

1983 No. 6M

J.R. (OTHERWISE McG)

.v.

P.McG

Judgment of Mr. Justice Barron delivered the 24th day of February, 1984

The petitioner seeks a decree of nullity upon the grounds of duress.

To understand the nature of the duress alleged, it is essential to refer to the petitioner's family background. Her mother had been a member of the Salvation Army. She was English by birth and had come to Dublin to live. While in the Salvation Army she had met the petitioner's father who was a Roman Catholic and had fallen in love with him and had married him. As a result of her marriage she was obliged to leave the Salvation Army; she then became a member of the Church of Ireland. However, by reason of her background she appears to have become extremely bigoted and was not prepared to tolerate the society of Roman Catholics. It is not necessary to go into this aspect of the evidence in any detail. However, it was of such a scale that although there was six children of the marriage only three, of whom the petitioner was one, were brought up here, the other three being brought up by relatives in Belfast. In addition to her religious bigotry, the petitioner's mother's attitude to sex was that of total intolerance.

The combination of these two attitudes had a serious and adverse effect on

the petitioner. By reason of the religious intolerance, she was taken from the Dun Laoghaire Technical School and went to work at the age of 14. By reason of her intolerance in relation to matters of sex, boyfriends were not permitted in the home and consequently the petitioner had no real knowledge of the other sex.

The petitioner went to work at the age of 14. At first she had a job obtained for her by her father and subsequently obtained employment in a Builders Providers in Dun Laoghaire. She had been employed with this firm for about five years and was aged 20 when she met the respondent who was a fellow employee of the same firm. She started going out with him but as he was a Roman Catholic this association had to be kept secret from her mother. They had intercourse on two occasions, both induced so far as the petitioner was concerned by alcohol, something to which she was not accustomed. As was perhaps bound to happen in such a situation, the petitioner found herself to be pregnant.

The evidence as to the subsequent sequence of events is not totally clear. It seems to me that the salient facts are as follows. She discovered that she was pregnant in or about the 15th December, 1963. She immediately told her father since she was afraid to tell her mother. He agreed to tell her mother whose reaction was predictable and she was told to pack her things and go. This threat was not complied with because the petitioner's brother was being married on

Christmas Day in Portrush and her mother went up in advance of that date to Portrush.

Meanwhile the petitioner told the respondent. His immediate reaction was non-committal, but certainly when he realised the petitioner's home situation he offered to marry her. They became engaged on the 24th December, 1963 and the petitioner brought him with her to her brother's wedding the following day. Her mother's reaction was to refuse to remain at the reception and she took her husband and two of her children with her.

On her return to Dun Laoghaire, the petitioner went to see the local Parish Priest. He regarded her as too young and did not wish to marry her and the respondent. Nevertheless he agreed to do so and the wedding was fixed for and took place on the 9th February, 1964. The reception was held at a local hotel and the party left for a week's honeymoon in Belfast in accommodation provided for them by the petitioner's brother.

During the period between her brother's wedding and her own the petitioner was permitted by her mother to remain in the house but not as a member of the family. Her situation was fully known to the respondent who was physically assaulted by her mother when he called at the house on one occasion. As an alternative to marriage, the petitioner says that she approached her father's relatives who also lived in Dun Laoghaire but as they had previously experienced

the antagonism of her mother they were sympathetic but not prepared to be involved.

The parties history since the 9th February, 1964 was perhaps to have been predicted. The respondent became drunk on the train journey to Belfast and assailed the petitioner. On their return to Dublin they stayed in a flat for a few months and then moved to London in a hope that matters would improve. There were two children born of the marriage: Sandra born on the 18th August, 1964 and Susan born on the 4th February, 1966. The move to London was not a success nor was the marriage. The respondent deserted the petitioner on many occasions and out of a period of approximately sixteen years during which the parties were nominally living together the respondent was absent for approximately half this period. The petitioner obtained a good job in a West End London store as a Buyer. Basically it was her earnings which kept the family together. They returned, though on separate dates, from England in 1977 and separated finally in 1980.

The respondent has not given any evidence and has not defended the proceedings. Nevertheless I am satisfied that there is no collusion between the parties. The petitioner's evidence in relation to the matters occurring before her marriage and to her mother's attitude was fully corroborated by the evidence of her sister. I accept all the evidence which I have heard on this matter. I am satisfied that

no attempt is being made by the petitioner to give any evidence other than that which she genuinely believes to be true.

