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*Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Delivered:*	**16/01/2019**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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AB

Appellant

and

CD

Respondent

_____

Before: Stephens LJ, Deeny LJ and Treacy LJ

_____

STEPHENS LJ (delivering the judgment of the court)

Introduction

[1] This is an appeal brought by AB, the appellant, in relation to an order dated 14 June 2018 of His Honour Judge McFarland sitting in the High Court granting a Decree Nisi in divorce proceedings brought by CD, the respondent. The Decree was granted on the basis that the marriage of the appellant and the respondent has irretrievably broken down on the ground that the appellant has behaved in such a way that the respondent cannot reasonably be expected to live with him.

[2] The appellant appears in person and Ms Maire Kelly appears on behalf of the respondent.

Factual Background

[3] The appellant and the respondent were married in 1985 and only one of their children is under 18 whom we anonymise by the initials CF. The family home was in Northern Ireland. The appellant and the respondent separated in or around 28 January 2014 since when the respondent and CF have lived at another location in Northern Ireland. There have been numerous court proceedings since that

separation with, for instance, both the respondent and CF seeking and obtaining non-molestation orders against the appellant.

[4] The divorce petition is dated 14 June 2017. It and the related papers required to be served on the appellant. On 17 August 2017 the respondent's solicitors sent it and the related papers by registered post to the appellant's address but the letter and all its contents were returned on 6 September 2017. However, that does not mean that the appellant did not receive the documents because on 28 August 2017 the appellant signed for the documents and collected them from the post office. However, he decided to return them to the post office. He has accepted today in court that he actually had those documents in his possession at the time. The documents having been returned to the post office they were sent back to the respondent's solicitors. The next step for the respondent's solicitors was for a process server, Mr Stephen Weir, to be engaged to effect personal service on the appellant. On 24 November 2017 the process server saw the appellant, identified that it was the appellant, told him that he had legal documents to serve on him and the appellant declined to accept service. Again, the appellant has in essence confirmed those facts to us during the course of this appeal.

[5] On 26 January 2018 the respondent's solicitors then applied to the Master by summons to deem service good. The Master acceded to that application by order dated 12 February 2018. There is no appeal from that order. Today belatedly and orally the appellant stated that he wished to appeal against that order but we consider that there has been no appeal against it.

[6] We would observe that the appellant had notice of the divorce proceedings on 28 August 2017 some 10 months prior to the hearing of the petition on 14 June 2018. He had plenty of time to forward any answer to the divorce petition. We also consider that the appellant was deliberately avoiding and obstructing service of the divorce petition. He could simply have accepted the documents on either 28 August 2017 or 24 November 2017.

[7] The divorce petition was due to be heard on 14 June 2018 and on 13 June 2018 the day before the hearing, at 1:07pm the appellant sent an email to the court office seeking an adjournment. He was told that the petition remained in the list and he could attend to make any representations to the judge.

[8] On 14 June 2018 the appellant attended in person and made an application for an adjournment. He informed the judge that he was resisting the petition on the basis that the allegations of unreasonable behaviour were in fact a construct of the mental health of the respondent. The judge ruled that the appellant had had ample time to deal with all the issues and he refused to adjourn. The judge heard the evidence of the petitioner which he accepted and he granted the Decree Nisi to the respondent.

The grounds of the appeal

[9] The grounds of the appeal as drafted by the appellant are as follows:

(a) No grounds for application or decree.

(b) No papers received.

(c) No hearing took place of facts in evidence of the matter.

(d) Listed undefended while matter is fully defended by respondent in equality and injustice reasons.

Legal Principles

[10] This is an appeal to the Court of Appeal from the orders made by the judge which in ease of the appellant, though this is not specified in his notice of appeal, we proceed on the basis that there are two orders. The first order was to refuse the application for an adjournment so that amongst other matters the appellant could file an answer and defend the proceedings. The second was to grant a Decree Nisi.

[11] In considering the issues in this appeal it is important to appreciate that there is a difference between an appeal and an application to rescind the Decree Nisi under Articles 10 and 11 of the Matrimonial Causes (Northern Ireland) Order 1978 and Rule 2.50 of the Family Proceedings Rules. An application to rescind can in certain limited circumstances be made to the court at first instance. It should not be made to the Court of Appeal. An application to rescind cannot be made by way of an application to this court. This court deals with appeals from decisions made at first instance, it does not make the initial decisions. We consider that insofar as any aspect of the appellant's submissions amount to a suggestion that there are grounds for rescinding the Decree Nisi then that is a matter with which this court cannot deal. It is a matter to be dealt with, if at all, at first instance. To summarise, this is not an application to rescind a Decree Nisi rather it is an appeal from a Decree Nisi.

Discussion

[12] The service of the petition and related papers on the appellant was deemed good. That was a decision of the Master. There has been no appeal from that decision apart from a half-hearted attempt today orally by the appellant that he wished to appeal that decision. We have considered that decision and we consider that it was the only possible decision that could have been made by the Master. If there had been an appeal from that decision we would have refused it. We consider that it is quite clear that the appellant was obstructing service of the petition and the related papers. The appellant did obtain the papers on 28 August 2017 but chose to return them and he could and should have obtained them on 24 November 2017. The appellant did not keep the papers on 28 August 2017 but we are entirely clear that the only reason why he did not have the papers was because of his own attitude

and response to the attempts to serve the papers on him. The appellant accordingly cannot complain that he had not received the papers and we dismiss the ground of appeal which relies on that contention.

[13] We also hold that the appellant was deliberately manipulating the court process so that he could delay and disrupt it and that the appellant is personally to blame for that delay and disruption. So the finding made by the judge that the appellant had plenty of time to defend the divorce petition was a finding which was impeccable and is to be commended.

[14] We consider that the decision of the judge to refuse the application for an adjournment was not only one within the permissible range of decisions but that it is also one that all the members of this court would also have made. We consider that there was a deliberate decision by the appellant not to engage with the legal process so that he could thereafter disrupt and delay it. This amounted to, in our view, an abuse of the process of the court. We consider that the first decision made by the judge to refuse to adjourn was entirely correct and insofar as any of the grounds of appeal relates to that decision we dismiss the appeal.

[15] We can deal with the other grounds of appeal in relatively short form as follows:

(a) There clearly was a ground for a Decree Nisi. That ground was irretrievable breakdown as evidenced by the appellant's unreasonable behaviour. We consider there is no substance in this ground of appeal and we dismiss it.

(b) The next ground of appeal was that there was a lack of a hearing. There clearly was a hearing and evidence was clearly given to the trial judge. We consider that there is no substance in this ground of appeal and we dismiss it.

(c) The final ground of appeal relates to the matter being listed as undefended. The matter was correctly listed as undefended because the appellant had not entered an appearance or served an answer. The suggestion that it was fully defended only came late on the day before the petition was due to be heard. That was clearly too late and as we have indicated the judge was entirely correct to refuse an adjournment application. We consider that there is no substance in this ground of appeal and we dismiss it.

Conclusion

[16] We dismiss the appeal.

[17] We order the appellant to pay the respondent's costs to be taxed in default of agreement.

[18] We make a Legal Aid Taxation Order in respect of the respondent's costs.