

MA v JA and the Attorney General [2012]

[2012] EWHC 2219 (Fam)

27/07/2012

Barristers

Teertha Gupta KC

Court

High Court (Family Division)

Practice Areas

Public Children Law

Summary

Application for a declaration under section 55(a) of the Family Law Act 1986 that a marriage which took place in a mosque was a valid marriage at its inception. Application granted.

Facts

The petitioner and respondent underwent a ceremony of marriage in a mosque in 2002. The ceremony was conducted by an Imam. The petitioner and respondent intended that the ceremony would create a valid marriage under English law. The Imam believed he was 'only' performing the religious ceremony. It was agreed that the ceremony did not comply with the requirements of the Marriage Act 1949. The petitioner and respondent sought a declaration that the marriage was a valid marriage at its inception. The Attorney General intervened in the case and opposed the declaration citing public policy reasons which required the rules governing the formulation of marriage should be strictly observed.

Held

Moylan J summarised the issues as: whether a ceremony conducted in England and Wales which does not comply with the requirements of the Marriage Act 1989 either:

(a) results in a marriage which is entitled to legal recognition as a valid marriage or results in a marriage which is a void marriage;

(b) has no effect under English law.

Moylan J surveyed fully the statutory history and relevant case law. He concluded that:

(1) The presumption of marriage did not apply in this case as the evidence clearly established that the requirements of the Marriage Act 1949 were not fulfilled and the presumption could not be relied upon to establish that they were.

(2) Notwithstanding the above the marriage ceremony was in its character 'of the kind' contemplated by

the Marriage Act 1949. It was conducted in an authorised building in the presence of an authorised person. A marriage was therefore created.

(3) The marriage was not void as the parties did not knowingly and wilfully breach the requirements of the Marriage Act 1949.

Moylan J therefore granted the declaration that the marriage was valid in English law.

Permission

Family Law Week 