

**THE HIGH COURT  
(MATRIMONIAL)**

Record No: 1999 48M

**BETWEEN****L.B.****PETITIONER**

**AND  
T. MACC.**

**RESPONDENT****Judgment of Mr. Justice O'Higgins delivered on the 20th day of December, 2004.**

1. In these proceedings, the petitioner seeks an annulment of her marriage.
2. The petitioner is an Irish citizen and lives in the south west of Ireland and the respondent is from Scotland and lives there.
3. On the 5th May 1993, the parties underwent a marriage ceremony according to the rites of the Church of Scotland in Glasgow. They had two children, A. MacC, born in May 1994 and S. MacC born in September 1997.
4. Paragraph 7 of the petition dated 12th May, 1999 states that "Your petitioner's consent to the marriage was not fully informed and was obtained by misrepresentation of fundamental facts and fraud on the part of the respondent in respect of his personal circumstances, his family circumstances, his character and his intentions".
5. At paragraph 8 the petitioner says "Furthermore, the respondent lacked capacity to marry in that he suffered psychological immaturity and under-development of character to such an extent that he was incapable of maintaining a normal marital relationship with your petitioner and was pathologically given to deception and concealment in relation to his circumstances, intentions and emotions in such a way as to wholly prevent and undermine the development of any proper matrimonial relationship."
6. Following their separation in 1997 the respondent commenced judicial separation proceedings (1998 No. 1153M) and it was agreed that those proceedings should be adjourned pending the outcome of this case. On 4th May 2000, the parties entered into an agreement dealing with many of the issues in the judicial separation proceedings. Apart from nominating a solicitor for the purpose of the serving of documents, the respondent has chosen to take no part in these proceedings. I am satisfied that there is no question of collusion between the parties.
7. By order of the Master of the High Court dated 20th October, 1999 it was ordered that the action be set down for trial and the issues would appear to be as follows: "

(a) Whether the petitioner is entitled to a decree of nullity on the following grounds:

- (1) That the petitioner's consent to the marriage was not fully informed and was obtained by misrepresentation of fundamental facts and fraud on the part of the respondent in respect of his personal circumstances, his family circumstances, his character and his intentions.
- (2) That the respondent lacked the capacity to marry in that he suffered from psychological immaturity and underdevelopment of character to such an extent that he was incapable of maintaining a normal marital relationship with your petitioner and was pathologically given to deception and concealment in relation to his circumstances, intentions and emotions in such a way as to wholly prevent and undermine the development of any proper matrimonial relationship.
- (3) In relation to the misrepresentation and fraud of the respondent in relation to his personal circumstances, his family circumstances and professional circumstances.
  - (a) That the respondent represented himself to your petitioner as a man of substantial wealth and position in society and that he concealed from the petitioner that he was chronically indebted and incapable of managing his own financial affairs.
  - (b) That the respondent represented to the petitioner that he was the owner of a substantial home, which he proposed to be the family home, but which was, in fact, encumbered with debt to such an extent that he was obliged to sell it within a year of the marriage.
  - (c) That the respondent wholly misrepresented to the petitioner the extent of his status as a partner in a Glasgow Quantity Surveying partnership from which owing to his inability to commit himself to work and to further his own financial interest he was unable to derive an income in any way adequate to meet his own financial circumstances.
  - (d) That the respondent concealed from the petitioner the true circumstances relating to his occupation, the demands of his partners that he should improve his performance and invest in his partnership, and other circumstances which led to the collapse of his partnership in the year following the marriage.
  - (e) That the respondent represented to the petitioner that he was a son of a happy and functional family and that the petitioner would be a part of this extended family life but that after the marriage the petitioner never met any members of his family apart from his parents with whom he had an unusual and secretive relationship
  - (f) That the respondent represented himself as someone who was outgoing, honest and interested in establishing and sustaining a matrimonial relationship with the petitioner but that after the purported marriage the petitioner discovered that the respondent was dishonest both in his business and personal dealings, untrustworthy, given to practising deceptions on a routine basis and incapable of addressing social and economic realities on any realistic basis.

(g) That the respondent instead of acting as a normal bread winning member of a family, took every opportunity to avail of the petitioner's resources and to become financially dependant upon the petitioner and avoided his financial and family responsibilities to a wholly unwarranted extent.

