Neutral Citation Number: [2009] IEHC 623

THE HIGH COURT

[2005 No. 57 M]

IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT

BETWEEN

S. B. (FORMERLY KNOWN AS S. M.)

APPLICANT

AND

F. L.

RESPONDENT

PRELIMINARY ISSUE RE: NULLITY

JUDGMENT of Mr. Justice Henry Abbott delivered on the 17th day of July, 2009

1. The applicant and respondent are aged 56 and 53 respectively and were married to each other in this jurisdiction on the 2nd August, 1978. The applicant was at the time of the marriage a man but has undergone a sex change and, in deference to her present state, shall be referred to as a woman by her chosen female name, S.B.. The respondent was at the date of the marriage and remains a woman. There were no children of the marriage. This judgment deals with a claim by the respondent (wife) for nullity of the marriage.

Judicial Separation
2. The applicant and the respondent were granted a decree of judicial separation pursuant to the Judicial Separation and Family Law Reform Act 1989, by order of the Circuit Court made on the 4th May, 1993.

Divorce Proceedings
3. By special summons dated the 12th July, 2005, the applicant initiated proceedings against the respondent claiming a decree of divorce under the Act of 1996, and that provision be made for her thereunder. After the judicial separation in 1993, the applicant had a sex change from man to woman using surgical, pharmaceutical, and psychotherapeutic means. The respondent, in her replying affidavit, defended the claim of the applicant for a divorce by claiming nullity in respect of the marriage on the grounds of various aspects of the applicant's cross dressing, and inability to enter into a marriage as ultimately evidenced and practiced by her sex change. The applicant did not deny cross dressing and had, in fact, in her grounding affidavit of the special summons in para. 4, averred as follows:-

> "I say that your deponent was born by gender a female, but with the external physical characteristics of a male and that in or about the month of September, 1994 your deponent underwent an operation, or a series of operations, as a result of which your deponent now has the physical external characteristics of a woman and am now known as S.B. and I have changed my name by deed poll on the 19th September, 1994."

The Issues
4. Affidavits were exchanged which highlighted a number of conflicts between the applicant and the respondent, which pointed to the necessity to have a preliminary issue tried as to whether the purported marriage between the applicant and the respondent is null and void and of no legal effect. By order of this Court dated the 6th July, 2007, the court directed (by consent) that a preliminary issue be tried as to whether the purported marriage between the applicant and the respondent is null and void and of no legal effect, and that for the purposes of the said preliminary issue the respondent is to be treated as petitioner and the applicant is to be treated as respondent. It was further ordered, by consent, that the issues to be tried were:-

> A. Whether at the date of the purported marriage the petitioner/respondent lacked the capacity to enter into and/or sustain a normal lifelong marriage with the respondent/applicant by reason of the petitioner/respondent's state of mind, mental condition, personality disorder, her emotional and/or psychological immaturity.
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> B. Whether at the time of the purported marriage the respondent/applicant lacked the capacity to enter into and/or sustain a normal lifelong marriage with the petitioner/respondent by reason of the respondent/applicant's state of mind, mental condition, personality disorder, her emotional and/or psychological immaturity.
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> C. Whether at the date of the purported marriage the parties lacked the capacity to enter into and/or sustain a normal lifelong marriage each with the other by reason of the respective states of mind, mental conditions, personality disorder and/or emotional and/or psychological immaturity.
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> D. Whether the petitioner/respondent gave a full free and informed consent to a purported marriage to the respondent/applicant.
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> E. If the marriage between the petitioner/respondent and the respondent/applicant is void or voidable, whether the petitioner/respondent had approbated such a marriage by her conduct during the marriage and/or arising from the judicial separation proceedings already had between the parties or in the conduct of these proceedings and the related divorce

proceedings.

