



# ECLI:NL:RBROT:2010:BP8396

Authority Court of Appeal Rotterdam  
Date of ruling 08-12-2010  
Date of publication 21-03-2011  
Case number 364739 / KG ZA 10-1018  
Judicial areas Personal and family law

Specifics First instance - single judge

Indication as to content Claim to cooperate towards the dissolution of the religious marriage after a divorce assignable in accordance with Dutch law. Because the husband refuses cooperation towards this he is keeping his wife captive in what she perceives to be a religious marriage. Therefore, the husband acts in breach of that which - according to unwritten rules - is generally accepted in social intercourse and that which can be required from him.

Nota bene

Below the ruling it is wrongly stated that the second religious marriage was concluded on 2-12-2001. However, this concerns the first ceremony. The second ceremony took place on 5 February 2005.

Legal reference Dutch Civil Code Book 6  
Dutch Civil Code Book 6 162

Relevant sites Rechtspraak.nl  
RFR 2011/76  
JPF 2011/69

## Ruling

COURT OF APPEAL ROTTERDAM

Sector Civil Law

Case - / docket number: 364739 / KG ZA 10-1018

Ruling: 8 December 2010

RULING in interlocutory proceedings in the case of:

[person 1],

residing in Rotterdam,

claimant,

lawyer mr. D.H. Bialkowski in Amsterdam,

- versus -



[person 2],  
residing in Rotterdam,  
defendant

lawyer mr. J. Heinrici.

Parties will be referred to as 'the wife', 'the husband', respectively.

#### 1 The course of the proceedings

The preliminary relief judge has received disclosure of the following documents:

- writ of summons dated 16 November 2010;
- Exhibits from mr. D.H. Bialkowski;
- note for submission and Exhibits from mr. J. Heinrici.

The lawyers of parties, the aforementioned mr. Bialkowski and mr. S.M. den Hollander on behalf of the husband clarified the respective viewpoints at the hearing of 24 November 2010.

#### 2 The established facts

On 27 May 2002 parties concluded a civil marriage.

The marriage was dissolved by registration of the divorce decree of 30 September 2009 of this Court in the registers of the civil registry on 16 October 2009.

#### 3 The dispute

The wife claims - in brief - that the husband be ordered to cooperate towards the realisation of the dissolution of the religious marriage where the husband is to make arrangements with [person 3] or with [person 4] and will notify the wife as timely as possible of the date and time and location where the husband will appear and that the husband will be present there to pronounce his wish to divorce the wife there and then by dissolution of the religious marriage and to order the husband to act and refrain from acting in such a way that the dissolution of the religious marriage can be effected, at least that the Court orders such cooperation towards the dissolution of the religious marriage as justice may require, at least lends such a cooperation towards the realisation of the dissolution of the religious marriage as the preliminary relief judge in his discretion considers appropriate on punishment of a penalty payment and civil imprisonment for the duration of three days.

The husband has substantiated his defence and decided to refuse the wife's claims.

#### 4 The judgment

The wife stated that the husband refused to cooperate towards the dissolution of the marriage concluded between parties in accordance with Islamic law. Because of this refusal the husband is keeping her captive in this religious marriage, which for the wife is unacceptable. She remains to be his 'wife' so that she can never marry another man and start a family. In case the wife unexpectedly were to start a family with another man or if she were to travel to an Islamic country on her own, she would be regarded in most Islamic countries as an adulterous woman and would be exposed to an actual prospect of criminal prosecution, particularly in Pakistan. She claims that the husband cooperate towards the realisation of the dissolution of the religious marriage in accordance with religious Islamic law. By refusing to cooperate the husband commits a wrongful act against his wife and he violates the sections 8



and 12 of the European Convention on Human Rights. Now that these stipulations have a horizontal effect between citizens, a violation of this clause in casu is a violation of the standard of care c.q. a wrongful act now that the husband deliberately prevents the wife to exercise her rights and liberties under these stipulations. The wife has an urgent and personal interest in the dissolution of the religious marriage.

The court is competent to be informed of the claims of the wife now that the Supreme Court has ruled that the cooperation towards the realisation of an Islamic divorce can be ordered by a Dutch Court (10/11/89 NJ 1990, 112).

At the hearing the wife stated that a religious marriage was concluded between parties the first time in front of a Turkish Imam and two witnesses, at which occasion her brother and sister were present as well. She has a document concerning this marriage. On 4 December, at the husband's relatives' request a second religious marriage (the Nikah) was concluded in accordance with Pakistani law in front of an Imam with witnesses and many relatives. The wife is no longer in possession of documents concerning this religious marriage.

At the hearing the husband recognised that he refuses to cooperate towards the dissolution of the religious marriage. To this object he argued that there is no religious marriage and that therefore he is not obliged to cooperate towards the dissolution thereof. The divorce pronounced and registered by the Dutch Court is legally valid according to Pakistani law as well.

