

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

Delivered: 07/01/08

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

RE: R and D (Allegation of rape)

**MORGAN J**

[1] BP is the mother of twins, R and D, who were born in May 2003 in Northern Ireland. BP and the twins have resided with her partner, RK, since their birth. GB is the father of the twins. Nothing should be reported which could lead to the identification of the children, their parents or carers.

*The background*

[2] BP, GB and RK are citizens of different States outside the European Union. BP left her State of origin on 26 December 2000 and arrived in Belfast the following day. She made an asylum application which was unsuccessful and she eventually returned to her State of origin. Two weeks later in March 2002 she again entered the United Kingdom. RK entered the United Kingdom on 6 January 2002. He and BP have pursued various appeals in respect of their immigration status the latest of which was refused on 7 December 2007. On 14 December 2007 they mounted a further application relying on article 8 ECHR rights connected to the Irish born twins. GB entered the United Kingdom in November 2001 on a student Visa. He had previously left his State of origin and sought citizenship in BP's State of origin. He was unsuccessful. It appears that his entitlement to remain in the United Kingdom may depend upon the nature of his relationship with the twins. The immigration status of each of the parties is important because it may give them an incentive to represent the facts in a way which is most advantageous to their immigration objectives.

[3] GB has made an application for parental responsibility and seeks an order for contact with the twins. Initially BP contended that GB could not be the father of the twins as she had not had sexual relations with him. DNA tests were ordered as a result of which it was established that GB was, indeed, the father. BP now contends that the conception was as a result of an act of

rape perpetrated upon her by GB. I conducted a fact-finding hearing for the purpose of establishing whether BP was raped by GB.

[4] BP and GB were the only witnesses who gave evidence. BP adopted statements that she had made on 7 March 2007 and 23 November 2007 and GB adopted statements made by him on 6 March 2006, 11 July 2006, 15 May 2007 and 30 November 2007. The evidence of the parties differed markedly and it is convenient to examine it in respect of different time periods.

*The period in BP's country of origin*

[5] It is common case that GB left his State of origin in 1996 and entered BP's State of origin. BP says that she met him in 1999 when he was running a stall selling clothes. She herself was selling clothing to towns across the country. She alleges that she only purchased from GB on three or four occasions. She said that on one occasion she left her wallet which contained her identity card at his stall. She only realised this as she was on a train to the other side of the country. When she came back she asked GB for her wallet which he gave her. It did not contain her identity card which he said he left at his house. She collected it some three to four days later.

[6] In the latter part of 2000 BP says that she applied for a passport in order to travel to Dublin to see her cousin who was living there. She says that when the passport was sent to her it was in the name of BB. She realised that someone had used her identity for a fraudulent marriage. She says that she did not know GB's surname at that time. She says that she obtained the passport on the last working day before her flight left on 26 December 2007. If she had drawn the fraud to the attention of the authorities at that time it would have prevented her travelling and she did not do so.

[7] GB agrees that he met BP as a result of working on his clothes stall. He says that a friendship developed and she became his girlfriend. He alleges that she became pregnant in 1999 and had a termination. There is no medical evidence before me in relation to that period. He says that they got married at a registry office on 11 April 2000. Although a marriage certificate to confirm the ceremony was produced BP adduced correspondence in 2005 and 2007 from the relevant government department indicating that the marriage had been removed from the register as a fraudulent marriage. This was apparently as a result of an application by BP which she says she made in 2002. She says that she made a statement to police in order to ground her application but that has not been produced. GB's solicitors have written on a number of occasions to the relevant government department to establish what investigation was carried out before the marriage was removed from the register but have not had a response. It appears that GB was never contacted about this as he was in the United Kingdom when BP's application was made.

[8] GB says that the marriage was witnessed by his friend Felix and a friend of BP whose name is not known to him. He relies upon an e-mail from Felix confirming that he was a witness of the ceremony. He also says that another man called Leopold was present although he was not referred to in any of his four statements. He agreed in cross examination that there were no photographs of the wedding and said that BP did not invite her family because he was a foreigner and they might be unwilling to accept him. He alleges that he has some photographs of himself and BP together but they are held by a friend who is away from home pursuing his studies at present.

[9] GB also relies upon a handwritten note which he says was given to him by Solomon whom he believed to be BP's brother. The note constitutes a dowry request. GB says that this is not uncommon in BP's State of origin. BP denies that she has a brother called Solomon and denies that the writing is that of her father. The note is signed "Richard Milton P". BP agrees that her father is called Milton but says that Richard is not one of his Christian names. GB alleges that he and BP lived as man and wife from April to December 2000. BP denies this.

