

Neutral citation number: [2021] EWFC 118.

Case Number: LU20F03330

**IN THE FAMILY COURT SITTING AT LUTON**

Luton Justice Centre  
Floors 4 & 5, Arndale House  
The Mall  
Luton  
LU1 2EN

**Date: 14<sup>th</sup> November 2022**

**Before**

**HER HONOUR JUDGE YVONNE GIBSON**

**Between**

**X**

Applicant

**and**

**A**

Respondent

**Heard on 18-22 October 2021**

**Representation:**

For the Applicant: Mr Billal Malik, Counsel, instructed by Eamonn, Solicitors  
For the Respondent: Mr Mark De Lane Lea, Counsel instructed by Silvine, Solicitors

**APPROVED JUDGMENT**

This judgment was handed down on 29<sup>th</sup> November 2021.

*“This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.”*

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**Her Honour Judge Yvonne Gibson:**

1. This is the judgment in the matter of *X v A*. A transcript of the ex-tempore judgement handed down on 29 November was directed to be obtained at the end of the hearing on that day and subsequently various clarifications were proposed and agreed as between the parties. Such of those changes as were approved by the court have been incorporated into this judgment.
2. I shall refer to X, as the Applicant throughout this judgment. He is the Applicant in proceedings issued under the Family Law Act 1996 for Non-molestation and Occupation Orders. Although he has now discontinued the Non-molestation application, he seeks a declaration under s.33 as part of the Occupation Order, as to his entitlement to return to and occupy the former family home.
3. A, now represented by her litigation friend, C, was the Respondent to those applications. She, via her litigation friend, is the Applicant in the nullity petition for which X is the Respondent. I shall refer to her throughout this judgment as the Respondent.
4. The background to this judgment is set out in my judgment dated 18 March 2021 when I made a finding that A did not have capacity by reason of dementia. That was to conduct litigation. Capacity is issue specific. That decision enabled the Court to appoint her nephew, C, as her litigation friend.
5. The finding in relation to capacity means that the Respondent did not have capacity on 26 May 2020, when the consultant psychiatrist examined her, and subsequently. There was no finding as to her capacity when she married on 2 April 2019 nor when she transferred a half share in her home to the Applicant on 21 May 2019, nor was there any finding as to whether she had capacity in relation to either of those issues.
6. The issues the Court has to determine at this hearing are:
  - i. whether on the date of the parties' marriage, on 2 April 2019, the Respondent did not within the meaning of section 12(1)(c) or (d) of the Matrimonial Causes Act 1973 (a) validly consent to the marriage in consequence of "unsoundness of mind" or duress; or (b) "though capable of giving a valid consent, was suffering, (whether continuously or intermittently) at the time of the marriage from a mental disorder within the meaning of the Mental Health Act 1983 of such a kind or to such an extent as to be unfitted for marriage such that the marriage was voidable."
  - ii. whether on 21 May 2019 when the Respondent transferred a half-share in the former matrimonial home to the Applicant, she had the capacity to authorise that transfer
  - iii. whether under section 33 of the Family Law Act 1996 the Court has the power to or should make an order that the Applicant is entitled to occupy the former matrimonial home bearing in mind, inter alia, the Respondent's present lack of capacity, the latter having been determined by the Court in the preliminary issue judgment dated 18 March 2021 to which I have already referred.
  - iv. Whether the court should make an order on the Respondent's application for an Occupation Order excluding the Applicant.

7. The issue of capacity is central to all the issues. There is a presumption of capacity. If the respondent is found not to have capacity at the time of the marriage and the transfer, the Applicant accepts the Court is unlikely to make an Occupation Order.

#### The law in fact finding.

8. The burden of proof lies with the person making the allegation. It is not reversible and it is not for the other party to establish the allegation is not made out.
9. The standard of proof is the balance of probabilities. *Re B* [2008] UKHL 35:  

“If a legal rule requires facts to be proved a judge must decide whether or not it happened. There is no room for a finding it might have happened.”
10. It is not uncommon for witnesses in these cases to tell lies in the course of the investigation and the hearing. The Court must be careful to bear in mind a witness may lie for various reasons, such as shame, misplaced loyalty, panic, fear, distress, and the fact that the witness has lied about some matters does not mean he or she has lied about everything. *R v Lucas* [1981] QB 720.
11. When determining if someone is telling the truth I take into account my impression of the witness, all known circumstances, the context of the allegation, and if an account has been consistent over time. I also consider any corroboration from an external source.
12. I have considered all the evidence. It is not possible to include all the evidence from a hearing of this length. If I do not refer to a piece of evidence, it does not mean I have not considered it.