(h) That the respondent continually incurred indebtedness in a reckless and irresponsible way without any regard to his capacity to defray such debts.

(i) That following the birth of [A.MacC]. . . the respondent demonstrated little or no interest in sustaining a sexual relationship and drank excessively and remained secretive about his personal feelings, emotions and activities.

(j) That the respondent demonstrated complete emotional immaturity and incompatibility with the petitioner."

### **The evidence of the petitioner**

8. The petitioner is a successful and experienced solicitor practising in the south of Ireland. She became national president of a voluntary organisation for business and professional people. It was through that organisation that she met the respondent who was involved in the same organisation. The parties first met in 1988 and had occasional contact after that but a relationship between the parties did not develop until about June of 1992. The parties became engaged in December of that year and were married in Scotland in May 1993. At the time of the marriage, the respondent was a partner in a firm of chartered surveyors but he was in dispute with that firm and left the practice in 1994. He had bought a house in 1991/1992 but he had to sell it in November 1994, to cover his debts of which the petitioner was unaware, as the respondent had never told her of his financial difficulties or the facts of his professional dispute. After the marriage, the respondent was a considerable financial burden and a constant drain on the resources of the petitioner. Contrary to her expectations that his side of the family would pay for the wedding celebrations, which were held in Scotland, and that her family would be responsible for the celebrations held in Ireland, the petitioner had to pay for the wedding celebrations in Scotland. She had understood from the respondent that he was a member of a close-knit family. Subsequent to the marriage she became aware that this was not so and that the respondent did not seem to have close relationships with his extended family other than his parents. There had been Hogmanay celebrations before the marriage which involved his extended family. The parents of the respondent spent the first Christmas after the marriage in Ireland and the petitioner returned with the respondent to Glasgow after Christmas in the expectation of Hogmanay celebrations with the extended family as she had been led to believe that there were annual Hogmanay celebrations which involved the extended family. The respondent and his parents knew that no such celebrations were planned. In fact, after the marriage, there was no further contact with the respondent's extended family aside from the S-----s. The petitioner felt misled as to the nature and extent of the respondents contacts with his extended family.

9. During the course of the marriage, the petitioner subsidised the rental of office space for the respondent in Dublin while he sought work and he resided in an apartment in Dublin owned by her parents during that time. She also supported him financially while he was involved in unsuccessful business enterprises. Indeed she was the main breadwinner throughout the marriage. The respondent attempted to obtain a franchise on the sale of certain fast food products in Ireland but that required security of £150,000 which the petitioner was unable and/or unwilling to pay. Following her refusal on the 2nd June 1994, he left. The petitioner said that the funding in relation to the franchise was "what eventually brought an end to the marriage. He was looking for me to go guarantor for IR£150,000, which he needed by July 1997 and I refused".

10. The parties separated on the 4th July 1997 and the respondent returned to Glasgow. The petitioner did not hear from him for fifteen days. A meeting then took place in the petitioner's office. The respondent asked the petitioner could they get back together and she said that she did not think it was appropriate. Shortly after that on the 23rd July, the plaintiff got what she described as "a tender, loving letter, but I really felt that the marriage was at an end". She was six and a half months pregnant at the time and she told the court that herself and the respondent "had become practically estranged." The petitioner was "paying everything" and she said she could not keep on paying it, "I just said I didn't want anymore involvement with him."

11. The evidence discloses that this unauthorised sale took place at the time that he wrote the "tender" letter already referred to. This was an example of duplicity and affords some support for the opinion of Dr. Byrne. It was one of a number of deceitful acts in the course of the marriage. The evidence also shows that the respondent provided little emotional support to the petitioner in the course of the marriage.

12. It is difficult to avoid the conclusion that the constant financial demands of the respondent were a real factor in the failure of the marriage and although the respondent was unsuccessful in his business endeavours during the marriage I am satisfied that his financial dependency on the petitioner was not deliberate. The evidence does not disclose that the respondent was incapable of earning a living or keeping a job by virtue of his personality. Had circumstances been different he may well have been successful in business. The financial dependency issue in this case is not in my view of assistance, in assessing the respondent's ability to contract to a valid marriage.