*BP comes to the UK*

[10] It is common case that BP left her State of origin on 26 December 2000. It is further agreed that GB gave her a lift to the airport on that occasion. BP says that she had gone to see a friend who works as a street hairdresser close to the stall operated by GB on the day of her departure. She says that she needed transport to the airport and that her friend approached GB to ask him to take her. He agreed to do so. The journey was approximately 45 minutes long. As they approached the airport BP alleges that GB told her that he was the one who had married her. She says that he advised her to seek asylum in Europe and handed her some paper with his mobile phone number on it. The paper was a copy of their marriage certificate. BP was uncertain as to whether GB had told her what the document was. In any event BP agrees that when she boarded the aircraft she knew that GB was registered as her husband and she had in her possession a passport in her married name, her marriage certificate and a mobile phone number for GB.

[11] GB alleges that he had accompanied BP to the airport on a previous occasion with others when she had not been allowed to travel. She had then established that she would be allowed to travel on 26 December 2000 and he had arranged to leave her to the airport. He says that he gave her some money whereas she says that he tricked her out of money. GB alleges that BP was to return after one month and that this was a holiday to see her cousin in Dublin.

[12] On her arrival in Northern Ireland BP claimed asylum. She contends that this was at the suggestion of GB whom she had contacted on his mobile

phone. It was his suggestion that she should use the marriage certificate in order to help with entry. She was initially detained in Maghaberry prison before taking up hostel accommodation. She formed a relationship with Alphonso to whom she became pregnant. She suffered a miscarriage in 2001. She alleged that she was getting regular calls from GB throughout this period both to the hairdressing business in which she worked and to her mobile phone.

[13] GB alleges that he was getting regular e-mails and phone calls from BP during 2001. He alleges that she wrote him a letter which is typewritten but not signed and refers both to their marriage and their love. BP denies that she sent this letter and claims that it is a forgery. GB says that he was unable to follow his wife to Europe because of his business commitments. He adduced no evidence to substantiate that claim other than to say that it took time for him to wind up his business.

*GB enters the UK*

[14] GB entered the United Kingdom on 24 November 2001. He stayed in London and then travelled with friends to Bristol, Liverpool and Manchester. He arrived in Belfast on 4 January 2002. He claims that it was his intention to take BP back to England. He says that BP did not let him know where she was living and he did not have a mobile phone number for her. In or about late February or early March 2002 BP left the United Kingdom to return to her country of origin following on her failed asylum claim. She subsequently returned to Belfast approximately 2 weeks later. GB alleges that he provided her with money at her request at or about this time. She denies that. GP has produced a moneygram dated 28 February 2002 together with a receipt of the same date in respect of a transfer by GB to BP of £90. There is no reason to doubt that the documentation in respect of this is other than genuine.

[15] BP alleges that on her return to Northern Ireland in March 2002 she resumed her relationship with Alphonso. She says that he left Northern Ireland in May 2002. GB alleges that in or about late April 2002 BP and a Palestinian male friend called by arrangement to see him. He and BP had a long discussion after which he says they resumed their sexual relationship. He says that they met regularly until August 2002 at or about which time BP commenced a relationship with RK.

[16] BP denies that she and GB ever had or resumed a sexual relationship. Her evidence was that GB saw that she was not interested in signing papers for him that would help with his citizenship application and that he contacted her to seek a divorce. In her original statement in March 2007 BP alleged that she had contacted GB with a view to ending the "marriage".

*The alleged rape*

[17] It is agreed that BP visited GB at his house on or about 24 August 2002. BP said that she did so because GB had indicated that he wanted her to sign divorce papers. GB says that this was one of a number of regular sexual encounters. When BP entered GB's room she says that she took up a position in a chair. She says that he asked her to have sex before signing the forms. She refused. Her evidence was that GB then pushed her chair onto the floor and had sex with her against her will. Because of her position on the chair she was unable to resist.

[18] The only other detailed account of this incident given by BP is in her statement of 23 November 2007. In that statement she described how she had refused to have sex with GB and he then pushed her off the chair and onto the bed. In her evidence she maintained that this account was inaccurate because there was no bed in the room although there was a mattress with a duvet cover.

[19] In her statement of March 2007 BP alleged that GB threatened to kill her if she reported him. In her evidence she initially denied that any such threat had been made. Her account was that he had warned her that she could be deported if she reported it. When it was pointed out to her that this was at variance with her earlier statement she alleged that GB might have said that he was going to kill her.

