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Categories: settlement negotiated during hearing; respondent terminally ill, attending remotely

Consent divorce after terms agreed on morning of hearing

A judge in a provincial city granted a decree of divorce where consent terms had been agreed between the parties on the morning of their hearing date. The case had been allocated a two-day hearing date in the Circuit Court.

Both parties were represented by a solicitor and barrister. The applicant husband had been granted permission to appear in court by video link from his hospital room in circumstances where he was suffering from a terminal illness.

An application to attend remotely had been made by the husband's barrister the day before the hearing was scheduled to begin. This application was initially opposed by the respondent wife. Her barrister told the judge that her understanding was that the applicant's health was not palliative and they had been given very limited information as to his current medical state.

The judge asked for some medical evidence which illustrated that the applicant was too ill to attend court in person. The judge said that the applicant's health was the priority, but she would need some medical evidence which showed firstly that he was too ill to attend court, and secondly that he could withstand examination in chief and cross examination, albeit remotely. The judge also voiced concerns about how difficult it was to adhere to the *in* camera rule in a hospital setting.

The husband's solicitor told the judge that she had arranged for a trainee solicitor to attend with the applicant. The judge said that it was preferable to have a fully qualified solicitor to accompany the applicant and the solicitor responded that she would ensure this was done.

The Court adjourned for a short period to allow the husband's solicitor obtain the requisite medical evidence. When the Court resumed, the judge was informed that the husband's consultant was online via video link. The consultant was sworn in and the judge welcomed him to the courtroom.

The medical consultant provided a summary of the applicant's medical condition. He said he was suffering from a terminal illness and he had been recently hospitalised due to complications arising from his illness. The wife's barrister asked the husband's medical consultant if the applicant had the mental capacity to attend the hearing and give evidence. The consultant confirmed that the applicant had the mental capacity to attend but it would be optimal if he was cross-examined and given a break every 40 to 45 minutes.

Judge: "If the applicant was discharged from hospital would he be capable of travelling and attending court in person?"

Consultant: “Yes he would be able, but there is no immediate date for discharge at the moment.”

The medical consultant finished his call. The judge spoke to the counsel for both parties.

Judge: “This is a most sensitive and serious case, and any last chance of talks is to be encouraged. If you can’t resolve the matter entirely, please deal with some of the preliminary issues such as agreed valuations of property.”

The judge adjourned the hearing until after lunch to allow the parties representatives to meet.

When the Court resumed after lunch, the husband’s barrister told the judge that the parties had settled the case, terms had been reduced to writing and signed by the parties.

The applicant’s solicitor said that she would sign the consent terms per procurationem on behalf of the applicant and she confirmed that the applicant would also sign via Docusign. The judge said she would like the husband to attend the ruling via video link if it were possible.

At the ruling of the consent terms, the wife’s barrister outlined the terms of the settlement to the Court. She said the parties had two dependent children in their late teens. The main asset was the family home and the other asset was a sizeable life assurance policy. Under the terms of the consent agreement, the wife would have the full legal and beneficial interest in the family home. There was a protection policy in respect of the mortgage which would be redeemed upon the death of the applicant and in the interim he would continue to pay the mortgage. The parties had agreed to continue discharging 50 per cent each of the children’s expenses.

The husband’s barrister said that the other main asset was a significant life assurance policy which was held in the applicant’s name. She said it had been agreed between the parties that after a number of the husband’s loans and expenses had been discharged, the parties would divide the balance of the life assurance policy proceeds on a 50-25-25 basis, with 50 per cent of the policy going to the respondent and 25 per cent each to the parties’ two children. It was agreed that the applicant would keep his pension including the contingent benefits.

The respondent wife gave the formal evidence. The judge confirmed with the applicant that he could see and hear the proceedings via his video link. The wife identified the marriage certificate and confirmed the date of the parties’ marriage. She said that the parties had been separated for almost four years and there was no prospect of reconciliation.

The judge asked the respondent if she acknowledged that the terms of consent signed by the parties were in full and final settlement of all matters between them. The respondent agreed that it was. The judge wished the respondent well and she inquired after the welfare of the two children. The applicant’s counsel asked him if he was happy with the terms of settlement and he said he was.

The judge said she had read the papers. She said it was a most difficult case and everyone had handled themselves with dignity and worked hard at reaching a settlement. The judge said she was satisfied that the children were being looked after by their parents, and she was satisfied that proper provision was made pursuant to the terms of settlement.

The judge made the orders per the terms of consent that were handed into court. She gave a date for ruling the nominal pension adjustment orders, and she noted that the applicant would keep his pensions which would go into his estate upon his demise.

The judge granted liberty to apply, liberty to re-enter, and no order as to costs.