### **The Evidence of Dr. Byrne**

13. Dr. Gerard Byrne, psychiatrist was appointed to carry out a psychiatric examination of the petitioner and of the respondent and to report to the court thereon.

14. He interviewed the petitioner for a total of four hours and interviewed the respondent for a total of four hours. He gave us his opinion that at the time of his marriage the respondent had a personality disorder to such an extent as to make it impossible for him to consent to and sustain a marriage with the respondent. He had a fundamental difficulty with trust and allowing himself to be trusted. He constructed a persona entirely at variance with reality.

15. Dr. Byrne quoted from the International Classification of Diseases, which sets out what specifically a personality disorder is, as follows:-

"it is a condition which comprises deeply ingrained and enduring behaviour patterns manifesting themselves as inflexible responses to a broad range of personal and social situations, they represent either extreme or significant deviations from the way that the average individual in a given culture perceives, thinks, feels thinks (sic) and particularly relates to others. Such behaviour patterns tend to be stable and to encompass multiply domains of behaviour and psychological functioning. They are frequently, but not always, associated with various degrees of subjective distresses and problems and social functioning and performance. They emerge early in the course of the person's development, usually present by early adulthood and generally persist throughout life."

16. He went on to say the particular personality disorder of the petitioner was "what is called a narcissistic personality disorder and that has a triad for diagnosis and the triad is self-importance or grandiosity, the need for admiration and the inability to empathise with others. They are usually people who have a very strong negative reaction to criticism; they show manipulative behaviour and an exaggerated sense of achievement and special abilities, a strong sense of entitlement and a requirement for constant attention while being indifferent to the feeling of others." Dr. Byrne said that he formed his opinion based on a number of factors in the history given to him by the petitioner and the respondent and on the documents furnished by him and referred to in his report.

17. The matters he relied on included (but were not confined to) the following:-

- (1) The letter in which the respondent said he had been head hunted by Thistle Developments.
- (2) The letter found addressed to a celebrated Q.C. in England.
- (3) His asking for delivery of paintings from persons to whom he was in debt.
- (4) His descriptions of himself in his C.V.

I will deal with these matters referred to by Dr. Byrne *seriatim*.

#### **(1) The letter seeking the franchise.**

18. The respondent applied for a franchise for the sale of a fast food product from an American business. In a letter concerning his application, he said inter alia that "he was subsequently headhunted to assume the position of Director in Thistle Developments, Dublin." This statement is inaccurate – the respondent was not headhunted by Thistle Developments, the company was in fact founded at his behest. However, in my view Dr. Byrne is not correct in attributing any significance to this document in assessing that the respondent was grandiose or self-important. It is nothing but a minor puff to cover up a gap in his curriculum vitae and to account for a period of unsuccessful business activity. I do not consider this to be of any importance and I do not think that any significance should be attached to it.

#### **(2) The letter to the celebrated Q.C.**

19. Dr. Byrne also places reliance on a draft letter from the respondent to a celebrated Q.C. as being evidence of pomposity and self-importance. In my view, any such reliance is totally misplaced. Dr. Byrne is not in a position to tell the court whether or not the respondent knew the person in question and consequently could not be justified in placing any reliance on the fact of correspondence itself. It appeared moreover from the letter itself that it is not the first letter in correspondence and appears to be in response to "papers you forwarded." However, Dr. Byrne attaches significance not to the letter itself but to the following sentence, "Finally on a more personal note we are hoping to see you in [B] . . . on the 29th." It would appear that the petitioner knew nothing of this invitation. In my view, it would be wrong to draw any inference however slight from that sentence. It may be a casual invitation, or a meaningless polite phrase. It might have been something already discussed between the parties. There are no grounds in my view for forming an opinion that that sentence is evidence of grandiosity or pomposity – without further information about the dealings between the respondent and the Q.C.

