

Ref : Master57

Judgment: approved by the Court for handing down **Delivered: 20 June 2008**
(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION (PROBATE AND MATRIMONIAL)

BETWEEN:

H

Petitioner;

v

H

Respondent.

No. 1 of 2008

MASTER REDPATH

[1] This is an application by the Respondent husband for the issue of a Decree Absolute. The Petitioner wife objects to the issue of the Decree Absolute as requested.

[2] The case has a fairly lengthy history commencing with an ancillary relief summons issued on 15 August 2005. After no fewer than nineteen court appearances the matter settled on 5 December 2007. There had been an intervening bankruptcy and attempted individual voluntary arrangement on the part of the Respondent during the course of the proceedings which undoubtedly added to the delay in dealing with the case.

[3] On foot of the agreement (which was also entered into by the Trustee in Bankruptcy) the matrimonial home was to be placed on the market for sale and it was agreed that an offer of £305,000 should be accepted forthwith with the completion

date being within 2 months of the date thereof. There were some other minor aspects to the agreement.

[4] It is alleged that the Respondent has deliberately stalled the sale of the matrimonial home and that 2 sons of the family (now both in their majority) are refusing to quit the premises to allow the sale to proceed. It is also alleged that 'For Sale' signs have been removed from the property and that on at least one occasion a potential purchaser was approached by the Respondent and warned off from purchasing the property.

[5] There is a pending application made on behalf of the Petitioner for consequential directions under Article 26(4) of the Matrimonial Causes (Northern Ireland) Order 1978.

[6] Some weeks ago, and this is agreed, the Petitioner after having personal talks with the Respondent agreed to take £100,000, a much reduced figure, in order to settle the matter quickly. It appeared however that this £100,000 was dependent on a new Individual Voluntary Arrangement being entered into by the Respondent and once his bankruptcy was annulled a remortgage of the matrimonial home. Clearly this would have taken some time.

[7] In the meantime the Respondent had engaged to get remarried next week and the case was made to me that the Registry Office had been reserved and the reception (for 150 guests) costing approximately £10,000/£12,000 had been booked for a hotel in Donegal on the Saturday after next (28 June). When the application for the issue of the Decree Absolute came before the court (originally before Master McCorry) on 12 May 2008 the Petitioner objected to the issue of the Decree Absolute essentially on the grounds that the Respondent was deliberately trying to undermine the proper implementation of the agreement arrived at in December 2007.

[8] Contested applications in relation to the issue of a Decree Absolute are unusual though they do arise from time to time. In cases where proceedings for ancillary relief are either pending or concluded but not yet implemented the issue is one that should be considered carefully, and of course in line with existing law. It should also be borne in mind that the issue of a Decree Absolute severs any rights (in the absence of a maintenance obligation) that a spouse might have following the death of the former spouse.

[9] Two further allegations were made by the Petitioner. One was that she was telephoned after it became clear to the Respondent that she was refusing to accede to his application for the issue of the Decree Absolute and she alleges that during the course of the conversation he said to her "You'll not get a f...ing penny out of this house". The Respondent, countering this, said that what he had said was "Nobody will get a penny out of this house" and he accepted that he may well have used foul language.

[10] The Petitioner also claimed that during the course of the lunchtime break on the day of the hearing she was approached by the Respondent who told her "He had two men who would sort her out". His response to that was to say that what he had said when he approached her was "There are only two people who can sort this out"

and the Petitioner on cross-examination accepted that that might have been a closer version of what was said.

[11] In any event the net point in this case is whether or not the court can properly withhold the issue of a Decree Absolute in order to allow enforcement of an ancillary relief agreement.

[12] There are surprisingly few authorities on this point. In the case of Dart v Dart [1996] 2 FLR 286 the Court of Appeal in England and Wales, amongst other things, considered whether or not a husband would be entitled to apply for a Decree Absolute whilst there were ongoing issues concerning disclosure involving a Respondent who was Greek and who the Petitioner alleged was likely to leave the jurisdiction.