This evidence shows an unhappy state of affairs. The petitioner when she found herself pregnant knew that she would be unable to remain at home to have her child. She sought help from her father's relatives who lived in Dun Laoghaire but was unable to obtain any assistance from them. She did not have the financial resources to fend for herself. Marriage seemed to her to be the only course open. She says now that she was never really in love with the respondent and that he was only a means to get her out of her home in the evening and that left to herself she would never have married him. She says that if she had not married him she would have been in Grangegorm. It is difficult twenty years later to be reasonably sure of the position in which the petitioner found herself. She herself looks back from an extremely bad marriage and with a maturity which she had not even begun to acquire at that stage. I do not accept totally what she now says. There must have been a greater bond of affection between herself and the respondent than she is now prepared to admit. There is no other explanation for the fact she immediately became engaged and that he accompanied her to her brother's wedding. There were undoubtedly pressures on her which resulted in her agreeing to get married, but these were resolved in an

amazingly short time if she herself was against the idea of marriage.

The case that is made on behalf of the petitioner is that she was compelled by two main factors to get married. These were the attitude of her mother and financial position. There is no doubt that her mother's attitude was outrageous and had the effect of closing off avenues of assistance such as her father's relatives which might otherwise have been open to her. It is submitted that the affect on her will was the same as that of parents who require their daughter to leave home because of the disgrace which they regard her as having brought upon the family. In each case, if a girl has no financial or other resources, it is submitted that this may be tantamount to compelling her to getting married. It is said that if there is only one course open to you your choice is not a free one. In my view the pressures imposed on the petitioner were not nearly as serious or as compelling as she now imagines them to have been. Marriage to the respondent may not have been an ideal marriage from her point of view even at that date. Nevertheless I am satisfied that she was not totally averse to the idea. If she had been, I feel that other assistance would have been available to her and I am reasonably sure that even as a last resort her own brother in Belfast would have provided for her during her pregnancy and afterwards.

The petitioner relies upon the decision of O'Hanlon J. in M.K. v. McC.

In that case O'Hanlon J. deals very fully with the law of duress as it affects the validity of a marriage. That was a case where the evidence showed that the decision that the parties should marry was made not by the parties themselves but by their respective families and that the two parties to the ceremony were in fact given no choice in the matter and accordingly there was no true consent on either of their parts.

Duress must be such that the apparent consent to marry is not a true consent. It can operate in one of two ways. It can operate so that the party under the duress fails to apply his or her mind to the question of giving consent. In such cases, the duress creates a form of bondage. The party concerned may not even be aware that such bondage exists. M.K. v. McC and S. v. S. an unreported judgment of Finlay P. delivered on the 10th November, 1978 are examples of this form of duress. Duress can also operate to compel the party under the duress to make a decision to give his or her consent to escape the consequences which will otherwise follow. Such a party knows that his or her consent is not a true consent and is in effect consenting not to being married but to escaping from the threat. Such a marriage is a sham or a device to procure a particular result, i.e. freedom from the particular threat to which he or she is subjected.

It is this latter type of duress which is alleged in the present case. Of course the attitude of the petitioner's mother was a compelling factor

towards her decision to get married. Equally her economic situation was a further compelling factor. But this does not mean that when she agreed to become engaged and then to become married that these two factors were the only factors bearing on her mind and that her consent was not a true consent. To test whether or not duress has affected the mind of a party to a marriage so that the marriage is a mere device to escape the pressures imposed it is necessary to look to how that party acted not only before the marriage ceremony itself but also afterwards.

Three English cases indicate the nature of duress of this type. In Parojic .v. Parojic 1959 1 All E.R. 1 the petitioner was a political refugee from Yugoslavia. Her father threatened that unless she married as he required her to do she would be sent back to Yugoslavia. In Szechter .v. Szechter 1970 3 All E.R. 905 the whole purpose of the marriage was to enable the petitioner to leave Poland where she would otherwise have had to remain in prison where she was likely to die through ill-health. In H. .v. H. 1953 2 All E.R. 1229 the petitioner married to obtain a passport to leave her native Hungary. In none of these cases did the parties reside together after the ceremony nor was any of these marriages consummated. The ceremonies were clearly a sham and a device to ensure the safety of the petitioner.

These cases show a stark contrast from the present. I do not suggest that a decree of nullity cannot be granted unless the circumstances are as obvious

as in these three cases. But they do show that wherever the dividing line must be drawn, the present case does not lie on the side where the marriage can be annulled. The petitioner intended to marry the respondent and to hold herself out as being so married. In my view the marriage was not brought about through duress. The relief sought will be refused.

Henry Barron.
24/2/84.