintiff due to the fact that prior to marriage, plaintiff never revealed to respondent his physical and psychological problems, and that, therefore, the consent of respondent was vitiated due to concealment by plaintiff;
3. That during marriage, respondent never lived a married life, and that plaintiff denied respondent of the basic elements of marriage, due to the fact that plaintiff was never physically present in respondent's life, and was also physically away since plaintiff lives abroad and respondent lives in Malta;
4. That if respondent had known of these problems and of the irresponsible behaviour of plaintiff, respondent would have definitely never entered into a bond of marriage with plaintiff;
5. That respondent's marriage in reality never existed, due to the fact that the basic elements of marriage were never respected by plaintiff, and this led to a lot of suffering on the part of respondent;
6. That due to these reasons, respondent insists that her marriage never existed, and should, therefore, be declared null and without any effect, and this due to plaintiff's behaviour.

Saving ulterior pleas.

With costs, and with plaintiff from now referred to the oath.

THE EVIDENCE.

The Testimony of A B C

In his affidavit, Fol.13 et seq. plaintiff declares that he met respondent in Malta in April 2008 at a student conference, they met again in Aachen, in October 2008. They chatted on line for a month, but in December, due to relapsing into a depression, plaintiff stopped communicating. He resumed contact in March 2009, as he was feeling better, and accepted her offer to visit her in Poland, for a week in April over Easter, she had a boyfriend at the time. She broke off with her boyfriend in May 2009 and their contacts resumed in June 2009. She then came to Malta in October 2009 for a holiday with two friends and started adjusting to life in Malta. He referred to this period as a 'honeymoon period'.

Plaintiff declared that he had long suffered symptoms of anxiety and depression when they were together in Malta, reaching toxic anxiety levels, culminating in frequent arguments and his 'shutting off' emotionally and intimately. He was diagnosed with generalized anxiety with obsessive tendencies. He had been so diagnosed from an early age, however, when he was 23 he was diagnosed with a mixed mood disorder, an Emotional Unstable Personality- Impulsive Type. He only mentioned to her anxiety in general, omitting mood disorders, overdoses, suicide attempts and a number of hospitalisations.

In Ireland he was found to be suffering from symptoms of hyper vigilance, Asperger Syndrome. He had a history of physical and psychological abuse in the past as well as an instance of sexual assault which all contributed to the development of post-traumatic stress which led to dysfunctional emotional and intimate responses, as well as defensive behaviour. He admits that he was unable to reach orgasm during penetrative sex. He experienced social and communication difficulties, obsessive and repetitive behaviour and anxiety related to change of routine and new situations. He was unable to properly function in interpersonal relationships.

As regards married life, he admitted that their views were extremely different. Her vision of marriage was of a serious, long term committal, happy in a family setting, providing a good education for the children. His vision in life amounted to just finishing his PhD with no plans for the future regarding work, married life and children.

He described his conduct during the marriage as being psychologically abusive on several occasions. He left to study abroad leaving her alone in abject conditions barely providing for her living with no emotional care. He failed to plan ahead in life, and was never serious on the issue of having children.

In conclusion, plaintiff declared:

"I believe that the symptoms I experience, and the way I deal with life situations due to such symptoms-in particular the dysfunctional manner in which I view and handle personal relationships, rooted in a deeply ingrained set of beliefs and defence mechanisms- do not currently make it possible for me to be able to fathom the requirements and responsibilities necessary for many important life situations, much less those necessary for personal relationships, let alone for marriage".

The Medical Report.

The medical report annexed to the application, Fol.8 and 9 of the Consultant Psychiatrist Dr Niamh Farrelly certifies the Diagnoses and Prognosis to be Aspergers syndrome and Generalized anxiety disorder, a condition which is described as follows:

“**Aspergers syndrome** is a neurodevelopmental disorder associated with impairments in communication and social interaction, sensory sensitivities and behavioural rituals that are the source of distress when routine or environments are disrupted.”

“Although Mr. C was not known to me at the time of his marriage, the enduring and neurodevelopmental (present since birth) nature of his Asperger Syndrome would have existed at this time and all the attendant impairments would have been present.” (emphasis of the Court).

Another consultant opinion is given by Counselling Psychologist Dermot Coonan who comments as follows (Fol. 12):

“It is my opinion that A’s presentation of Aspergers Syndrome and complex trauma history contributed to the considerable difficulties experienced in the formation and maintenance of the marital relationship and at times of conflict within the relationship.”

The Testimony of DE C.

