THE HIGH COURT

FAMILY LAW

[2024] IEHC 684

RECORD NO. 2021 77 M

IN THE MATTER OF THE FAMILY LAW ACT 1995, AS AMENDED

BETWEEN:

W

APPLICANT

-AND-

C

RESPONDENT

-AND-

THE ATTORNEY GENERAL

NOTICE PARTY

JUDGMENT of Mr. Justice Jordan delivered on the 17th day of October 2024.

1. The applicant and the respondent were married in August 2020 at a Church in Arklow, County Wicklow, Ireland. The Attorney General was joined as a notice party in these proceedings in view of the issues raised. The respondent though properly served and clearly aware of these proceedings has decided not to participate.

2. There are no children of the marriage. Shortly after the marriage there was a complete and irreversible breakdown in the relationship. The applicant's evidence, which the Court

accepts, was that he decided during the first week of December of 2020 that he did not want to be part of the relationship. This was in view of the difficulties which had emerged between he and the respondent. Around 08 or 09 December 2020, the respondent packed up her belongings in the rented accommodation in which the couple lived and she returned to Colorado where her mother lived – to the home she had grown up in.

3. The applicant filed a petition for annulment in the Superior Court of Arizona on 21 December 2020. On 02 March 2021, a consent decree of annulment was granted, with the marriage declared null and void. The annulment was granted in circumstances where the marriage was not entered into with the requisite mental capacity due to stress of COVID-19, such that this was deemed an impediment rendering the marriage void. The applicant did have legal advice and representation at the time of the annulment. It appears that the respondent did have legal advice in relation to the annulment but ultimately represented herself before the Court for the granting of the annulment. The operative ground which was the first of the three recited in the Petition read –

> *(i)* *"That the parties felt under pressure to proceed with the wedding as it had been cancelled and re-planned after great effort three separate times, with each venue cancelled due to lock-down restrictions arising from COVID-19. The wedding was re-scheduled in great haste over a five day period to take place in the family home in Ireland in [] August, 2020. Both parties believe that they were caught up in the excitement of travelling to Ireland and getting married and had not given the decision clear and thoughtful consideration so that they had the mental capacity to enter into a valid and binding marriage."*

4. Insofar as the granting of the annulment is concerned it does appear from the evidence that the "hearing" was a paper-based exercise during COVID-19 times. Certainly, it is apparent from the evidence that neither side gave oral evidence to the Court in Arizona.

5. The applicant, who is a professional athlete, is domiciled in Ireland. He was born in the United States of America in 1995. He was entitled to American citizenship by birth. The applicant's father is Irish. The applicant's mother was born in the US but renounced her US citizenship in favour of Irish citizenship. The applicant's family moved overseas in 1996 before returning to Ireland in 2000. The applicant attended both primary and secondary school in Ireland. The applicant has never changed this domicile. Upon turning 18 years of age, the applicant renounced his US citizenship in favour of Irish citizenship. The applicant favoured his Irish nationality and did not want US citizenship.

6. The joint consent decree for the annulment of the marriage dated 20 January 2021 provides agreed arrangements for the service of documents abroad, should one of the parties seek to have the consent decree recognised in other jurisdictions, and in particular, Ireland.

7. The parties did not claim any maintenance or property reliefs as against the other in the nullity proceedings - as they might have done in accordance with Arizona law. The applicant did provide the sum of $25,000 to the respondent to assist her in obtaining alternative housing. The final payment from this total sum was provided to the respondent by cheque posted on 17 March 2021 to a named address in Colorado Springs, United States of America (the mother's home address).

8. The couple had intended to get married in the United States. However, due to COVID-19 difficulties and lockdowns, their plans in that regard proved difficult and they decided to look at the Irish option. This caused them to travel to Ireland where they arranged the wedding. At this time the applicant was residing in Arizona on a visitor's visa – and was 25 years of age.

9. The respondent is American by birth. She is an American citizen and she is domiciled in the United States. She was born in Utah, USA in 1998. Her parents are American. She has lived and was educated in America for all of her life. Her father was born in Michigan. Her mother's place of birth was Japan as her family was stationed in the US military there. The

mother's residence however was the State of Utah – as shown on the respondent's birth certificate. The respondent has two sisters and one brother. During her early childhood years she lived in Michigan. Her parents divorced and she subsequently lived and was educated in Colorado Springs. She was educated in Colorado Springs.

10. In 2017 the respondent relocated to Arizona and attended University in Arizona. She obtained an undergraduate Bachelor of Arts Degree between 2017 and 2020. During this time she lived on University Campus. She also worked as a café server in Arizona from October 2017 to March 2020.

11. In correspondence from the applicant's solicitors to the Chief State Solicitor's Office dated 18 January 2022, it is asserted that "*we understand Ms. C is now completing a masters degree ... which she commenced in 2021."* However, in evidence the applicant said that he last spoke to the respondent four or five days after she left the house in Arizona. He spoke to her because he was concerned about her due to the content of several text messages he had received from her after she left. He did not speak to her subsequently. Later in evidence, in cross-examination, the applicant said that as far as he was aware the respondent did not return to Arizona.

12. The respondent's mother resides in Colorado Springs along with the respondent's two sisters and brother. Her father still resides in Michigan. The respondent's family are Mormon and her grandmother lives in Utah.

13. These proceedings were issued on 20 July 2021. In the proceedings the applicant claims; -

(i) A declaration pursuant to s.29(1)(d) of the Family Law Act 1995 that the annulment in respect of the marriage of the applicant and the respondent granted by the Superior Court of Arizona on 02 March 2021 is entitled to recognition in this jurisdiction.

(ii) Costs.

(iii) Such further and other orders as to this Honourable Court shall seem proper.

