

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION

Cause No.: FAM 24 of 2020

BETWEEN

GREGORY ANTHONY RICARDO WATT

Petitioner

AND

LORNA NATASHA NUNES

Respondent

ON THE PAPERS AND IN CHAMBERS

Appearances: Gregory Anthony Ricardo Watt in person
Lorna Natasha Nunes not present, not represented

Before: Hon. Mme. Justice Ramsay-Hale

Judgment Handed Down: 23 July 2020



HEADNOTE

Application for a decree of nullity on ground of fraud under section 8 of the Matrimonial Causes Law (2005 Revision) - Petition undefended - duty of Court under section 15 of the Matrimonial Causes Rules - relevant principles to be applied

JUDGMENT

Introduction

1. The Petitioner, Mr. Gregory Watt, and the Respondent, Ms. Lorna Natasha Nunes, met on a social media site and after a short courtship, were married in Ms. Nunes's hometown of Mandeville, Jamaica on 16 November 2019.
2. Plans were made for Ms. Nunes to travel very soon after to the Cayman Islands but her arrival was delayed as she was experiencing some difficulty in obtaining a Police Clearance Certificate. Notwithstanding her inability to get such a certificate, Ms. Nunes travelled to the Cayman Islands on or about 15th December 2019 to join her husband, and the parties started their married life together at Mr. Watt's home in Grand Cayman.

3. The parties had decided that Ms. Nunes would return to Jamaica on 16 January 2020 in order to resolve the outstanding issues with obtaining her Police Clearance Certificate, but on 25 December 2019, some 10 days after arriving in the Cayman Islands, Ms. Nunes left the matrimonial home to which she never returned.
4. By Petition filed on 29 January 2020, Mr. Watt, acting in his own behalf, made application to this Court for a decree of nullity of marriage on the ground of fraud pursuant to section 8 of the *Matrimonial Causes Law* which provides that

“8 (1) For the purpose of this section a marriage is void if-

... ..

*(c) the parties were not **virtually consenting** thereto by reason of duress, fraud or incapacity of mind.”*

5. The Petition was duly served on Ms. Nunes at her home in Jamaica on 28 February 2020. She has not acknowledged service or sought to defend the Petition.
6. Mr. Watt now applies to the Court for adjudication of the undefended Petition and the grant of a decree of nullity pursuant to Section 15 of the *Matrimonial Causes Rules* which provides:

“15. (1) The petitioner may apply for the adjudication of an undefended petition by submitting an application in Form 8 or 10 together with a draft order in Form 9 or 5 as the case may be.

(2) If the Judge is satisfied that –

- (a) the petition has been duly served;*
- (b) the petition is an undefended petition;*
- (c) the verifying affidavit is sufficient to prove the petition in accordance with the requirements of the Law; and*
- (d) ancillary matters (if any) are to be adjourned to Chambers,*

he shall make an order in Form 9 that the petition has been proved and that the ancillary matters be so adjourned.

(3) If the Judge is satisfied that the requirements of sub-paragraphs (2) (a), (b) and (c) are met and that there are no applications for ancillary relief or that all ancillary matters have been agreed, he shall make an order in Form 5.

(4) If the Judge is not so satisfied, he may –

- (a) require the petitioner to file further evidence;*
- (b) direct that the petitioner attend and give oral evidence;*





- (c) *make directions for the trial of the petition in accordance with Rule 16; or*
(d) *dismiss the petition.*”

7. Simply put, even though a Petition is undefended, the Law requires the Court to consider the evidence on which the Petitioner relies in his suit for nullity and decide whether or not on the facts asserted, the Petition is proved. If it is not proved, the Court may dismiss the Petition.

The Evidence

8. In his Petition verified by his affidavit, Mr. Watt asserts, *inter alia*, that the Respondent “*made a false representation of herself*”¹ and that “*she is not at all whom she had held herself out to be*”².
9. From the matters set out in paragraphs 7 through 11 of the Petition I glean that Mr. Watt believes Ms. Nunes to have deceived him as to her character.
10. Mr. Watt avers that before the marriage Ms. Nunes told him that she had been charged with a criminal offence some 11 years earlier but it had been dismissed by the Court and that she would be able to get a Police Clearance Certificate which she would need in order to obtain permanent residence as the wife of a Caymanian.
11. Ms. Nunes’ efforts to obtain the Certificate depended upon getting a document from the Court to show that the charge had been dismissed, but her efforts in that regard were stymied as the Court’s Office was being relocated. A later attempt also failed as a section of the Courthouse caught fire. She was later directed to an interim office and given a number to call but she failed to pursue the matter which led Mr. Watt to believe that she had not been forthcoming about the charge against her, and that she was, in fact, unable to obtain the necessary Police Clearance Certificate.³
12. I take from this that Mr. Watt believes Ms. Nunes to be a woman of bad character.
13. The second material ground of complaint is that he had told Ms. Nunes before they were married that he wanted to have a child, but she had indicated that she did not plan on having any more

¹ At paragraph 20

² At paragraph 19

³ At paragraphs 8, 9, 10

children. They discussed the matter and he thought he had persuaded her thereafter to have a child with him, but after the marriage she continued to say she did not intend to have more children.⁴

