

Neutral Citation No: [2022] NIFam 38

Ref: ROO12009

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 24/11/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between:

SHEELIN MAIRE HALLIGAN

Petitioner:

and

MATTHEW JOHN HALLIGAN

Respondent:

ROONEY J

Issue For Determination

[1] By summons and affidavit dated 1 September 2021 the respondent seeks an Order pursuant to Rule 2:16 of the Family Proceedings Rules (Northern Ireland) 1996 (hereinafter "FPR 1996") granting leave to the respondent to file an answer and cross petition *after the filing of the Certificate of Readiness*.

[2] The summons was listed for hearing on 15 September 2021. The said application was resisted by the petitioner. At the hearing counsel for the respondent advanced the argument that since the "corrected" Certificate of Readiness was not lodged until 8 July 2021, Rule 2.14(2) FPR 1996 permits filing of an answer at any time before the Certificate of Readiness has been lodged, notwithstanding the time for filing the answer had expired. The respondent claims that the answer and cross petition had been filed on 7 June 2021.

[3] In essence, the respondent makes the following submissions. Firstly, although the respondent did not file an answer to the petition within twenty-one days after the expiration of the time limit for giving notice of intention to defend (Rule 2.14(1) FPR 1996) the respondent's answer may still be filed at any time before the Certificate of Readiness has been lodged (Rule 2.14 (2) FPR 1996). Alternatively, if the court determines that the Certificate of Readiness had been lodged prior to filing the answer and cross petition, then the respondent requests the leave of the court to file a late answer and cross petition pursuant to Rule 2.16 FPR 1996.

Hearing and Submissions

[4] This matter came before the court initially to deal with the respondent's application for leave to file a late answer and cross petition which was grounded on the affidavit from Mr Niall O'Hare, O'Hare Solicitors, dated 1 September 2021. At the hearing on 15 September 2021, following submissions made by Ms Walkingshaw BL, counsel for the respondent, the court directed that Mr O'Hare should file a second affidavit addressing factual matters arising from the submissions made by counsel. Mr O'Hare filed a second affidavit dated 29 September 2021. A chronology relating to the relevant background circumstances was attached to Mr O'Hare's second affidavit.

[5] Ms Lorraine Keown, Cleaver Fulton Rankin, Solicitors, filed an affidavit dated 7 October 2021 in response to Mr O'Hare's affidavits. Ms Keown also attached an updated chronology entitled "Master Timeline of Events" to her affidavit. The chronology of events, insofar as they are relevant to the decision of the court, are highlighted in detail below.

Chronology

[6] The petitioner and respondent were married on 29 December 1997. They have five children. The parties separated on or about 26 November 2017. In Ms Keown's affidavit dated 7 October 2021, it is stated that between 21 December 2017 and 25 August 2020 the parties were embroiled in contentious contact proceedings under the Children (Northern Ireland) Order 1995 which ultimately concluded in a High Court hearing on 25 August 2020.

[7] The petition for divorce was signed by the petitioner on 20 March 2020. In Ms Keown's affidavit dated 7 October 2021, it is stated that the petitioner did not file a divorce petition until after the proceedings under the Children (Northern Ireland) Order 1995 had concluded in order to ensure that the statement of arrangements for the children had been settled and, as a consequence, the divorce would more likely be approved by the court.

[8] The petition was stamped by the Matrimonial Office on 4 October 2020. On 13 October 2020, Ms McKeown sent a letter to O'Hare Solicitors enclosing the relevant divorce documents, to include the stamped petition, Forms M4, M5 and M6. The petition claimed the irretrievable breakdown of the marriage grounded on the respondent's unreasonable behaviour. Mr O'Hare, Solicitor for the respondent, acknowledged that he had authority to accept service of the divorce proceedings.

[9] A form M6 (acknowledgement of service) dated 26 October 2020 and signed by the respondent, specified that the respondent received the petition on 20 October 2020. The form M6 also provided that the respondent intended to defend the proceedings and at paragraph 9 stated that the grounds of unreasonable behaviour were in dispute. Therefore, assuming the date of service of the petition to be 20 October 2020, the respondent had fourteen days (inclusive of the day of service) to return form M6 to the Matrimonial Office. (See Rule 2.11 FPR 1996).

[10] On 27 October 2020 Ms Keown emailed Mr O'Hare enquiring whether form M6 had been filed with the Matrimonial Office. On the same date, Mr O'Hare emailed Ms Keown to confirm that the form M6 would be lodged "early next week." On 5 November 2020 Ms Keown sent a further email to Mr O'Hare asking for a copy of the form M6.

