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Authority Court of Appeal Rotterdam
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Case number C/10/571604 / KG ZA 19-308
Judicial areas Civil law
Specifics Interlocutory proceedings

Indication as to contents

Judgment in default in interlocutory proceedings. The wife claims that the husband be sentenced to cooperate towards the dissolution of the marriage of parties in accordance with Islamic law as well as to surrender the wife's personal effects and the Mahr to the wife and that these rulings will be followed by injunctive relief (penalty payment and civil imprisonment). Legal costs, enforcement costs.

Relevant sites Rechtspraak.nl
Module Burgerlijke stand en landeninformatie 2019/5235

Ruling

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Ruling

COURT OF APPEAL ROTTERDAM

Team Familie [Family]

case number / docket number: C/10/571604 / KG ZA 19-308

Ruling in interlocutory proceedings of 29 May 2019

in the case of

[claimant],

residing at [place of residence claimant],

claimant,



lawyer mr. A.C. van Seventer at Rotterdam,

versus

[defendant],

living at an unlisted address,

defendant,

was not present.

Hereinafter parties will be referred to as wife and husband.

1 The proceedings

1.1. The course of the proceedings is attested by:

- the summons of the wife of 24 April 2019
- the wife's letter with annexes dated 15 May 2019

1.2. The case was processed on 16 May 2019. On that occasion the wife and her lawyer were present and were heard.

1.3. In conclusion a ruling was issued.

2 The facts

Parties concluded a marriage between each other in accordance with Islamic law on 5 May 2017.

The ruling

Granting of a trial in absentia

2.1. In the summons the formalities provided by law have been observed so that the request for a trial in absentia will be granted.

Urgent interest

2.2. The wife's claims have the purpose of sentencing the husband to cooperate towards the dissolution of the marriage of parties in accordance with Islamic law as well as to the surrender of personal effects and the Mahr to the wife and that coercive measures will be connected with this sentence, notably penalty payments and civil imprisonment. With the nature of the claims the urgent interest



of the wife has been stated.

Dissolution marriage and the surrender of goods (claims under I, II and III)

2.3. That which is claimed under I, II and III (cooperation termination marriage, surrender personal effects and surrender Mahr) does not seem unlawful or unfounded to the preliminary relief judge and will be granted.

Coercive measures cooperation divorce (claims under IV and VI)

2.4. When evaluating the coercive measures claimed (penalty payment and civil imprisonment) it should be investigated whether the husband is unwilling to cooperate towards that which is claimed sub I up to and including III. In this context the state of affairs concerning the religious dissolution of the marriage is relevant.

2.5. The wife stated that the marriage between the husband and the wife was characterised by coercion and aggression. In June 2018 the police submitted an intervention referral at *Veilig Thuis* after the wife had been abused by the husband in the street. *Veilig Thuis* advised marriage counselling and the wife decided to give the husband one more chance. However, the marital problems continued to exist.

On 14 November 2018 under guidance of the imam parties agreed that the wife would be granted the right of *talaq*, so that she can divorce in accordance with Islamic law. Parties committed the agreements to paper and signed these in the presence of the imam. Ten days later the wife was abused again by the husband. Therefore the wife exercised her right of *talaq* and an imam recited the formula for the finalization of an Islamic divorce. The husband does not recognise the religious divorce and relies on a statement by another cleric that the divorce is null and void.

In order to resolve the uncertainty caused by the situation, the wife, assisted by the women's rights organisation *Femmes for Freedom*, and later also by her lawyer, repeatedly asked and ultimately summoned the husband to cooperate towards a divorce according to Islamic law. According to the wife the husband has not responded to these requests.

Therefore, the wife remains captive within the religious marriage. Therefore, she cannot contact another man or enter into a second marriage in accordance with Islamic law, because in most Islamic countries this would expose her to criminal persecution. In case of a possible new relationship she also runs the risk of honour-related violence because this is considered to be adultery; nor can she travel alone to an Islamic country such as Afghanistan the country of origin of her relatives.

2.6. In view of these statements by the wife, which have remained unopposed, the preliminary relief judge deemed it plausible that the husband is unwilling to cooperate towards the Islamic divorce and the wife has a justified interest in the application of coercive measures.