Respondent DE C submitted her affidavit. She confirmed meeting plaintiff in Malta in April 2008 at a student conference, they met again the following October at another conference, they kept in contact for a month, after he abruptly stopped all contact, without explanation and was unreachable. Contact resumed the following March, and plaintiff visited her in Poland in April over the Easter period. He told her that he had stopped all contacts before as he was going through a period of depression. She told him that he should have informed her and she offered to help. They started moving into a relationship after she broke off from her boyfriend. They made plans to travel together and that she would move to Malta. When in Malta she realized he was ‘very engrossed in his legal work’, they did not have much time together, and she tried to adjust to a new environment. He used to come back from work, angry without wanting to open up, and this affected both his mood as well as the home environment. Charging his clients and demanding payment became a source of grave concern, and as a result they had financial problems. She thought that together they would manage their problems and was eager to move ahead with the relationship.

They married in April 2010. They travelled together on voluntary work where he was 'acting very moody and irresponsible', but at the time never realized that it was an indication of more serious and underlying problems. In March 2011, he received a letter from his psychiatrist saying that he suffered from mild anxiety but could lead a normal married life. She declared that she knew that anxiety was an issue with him and that he had instances of depression, but she did not suspect they were so severe and thought that with a change in lifestyle things would improve.

She confirmed that it was a shock for her to discover gradually his past psychiatric history. He did not listen to her, he would not trust her. He never cared about marriage and living a married life, he returned home after work just to eat and sleep, would refuse to talk about anything, let alone future plans. He never wanted a proper future with a family and children. He had no interest in her, he never managed to reach a climax during sexual intercourse. He "made shutting off emotionally his every day business". She finally declares the following:

"In the current situation, I am living in a marriage that was built on different perceptions, half-truths, hiding and lies, with a partner who has serious medical and psychological issues.....I definitely consented to a very different impression of matters, than those which I am currently experiencing."

Dr. Peter Muscat, a consultant psychiatrist appointed as court expert by a decree of this Court of the 27th June 2014 in order to conduct a medical examination of plaintiff and to examine the medical reports filed in this case as well as other relevant evident, held three sessions with plaintiff and examined the relevant medical and court documents. In his report Dr Muscat examined the salient stages of plaintiff's marital history as well as his academic and occupational history. Dr Muscat then proceeds to make a detailed assessment of plaintiff's psychiatric history which goes back to when plaintiff was sixteen years of age and suffered from a generalised anxiety disorder and panic. When he was 26 years of age Dr Mark Xuereb, psychiatrist, diagnosed plaintiff to be suffering from Asperger's syndrome. Over the years plaintiff was prescribed various psychotropic mediations: Haloperidol; Anafranil; Diazepam; Xanax; Ativan; Sertraline; Fluoxetine; Seroxat; Stelazine and Risperdal.

The conclusions of the Court appointed medical expert, Dr. Peter Muscat are being reproduced hereunder:-

"A's complex psychological traumas and Asperger's syndrome contributed to the great difficulties in developing and maintaining a marital relationship.

However Asperger's syndrome is a corroborative condition on top of his past psychological history which included the post traumatic stress starting in childhood, secondary to emotional and psychological abuse mostly from parents. Furthermore ,concomitant anxiety was exacerbated by his past history and obsessions due to Asperger's syndrome. It appears that what contributed mostly to his inability to assume a healthy marital relationship were his past history of emotional disturbance in childhood and the fact that he did not come to terms with such issues prior to marriage.

In my opinion A did not possess the necessary mental and psychological attributes necessary to assume marital obligations at the time of his marriage.” (emphasis of the Court).

The Legal Context.

Plaintiff is requesting the Court to declare the marriage of the parties celebrated on the 3rd September 2011, null and void without any effect at law in terms of **Article 19(1)(c), 19(1)(d) and 19(1)(f) of Act XXXVII of 1975- the Marriage Act, Chapter 255 of the Laws of Malta.**

The said article 19 reads as follows;

19. (1) In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void:

- Omissis -

(c) if the consent of either of the parties is extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life;

(d) if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage;

- Omissis -

(f) if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any or more of the essential elements of matrimonial life, or of the right to the conjugal act;

Jurisprudence on Article 19 (1) (d) of Chapter 255.