[11] On 9 November 2020 Mr O'Hare lodged form M6 with the Matrimonial Office. Significantly, it appears that a copy and not the original form M6 was served on the Matrimonial Office. Mr O'Hare also forwarded an email to Ms Keown enclosing copy form M6 dated 26 October 2020.

[12] By letter dated 12 November 2020 from the Matrimonial Office to Cleaver Fulton Rankin (the petitioner's solicitors) it was stated that the Matrimonial Office cannot accept a photocopy of the form M6 and required either the original M6 to be lodged, or, in the alternative, the petitioner's solicitor must requisition a sealed certified copy of the M6 (acknowledgment of service) to be re-served upon the respondent. A sealed and certified copy of the Form M6 would carry a fee of £6.

[13] Four weeks after the said letter from the Matrimonial Office dated 12 November 2020, Ms Keown sent an email dated 10 December 2020 to Mr O'Hare requesting that the original M6 must be lodged with the Matrimonial Office. Ms Keown did not receive a reply to this email. On 19 January 2021, Ms Keown emailed Mr O'Hare again requesting him to file the original form M6. Once again, Mr O'Hare did not reply. One week later, on 26 January 2021, Ms Keown emailed Mr O'Hare advising him that it would be necessary to obtain a certified copy of the M6 and that she would be pursuing costs against the respondent. Mr O'Hare replied on the same date, apologising for the delay and stating that the original form was lodged with the Matrimonial Office on 9 November 2020 and that the respondent's answer and cross Petition would be served "very shortly. The court notes that the respondent's Solicitor should have filed the answer and cross petition within the 35 days of service of the petition. (see Rules 2.11 and 2.14 FPR 1996). He failed to do so.

[14] In his affidavit dated 29 September 2021, Mr O'Hare states that he genuinely believed that the original M6 was lodged with the Matrimonial Office in November 2020. Whatever belief Mr O'Hare may have had, it was abundantly clear that the original form M6 had not been lodged with the Matrimonial Office. This fact was communicated to Ms Keown by letter from the Matrimonial Office dated 12 November 2020. Emails sent by Ms Keown to Mr O'Hare on 10 December 2020 and 19 January 2021 should have alerted Mr O'Hare to the fact that the Matrimonial Office did not have the original M6. Mr O'Hare is at fault for not contacting the Matrimonial Office to clear up the ambiguity if he genuinely believed that he had lodged the original M6. He failed to do so. Whatever reasons Mr O'Hare puts forward for the delay in drafting the answer and cross petition (which will be considered below), out of professional courtesy Mr O'Hare should have responded to Ms Keown's emails.

[15] In the knowledge that the Matrimonial Office had not received the original M6 from Mr O'Hare, Ms Keown must bear some responsibility for failing to timeously requisition a sealed and certified copy of the M6 to be re-served upon the respondent. Alternatively, it was always open to Ms Keown to bring an application pursuant Rule 2.10 FPR 1996 that the form M6 had been deemed served. Since Mr O'Hare had already served a copy of form M6 on both the Matrimonial Office and Ms Keown, the court accepts that an application to deem service good in the initial stages after service of the petition would not have been the usual course of action.

[16] On 25 February 2021 Ms Keown sent a reminder to Mr O'Hare that if the answer and cross petition was not lodged within three days, the case would be set down for hearing. Mr O'Hare did not respond to Ms Keown's reminder.

[17] On 24 March 2021, Ms Keown lodged the Certificate of Readiness (COR). The COR was stamped by the Matrimonial Office on 25 March 2021 at 11:17am. At paragraph 27 of her affidavit dated 7 October 2021, Ms Keown states that since the COR was lodged on 24 March 2021, pursuant to Rule 2.14(2) of the FPR 1996, it was not possible for the respondent to file an answer and cross petition.

[18] On 30 March 2021, Ms Keown sent an email to Mr O'Hare attaching an unstamped Certificate of Readiness. Mr O'Hare states that the answer and cross petition were lodged with the Matrimonial Office (front of house) on 30 March 2021. In his affidavit dated 29 September 2021, Mr O'Hare states that although the answer and cross petition were lodged in a post box at the front of house in the High Court on 30 March 2021, due to issues with Covid, it was not processed until May 2021. This court notes that the answer and cross petition were stamped 13 May 2021 with a fee being taken on the same date. Ms Keown states that she did not receive the answer and cross petition until 16 June 2021.

[19] On 19 April 2021, the Matrimonial Office sent the following letter to Cleaver Fulton and Rankin:

“Please find enclosed fee stamped Certificate of Readiness and note that this case is not yet ready to be sent down for hearing as the Acknowledgement of Service filed by the respondent could not be accepted as it was a copy only. A letter regarding this was sent to you on 12 November 2020.”