F. That if the petitioner/respondent has delayed unreasonably in seeking an annulment.

G. Such further or other issues as this Honourable Court may deem appropriate.

5. By order of this Court dated the 11th July, 2008, made pursuant to O. 70, r. 32 of the Rules of the Superior Courts, Professor James Barrett of Gender Identity Clinic in London was appointed as medical inspector of the parties. Dr. James Barrett furnished a written report dated the 23rd September, 2008. The circumstances in which Dr. Barrett was appointed arose from the fact that prior thereto a report of Professor Richard Green, dated the 2nd November, 2007, and an addendum to that report dated the 13th February, 2008, did not fully deal with the issues. The reason for the second report, ordered by the court, arose from the fact that Professor Green's report did not address the issues of capacity to marry, while it was helpful in a clinical diagnosis of the applicant.

6. The case came on for hearing on the 23rd February, 2009, and evidence was heard on the 23rd February, 2009, and the 24th February, 2009. Prior to the hearing, it was indicated by counsel for the applicant and the respondent that the parties had reached agreement in relation to the financial settlement which would be for the benefit of the parties, regardless of the decision of the court in relation to nullity or divorce, and that in the event of nullity being refused and a decree of divorce being ordered, that the parties would suggest to the court that the financial arrangements should be accepted by the court as proper provision for the parties in all the circumstances. While the applicant/respondent attended the hearing with her solicitor and counsel, she took no further part in the hearing and thus, the hearing proceeded as an undefended petition for nullity. The court considers that it was necessary to take special care in assessing the evidence in these circumstances.

Issues Arising from the Reports and the Evidence

7. While Dr. Barrett's report indicates that the applicant's account to him was that the respondent knew about the applicant's cross dressing tendencies before the marriage, the evidence of the respondent does not bear this out insofar as she described her state of knowledge when she met the applicant when she was eighteen as being very ill informed about cross dressers, and that the only possible manifestation of tendency to cross dress of the applicant (which did not occur to much at the time) was through dressing up for a fancy dress party prior to the marriage. I accept that the first real inkling that the respondent got of the applicant's cross dressing tendency was when she found a new gown with make up on it for which she knew she was not personally responsible, some six month or so after the marriage. Dr. Barrett in his report had great difficulty in resolving the conflict of accounts between the respondent and the applicant in relation to this aspect and the developing knowledge of the respondent of it, insofar as the applicant in her interview with him informed that the respondent was well aware of the applicant's cross dressing tendencies prior to the marriage. This difficulty in resolving the conflicting histories given by the applicant and the respondent to Dr. Barrett was resolved in the hearing by reason of the fact that, whereas the applicant consistently stated to Dr. Barrett and Professor Green that the respondent was aware of the applicant's cross dressing tendencies from before the marriage, the applicant also consistently and strongly stated that her move towards sex change was driven not by herself, but by the influence of her therapist.

8. The evidence of her therapist, Dr. Emery, and her consultant surgeon Dr. O'Donohue to whom Dr. Emery referred the applicant, was quite to the contrary, and this is borne out by the letter of referral from Dr. Emery.

9. Crucial to the resolution of issues in this case is the factual determination as to whether the applicant's accounts to Dr. Barrett and Professor Green that her therapist and medical advisors had driven her choice and desire for a sex change. The applicant's therapist, Freda Emery, Clinical Psychologist, gave evidence in which she referred to her letter of referral to Dr. Donohue and in this letter she set out under the heading of "History of Presenting Problem" the account of the applicant to her prior to the 12th August, 1992, as follows:-

> "According to S., the desire to have a female body to accommodate the female within him has always been there, and the rejection of his body intensified with the development of secondary sex characteristics. As far as back as age six, S. can remember dressing up in his mother's clothes, and being reproached by her for this. During his early pubescent years, S's cross dressing began in earnest and he availed of every opportunity. At fourteen, S. began experimenting with cosmetics. He was again discovered and reproached by his mother.
>
> At sixteen, S. began dating, usually in a group context. While he engaged in petting, he had no full sexual experience. At seventeen years S. had a homosexual encounter. At this stage he was considering homosexuality as a physical outlet for his sexual needs which he felt unable to gratify in heterosexual encounters. Between ages 21 and 24, S. dated his ex-wife (the respondent) and at 24 he married her. Marriage, for S., represented security and conformity, and well as the "family" he felt he never had. Their marriage quickly established itself as a "platonic friendship". His wife had a regular boyfriend, S. kept his own separate supply of female clothing. S's wife showed mild tolerance towards what they both regarded as his transvestism. S. did attend some T.V. meetings in Dublin but he felt very dissatisfied because these largely are heterosexual men who enjoyed cross dressing, had little in common with S's own desire to be a female, which cross dressing only partially satisfied."

