

JERSEY / JUDGMENT

D -v- N [2007] JRC 124 (27 June 2007)

[2007] JRC 124

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judgment

commisioner: 1. The parties attended before me this morning on a matter of great urgency. The Petitioner and the Respondent have a decree absolute of divorce. As part of the divorce settlement the Registrar made various orders embodied in an Act of Court dated 20 th June 2007. One of these orders was that the husband's share in the matrimonial home be transferred to the wife with terms attached to it. 2. I have just heard that Ms D is dangerously ill - she has lapsed into unconsciousness and could pass away at any time. 3. Everything in the Act of Court was agreed by the parties before the petitioner fell ill and Miss Blomfield has agreed that there is no possible dispute to the action now proposed. 4. The learned Registrar in his attempt to be as helpful as possible says that Advocate Messervy is to pass contract under Article 36 of the Matrimonial Causes (Jersey) Law 1949 which reads as follows:- "36 Execution of instruments by order of the court Where any person neglects or refuses to comply with an order of the court directing the person to execute or make any conveyance, assignment, or other document or instrument or endorsement, for giving effect to any order of the court under Articles 25, 27, 28, 29, 30 or 33, the court may, on such terms and conditions, if any, as may be just, order that the conveyance, assignment, or other documents or instrument or endorsement, shall be executed, made or done by such person as the court nominates for the purpose, at the cost of the person in default, or otherwise, as the court directs, and a conveyance, assignment, document, instrument or endorsement so executed, made or done shall operate and be for all purposes available as if it had been executed, made or done by the person originally directed to execute, make or do it." 5. It is clear to me that this is not a case where any party has "neglected or refused to comply" with the terms of an order. The fact that Ms D is unable to pass contract does not fall within the terms of Article 36. 6. I draw some consolation from the case of Ritson v Slous

[1973] JJ 2341 where the court said:- "We know of no rule of law which prevents this Court from divesting a person of his property when the justice of a case dictates that that be done" This is not a case where a licitation is in point but an unusual case where everyone is prepared to pass the contract and the petitioner is unconscious and near to death. We therefore order the contract be passed on the clear basis that this Court cannot allow its orders to be set to nought. Authorities Matrimonial Causes (Jersey) Law 1949. Ritson v Slous

[1973] JJ 2341 . Page Last Updated: 27 Mar 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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