#### Parties' positions

##### The Applicant

13. The Applicant asserts there is no reliable evidence that the Respondent lacked capacity at the date of either the marriage or the transfer of title to the former matrimonial home. These dates are so close together the Applicant accepts realistically that the finding as to whether she does or does not have capacity will apply to both these two dates. As regards issue 3, the Applicant accepts if the Court finds in relation to 1 or 2 that the marriage was voidable or that the Respondent historically lacked the capacity to authorise a transfer of title in the former matrimonial home, the Court would be unlikely to make an Occupation Order. The Applicant, however, asserts that, subject to the Court's finding on issues (1) and (2) it is open to the Court to make an Occupation Order under section 33 of the 1996 Act notwithstanding the Respondent's current lack of capacity.

##### The Respondent

14. The Respondent's position is that the marriage is voidable under section 12 of the Matrimonial Causes Act 1973 as the Applicant exerted control over the Respondent, subordinating her will. Such control was facilitated by the Respondent suffering with undiagnosed dementia, and, alternatively, she lacked the capacity to marry and did

not, therefore, validly consent to the marriage. Furthermore, under section 33(7) of the Family Law Act 1996, the Respondent is likely to suffer significant harm attributable to the conduct of the Applicant if an Occupation Order excluding the Applicant is not made, and that any harm suffered by the Applicant will not be as great as that likely to be suffered by the Respondent if an order is made.

15. The Second Respondent, B, the Applicant's son, sadly died during these proceedings. He was originally a Respondent to the Non-molestation and Occupation Order application, and the Court admitted his position statement as evidence under section 2 of the Civil Evidence Act 1995. It is, of course, hearsay evidence which has not been tested in cross-examination, and the Court must consider what weight to give to it.

### **The witnesses**

#### **The Applicant**

16. His evidence was highly unreliable. He is under investigation by the Home Office and was served with a notice under section 26 of the Immigration Act 1971 for the offence of verbal deception. The Home Office disclosure is clear that he entered on a visitor visa on 2 October 2018. He wished to visit the UK for four days for tourism. He had no family or friends in the UK and would stay in a hotel. When served with the papers as an illegal immigrant on 13 March 2019, he admitted his true intention was to visit the Respondent. She claimed the Applicant surprised her when he came to the UK. He stated she knew he was coming and came to the airport to collect him.
17. In relation to his alleged conversion to Christianity he told the Court he attended church regularly in the Respondent's hometown, and then in his local area in London, but he was unable to name or describe any church he went to. He stated the jewellery, which was pawned, for which there was written evidence in the bundle, was in fact his jewellery and not the Respondent's jewellery, as C alleges. When asked by the Court to describe the symbol necklace, one of the pieces pawned, he was unable to do so.
18. In his oral evidence he claimed that he entered the United Kingdom with \$20,000 in cash and gold. There is nothing to say that within the Home Office documentation. Indeed, the Home Office note that his accounts in the Lebanon are shown as regularly overdrawn. When asked why he did not travel to the Lebanon with his new wife in June 2020, he did not say he was afraid he would be killed on account of his conversion to Christianity, which was the basis for his human rights asylum claim, but told the Court that his priest told him not to go pending determination of that claim.
19. His oral evidence about the decision to marry and the celebration was that he had a marriage party, curiously without naming the bride, before leaving Lebanon. He said it was recorded on FaceTime so her family knew, which is contrary to their evidence. The Applicant's evidence to the Home Office is that he showed the Respondent a gold ring about a year ago, but in 2019, he asked her to marry him in the Lebanon at her niece's home. He loved her for one year and then he then asked her last summer. So, it is all a very confusing picture.

20. However, in his first witness statement, dated 6 March 2020, he stated that he agreed with the First Respondent that he “agreed to come to the UK in October 2018 and perhaps we will tie the knot.”