14. Section 29(1) of the Family Law Act 1995 provides; -

"(1) The court may, on application to it in that behalf by either of the spouses concerned or by any other person who, in the opinion of the court, has a sufficient interest in the matter, by order make one or more of the following declarations in relation to a marriage, that is to say:

(a) a declaration that the marriage was at its inception a valid marriage,

(b) a declaration that the marriage subsisted on a date specified in the application,

(c) a declaration that the marriage did not subsist on a date so specified, not being the date of the inception of the marriage,

(d) a declaration that the validity of a divorce, annulment or legal separation obtained under the civil law of any other country or jurisdiction in respect of the marriage is entitled to recognition in the State,

(e) a declaration that the validity of a divorce, annulment or legal separation so obtained in respect of the marriage is not entitled to recognition in the State.".

15. Section 30 provides as follows; -

"(1) Rules of court may make provision as to the information to be given in an application under section 29 (1) including particulars of any previous or pending proceedings in relation to any marriage concerned or to the matrimonial status of a party to any such marriage.

(2) The court may make such order (if any) as it considers just for the payment of all or part of any costs incurred by the Attorney General in proceedings under this section by other parties to the proceedings.

(3) Without prejudice to the law governing the recognition of decrees of divorce granted by courts outside the State, a declaration under section 29 conflicting with a previous final judgment or decree of a court of competent jurisdiction of a country or jurisdiction other than the State shall not be made unless the judgment or decree was obtained by fraud or collusion.

(4) Notification of a declaration under section 29 (other than a declaration relating to a legal separation) shall be given by the registrar of the court to an tArd Chláraitheoir.".

16. There is no known judgment of the Superior Courts concerning an application for a declaration that a decree of nullity granted in another jurisdiction is entitled to recognition in this jurisdiction. In these circumstances the Attorney General felt it was appropriate to become a notice party in the proceedings. In the written submissions the Attorney points to the Supreme Court decision in *G.McG. v D.W. & A.R.* [2000] 4 IR 1 in support of the involvement of the Attorney General. In that case the Supreme Court considered the provisions of s.29 of the Family Law Act 1995 enabling the Attorney General to participate in proceedings concerning a declaration in regard to marital status. Murray J. there noted that; -

"Suffice to say in the context of these proceedings and the Act of 1995 that the status and importance of marriage as an institution in society is reflected in the fact that it is regulated by public law and expressly provided for in the Constitution which imposes on the State a duty to safeguard it.

The Constitution and the law reflect a shared value of society as to the status of marriage. A declaration as to marital status, made pursuant to s.29(1)(a) to (e) may have implications for the force and effect of a marriage contracted, or purported to have been contracted, in Ireland.

Accordingly, proceedings pursuant to s.29 may well give rise to issues which have effect far beyond the relationship between the private parties to those proceedings and impinge on the State interest concerning the status of marriage as an institution".

17. There is in fact no controversy surrounding the involvement of the Attorney General in these proceedings. It is appropriate and necessary in light of the issues raised.

18. There are three Affidavits of Laws before the Court, namely:

i. Affidavit of Laws of Ms. Marlene A. Pontrelli, Dickinson Wright, 1850 N. Central Avenue, Suite 1400, Phoenix AZ 85004, 11th August 2021 (Ms. Pontrelli acted for the applicant in the Arizona family law proceedings).

ii. Affidavit of Laws of Mr. Keith Berkshire, Berkshire Law Office, PLLC, Tempe, Arizona, 21st November 2022 (retained by the applicant to provide an expert opinion).

iii. Affidavit of Laws of Mr. Kilu Davis, KD Law, Scottsdale, Arizona, 9th October 2023 (retained by the CSSO on behalf of the A.G. to provide an expert opinion).

Each of the three experts agree that the Superior Court of Arizona had jurisdiction to grant the decree of annulment and that the annulment is valid and effective across the United States of America.

19. The Attorney has in written submissions identified four issues of systemic importance which arise in these proceedings. The Court will recite and consider each issue and submission in turn. In this regard it is appropriate to say at the outset that this court considers the submissions of the A.G. on the law to be correct.

ISSUE ONE AND SUBMISSIONS OF A.G.

20. What is the correct legal test to apply in determining whether a decree of nullity granted in another jurisdiction, outside the European Union, should be entitled to recognition in the State?

The Brussels II (Recast) Regulation 2019, Regulation No.2019/1111 sets out express rules in regard to the recognition of decrees of divorce and marriage annulment granted by the courts of the Member States of the European Union. However, other than these regulations, there are no statutory provisions governing the recognition of a decree of nullity granted by a Court outside the State.

In such circumstances the rules set out by the common law are applicable. In *Gaffney v Gaffney* [1975] 1 IR 133, Walsh J. set out the principles in regard to the recognition of a decree of divorce granted abroad in the following passage.

> *"In the course of his judgment in Mayo-Perrott v. Mayo-Perrott, Kingsmill Moore J. stated the Irish law to have been that the recognition of foreign divorces in Irish courts depended upon establishing that the domicile of the parties was within the jurisdiction of the court pronouncing the decree. Recognition and application of this principle of private international law was part of the common law in Ireland and, like Kingsmill*

> *Moore J. in the Mayo-Perrott Case and Mr. Justice Kenny in this case, I am satisfied that it is still part of our law. It follows, therefore, that the Courts here do not recognize decrees of dissolution of marriage pronounced by foreign courts unless the parties were domiciled within the jurisdiction of the foreign court in question."*

There are comments to like effect in regard to the recognition of foreign decrees of divorce based on domicile by Kingsmill Moore J. *in Mayo-Perrott v. Mayo-Perrott* [1958] IR 336; Kenny J. in *Bank of Ireland v. Caffin* [1971] 1 IR 123*;* Blayney J. *in W v W* [1993] 2 IR 476 and most recently reaffirmed by the Supreme Court, per Dunne J. in *MH v. GH* [2015] 4 IR 560 .