Our Courts have consistently declared that marriage is a contract of public order, and therefore any actions requesting the nullity of a marriage have to be supported by sufficient and adequate proof that can convince a Judge that such a claim is legally justified- (Court of Appeal - 6th November 1991 - “**DTonna vs Alexander Tonna.**”

Article 19 (1) (d) provides that a marriage is null *if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage; :-*

Briffa Emmanuel vs Briffa Veronica Et: “Meta parti tkun qed taghti l-kunsens taghha ghaz-zwieg hi ghandha tgawdi grad ta' liberta` psikologika li tkun necessarja u sufficjenti li tassigura l-poteri bazici ta' l-ghazla”. (First Hall of the Civil Court - 2nd April 2003)

Atkins Charles vs Atkins Matilde (First Hall of the Civil Court - 2nd October 2003) :

“Il-kuncett tad-*discretio iudicii* ma jirrikjediex maturita` shiha u perfetta fuq dak kollu li jirrikjedi z-zwieg, izda konoxxenza shiha ta' dak kollu li jkunu dehlin ghalih il-partijiet u cjoe` ghall-obbligi u ddrittijiet konjugali kemm fil-prezent kif ukoll fil-futur. Inoltre l-partijiet irid ikollhom dik il-maturita' affettiva u cjoe` dak kollu li ghandu x'jaqsam ma' l-emozjonijiet u s-sentimenti taghhom fil-konfront ta' xulxin. Jekk xi wahda minn dawn l-elementi hija b'xi mod nieqsa, allura hemm difett tad-diskrezzjoni tal-gudizzju kif rikjest mill-ligi. Il-partijiet irid ikollhom dik il-maturita' li taghmilhom kapaci jirriflettu fuq l-obbligi, id-dmirijiet u r-responsabbiltajiet li ggib maghha il-hajja mizzewga u jkunu ghalhekk kapaci jerfghu u jwettqu l-istess matul il-hajja matrimonjali taghhom”.

Borg Cachia Melanie vs Borg Joseph (First Hall of the Civil Court - 29th May 2003) “B'dan l-artikolu, il-legislatur ma riedx ifisser semplicement kwalsiasi stat ta' mmaturita' fil-mument li jinghata l-kunsens reciproku, izda dan in-nuqqas tad-*discretio iudicii* huwa kuncett guridiku ntrinsikament marbut mal-kapacita' ta' parti jew ohra fiz-zwieg li taghti kunsens liberu u xjenti taghha ghar-rabta taz-zwiegIl-gurisprudenza nostrana ssegwi din l-interpretazzjoni - ghalhekk id-difett irid ikun wiehed serju fil-fakolta' kritiko-estimativa tal-parti, difett li wiehed jevalwa u jifhem u jassumi dawk li huma d-drittijiet u dmirijiet essenzjali taz-zwieg, jew li jevalwa u jifhem x'inhu z-zwieg u l-hajja mizzewga”.

Considerations of this Court.

One of plaintiff's premises is that his marriage to respondent is null and void because his consent was vitiated in terms of Article 19 (1) (d). The shall shall proceed to examine the case in the light of this provision of the law. Respondent has not contested Plaintiff's claims and is in agreement that the marriage should be declared null and void because of a vice of consent on his part.

It has abundantly resulted from the evidence produced that prior, during and after the marriage plaintiff had been diagnosed as suffering from Asperger's Syndrome and Generalized Anxiety Disorder. Said serious medical condition has been certified by Consultant Psychiatrist Dr. Niamh Farrelly and by Counselling Psychologist Dermot Coonan, both from Trinity College, Dublin and Dr. Peter Muscat. It is a psychological disorder associated with impairments in communication and social interaction.

The Court is of the opinion that it has been sufficiently proven that at the time of contracting marriage plaintiff's consent was vitiated by a serious defect of discretion of judgement on marital life as he suffered from a serious psychological anomaly which precluded him from assuming the essential obligations of marriage in terms of Article 19(1)(d) of Chapter 255 of the Laws of Malta. Dr Peter Muscat's medical report confirms the evidence tendered by plaintiff that the latter's consent was vitiated. Plaintiff's capacity to give a free consent to the marriage celebration was seriously impaired by his serious medical condition which made it impossible for him to assume the duties and obligations inherent in marriage.

Since one premise has been sufficiently proven leading to a declaration of the annulment of marriage, it is not necessary to consider the other two premises based on Article 19 (1) (c) and (f).

Decision.

For the reasons outlined above the Court accepts defendant's pleas, and accedes to plaintiff's claims,

1. Declares the marriage of the parties celebrated on the 3rd September 2011 to be null and void in terms of Article 19 (1) (d) of Chapter 255 of the Laws of Malta.
2. Orders the relative annotation in the act of marriage held at the Public Registry.

3. Orders a prohibition of the publication of names of the parties due to the sensitivity of the case.

Costs are to be borne solely by plaintiff.

Judge

Deputy Registrar