To the Home Office in the marriage interview he says: “we stayed in the same room, same bed and same house to see if we were compatible.”

This is strongly suggestive that they had not made a decision to marry, which is reflected in the Respondent’s comments: “we haven’t decided yet 100%, we are friends now.”

21. The Home Office highlight the couple’s different versions about the marriage proposal and how the engagement was celebrated. The Home Office describe a significant discrepancy, for instance, the Applicant’s version is “Two years ago St Mary’s day, 15<sup>th</sup> August in Lebanon, we go to a restaurant, I make her dinner of course and got her a ring. We she left Lebanon and she do me a marriage party and it was recorded. When we go to restaurant I surprised her with the ring”; but the Respondent’s version is that they celebrated in Lebanon with her niece: “I didn’t want to go publicly. We went to the Rousin, a famous stone in the sea, and we had a meal.” She showed the Home Office investigator a photograph of both parties sitting at a table outside the balcony overlooking the sea and the rock in the sea.
22. Of course, if the Respondent’s memory is affected by dementia, and that is the evidence of the consultant psychiatrist her memory may well not be accurate, particularly as to dates. It would not be fair, therefore, to conclude the Applicant was telling lies because his story did not coincide with that of the Respondent, particularly past dates but it is relevant that the Applicant’s own version has varied.
23. He claims to be a gerontophile in his first statement but bisexual in his second statement. There is no evidence whatsoever he has had any sexual interest in older people prior to the Respondent. She describes some “hanky-panky.” It is not clear what is meant by this. There is evidence that the Applicant has gay relationships.
24. Throughout, therefore, his evidence was a mass of internal contradictions and inconsistencies. I give myself a Lucas warning in relation to him. It is impossible to rely on any of his evidence. He had clear motivation to lie in order to remain in the UK and to retain his half share of the Respondent’s house.

#### The Litigation Friend (C)

25. According to C, when the Respondent returned from Lebanon in September 2018, she was behaving so strangely that her family did not recognise her, becoming easily confused and forgetful. Despite this, on the Applicant’s arrival in the UK, the Respondent’s family accepted him into the family home, even though they had concerns about the disparity in age. They also allowed the Respondent to travel alone to the Lebanon, from June 2019 to January 2020.
26. It is clear some of this evidence is likely to have been embellished and written with the aid of retrospection. I give myself a Lucas warning in relation to C. It is submitted on behalf of the Applicant that the Respondent’s family only intervened once they knew the Respondent had married the Applicant and gifted half of her home to him.

27. The Respondent's elderly friend conceded in cross-examination that B knew about the Respondent's relationship on Valentine's Day 2019. However, her evidence is entirely unreliable. It is not surprising the family did not appreciate that the elderly applicant was going to marry a much younger man, and the Court can accept they had not thought him to be heterosexual.
28. It is plausible that C did not at first understand the symptoms of dementia he was seeing, such as the Respondent being influenced by a stronger personality to make a decision about cosmetic surgery, and not being able to weigh up the pros and cons of her actions.
29. C was very angry about the Applicant allegedly stealing from the person he was employed by and which had been arranged with C's help. He said this was actually a volunteering position. It was hard to reach any conclusion about this. It was clear that the Applicant had his hand in the till and threw away the till receipt, taking money and putting it in his back pocket. However, the employer was not called, and the Applicant says this was an arrangement in full sight of the CCTV camera. The Court therefore does not make a finding in relation to the issue of stealing. The Applicant now accepts that C was not endeavouring to steal the Respondent's house. I do not put weight on C's evidence because of the embellishment issues.