14. Mr. Watt also complains that she spoke about him in a manner that would cause damage to his reputation.⁵

The Law

15. For a valid contract of marriage, there must be “*virtual consent*” by both parties, with knowledge on their part of all material facts.
16. The principles to be applied were set out in the judgment of Sir F.H Jeune, President, in the case of *Moss v Moss*, in which His Lordship reviewed the existing authorities in English law on fraud vitiating consent in marriage. *Moss* was a suit for nullity of divorce on the grounds of fraud, the wife not having disclosed to her husband before marriage that she was pregnant for another man. His Lordship, citing the decision of the Privy Council in *Swift v. Kelly* 3 Knapp, 257, at p. 293, stated that:

“the Judicial Committee of the Privy Council, Lord Brougham, Baron Parke, and Shadwell V.C. being members of the Board, expressed its opinion in the following terms:

“It should seem, indeed, to be the general law of all countries, as it certainly is of England, that unless there be some positive provision of statute law, requiring certain things to be done in a specified manner, no marriage shall be held void merely upon proof that it had been contracted upon false representations, and that but for such contrivances, consent never would have been obtained. Unless the party imposed upon has been deceived as to the person, and thus has given no consent at all, there is no degree of deception which can avail to set aside a contract of marriage knowingly made.”

17. His Lordship further stated that:

“... the English law of the validity of marriage is clearly defined. There must be the voluntary consent of both parties. There must be compliance with the legal

⁴ Paragraph 12

⁵ Paragraphs 13,14

requirements of publication and solemnisation, so far as the law deems it essential. There must not be incapacity in the parties to marry either as respects age or physical capability or as respects relationship by blood or marriage. Failure in these respects, but I believe in no others ... renders the marriage void or voidable. It has been repeatedly stated that a marriage may be declared null on the ground of fraud or duress. But, on examination, it will be found that this is only a way of amplifying the proposition long ago laid down (Fulwood's Case (1638) Cro. Car. 482, 488, 493.) that the voluntary consent of the parties is required.



But when in English law fraud is spoken of as a ground for avoiding a marriage, this does not include such fraud as induces a consent, but is limited to such fraud as procures the appearance without the reality of consent. The simplest instance of such fraud is personation, or such a case as that supposed by Lord Ellenborough in Rex v. Burton-on-Trent ⁽¹⁾ of a man assuming a name to conceal himself from the person to whom he is to be married. In Portsmouth v. Portsmouth ⁽²⁾ and Harrod v. Harrod ⁽³⁾ the fraud consisted in taking advantage of a mind not absolutely insane, but weak, to induce in the one case a man, in the other a woman, to enter into a contract, which (to use the phrase of Wood V.C. in the latter case) he or she did not understand. Browning v. Reane ⁽⁴⁾ and Wilkinson v. Wilkinson ⁽⁵⁾ are other cases of the same kind. In all these, and I believe in every case where fraud has been held to be the ground for declaring a marriage null, it has been such fraud as has procured the form without the substance of agreement, and in which the marriage has been annulled, not because of the presence of fraud, but because of the absence of consent."

18. His Lordship further observed:

"But when there is consent no fraud inducing that consent is material. Lord Stowell has at least three times expressed this in the most emphatic language. In Wakefield v. Mackay ⁽⁷⁾ that learned judge said: "Error about the family or fortune of the individual though procured by disingenuous representations does not at all affect the validity of the marriage"; in Ewing v. Wheatley ⁽⁸⁾ : "It is perfectly established that no disparity of fortune or mistake as to the qualities of the person will impeach the vinculum of marriage"; and in Sullivan v. Sullivan ⁽⁹⁾: "The strongest case you could establish of the most deliberate plot, leading to a marriage the most unseemly in all disproportions of rank, of fortune, of habits of life, and even of age itself, would not enable this Court to release him from chains which, though forged by others, he had riveted on himself. If he is capable of consent and has consented, the law does not ask how the consent has been induced."

Decision

19. Although Mr. Watts complains of Ms. Nunes' putatively criminal character, he knew before the marriage that she had been charged with a criminal offence and that the allegations sprung from "*an altercation between herself and her boyfriend*"⁶ and married her with that knowledge.
20. He also knew she was ambivalent about having another child and yet had persuaded himself that he had changed her mind. As he put it in his Petition, he appealed to her by telling her "*it was unfair for her to have given children to men who never married her, but would be reluctant to give her husband a child that he so desires.*" Her response was that she had never looked at it that way before, whereupon he believed the matter was resolved. It is hard to discern from his plea and her answer that she led him to believe she was prepared to have a child with him.
21. The allegations of fraud or fraudulent misrepresentation on which Mr. Watt relies, cannot avail him in his application to have his marriage to Ms. Nunes declared void. The case falls squarely within the principle enunciated in *Ewing v Wheatley supra*, that no mistake as to the qualities of the person will impeach the bond of marriage. In other words, a mistake as to your partner's attributes is not a ground for avoiding a marriage, as disappointment as to their character does not constitute fraud.
22. The Petition is dismissed.



Hon Mme. Justice Margaret Ramsay-Hale
JUDGE OF THE GRAND COURT



⁶ Paragraph 15 of the Petition