[20] Ms Keown stated that, on receipt of this letter, she contacted the Matrimonial Office to query the position on the basis that she had been told by Mr O'Hare that the original Form M6 had, in fact, been lodged. The Matrimonial Office replied stating that the Form M6 lodged was not the original. Ms Keown then requested a duplicate Form M6 to be issued and on 26 April 2021 Ms Keown emailed Mr O'Hare to state that she had requested a duplicate form M6 and was seeking costs. Mr O'Hare did not acknowledge or respond to this correspondence.

[21] At paragraph 31 of her affidavit dated 7 October 2021, Ms Keown stated that “given the number of communications that I had sent to Mr O'Hare that were being

ignored, unanswered, not actioned, I took the unusual course of writing directly to the respondent on 20 May 2021 enclosing the duplicate form M6 and asking that he complete and return it to the Court Office.” The correspondence was also sent to Mr O’Hare.

[22] On 27 May 2021 the Matrimonial Office sent a letter to Mr O’Hare enclosing a copy of the respondent’s answer and cross petition stamped 13 May 2021 and advised him that the said answer and cross petition could not be accepted until the Matrimonial Office was in receipt of a completed original form M6 from the respondent indicating that he wished to defend the case.

[23] On 7 June 2021, Mr O’Hare lodged a duplicate M6 with the Matrimonial Office and re-lodged the answer and cross petition. On the same date, an email was sent from O’Hare Solicitors to Cleaver Fulton Rankin confirming that the duplicate form M6 had been lodged with the Matrimonial Office together with the answer and cross petition. Ms Keown states that there were no attachments to this email and that she did not receive a copy of the Form M6 until 16 June 2021.

[24] On 2 July 2021 the Matrimonial Office sent the following letter to O’Hare Solicitors:

“I acknowledge receipt of your correspondence of 7 June 2021 enclosing the fee stamped Answer and Cross Petition. I would advise after receiving the respondent’s Form M6 we have noticed that you are out of time for filing your Answer and Cross Petition the date of service at question 2 is the 20 October 2020. The petitioner filed a Certificate of Readiness on 24 March 2021, however this was returned until your client’s Form M6 was returned. Your client’s Form M6 was not filed until 16 June 2021. Please note that you may need to lodge a summons and affidavit to the Judge to apply for a late Answer and Cross Petition.”

[25] On 8 July 2021, the Certificate of Readiness was re-lodged by Cleaver, Fulton and Rankin together with the minor children’s original birth certificates. At that stage, as noted above, the certified copy of form M6 had already been lodged by O’Hare Solicitors.

[26] Two months later, namely, on 1 September 2021, Mr O’Hare filed a summons and affidavit for an Order pursuant to Rule 2.16 of the FPR 1996 requesting leave of the court to file the respondent’s answer and cross petition *after the filing of the Certificate of Readiness*.

[27] The application for leave to file a late answer and cross petition was listed for 15 September 2021. Ms Walkingshaw BL appeared on behalf of the respondent instructed by O’Hare Solicitors. Ms Marie-Claire McDermott BL, instructed by Cleaver Fulton and Rankin, appeared on behalf of the petitioner.

[28] At the hearing, Ms Walkingshaw advanced the following submissions. Firstly, despite the relief claimed in the summons, the respondent did not require the leave of the court to file a late answer and cross petition since same had been filed prior to the date when the Certificate of Readiness was lodged, namely, 8 July 2021, notwithstanding that the time for filing the answer has expired. In this regard, Ms Walkingshaw relies on Rule 2.14(2) FPR 1996. Secondly, in the event that the first submission is rejected, the leave of the court is sought as per Rule 2.16 of the FPR 1996.

[29] Ms McDermott BL, on behalf of the petitioner submits that the respondent has failed to comply with the relevant statutory provisions pursuant to the Family Proceedings Rules (Northern Ireland) 1996. Firstly, the respondent failed to comply with Rule 2.11(2) FPR 1996 in that following service of the petition, the respondent failed within 14 days (including date of service) to file an acknowledgement of service (Form M6) on the Matrimonial Office. Accordingly, the M6 should have been filed by 3 November 2020. Although the original M6 was not served on the Matrimonial Office, the respondent's solicitor concedes that he did not file the form M6 until 9 November 2020. Secondly, pursuant to Rule 2.14 FPR 1996 the respondent shall within 21 days after the expiration of the time limit for giving notice of intention to defend, file an answer to the petition. Accordingly, the answer and cross petition should have been filed by 24 November 2020. Thirdly, the M6 returned to the Matrimonial Office must be either the original stamped form or a copy certified by the Matrimonial Office. Photocopies are not acceptable (see Practice Direction 1 September 1992). Despite several reminders, the respondent's solicitor failed to serve a certified copy until 7 June 2021.

[30] With regard to the stated statutory time limits, Ms McDermott BL is correct that the respondent failed to comply with same. Ms McDermott is also correct that the original stamped form M6 or a certified copy must be served on the Matrimonial Office before matters can progress.

Decision

[31] The background circumstances plainly highlight a failure on behalf of the respondent's Solicitor to comply with the statutory time limits and a failure to acknowledge and reply to correspondence from the petitioner's solicitor. With regard to the delay in filing the answer and cross petition in the initial stages, the court accepts the explanations advanced by the respondent's solicitor in his affidavit dated 29 September 2021 which relate to the impact of the Covid pandemic. The failure to acknowledge and respond to correspondence from petitioner's solicitor and to contact the Matrimonial Office to clear up the issue relating to the original Form M6 has not been satisfactorily explained to this court.

[32] It is unclear to this court as to whether the petitioner's solicitor served the original Form M6 with the red certified stamp on the respondent's solicitor. It may be of significance that the M6, dated 26 October 2020 and signed by the respondent, included responses in the various paragraphs which have been completed in

original black and blue ink. In other words, it seems that the said responses on the Form M6 are original but that they have been completed onto a photocopy of the Form M6 which did not have the red certified stamp. The reason why the Form M6 was not accepted by the Matrimonial Court was because the red certified stamp did not appear on this document. The explanation can only be that either the petitioner's solicitor did not send the original document with the red certified stamp, or for some reason, the respondent's solicitor photocopied the original Form M6 and requested the photocopy to be completed by the respondent.

[33] Whatever the reason, both parties were plainly aware that the original Form M6 had not been lodged with the Matrimonial Office. Referring back to paragraph [14] above, the respondent's solicitor is at fault for not contacting the Matrimonial Office to clear up any ambiguity he genuinely believed with regard to lodging the original Form M6. The petitioner's solicitor must also bear some responsibility for failing to respond to the delay and to timeously requisition a sealed and certified copy of the Form M6 to be re-served on the respondent.

[34] It is correct that the petitioner's solicitor did attempt to progress matters by lodging a Certificate of Readiness which was stamped by the Matrimonial Office on 25 March 2021. However, as advised by the Matrimonial Office in correspondence dated 19 April 2021, the case was not ready to be set down for hearing as the original M6 (Acknowledgement of Service) had not been filed. In the said correspondence, the petitioner's solicitor was advised that in order to progress matters, it would be necessary to requisition a certified copy of Form M6 for re-service on the respondent.

[35] A further delay ensued before the certified copy of form M6 was served on the Matrimonial Office on 16 June 2021. At the same time, the respondent's answer and cross petition was also served on the Matrimonial Office. A previous attempt by the respondent's solicitor to serve the answer and cross petition was refused by the Matrimonial Office since the original form M6 had not been filed. In correspondence from the Matrimonial Office dated 27 May 2021, the respondent's solicitor was told to re-lodge the answer and cross-petition once the original or certified copy of the M6 was lodged.

[36] The net result of the delays resulted in lodgement of the corrected Certificate of Readiness on 8 July 2021, together with the original birth certificates. It seems that the previous defective Certificate of Readiness dated 25 March 2021 did not include the original birth certificates.

[37] Rule 2.14(2) FPR 1996 provides that an answer may be filed at any time before the Certificate of Readiness has been lodged, notwithstanding that the time for filing the answer has expired. On the basis of the chronology detailed above, it is clear that the answer and cross petition were filed, together with the certified copy of the form M6, prior to the lodgement of the Certificate of Readiness on 8 July 2021. The respondent evidently did comply with Rule 2.14(2) FPR 1996. Accordingly, it is not necessary for the court to consider whether it should exercise its discretion pursuant

to Rule 2.16 FPR 1996 for leave to file proceedings after the Certificate of Readiness has been lodged.

[38] The chronology of events highlighted above depicts a sorry tale of delay and non-cooperation for which both parties bear responsibility. The court acknowledges that the impact of the Covid pandemic contributed to the delay. Although it is likely that the matter in dispute was motivated by ongoing animosity and hostilities between the petitioner and the respondent, it is regrettable that the dispute was not resolved by agreement. Both the petitioner and the respondent accept that their marriage has irretrievably broken down and that a reconciliation is unlikely. Expedition of the proceedings must now be the priority. The matter will now be listed as a contested divorce on a date to be determined.

[39] I make no Order in respect of costs.