This Court agrees that these cases reflect the application of a wider principle, in the particular context of divorce, which is that domicile governs status. This wider principle was recognized by Hogan J. in his judgment in *Adoption Authority of Ireland v A (A Minor), B (A Minor), C & D & Attorney General* [2023] IESC 6, where he says ; -

> *"There is, moreover, the important consideration that civil status (such as marriage, parentage and adoption) is regarded by our rules of private international law as (principally) a matter for the law of the domicile of the parties: see Mayo-Perrott v. Mayo-Perrott [1958] IR 336 at 345-346, per Kingsmill Moore J.; Binchy, Irish Conflicts of Law (Dublin, 1988) at 45. This further re-enforces the point that civil status cannot simply be altered or bestowed by contractual agreements alone."*

There are comments to the same effect in *H.A.H. v S.A.A. (Validity of marriage)* [2017] 1 IR 372 and *A, B and C (A Minor Suing by His Next Friend, A) v The Minister for Foreign Affairs and Trade* [2023] 1 ILRM 335.

The recognition of a decree of nullity is concerned with the status of the parties and is therefore governed by their domicile.

While the original common law rule in regard to the recognition of a decree of divorce required both parties to be domiciled in the country where the divorce was granted, this was subsequently altered by the Supreme Court so that the domicile of one of the parties was sufficient; *W v. W* [1993] 2 IR 476. This is also the position in regard to recognition pursuant to section 5 of the Domicile and Recognition of Foreign Divorces Act, 1986, as amended. In *MH v. GH* [2015] 4 IR 560 the Supreme Court made clear that in deciding what are the appropriate common law recognition rules an important consideration is the nature of the statutory rules for recognition as set out in the 1986 Act. Ms. Justice Dunne dealt with the matter in the following terms;

> *"Thus, it is my view that the policy of the court to be derived from the current statutory provisions in relation to the recognition of foreign divorces must be found in the Act of 1986 which expressly provides for recognition of foreign divorces on the basis of domicile alone. If it were not for the Act of 1986, it would be open to argue that public policy requires the recognition of foreign divorces either on the basis of one year's residence or alternatively on the basis of domicile. However, the Act of 1986 is clear and is the law. For that reason, I find it difficult to see how a modification of the*

common law rule to provide for recognition on the basis of residence could be said to be in line with the present statutory rule."

This Court agrees with the submission of the Attorney General that the rules for the recognition of a decree of nullity granted outside the State should mirror and reflect the rules for the recognition of a decrees of divorce granted outside the State. Such rules, for decrees granted outside the European Union, are set out in the provisions of the Domicile and Recognition of Foreign Divorces Act, 1986, as amended.

The central rule of recognition is therefore that a decree of nullity is entitled to recognition if either party to the application is domiciled in the country where the decree is granted at the date of the commencement of the proceedings.

The principles applicable to the establishment of domicile are well settled – see *T v T* [1983] IR 29. To be domiciled in a jurisdiction a person must be resident there and further have a settled purpose of residing indefinitely in that jurisdiction. A person has a domicile of origin but may obtain a domicile of choice. However, there is a rebuttable presumption that a person retains their domicile of origin. Abandonment of a domicile of choice can be established more easily than abandonment of a domicile of origin.

ISSUE TWO AND SUBMISSIONS OF A.G.

21. If the test for recognition is that such a decree is entitled to recognition if either party to the application is domiciled in the country where the application is brought at the date of the commencement thereof, is such domicile to be determined by the

application of Irish law, or the application of the law of the country where the decree is granted?

The issue of where a person is domiciled at the time of commencement of proceedings in a foreign country falls to be determined in accordance with Irish law rather in accordance with the law of that country.

This principle is well established. It was accepted nearly one hundred years ago by Russell J. in *In Re Annesley*: *Davidson v Annesley* [1926] Ch. 692 where he says

> *"In the result I prefer to adopt the view stated by Lindley M.R. in In re Martin (3), and I hold that the question whether Mrs. Annesley died domiciled in France must be answered by ascertaining whether she had abandoned her English domicile and had acquired a French domicile of choice in accordance with the requirements of English law - namely, by the factum of residence coupled with the animus manendi, and that regardless of the question whether she had or had not complied with the formalities required by French law to be carried out by her before she could rank in its eyes as a domiciled Frenchwoman."*

This view was adopted and approved by Budd J. in *Re Adams Deceased* [1967] I.R. 424 in the following passage from his judgment;

> *"As to the law which the court dealing with the question is to apply in determining the matter of a person's domicile, Russell J. in In re Annesley; Davidson v Annesley stated his view very clearly that the question (whether a person is or is not domiciled in a foreign country) is to be determined in accordance with the requirements of English*

> *law as to domicile irrespective of whether the person in question has or has not acquired a domicile of choice in the foreign country in the eyes of the law of that country. It was submitted to me that the matter was to be determined according to the lex fori, in this case of Ireland, and there was no suggestion to the contrary. I am not aware of any distinction between English and Irish law on the point. Applying the view of Russell J. (with which I agree) mutatis mutandis, the matter falls to be determined according to Irish law."*

In subsequent cases Irish law has been consistently applied by the courts when assessing whether the parties were domiciled in a particular state at the time that they commenced divorce proceedings in that state.

This Court accepts the submission of the Attorney General that the issue of the domicile of parties when applying for a decree of nullity in a country outside the State should be determined by the application of Irish law.

ISSUE THREE AND SUBMISSIONS OF A.G.

22. If the test for recognition is that such a decree is entitled to recognition if either party to the application is domiciled in the country where the application is brought at the date of the commencement thereof, if that country has in matters of nullity two or more systems applying in different territorial units, must one of the parties be so domiciled in the territorial unit where the decree is granted?

In *Gaffney v. Gaffney*, Walsh J. set out the rule in regard to recognition of foreign divorces at common law as follows ; -

> *"The Courts in Ireland do not recognize decrees of dissolution of marriage pronounced by foreign courts unless the parties were domiciled within the jurisdiction of the foreign court in question."*

A significant number of countries operate a federal system of government, whereby the country is made up of a federation of states, which have their own laws in regard to certain matters, including family law, and, in particular, divorce, separation, and nullity. Such states also have their own court systems. The test for recognition set out in *Gaffney* requires domicile within the jurisdiction of the foreign court in which the application is brought. In a federal system this means within the state over which, and in relation to which, the court exercises jurisdiction.

This Court accepts that both the common law, in regard to pre 1986 divorces, and statute law, in regard to post 1986 divorces, treat each territorial unit in a federal state as a separate country for the purposes of domicile, and recognition of a foreign decree of divorce.

It is worth noting s.5(2) of the Domicile and Recognition of Foreign Divorces Act, 1986, (as amended) which provides:

> *"(2) In relation to a country which has in matters of divorce two or more systems applying in different territorial units, this section shall, without prejudice to subsection (3) of this section, have effect as if each territorial unit were a separate country."*

This Court accepts that it is correct to adopt a similar approach in regard to domicile and recognition in cases concerning a foreign decree of nullity.

ISSUE FOUR AND SUBMISSIONS OF A.G.

23. In determining whether such a decree is entitled to recognition, is a court entitled to have regard to the fact that information relevant to the nullity application was not disclosed to the court determining the application, and was therefore not considered by the court in granting the application, in particular where the application was on consent of both parties?

If a judgment is pronounced by a foreign Court in respect of a matter within its jurisdiction, then the Court in which recognition is sought should not investigate the propriety of the proceedings in the foreign Court unless they offend against our views of substantial justice. *Pemberton v. Hughes* [1899] 1 Ch. 781; *LB v HB* [1980] ILRM 257 and *J v. J (*Unreported 21st December 2020 Barrett J). This principle was given statutory recognition in s.30(3) of the Family Law Act 1995 and is discussed in more detail below.

If there has been collusion between the parties and the full facts have not been placed before the foreign court then these are matters which are relevant to the question of whether the requirements of substantial justice have been satisfied.

The Court will deal with this issue of collusion below.

DISCUSSION.

24. The rule in *Pemberton v Hughes* [1899] 1 Ch 781 is articulated by Lindley M.R. as follows at p.790 of the judgment; -

"If a judgment is pronounced by a foreign court over persons within its jurisdiction and in a matter which with it is competent to deal, English courts never investigate the propriety of the proceedings in the foreign court, unless they offend against English views of substantial justice. Where no substantial justice, according to English notions, is offended, all that English courts look to is the finality of the judgment and the jurisdiction of the court, in this sense and to this extent – namely, its competence to entertain a sort of case which it did deal with, and its competence to require the defendant to appear before it. If the court had jurisdiction in this sense and to this extent, the courts of this country never inquire whether the jurisdiction has been properly or improperly exercised, provided always that no substantial injustice, according to English notions, has been committed. There is no doubt that the courts of this country will not enforce the decisions of foreign courts which have no jurisdiction in the sense above explained – i.e., over the subject-matter or over the persons brought before them…..but the jurisdiction which alone is important in these matters is the competence of the court in an international sense – i.e., its territorial competence over the subject matter and over the defendant."

25. This rule has long represented the law in Ireland. The rule is referred to and discussed by Barrington J. in the case of *L.B. v H.B.* [1980] I.L.R.M. 257.

26. When discussing the rule Barrington J. referred to the English Court of Appeal decision in 1962 in *Gray (Orse. Formosa) v Formosa* [1963] P. 259. Barrington J. pointed out that the case illustrated that the English courts, at any rate, claimed a residual discretion to refuse to recognise a decree made by the courts of the country of domicile in a matrimonial matter if the decree offended English ideas of substantial justice.

27. In a judgment delivered on 21 December 2020 (unreported) in *J v J* Barrett J. deals comprehensively with the law in Ireland on the recognition of foreign divorces. At para. 6 he

points out that the law on the recognition of foreign divorces in Ireland sits partly in common law and partly in statute law. The common law rule and the recognition of foreign divorces was identified by Walsh J in *Gaffney v Gaffney* [1975] 1 I.R. 133. In that case Walsh J observed, at p.150, that; -

> *"It was a principle of the system of private international law recognised by the Irish courts that they would recognise decrees of dissolution of marriage granted by the courts of another country where the parties were domiciled at the time. Domicile was recognised and accepted as the foundation of the jurisdiction to dissolve marriage."*

28. Barrett J. notes that the position changed as a result of the Domicile and Recognition of Foreign Divorces Act 1986, s.5 of which provides, *inter alia*, as follows; -

> *"(1) For the rule of law that a divorce is recognised if granted in a country where both spouses are domiciled, there is hereby substituted a rule that a divorce shall be recognised if granted in the country where either spouse is domiciled.*
>
> *...*
>
> *(6) Nothing in this section shall affect a ground on which a court may refuse to recognise a divorce, other than such a ground related to the question whether a spouse is domiciled in a particular country, or whether the divorce is recognised in a country where a spouse is domiciled."*

29. The 1986 Act abolished the law of dependent domicile pursuant to which the wife's domicile depended on that of her husband.

