

Summary

Divorce – marriage out of community of property without accrual – Rule 46 application – spousal maintenance and forfeiture of benefits – requirements for forfeiture – marriage of short duration – not necessary for all requirements to be present cumulatively – presence of one requirement suffices

After a brief courtship the parties were married out of community of property in terms of an antenuptial contract which excluded the accrual system. The divorce summons was issued barely a year into the marriage. It is common cause that the marriage has irretrievably broken down. The antenuptial contract between the parties made provision for a payment of R2 million (adjusted for inflation) by the plaintiff (husband) to the defendant (wife) in the event of divorce. The intention for this payment was to place the defendant in a similar position in the event the parties separated or divorced. They calculated the amount of R2 million as an appropriate amount for a replacement flat and vehicle. Further, they agreed that the plaintiff would pay the defendant's medical aid, on the most comprehensive medical cover.

Forfeiture of benefits claim – The plaintiff seeks forfeiture of benefits in terms s 9(1) of the Divorce Act relying on the short duration of the marriage. He adopts a fault neutral approach to the breakdown of the marriage attributing it to numerous reasons which both parties contributed to. In terms of s 9 where a divorce decree is granted on the ground of irretrievable breakdown of a marriage a court may make an order that patrimonial benefits be forfeited having regard to **the duration of the marriage**, the **circumstances which gave rise to the breakdown thereof** and **any substantial misconduct on the part of either party**. Not all three factors need be present cumulatively. The court must be satisfied that, if the order of forfeiture is not made, the one party will in relation to the other be unduly benefitted. The question whether the party against whom the order is sought will in fact benefit is a factual one. In determining whether the benefit the defendant would receive in terms of the antenuptial contract is undue, regard must be had to the duration of the marriage. The parties spent 8 months living together before finally separating. Given the luxurious gifts which included jewellery and designer clothing, payments made by the plaintiff to the defendant's bond when she could not during the subsistence of the marriage, the fact that she kept proceeds of her sold flat for herself, the benefit to be received by the defendant is not easily justified. A clean break is desirable between the parties.

Maintenance claim – the defendant bases her maintenance claim on the fact that she suffers from Idiopathic Inter-cranial Hypertension (IIH) and will need multiple surgeries to correct the defect. She is pursuing her PhD, due to be completed in June 2019. Her claim is based on her inability to work after these surgeries. She contends these surgeries will impact her ability to resume normal activities which include resuming her studies and in future will impact on her work abilities, her employability and her promotion prospects.

The defendant must establish a need to be supported. It was argued on her behalf that her ability to earn an income does not disentitle her to maintenance since the reasonableness of her decision not to work must be considered in light of factors such as her age, state of health and qualifications, when she was last employed, the duration of the marriage, the standard of living of the parties during the marriage etc.

The defendant's health condition is one of the factors to be taken into account when determining whether future maintenance is applicable. She was previously employed and received glowing references as a tutor cum au-pair before she commenced her studies. She expressed an intention to teach alternately to conduct research or offer proof reading and editing services. Notwithstanding her registered disability she has managed to secure two bursaries for 2018. According to her supervisor she may secure funding for 2019 to complete her research in 2019.

The defendant is required to prove the amount required as well as the resources she has at her disposal to determine her maintenance requirement. In her numerous Rule 43 applications, the amounts required for maintenance changed. She provided no vouchers to support the amounts.

Given the short duration of the marriage, it can hardly be said the defendant became accustomed to the lavish lifestyle she ascribed to the plaintiff's family. The defendant is academically accomplished and for several years has received funding for her studies. Despite the expert joint minute indicating that the defendant would as a result of her health condition be unable to maintain herself for the full period of her life, this is but one of the factors to be taken into account when determining whether future maintenance is applicable.

Her witness even testified that the defendant would enjoy more success if self-employed because she can regulate her work pace. The defendant is relatively young and has pursued her academic studies with discipline and drive, despite her medical condition.

Her claim for maintenance fails.