

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Cite as: J.M.D. v. D.F.D., 1992 NSCA 22

Clarke, C.J.N.S.; Hart and Hallett, JJ.A.

BETWEEN:

J. M. D.)	Paul B. Scovil
		for the Appellant
	Appellant)
)
- and -		The Respondent
		did not appear
)
)
D. F. D.)	
)
	Respondent)
)
		Appeal Heard:
		December 1, 1992
)
)
		Judgment Delivered:
		December 1, 1992
)
)

EDITORIAL NOTICE

Identifying information has been removed from this electronic version of the judgment.

THE COURT: Appeal allowed and judgment of divorce granted, per oral reasons for judgment of Clarke, C.J.N.S.; Hart and Hallett, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.:

The issue in this appeal is whether a sworn affidavit of the husband acknowledging his uncondoned adultery with a third person, which confirmed the allegation of the wife in her petition, is sufficient to grant a divorce judgment.

The parties were married in Yarmouth on August [...], 1990. They separated on July 1, 1991. They divided their assets. No children were born. Neither sought maintenance from the other.

The wife's petition for divorce was issued January 22, 1992. It was served on the husband. He did not file an answer nor contest the petition. As noted above, the petition verified by affidavit alleged the adultery of the husband with another person. The husband acknowledged this by his sworn affidavit of April 7, 1992 in which he deposed that between July 1, 1991 and April 6, 1992 he committed adultery with an unnamed third party, that it was not condoned by his wife and that he and his wife were not residing as spouses.

The trial judge refused to grant the divorce for the reason that the adultery had not been proved. The wife, here the appellant, appeals from that decision alleging the trial judge erred. The husband, here the respondent, has not responded to the notice of appeal nor has he appeared before the court in person or by counsel.

The **Divorce Act**, R.S. 1985, Chap. D-3.4, s. 8 provides, in part, as follows:

8. (1) A court of competent jurisdiction may, on application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been a breakdown of their marriage.

(2) Breakdown of a marriage is established only if

...

(b) the spouse against whom the divorce proceeding is brought has, since celebration of the marriage,

- (i) committed adultery, . . .

In this uncontested proceeding where there was evidence before the court proving the uncondoned adultery of the respondent, it is our opinion that the requirements of the **Divorce Act** and **Civil Procedure Rule 57.19** were met. Therefore, no additional formalities were required.

Accordingly, the appeal is allowed and it is ordered that a divorce judgment be granted, together with the other relief sought by the appellant in her petition.

We direct counsel to provide the Court with draft orders to give effect to this decision.

C.J.N.S.

Concurred in:

Hart, J.A.

Hallett, J.A.