According to Pakistani law there is only one kind of marriage and that is the marriage (Nikah) based on The Muslim Family Laws Ordinance 1961. Marriage is considered to be a civil agreement. According to Pakistani law there is no such thing as a religious marriage. If the husband wants a divorce (Talaq) it is sufficient to notify the wife he wants a divorce and subsequently to await the 90-day time-period.

The husband stated that although a ceremony with a religious background was held between parties, but that this ceremony had no official status whatsoever and cannot be considered to be more than a social confirmation of the civil marriage. No document whatsoever concerning the existence of the religious marriage has been produced.

The statement of the wife that she would be held captive in an Islamic marriage is incorrect. For both parties it is true that after registration of the divorce they are free to enter into a marriage again. Pakistani law does not object to this either.

In addition the husband is of the opinion that the case is not suitable for judgment in interlocutory proceedings, at least he is of the opinion that the dissolution of the religious marriage, desired by the wife, should not be ruled immediately enforceable. For that matter every appeal would be illusory. The ruling of the Supreme Court (10/11/89 NJ 1990, 112) on which the wife relies can, however, not be compared to this case. The question concerned involves only a civil marriage, concluded in The Netherlands and the divorce has been concluded in accordance with Dutch law as well as Pakistani law in a legally valid way.

In conclusion the husband is of the opinion that the persons mentioned by the wife do not possess any official legal or religious authority to dissolve the religious marriage. In addition the husband objects the penalty payment and the civil imprisonment claimed, where imprisonment is a very ultimate means that should only be applied with good reason.

The preliminary relief judge considers as follows.

As for the competence to be informed about the claims of the wife the preliminary relief judge is of the opinion that she can order the cooperation towards the realisation of an Islamic divorce, with reference to the aforementioned ruling of the Supreme Court (10/11/89 NJ 1990, 112).

The wife has stated without opposition that a document is present concerning the first religious meeting between parties and that witnesses can state that this religious marriage has taken place. It has also been established that a second ceremonial meeting with a religious background took place where witnesses and relatives were present, including the husband's father. Photographs have been taken of this meeting as well.

On 27 May 2002 parties married in accordance with Dutch law. During the hearing it was not



disputed that parties did not start living together until 5 February 2005. Therefore, the marriage has not been consummated after the civil wedding ceremony. From this it can be concluded that parties found the aforementioned religious ceremony so important that they only started living together after this meeting.

The first and second religious ceremonies are considered by the wife to constitute a religious marriage on Islamic grounds and it cannot be excluded that other people from this Islamic community view this in the same way.

The husband respects the decision of the Dutch Court concerning the marriage between parties that was dissolved by divorce. The husband is of the opinion that the divorce according to Dutch law will be recognised by Pakistani law as such. This has no bearing on the Islamic traditions concerning rituals that can terminate a religious covenant between husband and wife. The husband did not state anything that there would not be (a) genuine religious marriage(s), which is why he refuses to cooperate towards such a ritual whether or not in person by the designation of two witnesses.

The preliminary relief judge is of the opinion that the husband is committing a wrongful act against the wife now that his behaviour contravenes that which, according to unwritten law in social intercourse, can be required from him. By refusing to cooperate the husband is keeping the wife captive in what she experiences to be a religious marriage.

Therefore the claims of the wife will be granted on this point.

The penalty payment is sustainable as well, in the understanding that this, in view of the husband's income, will be limited and maximised to amounts to be mentioned below.

The preliminary relief judge deems the civil imprisonment claimed to be too severe a coercive measure. The wife is inadmissible in her claim to sentence the husband to the payment of (possible) enforcement costs now that the law already provides in this respect.

In view of the relationship between parties the legal costs between them will be compensated, in such a way that each party bears their own costs.

## 5 The ruling

The preliminary relief judge

declares the wife unsustainable in her claim to payment in case of non-compliance by the husband of the rulings that the enforcement costs will be at the husband's expense.

orders that the husband will cooperate towards the realisation of the dissolution of the religious marriage where the husband is to make arrangements with [person 3] or with [person 4] and will notify the wife as timely as possible (48 hours before the arrangement at the latest) of the date and time and location where the husband will appear and that the husband will be present there so that the wife can authorise the authority and can ask two witnesses to be present there and that the husband pronounces there and then his wish to divorce the wife by dissolution of the religious marriage;

orders the husband to act and to refrain from acting in such a way that is necessary for the realisation of the dissolution of the religious marriage;

rules that the husband will forfeit to the wife at title of a penalty payment an amount of [amount 1] per day as of 22 December 2010 if the husband contravenes the rulings c.q. if the religious marriage has not been dissolved per 22 December 2010; said penalty payment carries a maximum of [amount 2];

declares this ruling immediately enforceable;

rejects that which is claimed in excess or otherwise  
compensates the costs of these proceedings between parties, in such a way that each party bears



their own costs;

This ruling was issued by mr. H.L. de Gruijl-van Benthem, preliminary relief judge in the presence of A.J.M. de Ronde, court clerk.

Pronounced in public.

247/120