#### Elderly Friend of the Respondent

30. She was an elderly lady. She told the Court she had been the Respondent's best friend for 30 years. She was a carer for elderly people. As such, she had received training in dementia.
31. She asserts the Respondent's behaviour began to change in Easter 2017. She behaved in a way which was out of character, and she gives examples which do appear plausible about the Respondent losing her glasses and then thinking they were the witness's glasses, and she gives a further example about some jeans from a charity shop.
32. In her statement, she also says she was not aware of the marriage, even at the time she attended the Applicant's baptism. In her oral evidence she elaborated on her first meeting with the Applicant after Valentine's Day when there were flowers and chocolates in the house, and this caused her to worry about a romantic relationship. She gives evidence about driving to the Lebanese embassy on 3 June 2019. She says: "as soon as the Respondent got out of the car she grabbed her head with both hands and said, I don't know what this man wants from me but he wants to put my flat in the Lebanon in his father's name. The Applicant said the embassy had refused to do so."
33. The Applicant asserts the issue of the Respondent's historical dementia was transparently scripted and thus fabricated. He believes it results from the family pressurising the elderly friend to give such evidence. It is suggested, therefore, that such contrivance should make the Court sceptical about the evidence of C.
34. The Court found the elderly friend's evidence to be extremely muddled. She appeared overwhelmed by the occasion. Indeed, the Court was concerned as to her

capacity. The Court did not find her to be a reliable witness, and if she had high levels of concern at the time rather than retrospectively, she would surely have asked the family to speak to the Respondent and to take her for a medical opinion.

35. The Court does not put weight on her evidence and disregards it in its entirety. She was very distressed by the death of B and determined to help C and her friend the Respondent. That does not amount to a finding that the evidence was scripted by C.
36. The Court has received independent evidence from a Consultant Psychiatrist, from the Registrar of births, deaths and marriages, and from the solicitor who acted for the Respondent in the transfer of the half share of her home to the Applicant.

#### The Consultant Psychiatrist.

37. The consultant psychiatrist is an approved clinician under the Mental Health Act 1983. He is a consultant psychiatrist for the elderly based at the Memory Assessment Service in a local hospital.
38. As described in my judgment dated 18 March 2021, he assessed the Respondent in the garden of her home on 20 May 2020. His assessment was based on background given by the family, and, significantly, on the score in the standardised ACE-111, that is, the Addenbrooke's cognitive assessment. His diagnosis was confirmed by a CT scan. The diagnosis was mixed type dementia, Alzheimer's and vascular. Despite the assertions of the Applicant, the basis of this was not just the history given by the family but also the scan showed clear evidence of dementia and changes in the brain, and the telling replies of the Respondent to the standardised Addenbrooke's questionnaire.
39. In his letter dated 27 March 2021, the psychiatrist opined: "it is very unlikely the Respondent would have had a capacity about a year or two years ago."
40. The date when the Court needs to ascertain whether the Respondent had capacity is only about a year earlier than the assessment in the case of the transfer and 14 months for the marriage.
41. In his oral evidence at this hearing, the psychiatrist clarified patients deteriorated at a rate of two to four points per year on the Addenbrooke's cognitive assessment scale. The Respondent had scored a very low score, 60 out of 100, the cut-off point being 82. He particularly identified her short-term memory problems. In counsel for the Respondent's submissions, this is defined as an inability to recollect statements after two to three minutes. This was not the Court's impression of the psychiatrist's evidence, which was that being unable to recollect a statement, for example, an address, or three random words given to the patient, two to three minutes later was an example and not a definition. For instance, it is striking that on the Addenbrooke's assessment in relation to being asked what day it was, the Respondent was only able to remember the season of the year and neither the day, the date nor the year. This too is short term memory issue. Clearly, she did not know what day it was, and that was not information given to her two to three minutes beforehand.

42. The psychiatrist gave clear evidence as to the likelihood of dementia being present at the time of the marriage. His opinion, on the balance of probabilities, was that she would not have had capacity to give a valid consent to the marriage. He gave clear evidence as to the patient needing to score 82 and scoring only 60 on the Addenbrooke's score. He gave clear evidence as to the mean of 4 points per year, and he gave clear evidence that she would not have started from such a low base as to score only 60 two years (in fact only one year) later unless there had been a vascular incident of which there would have been clear evidence on the scan.
43. A lay person thinks of dementia as confusion, memory loss and repetition. The psychiatrist on the other hand, was clear that he was approached about dementia after it had gone on for some considerable time unsuspected by the family. Families do not usually realise it is dementia quickly enough, and he was able to give the Court a far greater insight into the more subtle signs of dementia, which are changes in personality, acting out of character, as well as short term memory loss and repetition of phrases. It is characterised by good and bad days, it affects comprehension, reasoning and decision making. As the patient cannot make judgments and plans, they rely upon other people to make decisions for them. They are, therefore, open to suggestibility by their carers.
44. There are various types of memory : long term, short term and procedural. In dementia cases long term memory is the last to go, and much of long-term memory can be procedural. The episodic memory may be long term or short term, and that explains why in June 2020 the Respondent was able to travel to the Lebanon, a journey she had undertaken many times before, and I accept the psychiatrist's evidence in relation to that.
45. The ABE interview was a very significant piece of evidence. This took place on 16 March 2020. In the ABE interview, the Respondent was able to recall details of how her relationship with the Applicant commenced in the Lebanon and how they married secretly in Luton.
46. The psychiatrist spent time viewing the ABE interview. He was struck by the Respondent's long and detailed references to her childhood, and her repetition of certain phrases was a strong feature. The Court notes that she referred to the Applicant as a "top nurse" on many occasions.
47. She did not refer to the Applicant as her husband, but only said she was trying to help a fellow countryman, and she kept on repeating this. The psychiatrist believed she was unfit for marriage, and he thought it was obvious she did not understand the consequences of marriage at all. He was also clear she had not understood the transfer of property.
48. It was noticeable there were patchy defects in her memory on the ABE interview, saying that she worked in Saudi Arabia rather than South America. The psychiatrist put down the fluency that she exhibited in the ABE interview to her having a good day, and he was at pains to point out that her short- term memory had not been tested on the ABE evidence. I accept his analysis of that.

The Registrar of Births, Deaths and Marriages .



49. The Registrar confirmed the Respondent was able to recall both her own and the Applicant's name, date of birth, occupation and address, how long they had been together, and the circumstances in which they had met. She met them on 18 November 2018, on 21 January 2019 and on 2 April 2019 at the wedding. However, I note that the Respondent could not get the information right about the Applicant's birth and age at the interview with the Home Office on 25 March 2019. This is again suggestive of good and bad days.
50. In her written statement, the Registrar said she had no concerns about the legitimacy of the marriage as both parties seemed very happy on both occasions. She was suspicious about the very large age gap. She was aware it was a secret marriage. She referred the matter to the Home Office because the Home Office had to grant them permission to marry. She saw them three times and they appeared happy. She believed they were of sound mind and she believed the Respondent had capacity to enter into marriage.
51. In her oral evidence she accepted the account B gives of his visit with the Respondent and the elderly friend on 3 March 2020. She said she did have concerns about whether the marriage was a sham and thought the Applicant was actually the Respondent's carer. She said she had received no specific training about dementia and would not have understood the more subtle signs of dementia as described by the psychiatrist. She had interviewed them separately.

#### The Conveyancing solicitor.

52. The Conveyancing Solicitor acted for the Respondent in the transfer of property. He first met her on 13 May 2019 and very quickly completed the transfer on 21 May 2019. He agreed the Applicant had visited his offices with the Respondent and came with her again, but he had seen her separately. According to his written evidence, he told her that she did not need to transfer ownership of the property to the Applicant and he could prepare a will to protect his interests. She attended his offices on 21 May 2019 to sign the transfer.
53. In his oral evidence, he indicated he had explored the Applicant's assertion that, as reciprocation for the proposed transfer of half the marital home to him, he had transferred property and money to the Respondent in the Lebanon and she had merely nodded. There was no further enquiry. That is not satisfactory when dealing with an elderly client in these circumstances. The solicitor also accepted he communicated with the Respondent via the Applicant's email account and did not see this was unsatisfactory. It is clear that the Applicant chose the solicitors, and it is clear that the Respondent was communicating via the Applicant's email address, and that he brought her to the solicitor's offices.

#### Analysis

54. The first two issues are:
  - i. whether on the date of the Applicant and Respondent's marriage, on 2 April 2019, the Respondent did not, within the meaning of section 12.1(c) and (d) of the Matrimonial Causes Act 1973 validly consent to the marriage in

- consequence of “unsoundness of mind” or duress, or though capable of giving a valid consent was suffering (whether continuously or intermittently) from a mental disorder, within the meaning of the Mental Health Act 1983, of such a kind or to such an extent as to be unfitted for marriage such that the marriage was voidable, and
- ii.** whether on 21 May 2019 when the Respondent transferred a half-share in the matrimonial home to the Applicant, she had capacity to authorise that transfer.

Nullity: Matrimonial Causes Act 1973

S.12 Grounds on which a marriage is voidable:

*“A marriage celebrated after 31 July 2017... shall be voidable on the following grounds only, that is to say;*

*(c) either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise.*

- 55.** Section 12.1(c), duress: I make a finding there is a clear pattern of controlling, coercive behaviour by the Applicant to the Respondent for the following reasons:
- i.** the timing of the wedding being so close to the property transfer is suggestive that this was his purpose in marrying the Respondent.
  - ii.** he claims to be a gerontophile in his first statement but bisexual in his second statement. There is no evidence of relationships with older women but evidence of gay relationships, again suggestive of an ulterior motive.
  - iii.** his relationship with the respondent should have been that of a nurse and patient but he misused the power that relationship gave him to enter into ‘a romantic relationship’ with the Respondent.
  - iv.** there is evidence he groomed her, including by taking her mother’s name. It is clear from the Respondent’s police interview how haunted she was by the early death of her mother and how important her name was to the Respondent.
  - v.** he caused her to take out a bank loan with Santander on 31 January 2019 for £2,000. When the cashier asked why she was getting the loan out, she actually pointed to the Applicant standing outside the bank;
  - vi.** B records the police coming to the house having been alerted by Santander, and the Court accepts his evidence in relation to this. Santander wrote off the loan. B also relates £1,500 was stored under his mother’s bed and disappeared, and the Court notes this was his written evidence and accepts this.
  - vii.** he gained access to her Nationwide bank account;

- viii. she took out another loan for £1,600 in February 2019 having never taken out loans before.
- ix. there is evidence from text messages between E (the wife of C) about the Applicant throwing out the Respondent's books without asking her. It was clear she was a book collector and he refused to store them. His explanation appears to be revenge as he says: "she's enjoying talking on my back (*sic*) and I enjoyed a different way."

56. The Respondent is clearly a proud woman; she was proud of having a mortgage free house and is now in debt to thousands of pounds. That he persuaded her to transfer one half of her house so quickly after the marriage is itself deeply suspicious. He selected the solicitor, he came with her to the appointments, he used his email to reply to the solicitor allegedly from her.

57. There is a recording of a conversation between the Respondent and the Applicant on 20 February 2020 in which the Applicant accuses C of trying to take the house. The Applicant is insistent the Respondent should not talk to her son or to C, and the Respondent says: "I will no longer receive anyone from now on or receive anyone."

The Applicant is quite clearly trying to set her against her son and uncle. The Applicant is accusing C of having a gambling habit, no evidence of which has ever been provided.

58. It is clear the Applicant put the Respondent under pressure to keep matters a secret. He clearly tells her to keep the marriage a secret. In his evidence the Applicant said the marriage was kept secret because the Respondent feared her family's disapproval. However, it was to his advantage to keep the marriage a secret while he arranged the transfer of the property. Obviously, the family would find out about the marriage, so it is not obvious what benefit there would be to the Respondent.

59. Controlling and coercive behaviour is defined as domestic abuse by section 1 of the Domestic Abuse Act 2021.

60. Counsel for the respondent submits: duress is not limited to threats and overt coercion. In respect of nullity by duress, the critical question is whether the threat or pressure, or whatever it is, is such as to destroy the reality of the consent and to overbear the will of the individual: Rayden and Jackson, issue 21, September 2021 at B242:

"The essence of duress in nullity proceedings is that there must be present some factor which would in law be regarded as coercion of the will so as to vitiate consent."

as per Lord Scarman in the contract case of *Pao On & Ors v Lau Yiu Long & Ors* [1980] AC 614, which is cited in *Hirani* below.

61. As per Ormrod LJ, with whom Watkins LJ and French LJ agreed, in *Hirani v Hirani* [1982] EWCA Civ 1:

"The crucial question in these cases, particularly where a marriage is involved, is whether the threats, pressure, or whatever it is, is such as to destroy the reality of consent and overbears the will of the individual."

62. In *NS v MI* [2006] EWHC 1646, Munby J applying *Hirani* said:

“There are, of course, many ways in which duress or coercion can be brought to bear.”

63. The test applied by the Court is subjective. The Respondent is elderly with a current diagnosis of dementia, and the test should be applied on that basis. Controlling behaviour alone is, therefore, in law sufficient to find subordination of the will of a party to a marriage so as to invalidate or vitiate consent. That would only be more so when the person controlled is suffering with dementia, and, in this case, the control exerted over the Respondent was insidious, pervasive and powerful (see Sloss LJ in *Re T (Adult: Refusal of Treatment)* [1993] Fam 95 at 120 regarding the nature of the pressure that can be exerted within the family relationships.)

64. Counsel for the Respondent further submits that, on the facts of this matter, this is a case of elder abuse and predatory marriage, facilitated and exacerbated by reason of the Respondent’s vulnerability and dementia. The reality of her consent is vitiated by the overbearing of her will and the ongoing control the Applicant exerted over her.

65. I accept those submissions.

Unsoundness of mind

66. It is submitted by counsel for the Respondent that, alternatively, the Respondent lacked capacity to marry and therefore did not validly consent to the marriage by reason of unsoundness of mind.

67. The test for capacity to marry remains as set out as *In the Estate of Park, deceased, Park v Park* [1954] page 89, and approved in *Sheffield City Council v E & Another* [2004] EWHC 2808 Fam. As per those authorities: the contract of marriage is in essence a simple one which does not require a high degree of intelligence to comprehend.

68. The contract of marriage can be readily understood by anyone of normal intelligence, and there are two aspects of the enquiry as to whether someone has capacity to marry: one, does he or she understand the nature of the marriage contract, two, does he or she understand the duties and responsibilities that normally attach to marriage.

69. According to the Sheffield City Council case, the duties and responsibilities that normally attach to marriage can be summarised as follows:

“Marriage, whether civil or religious, is a contract formally entered into. It confers on the parties the status of husband and wife, the essence of ... contract being an agreement between a man and a woman to live together, and ... love one another as husband and wife, to the exclusion of all others. It creates a relationship of mutual and reciprocal obligations, typically involving the sharing of a common home and a common domestic life and the right to enjoy each other’s society, comfort and assistance.” [at para 132]

70. It is submitted by the Respondent's counsel that:  
"The Respondent demonstrates a significantly limited understanding of the formal nature of the marriage contract. There is no impression from the evidence that the Respondent understands now or understood at the time that she had entered into a binding agreement between her and the Applicant to live together and to love one another as husband and wife to the exclusion of all others. Neither is there any impression of the Respondent understanding the marriage as a relationship of mutual and reciprocal obligations."
71. In the context of what she is reported as saying to the police, the Consultant Psychiatrist, and her family, the Respondent demonstrates little or no real understanding that marriage confers a status on the parties to it. Although she clearly understands she has undergone a marriage ceremony and is married to the Applicant, she does not refer to him as "her husband", does not demonstrate any understanding that he has that status, and neither does she demonstrate any understanding of herself as having the status of his wife.
71. On the contrary, she described the applicant to the police interviewer as a lodger who does not pay his rent. In the police interview she refers to the Applicant as "the gentleman, by her mother's name" and that he "is never my husband". The Respondent's apparent lack of understanding regarding her marriage to the applicant can be contrasted with her understanding of her previous marriage, where she readily refers to her former husband as: "only husband."
72. In the police interview, when asked what reason the Applicant gave her for wanting to get married, she said: "He wanted to come to England, I think." She also says: "It was really just helping him establish himself and giving him the chance."
73. When asked about the secrecy of the marriage, she tellingly says: "It's unusual for me to do something like this and I don't really know why I've done it."

It is submitted on the Respondent's behalf this last statement is made in respect of the marriage itself and not merely the secrecy of it. Indeed, across the evidence the impression is again of the Respondent being engaged in helping the Applicant establish himself in the UK, and which is not, of course, at all the same thing as wanting her relationship with the applicant to have the status of husband and wife.

74. The Court notes the Respondent believed that the Applicant loved her and was happy and excited about it. The Court must ask itself why that means the marriage should be annulled as it was not a valid consent or is any way different to other marriages where an older woman has, in effect, been conned by a young man into marriage. To be misled by the bridegroom's motivation is not necessarily to lack capacity. The Registrar's evidence is that she was happy and knew she was going through a marriage ceremony.
75. However, it is relevant that the Applicant did not understand the implications of the ceremony, such as the financial effect following divorce. In her evidence to the police, it is clear she understood she was going for a marriage ceremony but did not understand the change in status, both to herself and the Applicant as a result of such a marriage. She never referred to him as her husband and appeared to think she is just helping him to establish himself in the UK.

76. The psychiatrist is clear the Respondent would have been suffering from undiagnosed dementia, and I accept his evidence. His evidence is the dementia would have had an effect upon the Respondent's ability to weigh the decision she was making. He reports:

“She could not weigh the pros and cons of the issues discussed with her in decision making, although she was able to explain her final decision to me ... she was just of the opinion she was helping out and said she'd always done that since she was a child and doesn't see anything wrong with continuing to help others.”

77. It is clear to the Court that her decision was heavily weighted towards agreeing to the marriage because of the Applicant's position of power in relation to her. He was misusing a professional relationship, he was insisting upon secrecy so that she obtained no other opinions, and that formed part of the duress. That, coupled with the inability to weigh decisions caused by the dementia, amounts to an unsoundness of mind that led to the marriage. When asked about the secrecy of marriage she says: “It's so unusual for me to do something like this, I don't know why I've done it.”

78. She did not understand the financial implications. The test for a capacity to marriage is not to be set too high but includes, according to Mostyn J: “A knowledge... divorce may bring about a financial claim.” *Mundell v (Name 1)* [2019] EWCOP 50 at 31.

79. I do not accept the Applicant's submissions that the Respondent's ability to recall matters at ABE in relation to the history means that she was not affected by her dementia. She did not recall similar matters in relation to the Home Office interview. I accept the more wide -ranging effects of dementia and the overbearing of the Respondent's capacity to make decisions, as set out in the evidence of the psychiatrist.

80. I find, therefore, that the Respondent did not validly consent as a consequence of duress and unsoundness of mind. The presumption of capacity is displaced and the marriage is voidable. I would point out as an aside that, if the Court was wrong in relation to this, there would in any event be a conduct issue relating to financial remedy proceedings of any divorce.

81. It follows that the respondent did not have capacity to consent to the transfer of a half share in the matrimonial home on 21 May 2019 as the date is so proximate to the date of the marriage.

#### Occupation Order

82. The Applicant accepts that if the Court finds, in relation to issues 1 and or 2, that the marriage was voidable or that the Respondent historically lacked the capacity to authorise a transfer of title in the former matrimonial home, the Court would be unlikely to make an Occupation Order. Given my findings in respect of both these issues, the Applicant's application for an Occupation order is dismissed.

83. With respect to the Respondent's application for an Occupation order against the Applicant, the Court is first required to consider the mandatory provisions under section 33(7) of the Family Law Act 1996 namely:

*“If it appears to the Court that the Applicant or any relevant child is likely to suffer significant harm attributable to the conduct of the Respondent if an order under this section containing one or more of the provisions [under] subsection 3 is not made, the Court shall consider the order unless it appears to it that a) the Respondent or any relevant child is likely to suffer significant harm if the order is [not] made, and b) the harm likely to be suffered by the Respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the Respondent which is likely to be suffered by the Applicant or child if the order is not made.”*

84. In his evidence, the psychiatrist described the negative effect on the Respondent of any return by the Applicant to the former marital home as being “quite dramatic” and “a disaster”. In his opinion, the respondent's mental health state could deteriorate quite quickly. The Court has already found controlling behaviour towards the Respondent which has caused her emotional and financial harm, and the Applicant should not benefit from the transfer to him of a half share in property when the Respondent was suffering from dementia at the time the transfer was made .
85. The Applicant has now not lived at the property for about 18 months since March 2020. He has settled in alternative accommodation. He is working as a nurse and so can house himself. It is clear that the Respondent will suffer significant harm attributable to the Applicant's conduct if he returns to the property and that such harm will be greater than any harm to the Applicant if an order is made preventing him from returning to and occupying the home.
86. The Court makes an Occupation Order against the Applicant pursuant to section 33(7) to last until the conclusion of financial remedy or any other proceedings as may be issued to determine the legal and/or beneficial ownership of the property.

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**This Transcript has been approved by the Judge.**

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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