#### **(3) Letter to Art Bank.**

20. In correspondence with the firm of art dealers dated November 1997, the respondent wrote concerning the removal of three pictures from Dublin to Glasgow and referred to three unwrapped pictures from Dublin to Glasgow. Dr. Byrne found it "rather unusual that he would be writing to these people to whom he owed money and expecting them to move the pictures for him and also they would be wrapping them and they would send him a bill for this as well." He found an element of grandiosity in an expectation that they would take care of the matter even though the applicant owed them money. I do not share the views of Dr. Byrne on this matter. I do not consider it any way unusual for a person to deal with a company to whom that person owes money. In particular, I find nothing strange about the request in the letter especially when the same letter contains a cheque towards his account which he trusts "will bring me close to balance." (It appears from the previous correspondence which refers to balance payable of UK£252.88 on the 13th August, 1997 that the contention that the sum of UK£240.00 will bring me close to balance may well be correct). They may be an element of confusion in regard to this. The petitioner also had correspondence with 23 Club Management Services to whom he owed money and it may well be that matter referred to by the petitioner which Dr. Byrne may have wished to comment on. Even a request for favours from the respondent to that entity – even in circumstances where there was money owing – does not appear to me to be of any great significance.

#### **(4) Dr. Byrne's comments on the C.V.**

21. Dr. Byrne comments on the C.V. furnished by the respondent and points out that he describes himself as 'one of the most high profile chartered quantity surveyors in Scotland' and 'one of Glasgow's best public speakers'. Again, in my view it is not reasonable to use that, even as part of a jigsaw of findings and observations, on which to base the opinion that he formed. The assertions in the C.V. might be considered brash or excessive but the prevalent standards in self-promotion in the business world by way of a C.V. could well be at variance with those in the professional world. I do not think that Dr. Byrne was justified in attaching any significance to that document in arriving at this diagnosis. With regard to his assertions about his prowess as a public speaker, it appears there was some basis for this view of himself.

22. I am conscious of the fact that Dr. Byrne told the court "one of the difficulties in making a diagnosis with a personality disorder is that if one picks any one particular feature then it does not necessarily have to be outside the norm, it is a feature that one might see in other people. In making the diagnosis of a personality disorder you look at the general pattern of behaviour across many domains of the person's functioning. I would refer to a number of features of Mr. MacC, the most obvious one is his curriculum vitae and the manner in which it is written." It is clear from the above that the proper approach is to look at the overall pattern rather than to place too much emphasis on any one specific factor. Nevertheless, it appears from the evidence that Dr. Byrne considered the matters referred to above as being factors, all of which were to be taken into account in coming to his diagnosis, and a very considerable amount of his evidence was devoted to commenting on these matters.

23. There were other matters involved in the diagnosis. Dr. Byrne had lengthy interviews with both the petitioner and the respondent. Dr. Byrne referred to a letter in which the respondent wrote to the person from whom he had hoped to achieve the fast food franchise. In the letter, he referred to the very serious illness of his wife and as the doctor put it went on to embellish matters by using the phrase "it's funny how life turns." In fact, his wife was not seriously ill following the birth of the child – in this regard the doctor said "he cannot simply state what the truth is and then deal with the consequences of it, he will make a statement which is untrue and then will go on to embellish it".

24. Dr. Byrne also drew the attention of the court to the fact that the letter of the 23rd July, written by the respondent to the

petitioner expressing love and admiration was on the same day that he sold items belonging to the petitioner. Dr. Byrne concluded:-

"My sense of him was that he was able to maintain those two contrasting styles of relating to her without any difficulty which comes back to the question of his ability to empathise, which I think he is, sadly, devoid of, certainly in his relationship with Mrs. [B] . . . and I would say that he would have a similar difficulty with other people."

25. The respondent told Dr. Byrne that he had just ended a seven-year long relationship with another person. This matter was not probed at all by the psychiatrist. Dr. Byrne gave as his reason – "because I do not think he was a very credible person to interview" Nonetheless the court considers that it is unfortunate that it has no information on this topic. Furthermore Dr. Byrne made no reference in evidence to the respondent's relationship with his parents.

26. Dr. Byrne also commented on the fact that in the agreement reached between the parties – that the petitioner should have full responsibility for the rearing of the children and that he was not seeking access.

27. He also told the court of a time when the child was ill and the respondent appeared to be indifferent and mentioned that in the interview the respondent denied authorship of a document, which Dr. Byrne thought, was clearly in his handwriting.

28. Dr. Byrne conducted quite extensive interviews with the petitioner and respondent and had access to the documentation provided by the petitioner and referred to in his report. He had the benefit of information from the petitioner – but not from other informants – and referred in his evidence to the difficulties in not being able to use informants in these types of procedures.

29. The court is aware of the experience and expertise of Dr. Byrne but it would be wrong of the court to accept unquestioningly the evidence of an expert and to substitute expert opinion for the independent judgment of the court. Some of the matters which cumulatively, are part of the basis of his opinion, and which formed a major part of his evidence, have not been accepted by the court as valid material on which reliance should be placed.

30. I am aware that the matters in question are only part of the full picture, and that the opinion was not based solely on the matters referred to but also on the interviews with both the petitioner and the respondent. I am not satisfied, however, that the totality of the evidence discloses that the personality traits of the respondent were so outside the norm as to constitute a personality disorder such as would preclude him from contracting to a valid marriage. Nor am I convinced that his personality was such as to preclude him from sustaining a relationship with the petitioner. Furthermore, it has not been shown to the satisfaction of the court that the respondent "constructed a persona entirely at variance with reality."

31. The petitioner had a very difficult marriage. The respondent was not truthful with her concerning his financial situation and his difficulties at work. He gave up his work in Glasgow shortly after the marriage and was involved in a dispute with the firm where he formerly worked. During the course of the impugned marriage, the respondent was almost entirely financially dependant on the petitioner. She paid for his office rental; she provided him with accommodation in Dublin; she gave him an allowance; she discharged his debts. The respondent was unsuccessful in his business enterprises as property consultant and also in an enterprise in the restoration of baths. He unsuccessfully sought a lecturing post and unsuccessfully applied for entrance to the King's Inns. He accepted in correspondence a description of himself attributed to the father of the petitioner as "a kept man". (In passing, I must observe that this acceptance of such description does not seem to disclose either a grandiosity or pomposity.)

32. The petitioner was also surprised that he failed to discharge an electricity bill on his house and was unaware of those debts the discharge of which consumed the proceeds of the sale of his house in Glasgow in November 1994. The respondent also appears to have misrepresented the position as to the closeness of his relationship with his extended family. The petitioner thought that he had a close friendship with his relatives and that he socialised frequently with them, whereas the petitioner found this not to be the case and that his only close relatives were his parents. None of these matters however are such as would constitute grounds for annulment of the marriage. The law in relation to nullity and in particular the topic of informed consent is discussed by McGuinness J. in the case of *P.F. v. G.O.M.* (otherwise G.F.) [2001] 3 I.R. 1 at p. 13 and in particular the following passage at p. 23 is apposite and applicable to the present case:-

"The formulation of the need for an informed consent by Blayney J. in *M.O.M. (otherwise O'C) 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 a petitioner has at the time of the marriage lacked relevant information on a matter of substance 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 has only to formulate the test in this way to realise that it could readily give rise to an undue widening of the grounds for nullity which would lead to precisely the type of difficulty so well set out by Jeune P. in *Moss v. Moss (otherwise Archer)* [1897] p. 263 at p. 278:-

"...To assent to the proposition for which the petitioner contends would be to introduce into a law which now is, and beyond question should be, and believed to be certain, a new principle not resting on any sound basis, and, develop as it must in several directions, sure to give rise to many doubts and much confusion. This cannot have been the intention of Blayney J. in *M.O.M. (otherwise O'C) v. B.O'C.* [1996] 1 I.R. 208. I must conclude that *M.O.M. (otherwise O'C) v. B.O'C.* should be distinguished from the present case on the facts and on the particular nature of the information involved which gave 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."

33. The lack of full disclosure about his financial affairs, family and social circumstances are not in my view grounds on which one can base a claim for nullity. Neither the failure of the respondent to be the breadwinner for the family nor the failure of his business endeavours constitutes grounds on which to grant a declaration of nullity.

34. During the marriage, the respondent provided little emotional support and does not appear to have been good at parenting the child born prior to the break-up of the relationship. He was inconsiderate to the applicant and sometimes deceitful. One could be justified in concluding from the evidence that the respondent was very selfish, egotistical, deceitful and dishonest and that he behaved badly. However, as I have stated the evidence does not convince me that the personality traits which he displayed were of such a nature or quality as to bring him outside the norm. I am not persuaded that he was suffering from such personality disorder that would have prevented him from contracting to a valid marriage. In those circumstances, the petition must be refused.

