

Jersey matrimonial case summary- reasons for declaring the marriage void

Briefing Summary: Advocate Lauren Glynn, Counsel in Carey Olsen (Jersey) LLP's family team, represented the Petitioner, C (via the Viscount in her capacity as Guardian Ad Litum), in the case of C v D [2022] JRC205; the first case before the Royal Court of Jersey to consider whether a marriage is void ab initio or simply voidable in circumstances in which one of the parties lacked mental capacity at the time of the marriage.

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Case summary: C v D [2022] JRC205

The case involved an application by C for a declaration that her marriage to D was *void ab initio*. D, the Respondent, argued that the Court could not make a finding of nullity in the circumstances of the case.

Background

C and D married in October 2017 at the Office of the Superintendent Registrar in St Helier. C had a history of mental health difficulties and had received significant support and interventions from Adult Social Services.

Whilst the relevant statute did not expressly address the issue of capacity at the time of the marriage, concerns were raised as to C and D's capacity and a number of meetings took place between staff at the Registry Office and the couple. The conclusion reached at the time was that the couple did have capacity to marry. The evidence of the Superintendent Registrar was that C appeared to understand the nature of her application to marry D; indeed, she was said to be enthusiastic.

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In October 2019, the Minister for Health and Social Services issued an application for an order under the Capacity and Self Determination (Jersey) Law 2016, seeking the Court's determination in respect of a number of matters pertaining to C, including whether she should have full time supervised care. A significant restriction of liberty order was made, and the Royal Court also determined that C lacked capacity to consent to sexual intercourse.

Following the above-noted orders D instigated the divorce process, but later instructed his advocate that he no longer wanted to divorce C. D's divorce petition was therefore withdrawn by consent and C's nullity petition was issued.

Issues

Two questions fell to be considered by the Court in respect of C's nullity petition:

1. Did C have mental capacity to enter into the marriage (at the time of the marriage)?
2. If C did not have capacity, is the marriage thereby void ab initio or merely voidable?

The decision

Dr Prangnell, a Consultant Clinical Neuropsychologist, gave evidence in respect of the first of the issues before the Court. In reaching his conclusion, Dr Prangnell had before him contemporaneous medical evidence that had not been available to the Superintendent Registrar at the time of her determination. His conclusion was that, on the balance of probabilities, C lacked capacity to consent to the marriage in 2017. He had already assessed C in 2019 as lacking capacity under the new Mental Health Law (which was not in force at the time of the marriage).

The Court weighed the evidence of Dr Prangnell with evidence of the Superintendent Registrar and found that, on the balance of probabilities, C did lack capacity to consent to the marriage.

In respect of the issue of whether the marriage should therefore be void or voidable, D's advocate argued that:

"Article 18(1)(f) is the only section of that Article that is relevant and the Court can only grant a decree [of nullity] if "the petitioner was unaware of her being of unsound mind at the time of the marriage, the petition was filed within a year and a day of the marriage and there has been no sexual intercourse since the Article 18(f) ground was discovered."

The Court found that nothing in the Matrimonial Causes (Jersey) Law 1949 prevents the Court making a declaration of nullity on any ground which exists in law in addition to those specified in Article 18, including a parties lack of capacity to consent to a marriage. The Court declared that C and D's marriage was *void ab initio*.

The full case can be read [here](#).

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