10. The court heard evidence of Dr. Frank O'Donohue the consultant psychiatrist who was responsible for a psychosexual clinic for couples with sexual difficulties, which dealt with a number of referrals for people suffering from gender identity problems. Dr. O'Donohue's evidence in relation to the driving force behind the applicant's sex change was as follows:-

> "I felt she wanted to proceed, certainly wanted to proceed with hormone therapy, and onto surgery, but her biggest concern was a fear of not being able to pass as a woman. I can't put it any other way, but, you know, to pass satisfactorily as a woman; that was a big concern of hers at the time."

11. From this analysis of the evidence and from hearing the evidence of the respondent in relation to the history of the marriage, it would seem that the only manifestation of the applicant's sexual preferences by word or deed disclosed that, the applicant was a transvestite who on the odd occasion attended an organisation (hereinafter called "the organisation") of men who enjoyed dressing up and, who occasionally dressed in the respondent's clothes and negligée and masturbated herself in the presence of her wife (the respondent) with the assistance of whatever soft porn magazine was available, but who nevertheless had intercourse with her wife. The applicant's wife, the respondent, reacted to all this by deciding to use contraception, as she considered that it would not be appropriate to have children against such a background but, the evidence shows that she coped in the marriage in this way with no more knowledge of the applicant's sexual preferences than that the applicant was a heterosexual who enjoyed going around in female attire, and, would enjoy occasionally meeting like minded men for social gatherings, based on this activity.

Diagnosis of the Applicant

12. Dr. O'Donohue diagnosed the applicant in the context of an ascending scale or spectrum of transvestite sexual preferences beginning at the lighter end, as simple transvestite, or transvestite fetishist and ascending (at the heavier end), to the more marked transsexual. A transsexual is a man who wants to be a woman. Dr. O'Donohue stated that transsexualism is listed in the diagnostic and statistical manual of mental disorders at DSM 4 status. Professor Green in his evidence did not go as far as to be specific about the DSM status of the applicant's condition but described it as being consistent with a sub type of transsexualism termed "Autogynephilia". Dr. Barrett in his report also identified Autogynephilia as a condition possibly affecting the applicant.

Was Transsexualism Latent only at Date of Marriage?
13. From the reports of Professor Green and Dr. Barrett, which were dependent on the accounts of S.B. and F.L., it appeared that in this case the applicant S.B. was not aware of her transsexualism at the date of marriage. Professor Green found this to be quite consistent with his ultimate diagnosis of Autogynephilia. In the discussion of his report he states:-

> "Consistent elements are conveniently masculine boyhood, sexual arousal to cross dressing, and sexual arousing to the fantasy of oneself with a female body. This could be relevant in that Autogynephilic males are usually older than other transsexuals before they become fully aware of the need to change sex. This would be consistent with S.B's statement that she was unaware of her transsexualism prior to marriage."

14. As was clear from Professor Green's evidence, when he attended in court, he would have taken a different view had he had the benefit of Freda Emery's letter of referral and Dr. O'Donohue's report, prior to making his (Professor Green's) report. Similarly Dr. Barrett might have taken a different view in his report, and it is noteworthy that he stated in his report his regret that he did not have material from Freda Emery or Dr. O'Donohue when compiling it. The deficiency of previous referral letters and treating consultant reports is something which should be kept in mind by lawyers and courts dealing with the terms of reference of reports for nullity proceedings in the future, and every effort should be made to have these at hand prior to the request to the reporting medical expert for the sake of obtaining the best medical evidence and opinion for the court.