30. In the course of his judgment from para. 9 onwards Barrett J. traces the history of *Pemberton v Hughes* and points out that the passage cited above was cited with approval by Kenny J in *Gaffney*, at pp. 139-140. Barrett J concludes his discussion in relation to the rule in *Pemberton v Hughes* at para. 17 where he states; -

"*Pemberton, a case which presented with issues that have a notable similarity to those at play in the within proceedings, has become something of a classic case in the near century and a quarter since it was decided by the Court of Appeal, having been cited and approved by, inter alia, the Irish Superior Courts, the United Kingdom's House of Lords (see Salvesen v Administrator of Austrian Property [1927] AC 641) …, and the Supreme Court of Canada (see Powell v Cockburn [1977] 2 SCR 218) …. The effect of the decision in Pemberton is that if a judgment is pronounced by a foreign court over persons within its jurisdiction and in a matter which that court is competent to deal, the courts of Ireland will not inquire as to whether the jurisdiction of that court has been properly or improperly exercised; rather, the courts of Ireland will treat the said judgment of the foreign court as final and entitled to recognition under the laws of Ireland unless there is some defect in the initiation/course of the foreign law proceedings which would render recognition of the decree contrary to natural justice or yield a substantial injustice."*

31. The reference in s.30(3) to a Court of competent jurisdiction must be read in light of the authorities. The reference is to a Court which according to private international law has jurisdiction to grant a decree.

32. The applicant does not suggest that he was domiciled in Arizona, or indeed the United States, at the time of the commencement of the application for the Decree of Nullity. Rather, he accepts that he was, and is, at all relevant times domiciled in Ireland. At paragraph 8 of the Special Indorsement of Claim, he states that the respondent is American by birth and *"is domiciled in the United States".* Paragraph 7 of his Affidavit of the 17th of May 2021 states that *"at all material times pertaining to the Decree of Nullity"* she was domiciled in the United States of America.

33. In a letter dated the 18th of January 2022 the applicant's solicitors set out the respondent's background – as recited earlier. The letter of the 18th of January 2022 had enclosed with it a number of documents. Amongst these was a driving license which appears to be issued in December 2019, and which records the respondent as having an address in Colorado. Another document, a lease dated the 1st of September 2020, shows that the applicant and the respondent took out a lease on a premises in Arizona, for a period of a year from the 1st of September 2020 to the 31st of August 2021, the rent being paid in advance. The lease states that it automatically renews annually unless the parties otherwise decide. A Homeland Security Employment Eligibility Verification Form dated the 25th of March 2020 records the respondent as having an address in Arizona.

34. Also included amongst the documents enclosed with the letter, were the affidavits grounding the marriage exemption application which was brought in July 2020. In her Affidavit the respondent gives her address as being the premises in Arizona. At paragraph 7 of that Affidavit of the 17th of July 2020 she states that *"although I am presently resident in the USA, we will settle and live in Ireland".* [As matters transpired the wife's view on settling and living in Ireland was otherwise soon after when the couple embarked on married life in Arizona – and this was a position which appears to have greatly impacted the relationship].

35. The Petition for a Decree of Nullity dated 21 December 2020 states at paragraph (1) *"at least one of the parties has been domiciled in the State of Arizona for a period of at least ninety (90) days prior to the filing of this Petition".* That paragraph goes on to state that the State of Arizona has been the marital domicile of the petitioner and the respondent. Paragraph 3 of the Petition states that the respondent is 22 years old and *"until she vacated the marital residence a few days ago, was a resident of … Arizona".*

36. At paragraph 10 of his grounding affidavit of 17th of May 2021, the applicant states that the respondent resides at a named address in Colorado Springs which he says is her mother's family home. He says that all legal papers were served upon her at this address over the last three months. He further says at paragraph 10 that the sum of money payable under the Consent Order of the Arizona Court was sent to the address in Colorado and he believes that it was received by the Respondent there. The Consent Order was subscribed, and sworn to, by the respondent before a Notary Public in Colorado on 14th of January 2021.

37. The Consent Decree for Annulment of Marriage indicates that the Court finds at paragraph C *"at the time this action was commenced at least one of the parties had lived in Arizona for more than ninety (90) days".* Paragraph 2 of the Consent Order at (iii) also provides that the petitioner shall be solely responsible for the lease associated with the marital residence.

38. The Attorney General is of the view that the above matters would appear to be sufficient to establish that the respondent was domiciled in the United States at the time of commencement of the nullity proceedings. However, he asserts that it is considerably more doubtful that they are sufficient to establish that she was domiciled in Arizona at that time.

39. The Attorney says that the correct legal approach would appear to be as follows. The appropriate starting point must be that the respondent did not have a domicile of origin in Arizona. The rebuttable presumption is that a person retains his or her domicile of origin. The question is, therefore, whether the evidence in regard to the respondent's conduct is sufficient to establish, that she abandoned her domicile of origin in Colorado, and established a domicile of choice in Arizona, which she maintained up to the date of the commencement of the nullity proceedings.

40. In *T v. T* [1983] IR 29 Henchy J. makes clear that a man's sojourn abroad with his wife and children for a period of two years even in a position of permanent employment is not without more capable of displacing the presumption that the domicile of origin has been

retained. He points out that the period lived abroad may be no more than the external manifestation of a temporary compulsion of circumstances. He was of the view in *T v. T,* that the bare facts of the husband's foreign residence in Ireland did not show *"the volitional and factual transition which is a sine qua non for shedding a domicile of origin and acquiring a domicile of choice".*

41. The Attorney General asserts that –

The materials available would appear to suggest that while the respondent was resident in Arizona from 2017 to 2020, her sojourn there was for a specific purpose namely to obtain third level education in a university there. Further, the letter of 18 January 2022 from the applicant's solicitors suggests that she has been completing a master's degree at University in Arizona which she commenced in 2021. Whilst the respondent may well have intended to remain indefinitely in Arizona following her marriage to the applicant this intention would have disappeared once their relationship ceased. In this regard, it is significant that the Petition for Nullity confirmed that the respondent, *"until she vacated the marital residence a few days ago was a resident of ... Arizona"* This would appear to suggest that the respondent was no longer resident in Arizona at the time of the institution of the nullity proceedings but rather had gone back to live with her family in Colorado.