[20] In her statement made in March 2007 BP alleged that GB followed her home and fought with her until she bit him on the arm. In her statement in November 2007 she alleges that this incident occurred later the same week and that she bit GB when he again attempted to force himself on her. She did not mention this alleged attempted rape in her first statement. GB alleges that the bite occurred in October 2002 when he called round at BP's invitation and then refused to leave when she asked him to do so. It was around this time that BP discovered that she was pregnant and GB alleges that she told him that he was not the father.

[21] It appears to be common case that there was little contact between GB and BP after October 2002. GB alleges that he became aware of the birth of the twins in late 2003 and saw them when they were six months old. He started making inquiries in relation to paternity. His then solicitor was contacted by BP on 9 July 2004. She told the solicitor that the marriage to GB was for the purpose of his obtaining citizenship only and that there were divorce proceedings ongoing. BP advised the solicitor that she had never had any sexual relations with GB and that he could not, therefore, be the father of the children.

## *Conclusions*

[22] BP contends that she was entirely unaware of the existence of the marriage certificate until she arrived at the airport on the day of her departure. It must, therefore, be a coincidence that she went to see her friend who was working beside GB's stall on the day on which she left. It must further be a coincidence that she found herself in need of transport to the airport. One might have expected her to have made arrangements. It is a further coincidence that her friend just happened to approach GB to see if he would take her to the airport. The coincidence continues because it appears that GB just happened to have on his person the alleged fake marriage certificate and decided for some reason to own up and provide BP with a copy of the certificate and his mobile phone number which she did not until then have. In my view it is much more likely that BP has contrived this explanation in order to explain how she came to be in possession of a passport in her married name, the marriage certificate and the mobile telephone number of GB at the time of her arrival in the United Kingdom.

[23] The absence of any photographs of either the marriage or BP and GB together and any independent evidence of married life strongly suggests that this was a marriage of convenience connected to GB's citizenship application. That does not rule out a sexual relationship between them but it seems unlikely that these parties enjoyed a normal marital relationship. It may well be the case that the letter allegedly sent by BP to GB during 2001 was created by GB for his own immigration purposes.

[24] It is clear that BP at all times intended to travel to Europe for the purpose of residing there permanently. In my view it would have been apparent to GB if he had any form of relationship with her that this was the case. I consider that his evidence that he believed her to be going for a holiday was almost certainly false.

[25] The fact that GB spent about six weeks in England before coming to Northern Ireland tends to confirm that there was no real marital relationship between the couple at that time. I accept, however, that some money was sent by GB to BP on or about 28 February 2002 to assist her in her return to Europe. That is evidence of some form of friendship or arrangement between these individuals.

[26] BP's conversation with GB's solicitor on 9 July 2004 is clear evidence of BP's readiness to deceive if she thinks that it is in her interests. Her assertion to the solicitor is clearly untrue and inconsistent with her allegation of rape and I found her evidence that she was reluctant to disclose this entirely unconvincing. The account that she gave in her evidence of being raped while she was in her chair is inconsistent with that given in her statement

where she says that she was pushed onto the bed. That inconsistency is of some importance because she claims that it was the chair that prevented her being able to successfully resist GB.

[27] In her statement of March 2007 BP provided an account of an incident in which she bit GB. In that statement she alleged that GB had followed her home after the rape. In her statement of November 2007 she said that this had occurred some days later. Of more importance, however, is the fact that in November 2007 and in her evidence she claimed that the bite was administered to defend herself from a further attempted rape whereas there was no mention of this attempted rape in her statement in March 2007. There was no satisfactory explanation for such an omission in the context of this application.

[28] The standard of proof in this application is the balance of probabilities taking into account that the more unusual an event is the less likely it is to have occurred (see *Re H & R (Child Sexual Abuse)* [1996] 1 FLR 80). I do not have sufficient information to enable me to come to a conclusion as to the circumstances of the marriage or its removal from the register. I am satisfied, however, that the parties enjoyed a relationship which was substantially closer than that acknowledged by BP. Although I have concluded that neither party has provided me with a full and truthful account of their relationship the allegation of rape by BP has been specifically undermined by her conversation with the solicitor in July 2004 and by her conflicting accounts of the detail of the incident in her statement of November 2007 and her evidence before me. I consider her evidence unreliable.

[29] It is of some significance that the period of consensual sexual activity alleged by GB between late April 2002 and August 2002 coincides with the period between the termination of the relation of BP with Alphonso and the commencement of her relationship with RK. On the balance of probabilities I find that the sexual activity between GB and BP was consensual.