Consent
15. I have no doubt that the respondent wife was not aware of any transvestite tendencies of the applicant at or prior to the marriage ceremony. I am not satisfied that prior to the marriage she had full knowledge of what a transvestite at the lower end of the sexual preference spectrum entails prior to her marriage. But from her background and life experience and preference, I have no doubt that she would not have consented to marry a person, even with such a low level sexual preference and tendency, much less consent to marrying a gynephiliac.

Marriage Experience
16. When the respondent learned about her husband's sexual preferences in the direction of transvestiscism she coped in her own way by a tolerance of the manifestations of this within the marriage. She decided not to have children, but the marriage continued until this type of existence generally began to get her down, and a separation followed after thirteen years. At no time in the marriage did the applicant inform her that she(the husband) wished to be a woman, or that she had any transsexual gynephilic tendencies. After the judicial separation, when the home was being renovated the wife discovered a pamphlet from "the organisation", this was concealed under a carpet and was dated 1982, not long after the marriage. While it is clear from a reading of the pamphlet that the organisation dealt with all kinds of transvestites, it obviously catered from members and supporters who even at that early stage either had engaged in or were interested in surgical transformations in the area of sex change, or, (and it is technically described), gender transformation. That the applicant found it necessary to conceal such a booklet gives the lie to her assertion to the respondent that the applicant's outings with the organisation only consisted of meetings with professional men who merely enjoyed meeting and dressing up in female attire. From this I infer that the onset of transsexualism and the applicant's awareness thereof had occurred by 1982 to the extent that she had taken steps to contact the organisation. Having regard to the misleading information as to her awareness of her transsexualism to the reporting doctors and her accounts to her treating doctors that she had an awareness of same from a young age, that it is certain that the applicant was aware of her gynephilic transsexualism at the date of the marriage, and concealed same from the respondent, and continued to conceal it from her during the marriage using, what might be described as light end of the spectrum transvesticism, as a cover for same.

The Judicial Separation
17. In the affidavits relating to the divorce proceedings in this case, the applicant complained that the respondent used her knowledge of the applicant's tranvesticism to extract a better settlement in the judicial separation proceedings, but there is absolutely no evidence that the judicial separation proceedings raised the issue of gynephilic transsexualism at all. It was only after the judicial separation proceedings, (and then, through a third party), that the respondent learned of the applicant's sex change.

Consent
18. The absence of consent to a marriage is one of the main bases on which to render it void. The leading case on consent is *N.(K) v. K.* [1985] I.R. 733, in which Finlay C.J. stated as follows:-

> "Consent to the taking of a step (i.e. entering into a valid marriage) must, therefore, if the marriage is to be valid, be a fully free exercise of the independent will of the parties.
>
> Whilst a court faced with the challenge of the validity of marriage, based on the absence of real consent should conduct its enquiry in accordance with the defined legal concept such as duress, or what has been described by O'Hanlon J. as "the related topic of undue influence" (at p. 281). The concepts and the legal definition of them must remain subservient to the ultimate objective of ascertaining, in accordance with the onus of proof whether the consent of the petitioning party was real or apparent."

19. McCarthy J., in the same case set out the test as follows:-

> "The need of a true voluntary consent, based upon adequate knowledge and freed from vitiating factors commonly described as undue influence or duress particularly those emanating from third parties." (at p. 754)

20. Further on McCarthy J. continued:-

> "The test – whether or not each party to the contract brought an informed and willing consent to it – in my view, is a subjective one, and the burden of proof lies upon the petitioner for a declaration of nullity."