In this submission of the Attorney General, the actions of the respondent are said to be such that in a number of significant respects they appear to be inconsistent with her having taken up and maintained a domicile of choice in Arizona at the time of the commencement of the nullity application.

The Court will return to this issue. For now the Court will simply observe that the assertion that any intention to remain indefinitely in Arizona following the marriage would have ceased

once the relationship ended is not supported by the evidence. The wife had strong and well-established ties with Arizona which were separate and apart from her relationship with the applicant – and of longer duration. Indeed, the evidence supports the view that living and working permanently in Arizona was of such importance to the wife that it created a significant problem for the relationship/marriage.

42. The Attorney states that even if the respondent's domicile at the time of the nullity proceedings is sufficient to support and justify a claim for recognition, there may be grounds for refusing such recognition arising from the inaccurate and incomplete nature of the information that was provided to the court in regard to the circumstances of the marriage. The judgment of Barrington J. in *LB v. HB* makes clear that if there has been collusion between the parties to an application for divorce, and the full facts are not put before the court granting such a divorce, this can bring about a substantial defeat of justice such that the divorce should not be recognized under Irish law.

43. In the view of the Attorney General, the position in law is the same in a case involving the grant of a decree of nullity. The Court agrees with this latter submission. However, the court does not accept that there was any collusion and will return to this later.

44. The applicant submits that the common law position pertaining to the recognition of pre 1986 foreign divorces was addressed by the Supreme Court in *H v H* [2015] 4 I.R. 560. The Court discussed in some detail earlier case law to include *McG v W* [2000] 1 I.R. 96, *MEC v JAC* [2001] 2 I.R. 399 and *DT v FL* [2002] 2 I.L.R.M. 152. The Court concluded that the common law rule applicable to foreign divorces granted prior to 02 October 1986 could not be modified and that both pre-1986 and post-1986 foreign divorces can only be recognised based on the domicile of either of the parties. The applicant says that the 1986 Act prescribes domicile as the statutory basis for recognition and there is no equivalent statute for the recognition of a foreign nullity. The applicant says that the rules for recognition of a foreign nullity are derived

from the common law and such rules are capable of evolving as anticipated by O'Donnell J. (as he then was) in *H v H* **(**and as Dunne J. felt constrained from doing).

45. This Court does not view the possibility of the evolution referred to as an option to be considered having regard to the binding authorities which exist. The law is that domicile is the determining factor.

46. Each of the three expert opinions make clear that the respondent was sufficiently domiciled in Arizona to meet the jurisdictional requirements of Arizona law. The expert opinions are also unanimous that the annulment decree is recognised throughout the United States. The parties do not have a subsisting marriage in Arizona or in any other state within the United States.

47. However, as already stated this court must determine the issue of domicile according to Irish Law and will thus return to this issue after dealing first with the issue of collusion.

48. Having heard the evidence, the Court sees no evidence of collusion between the applicant and the respondent insofar as the Arizona proceedings and the decree of nullity are concerned. It is true that the Court in Arizona was unaware of the application for the marriage exemption order and was unaware of the Circuit Court marriage exemption order of July 2020.

49. The Attorney correctly pointed to this omission in his written submissions and the issue was canvassed with the applicant when he gave evidence.

50. Paragraph 9(i) of the petition dated 21 December 2020 to the Arizona Court recites; -

> *"Petitioner and respondent both felt pressure to proceed with the wedding as it had been cancelled and replanned after great effort three separate times, with each venue cancelled due to lockdown restrictions arising out of COVID-19. Eventually the wedding was rescheduled in great haste over a five day period to take place in the family home in Ireland in August[…], 2020. Both parties now believe that they were caught in the excitement of travelling to Ireland and getting married, and had not given*

the decision clear and thoughtful consideration so that they had the mental capacity to enter into a valid and binding marriage."

51. The reference to the *"great haste over a five day period"* did correctly put the Attorney on inquiry in relation to this assertion and presentation to the Arizona Court. However, when teased out in evidence it did become quite apparent that the substance of para. 9(i) is correct. It was apparent that there was significant pressure on the applicant and the respondent insofar as their efforts to get married and to organise the wedding were concerned. There was considerable pressure in terms of family members and getting them organised to attend the wedding. This is understandable given the COVID-19 situation at the time. Then when the family members were present in Ireland the pressure increased as the applicant outlined in evidence – as there was a need to get matters attended to after they had made the effort to come to Ireland and were present. While arrangements had been made to have the wedding at the K Club this unravelled when Kildare went into lockdown as a result of COVID-19 restrictions. This last minute hitch resulted in the need to reschedule in great haste and gave rise to the reference to the wedding having been rescheduled in great haste over a five day period to take place in the family home in Ireland in August 2020. In fact, the wedding was celebrated in a Church in Arklow and the "reception" such as it was took place in the family home.

52. In the course of his evidence the applicant in referring to the arrangements that were made for the wedding ceremony and "reception" referred to the fact that "*it was such a blur*". It undoubtedly was just that.