Bennett J concludes in paragraphs 28 through to paragraphs 30:-

[28] "... I am prepared to go so far as to say that there are grounds for suspicion that the husband has been less than frank in his disclosure but I cannot go further than that. In any event, even if non-disclosure were to be established it does not follow that the husband in this case would, if he obtained the Decree Absolute, leave the country and go abroad for the purpose of frustrating the wife's ancillary relief proceedings.

[29] Thus I can conclude that the wife has failed to make out her case that she will or might be prejudiced by the grant of the Decree Absolute. As I have already said, I fail to detect anything in the husband's affidavits or in Mr Warshaw's submissions that the husband would suffer any real prejudice if the Decree Absolute was held up. Although he was in a relationship with another lady, he has no present intention of marrying or cohabiting with her. Therefore, there is no question of the Decree being made Absolute so that he can remarry.

[30] In such a situation one is tempted to leave things as they are 'just in case', but in my judgment that would be a faulty exercise of my discretion. The wife is entitled to apply for a Decree Absolute and if she had done so it would undoubtedly have been granted. There are no technical objections to its grant. If the wife can establish no grounds why the decree absolute should not be granted then in the normal course of things it ought to be granted. I do not consider that the mere fact that there are ancillary relief proceedings yet to be heard and adjudicated upon is a sufficient reason to hold up the grant of the decree absolute. Accordingly the application will be granted".

[13] As I have already pointed out that in this case that the proceedings are concluded and it is simply a question of enforcement. Apart from anything else, the Respondent has no title to the premises to be sold, as his share in the premises has vested in his Trustee in Bankruptcy. As with Bennett J I have my suspicions in this case but am of the view that there are various methods of enforcing this judgment which will in no way be affected by the issue of the Decree Absolute.

[14] Miss Ranaghan for the Petitioner referred me to Smith v Smith [1990] 1 FLR at 438. This was an appeal from a decision of a Registrar to refuse to grant a Decree Absolute. The Appeal was on the basis that once the Registrar was satisfied that the provisions set out in Rule 65(2) of the Matrimonial Causes Rules 1977 were satisfied he had no option but to issue the Decree Absolute. Hollings J disagreed with this view saying that there was still a discretion to refuse a Decree Absolute but because the Appeal had not been based on the wrongful exercise of this discretion the only point considered in the Appeal was whether or not any such discretion existed. This is not particularly helpful in this case as I accept, and I have always accepted, that there will be circumstances in which the court may refuse to issue a Decree Absolute on the application of a Respondent.

[15] This is reinforced by the dicta of Brandon LJ in England v England (1980) 10 Fam Law 86 where he states:

“It was contended for the wife on this appeal that there were no circumstances in which the court had power to delay the making absolute of a decree nisi. I do not accept that convention. It is, in my view, clear beyond doubt the court has the power to do that in the exercise of its inherent jurisdiction where there are special circumstances which make it just that it should be done”.

[16] I do not however feel that the situation in this case constitutes such “special circumstances”.

[17] The decided cases appear to tend to the view that such a Decree should only be refused if it will prejudice the rights of the other spouse.

[18] This clearly covers situations where the applicant can frustrate ancillary relief proceedings by leaving and remaining out of the jurisdiction. It might also cover a situation where there may be an imminent risk of death to the Applicant, or allegations of fraud in relation to ongoing proceedings.

[19] As I have already pointed out the Respondent in this case has no title to these premises. It is possible that he is doing his best to frustrate the sale of the premises to the prejudice of his wife. It is not clear to me how the issue of the Decree Absolute will affect that situation given the various enforcement options that are available not only to the wife, but also to the Trustee in Bankruptcy and to the Building Society who presently hold a charge over the premises and have got an Order for repossession.

[20] Accordingly, whilst I have concerns about the way the enforcement of this Order is proceeding, I am of the view that withholding the issue of the Decree Absolute in this case would not be a proper course of action and I propose to Order that the Decree issue forthwith.