21. In *F. v. F.* [1990] 1 I.R. 348, Baron J., concluded that the parties marriage was a nullity on the basis, *inter alia*, that the petitioners consent was not a true consent. The respondent had concealed from the petitioner the fact that he was a practising

homosexual at the time of their marriage, although he admitted to one homosexual encounter when he was about 20 years of age. The petitioner had suspicions about his homosexuality, because of friendships he had with other men. However, she raised her concerns with him, the respondent assured her that he was not homosexual. Having concluded that the respondent lacked the capacity to enter into and sustain a normal marital relationship, Baron J. continued as follows:-

> "I am also satisfied that the respondent deliberately set out to bind the petitioner to him emotionally and that he succeeded in this design. His so called revelation of a one time homosexual tendency and his other total denial that such disposition had and were intended to have this effect. I am satisfied that the petitioner was totally taken in and would not have married the respondent had she even known the part of his true nature. For this reason, I have no doubt that her consent to the marriage was apparent only and was not a true consent."

22. In *M. O'M. (otherwise O.C. v. B. O'C.)* [1996] 1 I.R. 208, the Supreme Court affirmed the principle that the failure to disclose circumstances relevant to the decision to marry will vitiate consent. In that case the respondent failed to inform the petitioner prior to the parties marriage that he attended a psychiatrist over a number of years following his retirement from the priesthood. In that case Blayney J. on behalf of the court, quoted extensively from the judgments in *N. (otherwise K. v. K.)* [1985] I.R. 733, and continued:-

> "What has to be determined, accordingly, is whether the consent of the wife was an informed consent, a consent based upon adequate knowledge, and the test is a subjective one that is to say, the test is whether this spouse marrying this particular man, could be said to have adequate knowledge of every circumstance relevant to the decision she was making so that her consent could be truly said to be an informed one. (at p. 217)
>
> The test is subjective. Because of this, great weight must be attached to the wife's evidence that had she known that the husband had attended Dr. O'S. for approximately six years she would not have married him. It is possible that another person would not have reacted in the same way, that this was the wife's evidence of how she would have reacted if she had known this was accepted by the learned trial judge. For her, accordingly, the fact that the husband had attended Dr. O'S. was a circumstance which would have influenced her in making up her mind. And it could not be said that it was not a circumstantive substance. Apart altogether from any question of psychiatric illness – and there was no evidence that the husband had ever suffered from such illness – a persons mental health and mental stability is obviously a matter of great importance and anything which might throw doubt upon it calls for serious consideration."

23. In contrast to these cases the Supreme Court held in *P.F. v. G'M. (otherwise G.F.)* [2001] 3 I.R. 1, where the failure to reveal information relating to conduct (namely adultery before, at the time of and, after the marriage) rather than the respondent's inherent disposition and mental instability did not constitute a ground for the marriage being invalid on this lack of consent. In an earlier case *D.B. (otherwise O'R.) v. N. O'R.* [1991] 1 I.R. 289, It was held in the Supreme Court that where the petitioner was given no instruction on the consequences and meaning of marriage or explanation of the alternatives available to a pregnant young girl, there could be no free exercise of her independent will to covenant a marriage.

24. Since the hearing of the case the attention of the court was drawn to the judgment of the Supreme Court *in L.B. v. T. McC.* in which Kearns J., delivering the judgment of the court on the 6th march, 2009, cited with approval the judgment of McGuinness J. in the judgment of the Supreme Court in *P.F. v. G.O'M. (G.F.)* [2001] 3 I.R. 1, which she stated as follows:-

> "The formulation of a need for a informed consent by Blayney J. in *N. O'M. v. B. O'C.* [1996] 1 I.R. 208, as contended for by the petitioner would appear to be so wide as to cover almost any situation where the petitioner has at the time of the marriage lacked relevant information on a matter of substances concerning the conduct, character or circumstances of the respondent, and that this will ground a decree of nullity. This, it appears, would apply regardless of whether or not the information had been deliberately concealed by the respondent. The test is subjective. Presumably all that would be required would be for the petitioner to give evidence that he or she would not have married the respondent had this information been available before the marriage. One only has to formulate the test in this way to realise that it could readily give rise to an undue widening of the grounds for nullity…
>
> This cannot have been the intention of Blayney J. in *N. O'M. v. B. O'C.*. I must conclude that M.*O'N. v. B.O'C.* should be distinguished from the present case in the facts and on the particular nature of the information involved which gives rise to considerations of inherent disposition and mental stability. I respectfully agree with O'Higgins J., that it cannot be extended to cover concealed misconduct and other forms of misrepresentation. The courts have always stressed the necessity for certainty in marriage as did the learned judge in *Moss v. Moss (otherwise Archer)* [1897] p. 263. This is reinforced, as was submitted by counsel for the respondent by Article 41.3.1 of the Constitution:-
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> > 'The State pledges itself to guard with special care the institution of marriage, on which the family is founded, and to protect it against attack.'
>
> The introduction of a ground for nullity which, taken to its logical conclusion, could bring uncertainty into a wide variety of marriages is not only undesirable as a matter of public policy but is contrary to the clear intention of Article 41.3.1."