2.7. The wife's claim are tantamount to a request that the husband will forfeit a penalty payment of € 10,000.- for each time that he, briefly stated, does not comply to a summons by an imam to be present and to cooperate towards an Islamic divorce as well as that she can apply civil imprisonment for the duration of three days for each time that the man has forfeited a penalty payment of € 30,000.- on the grounds of the aforementioned.



The wife has a considerable interest in the compliance with the conviction of the husband, which justifies a substantial penalty payment, but conversely there are the husband's interests which impose a clear maximum upon the penalty payment and the civil imprisonment.

The preliminary relief judge will, in order to prevent execution proceedings among other things, sentence the husband to pay a penalty payment to the wife of € 10,000.- if the husband will not have cooperated towards the dissolution of the Islamic marriage of parties after a summons by an imam or after an appointment made on the husband's initiative within a month after the service of this ruling. If the husband after forfeit of this penalty payment continues to fail to cooperate, the preliminary relief judge deems appropriate civil imprisonment of at most one week as ultimum remedium to persuade the husband as yet to comply with the ruling.

Coercive measures surrender goods (claims under V and VII)

2.8. The wife claims that the man will forfeit a penalty payment of € 500.- for each day that the husband fails to surrender to the wife the personal effects and Mahr claimed by her with a maximum of € 15,000.-. The court sees reason to decrease the penalty payment to € 100.- per day with a maximum of € 1,500.-.

2.9. The preliminary relief judge is of the opinion that the wife gave insufficient motivation to justify application of civil imprisonment with respect to the ruling concerning the surrender of goods.

Ruling with respect to costs

2.10. The preliminary relief judge rules that the man, as the losing party pay the litigation costs.

2.11. The costs on the part of the wife are estimated at:

- summons € 101.06
 - Court registry duties paid € 81.-
 - salary lawyer € 633.-
- In total € 815.06

2.12. The wife's claim that the husband be sentenced to pay the (bailiff) fees that the wife has to incur if the man fails to comply with the rulings, including the costs of civil imprisonment, will be rejected. Insofar this concerns so-called subsequent costs this ruling is already a title to redress, so that the wife has no interest in a separate ruling. Insofar other enforcement costs are concerned it follows from the system of the law that these costs will be at the expense of the opposing party. Such costs are, however, only recoverable on the opposing party insofar as the costs have reasonably been incurred and this cannot be determined ahead of time.

3 The ruling

The preliminary relief judge

3.1. grants the husband trial in absentia;



- 3.2. sentences the husband to grant his cooperation towards the realisation of the divorce of parties in accordance with Islamic law by, after a summons to this effect by a competent Islamic authority or after making an appointment on his own initiative, to be present at the place and time denoted by that authority or agreed in mutual consultation, and in the presence of the wife and two witnesses to be appointed by her, to pronounce before this authority his wish to divorce the wife or to give his consent to the realisation of the dissolution of the religious marriage and to act and to refrain from acting in such a way that the religious marriage can be dissolved;
- 3.3. sentences the husband to pay to the wife a penalty payment of € 10,000.- if the husband fails to have cooperated towards the dissolution of the Islamic marriage of parties within one month after the service of this ruling, in accordance with the ruling under 4.2;
- 3.4. grants permission to the wife to enforce the ruling under 4.2 through civil imprisonment for the duration of one week, in the case that the husband, after the forfeit of the penalty payment of € 10,000.- (based on the ruling under 4.3), contravenes the ruling under 4.2.
- 3.5. sentences the husband to proceed within three days after service of this ruling to surrender to the wife her personal effects consisting of her garments, shoes, bags, jewellery (including a gold bracelet and a gold necklace with her name) and a suitcase with evening gowns;
- 3.6. sentences the husband to surrender to the wife the Mahr as described in the marriage certificate within three days after the service of this ruling;
- 3.7. sentences the husband to pay to the wife a penalty payment of € 100.- per day for each day during which he fails to comply with the rulings under 4.5 or 4.6 with a maximum of € 1,500.-;
- 3.8. rules that the husband has to pay the litigation costs on the part of the wife estimated until this day to 815.- rounded;
- 3.9. states this ruling immediately enforceable;
- 3.10. rejects all that is more or otherwise claimed.

This ruling was issued by mr. H.J. Wiemand Bart and pronounced in public on 29 May 2019.¹

¹type: coll:
