

**Neutral Citation no. [2008] NIFam 4**

*Ref:* **MOR7065**

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

*Delivered:* **04/02/08**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**FAMILY DIVISION**  
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**BETWEEN:**

**C MAITLAND**

**Petitioner;**

**And**

**D DONN**

**Respondent.**

**(nullity; duress)**

**MORGAN J**

[1] The petitioner seeks an order that her marriage be declared null and voidable pursuant to the provisions of article 14 (c) of the Matrimonial Causes (Northern Ireland) Order 1978 on the basis that she married the respondent under duress.

[2] The petitioner's evidence was that she married the respondent on 27 October 2004 at Falmouth Registry Office, Cornwall. There were no children of the marriage. She met the respondent during a gap year in South Africa in 2002. She came back to Northern Ireland in August 2003 and he followed her by arrangement in November 2003. The respondent lived with the petitioner and her family. She was going to college and because he had nothing to do he would sit with her during her free time in college. He spent a lot of time with her. As time went by she spent more and more of her time with him and less with her friends as a result of which she lost most of them. The respondent liked Northern Ireland and decided to go home in May/June 2004 to apply for a visa to return here. He was there for months but still had not heard

anything about his visa. He did not have a job in Cape Town and was keen to work. He was keen to return to the United Kingdom and the petitioner said that she was really missing him. When he was in Cape Town the petitioner missed him so much that she went over to see him and he proposed and she accepted. She says that she did not take it seriously but treated it as a promise rather than a commitment.

[3] Towards the end of that summer he came to London and worked with his uncle as a labourer. The petitioner moved to Cornwall in August 2004 to start a fine arts degree. The respondent moved to Cornwall with her but still did not have a visa. The petitioner was not happy on her course. She and the respondent spent most of their time together during this period. The petitioner did not like going out socially and was not sleeping. She attended the doctor. They were both struggling financially and she said that it looked like he would have to go home. She says that he introduced the idea of getting married and staying with her. Otherwise he would have to go home and she would be alone struggling through her course in Cornwall. She said that he was her world at that stage. She considered moving to Cape Town but he wanted to stay in the United Kingdom because jobs were better paid. She thought that she would lose him if they did not get married and he had to go back to Cape Town. He did not use any form of direct force on her but she was not happy about going through with the marriage. He had expressly said to her that if they did not get married he would have to go home and that was likely to be it.

[4] The critical question in this case is to establish whether the pressure which the petitioner felt is such as to destroy the reality of her consent and overbear her will. In H v H [1954] P 258 a Hungarian wife married a French citizen because she feared being taken to prison or to a concentration camp by the Communist government and desired a French passport to facilitate escape. The court concluded that her fear negated her consent. Similarly in Buckland v Buckland [1968] P 296 the petitioner was facing a false charge preferred against him. The court found that the marriage was arranged at an appalling speed and that the petitioner faced an inescapable dilemma-marriage or prison. In those circumstances the court again acceded to the petition.

[5] By contrast in Cooper v Crane [1891] P 369 the respondent threatened to commit suicide if the petitioner, his cousin, refused him. The licence was obtained by a false declaration and the separation occurred immediately thereafter. The marriage was never consummated. The court viewed these factors as insufficient to rebut the presumption of consent. Similarly in Kecskemethy v Magyar [1962] ALR 320 the respondent had threatened to commit suicide but the court held that this was insufficient.

[6] These cases can only be but examples of the application of the principle. Cooper v Crane (above) is a case which demonstrates that there is a strong prima facie presumption that both parties have given their consent. In this case the petitioner has explained that she was depressed as a result of her unhappiness with her course. She attended her doctor but there was no medical evidence before me to indicate that her medical condition caused any failure of understanding or will in relation to the proposed marriage. The proposal had been made to her in the summer in Cape Town and she had accepted. She had not anticipated that the marriage would take place so quickly but the facts as explained by her make it plain that unless the parties got married at that time the respondent would have been required to leave the United Kingdom. Even were it the case that the primary purpose of the marriage was to obtain British nationality for the respondent the marriage would have been valid (see Silver v Silver [1955] 2 All ER 614). At that time the petitioner was very anxious to avoid the respondent leaving. I have no doubt that this played a significant part in her decision but the choice was for her to make. I can find no proper basis upon which it could be said that there was pressure on her such as to destroy the reality of her consent or overbear her will.

[7] On the evidence that I have heard I consider that this case falls very far short of what would be required to persuade a court that it should grant a degree of nullity because of duress. I dismiss the application.