In the case under consideration Kearns J. concluded that McGuinness J. in *P.F. v. G. O'M. (otherwise G.F.)* [2001] 3 I.R. 1, drew a clear distinction between conduct on the one hand and incapacity and disability on the other.

Inability to Enter into and Sustain a Normal Marital Relationship

25. The judgment of Finlay C.J. in the case *U.F. (otherwise C.) v. J.C.* [1991] 2 I.R. 330, is instructive in relation to the question as to the inability to enter into and sustain a normal marital relationship where he stated as follows:-

> "I would accept both these statements of principle as being correct and as being material to the issues before us in this appeal, and would point out that the analogy, in my view, correctly drawn by the learned judge in that case between the question of impotence and the incapacity to enter into and sustain a proper marital relationship would appear to be valid, not only in cases where that incapacity arose from psychiatric or mental illness so recognised or defined, but also in cases where it arose from some inherent quality or characteristic of an individuals nature or personality which could not be said to be voluntary or self induced."

26. Finlay C.J. went on to conclude that the respondent who had "an inherent and unalterable homosexual nature" could be incapable of a normal marital relationship. On this point Finlay C.J., with whom the court concurred stated as follows:-

> "Recognition by psychiatrists of the existence of a homosexual nature and inclination, which is not susceptible to being changed, makes it in my view a necessary and permissible development of the law of nullity, having regard to the principles of which I have already outlined in this judgment, that it should recognise that in certain circumstances the existence of one party to a marriage of an inherent and unalterable homosexual nature may form a proper legal ground for annulling the marriage at the assistance of the other party to the marriage in the case, at least, where the parties has no knowledge of the existence of the homosexual nature."

Approbation

27. In the case *O.B. v. R.* [1999] 4 I.R. 168, the notice party (the petitioner's second husband) claimed that the petitioner was barred from relief by virtue of approbation. The petitioner had, it was submitted, approbated by seeking maintenance on social welfare payments as a deserted spouse. However, notwithstanding the petitioner's said actions and the delay of nearly 30 years, Kinlen J. granted the relief of nullity.

28. In the case *D. v. C.* [1984] I.R.M. 173, the impediment was in the form of a psychiatric illness, thus rendering the marriage voidable. Costello J. (as he then was) granted a decree of nullity, notwithstanding that the petitioner had previously sought matrimonial relief against the respondent in the form of a barring order. The respondent had claimed that, even if the alleged illness existed, it rendered the marriage voidable and not void. Furthermore, he claimed that the petitioner had approbated the marriage and was, therefore, not entitled to the decree. Costello J., accepted that the doctrine of approbation applied only to voidable marriages (at p. 189). The judgment sets out in detail the rational for the distinction between void an voidable marriages. In essence, a voidable marriage is one where only the parties have an interest, and a void marriage is one which society has an interest and "which rests on grounds of public policy". Having confirmed that the case involved a voidable rather than a void marriage, Costello J. went on to consider the defence of approbation.

29. Costello J. referred in that case to the case of *G. v. N.* [10 App. Cases 171 at p. 186] as providing the principle underlying a plea of approbation and quoted the following extract:-

> "There may be conduct on the part of the person seeking this remedy (a decree of nullity) which ought to have estopped that person from having it; as, for instance any act from which the inference ought to be drawn that during the interceding time the party has with a knowledge of the facts and the of the law approbated the marriage which he or she afterwards seeks to get rid of, or has taken advantages and derived benefits from the matrimonial relations which it would be unfair inequitable to permit him or her having received them to treat as if no such relation had ever existed."