53. The couple had become engaged on 01 January 2020, and they had intended to get married in Arizona. They planned on getting married there in September of 2020. Then COVID-19 happened and the world changed. They sought to bring the wedding forward to May of 2020. However, COVID-19 became a significant problem in Arizona and the couple decided to give up on their wedding plans in Arizona. They came to Ireland in June or July of

2020 and arrangements were made to have the wedding at the K Club. Then on 8th or 9th of August Kildare went into lockdown and those plans had to be cancelled. This left five days or so from the cancellation of the K Club to arrange the wedding which actually took place in the Arklow church with the "reception" in the parents' home. It is entirely true that there could have been more information inserted in para. 9(i) in relation to the arrangements and rescheduling and indeed in relation to the Circuit Court application for the marriage exemption order. However, the Court is satisfied that this detail would not have added to the substance of the plea in any material respect – and more particularly would not have detracted from it. The content at para. 9(i) is a fair and reasonable synopsis of the true situation.

54. The Court did have the benefit of the evidence of the applicant – and he was cross-examined on behalf of the Attorney General. He came across as a sincere witness. He explained the reference to the haste over the five-day period. The introductory line at para. 9(i) of the petition specifically refers to the fact that the wedding had been cancelled and replanned after great effort three separate times with each venue cancelled due to lockdown restrictions arising out of COVID-19. The evidence is that there were attempts at two separate dates in Arizona before the couple gave up and came to Ireland and looked at their options here. Having arranged the K Club those arrangements collapsed at short notice.

55. Furthermore, it is very difficult to see how the addition of the documentation in relation to the marriage exemption order would have in any way diminished the ground at para. 9(i). On one view it would have been further evidence in support of the ground.

56. The applicant came across as an honest and straightforward witness when giving evidence – to the point that some of the answers given by him were less favourable than they might have been had he been in any way economical with the truth.

57. Having heard the evidence of the applicant the Court is entirely satisfied that there was no collusion involved insofar as the petition for nullity or the decree of nullity are concerned.

58. Therefore, this Court must turn to consider where the parties were domiciled at the time of the commencement of the proceedings. The petition for the annulment of the marriage is dated 21 December 2020. In order to grant the declaration sought this Court must be satisfied that the respondent was domiciled in Arizona at that time.

59. In this regard, the situation is as follows; -

(a) Ms. C is American by birth and was born in Utah.

(b) During her early childhood she lived in Michigan. After her parents' divorce, she lived in Colorado. In 2017 she relocated to Arizona and attended University. She was resident there when she met and became engaged to the applicant.

(c) The couple originally planned to get married in Arizona.

(d) The marriage certificate issued in October 2020 gives Ms. C's address as a named address in Arizona as of the date of marriage.

(e) Ms. C's Department of Homeland Security Employment Eligibility verification form which she completed on 25 March 2020 confirms that she is an American citizen and confirms her address as a named address in Arizona.

(f) The couple entered into a one year lease in September 2020 for a property in Arizona. The lease is from 01 September 2020 to 31 August 2021. The lease indicates that the parties agreed to $4,000 p.m. in rent and paid $48,000 up front. This does support the assertion that the parties intended to live in the residence for at least a year. Furthermore, the lease terms were set to automatically renew unless cancelled by either party – further indicating the long term intentions of the parties.

60. It is true that following the breakdown Ms. C went to her mother's residence in Colorado Springs and a cheque was posted to her at that address on 17 March 2021.

Furthermore, notice of these High Court proceedings and accompanying documentation was personally served on her at that address on 30 July 2021.

61. The intention of Ms. C according to the applicant – and the Court accepts his evidence in this regard – was that she intended going to law school in Arizona but she was finding it difficult to get someone to take her on. As a result she was taking some time looking for employment while waiting for someone to take her on. The respondent did have a primary B.A. degree. She wanted to go into law school and it appears that she needed someone to take her on in order to commence in law school in Arizona.

62. The Decree of nullity granted in Arizona affected the personal status of the applicant and the respondent. As such, recognition of it depends upon either one of the parties being domiciled in Arizona at the time the proceedings commenced. Whether or not either one of the parties was so domiciled is to be determined in accordance with Irish law.

63. It is clear from the authorities that one looks at domicile at the time the proceedings were commenced. In *W v W* [1993] 2 I.R. 476 reference is made to domicile at the time of the proceedings (Blayney J at p.505). However, it is clear from the judgment that the focus on the *"relevant time*" related to the date when the divorce proceedings were issued. At p.483 of the judgment Hederman J. refers to the fact that "*she was domiciled in Ireland at the time of the commencement of the divorce proceedings in 1972*."

64. On this point Section 5(7) of the 1986 Act is worth noting as it provides –

" *'domiciled' means domiciled at the date of the institution of the proceedings for divorce".*

65. In this case, as the husband was domiciled in Ireland at the time he filed the petition for nullity in Arizona the Court must determine whether or not the wife was domiciled in Arizona at that time. As stated, this must be determined in accordance with Irish law.

66. If the wife was not domiciled in Arizona at the time of the petition for divorce then it is not entitled to recognition in Ireland.

67. On the evidence it is clear that the wife's domicile of origin was not Arizona.

68. The domicile of a child under the age of majority is a domicile of dependency. It is in general determined by the domicile of the person upon whom the child is regarded by the law as being dependent. At common law it is well established that the domicile of a legitimate child, during the lifetime of his or her father, would be determined by that of the father. At common law it seems that the domicile of the legitimate child would change automatically with a change in the domicile of the father. The Supreme Court decision in *Re Kindersley*, an infant [1944] I.R. 111 has been suggested as support for the view that a father's domicile continues to control even after a divorce (see Irish Conflicts of Law W. Binchy at page 87).

69. However, the Domicile and Recognition of Foreign Divorces Act 1986 has modified the common law rules to a significant, if limited, extent. Section 4(1) of the Act provides:-

> *"(1) The domicile of a minor at any time when his father and mother are living apart shall be that of his mother if—*
>
> *(a) the minor then has his home with her and has no home with his father, or*
>
> *(b) the minor has at any time had her domicile by virtue of paragraph (a) of this subsection and has not since had a home with his father."*

70. And s.4(3) goes on to provide that the section is not to affect any existing rule of law as to the cases in which a minor's domicile is regarded as being, by dependence, that of his mother.