30. Where the case involves a lack of consent on the part of the petitioner then the question of approbation does not rise, as lack of consent renders the marriage void rather than voidable, and a void marriage cannot be approbated.

Conclusions

31. I hold that there was a lack of consent on the part of the respondent petitioner, not only on the basis of the lighter end of the spectrum – transvesticism - which came to her knowledge during the marriage, but also in relation to the heavier end of the spectrum – gynephilic transvesticism - which was present throughout the marriage but which was concealed before and after the marriage by the applicant from the petitioner respondent. The lack of consent rendered the marriage void rather than voidable and, notwithstanding that I have held that the petitioner respondent coped in her own fashion with the "marriage" until the breakdown and ultimate judicial separation, this void marriage cannot have been, nor was it approbated. I have made this decision having exercised the special caution suggested by the judgment of Kearns J. in *L.B. and T. McC.*.

32. I thus answer the questions in relation to the issues directed in this case as follows:-

> A. Whether at the date of the purported marriage the petitioner/respondent lacked the capacity to enter into and/or to sustain a normal lifelong marriage with the respondent/applicant by reason of the petitioner/respondent's state of mind, mental condition, personality disorder or emotional and/or psychological immaturity?
>
> NO.
>
> B. Whether at the date of the purported marriage the respondent/applicant lacked the capacity to enter into and/or to sustain a normal lifelong marriage with the petitioner/respondent by reason of the respondent/applicant's mental state of mind, mental condition, personality disorder or emotional psychological immaturity?
>
> YES, but only by reason of the state of mind and mental condition of the petitioner/respondent (wife) being such and not to be in a position to contemplate marriage with a person in the applicant/respondents (husband's) condition.
>
> C. Whether at the date of the purported marriage the parties lacked the capacity to enter into and/or to sustain a normal lifelong marriage each with each other by reason of the respective states of mind, mental conditions, personality disorder and/or emotional or psychological immaturity?
>
> YES, subject to the qualification in answer B.
>
> D. Whether the petitioner/respondent gave a full, free and informed consent to her purported marriage to the respondent/applicant?
>
> NO.
>
> E. If the marriage between the petitioner/respondent and the respondent/applicant is void or voidable. Whether the petitioner/respondent has approbated such marriage by her conduct during the marriage and/or her arising from the judicial separation proceedings already had between the parties or in the conduct of these proceedings and the related divorce proceedings?
>
> As the marriage has been held to be void by reason of the lack of consent as appears from answer D., the question of approbation does not arise. even it does arise, in the case such evidence as may point to approbation, whether by conduct during the marriage or engaging in a judicial separation proceeding was only on the basis of such disclosed lighter end of the spectrum transvesticism, (which was only a cover for the more heavier end of the spectrum gynephilic transvesticism of the applicant/respondent) – present - but not revealed - , throughout the marriage, therefore, on any

view of the case whether the marriage was void or voidable, approbation does not in fact arise, as it depends on full knowledge of the facts and legal implications of the condition of the partner affected.

F. That the petitioner/respondent has delayed unreasonably in seeking an annulment.

Any delay in seeking an annulment must only date from the time after the judicial separation when the petitioner/respondent found out about the sex change operation. Such delay as occurred thereafter is not delay which I found unreasonable for two reasons. Firstly, the "marriage" was over and there could be no unfairness arising from the delay by reason of the respondent/applicant acquiring rights and expectations together with attachments in the "marriage" thereafter and, secondly, the concealment of the applicant/respondent of her true heavier end of the spectrum gynephilic transvesticism persisted (even after divorce and nullity proceedings had proceeded to joint medical examination), means that it would be unjust and inequitable to penalise the petitioner/respondent for delay in the face of such concealment.