71. Dealing with the issue of "domicile on attaining majority", Binchy in Irish Conflicts of Law (at page 91) states;

> *"Where a minor attains majority, he or she may require a domicile of choice different from the domicile of origin. The change may be immediate where the minor has already*

acquired what would be a domicile of choice in the new country if this had not been neutralised by the operation of the rule of domicile of dependency. Moreover, it appears that the evidence of a change of domicile, from that of origin to choice, need not be very strong, where the minor has already, prior to reaching majority, acted in the manner inconsistent with the desire to retain the domicile of origin. In Spurway v. Spurway, in 1893, Walker, C. stated strongly that "[O]nce a man's domicile – be it domicile of origin or domicile of choice – is established …, the new domicile will not be computed to him except on the clearest evidence of an intention to change his own domicile". He went on to note, however, that the evidence required to prove a change of domicile might *"vary enormously in different cases".* Thus, although a person could do nothing to disturb the domicile of origin while a minor, nevertheless:

"If during a man's minority we find in his conduct evidence conflicting with the supposition that he intends to retain his domicile of origin – acts and declarations not in harmony with such an intention – then I think, upon his attaining age, the court would require less evidence in order to be convinced that his intention was not to stereotype his domicile of origin, but have one in accordance with his declared conduct".

72. The discussion and analysis in the instant case must be approached in the context of the facts as of the commencement of the Arizona proceedings, most touched upon already, that; -

(a) The wife's domicile of dependency in Colorado resulted from her mother's choice of residence - since she was in her mother's custody as a child – and while her father was resident in Michigan – following the parents' divorce.

(b) Since attaining her age of majority the wife had spent almost all of her time in Arizona – where she resided and worked.

(c) Although she did go back to her mother's residence when the relationship broke down it is fair to say she probably had no place else to turn. There is evidence that her relationship with her mother was somewhat fraught and evidence to support the view that she had no real desire to return to Colorado. It is probable that the wife did not choose to forsake her Arizona plans and replace them with a life back in Colorado living with her mother as of December 2020. Whether she did acquire a different domicile of choice some months or years later is not known for certain although she may have. She is now apparently working in a law firm in Colorado Springs. It is however clear that her ties with Arizona were strong as of December 2020. That is where her life plans were. That is where she planned to live and to work.

(d) The Certificate of Marriage issued in October 2020 has a named address in Arizona as of the date of marriage.

(e) The official Department of Homeland Security Employment Eligibility Verification Form completed by Ms. C on 25 March 2020 has a named address in Arizona.

(f) The same named address in Arizona is given in the Circuit Court Exemption application papers - and is also given by Ms. C in her Declaration of no Impediment by a party to a proposed Marriage which she signed on 4 August 2020.

(g) The wife had a Bank Account in Arizona as evident from the bank statement exhibited and her address on the bank account is a named address in Arizona.

(h) In terms of her chosen domicile it is evident that a significant issue between the couple and which contributed to the fracture in the relationship was the wife's determination to stay in Arizona as opposed to travelling internationally with her husband in the course of his professional career.

(i) Following the breakdown of the marriage the wife did go to her mother's house to reside but at a time when it was her intention to study law in Arizona. While waiting for someone to take her on so that she could pursue law studies in Arizona she was looking for employment in Arizona. The Court is satisfied on the evidence that she had not changed her plans about a career in law and studying law in Arizona as of 21 December 2020.

(e) Although residing in student accommodation in Arizona for much of the time it is the position that the wife and the husband did enter into a one year lease in September 2020 for a property in Arizona at a rent of $4,000 per month and with an upfront payment of $48,000. The lease terms were set to automatically renew unless cancelled by either party.

(g) The evidence also establishes that it was the original intention of the couple to get married in Arizona – not Colorado (nor indeed Utah or Michigan).

(h) It must also be observed that acquiring a domicile of choice within a particular state which is part of a federal system (such as the United States of America) is more easily done and much more straightforward than when one is dealing with a move from one country to another country. It is also correct to observe that Arizona and Colorado are neighbouring states. On a practical level, acquiring a domicile of choice in a state other than the state in which either of one's parents reside (Colorado or Michigan) or indeed in a state other than one's state of birth – is a simpler move and an easier decision than moving from the United States of America and acquiring a domicile of choice in another country.

(i) When an adult the wife was entitled to a free choice and autonomy in terms of her chosen domicile – and her future.

(iv) The wife had made her life and established her life in Arizona long prior to 21 December 2020. It was her domicile of choice and the evidence does not support the assertion that she changed her domicile of choice when in the throws of the marriage collapsing unexpectedly in December 2020. The evidence supports the view that the wife was very sad in December 2020 and does not support the view that she was altering all of her plans and her domicile of choice from Arizona - or even thinking of that. The probability is that it was many months later before the wife was making life plans and choices. It is not known whether or not she has altered the remaining plans she had for life in Arizona - which was clearly her domicile of choice in December 2020. It is a possibility that she has by now a domicile elsewhere than in Arizona – possibly in Colorado - although that is not established by the evidence.

73. Having considered the evidence, the submissions, the authorities and the legislation the court is satisfied that, while the Attorney General was correct to urge careful consideration and caution in terms of the application, the applicant has satisfied all of the requisite proofs and in particular has satisfied the court in relation to the respondent having had a domicile of choice in Arizona on 21 December of 2020 when the Nullity proceedings were commenced. The Applicant is entitled to the declaration sought. Accordingly, this Court will grant the declaration as sought and hear the parties further in relation to any matters arising on the 25th. day of October 2024 or prior to then if the parties wish.