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Ecclesiastical Judgment

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Osnabrück matrimonial case, Error c. 1099 Codex/1983

Diocese of Osnabrück, Ecclesiastical Court

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ECCLESIASTICAL COURT
OF THE DIOCESES OF HAMBURG AND OSNABRÜCK
Marriage Case (A.A./N.N.);

JUDGMENT

" IN NOMINE DOMINI "

At the 2021 court session, which took place in the offices of the Ecclesiastical Court of Osnabrück, Große Domsfreiheit 10 a, the legally appointed judges handed down the following judgement in the marriage annulment proceedings requested by A.A. at first instance:

"It is certain that the marriage concluded in 1996 in the church in L between A.A., a Roman Catholic that left the church, and N.N., a Roman Catholic, is null due to an error regarding the indissolubility of the marriage on the part of the man in accordance with canon 1099."

Before a church marriage, it must be clarified that the plaintiff's position on the indissolubility of the marriage does not stand in the way of the intended marriage (see. can. 1066).

The costs of the proceedings amount to € 200.00 and have been paid by the plaintiff.

A. The facts

1. The plaintiff is A.A., who was born in H. in 1974 and is a self-employed consultant in the field of logistics. He was originally baptised a Roman Catholic and left the Catholic Church in December 1996. From 2006 to 2019, the plaintiff was married to the Protestant () (ex-wife) in a civil marriage (33-35). He is now in his third civil marriage to a Catholic. A.A. is resident at: R.

2. The Respondent is N.N., born (). She was born in 1967 in M./Poland, is a medical assistant by profession and a Roman Catholic. She is married in a second civil marriage and lives at: L.

3. Having known each other since summer 1993, A.A. and N.N. married in 1996 before the civil registrar of the L. registry office (8-9) and in 1996 in the Catholic parish church in L. (10-13). The Local Court of H. divorced the marriage (A.A.)/(N.N.) under civil law in 2004 (24-27).

The marriage produced two children: Child 1, born in 1997, and Child 2, born in 1999. Both children were baptised Roman Catholics (19-20).

4. A.A. and N.N. got to know each other at work. A.A. was employed as a trainee (industrial clerk) in the same company as N.N.. At the time, she was engaged to the son of the company owner and was preparing to move - together with her fiancé - to East Germany, where the company had a branch. A closer relationship developed between the parties, which ultimately led to the dissolution of the Respondents engagement to the junior boss. This led to disagreements in the Respondents family, where she lived; A.A., who until then had lived with his mother and stepfather, and N.N. decided to take a flat together in L. the relationship between the parties proceeded without any major complications. A.A. was also able to complete his training with the employer. However, he turned down the opportunity to continue working there and moved to another company in the packaging industry. Starting a family was a joint

intention of both parties. After around two years, A.A. proposed to his partner, who accepted and this ultimately led to the two marriages.

A few weeks after the marriage, A.A. declared his withdrawal from the Catholic Church and later induced his wife to do the same. In June 1998, both parties concluded a notarised agreement on the separation of property (57-60).

In 2002, A.A. met his former girlfriend of many years (). This was the reason for the plaintiff to separate from N.N., especially as the marital relationship between the parties had become difficult.

5. A.A. experienced a childhood and youth characterised by new relationships and break-ups: his parents separated when he was one year old. Living with his mother, he experienced her two marriages and thus two stepfathers. When he became acquainted with the Respondent, his mother had just separated from her third husband. The plaintiff's natural father also remarried after divorce; this marriage was also divorced. In the meantime, the plaintiff's parents have remarried in a civil ceremony. The various marriages of his mother have led to several changes of location and relocations, to ever new reference persons in the schools and beyond. The relationships with the two stepfathers have been difficult for A.A..

6. The plaintiff concentrated very strongly on his professional advancement, while the Respondent took over the household and the upbringing and care of their two children. In the course of the marriage, the parties developed fewer and fewer common interests and had fewer joint activities.

The chance encounter with his first childhood sweetheart () prompted the plaintiff to end the marital relationship in the shortest possible time and to move out. There was no willingness on his part to continue the marriage with the Respondent.

B. About the process

7. On 31 July 2019, an information and counselling meeting took place between A.A. and a judge () at the local ecclesiastical court (1-6). Following a recommendation made in August 2019 to initiate proceedings and a corresponding enquiry in February 2020, a petition dated 07/07/2020 was received by the Court on 14/07/2020 (42-43). This was deemed to be

sufficiently substantiated on 15 July 2020 and the court's jurisdiction was established in accordance with can. 1672 n. 2 (48). The parties were informed by letter (49-53). The appeal of the Court of Justice and the determination of the procedural question took place on 11 August 2020 (61):

„Is it established that the marriage concluded in 1996 in the church of L. between A.A., Roman Catholic, who has since left the church, and N.N., Roman Catholic, is null and void on the grounds of error with regard to the indissolubility of the marriage on the part of the husband pursuant to canon 1099?“

The decree was forwarded to the parties (62-68). On 11.09.2020, the judge () was appointed as instructor in the case (69).

8. The following sworn statements were made during the hearing of evidence
 - of the plaintiff A.A. (76-88),
 - of the witness (1), mother of the plaintiff (100-107),
 - of the witness (2), cousin of the plaintiff (109-115) and
 - of the witness (3), a friend of the plaintiff (117-123).

 - The Respondent N.N. was not prepared to make herself available for a personal statement, but did provide the instructor with some information in connection with the telephone conversation in which she made this statement (93-94).
9. On 11 February 2021 - following the conclusion of the taking of evidence - the proclamation of the trial/disclosure of the files was decreed in accordance with can. 1598 § 1 was decreed (125). The plaintiff waived access to the files (by email) on 15 February 2021 (129). The Respondent did not respond to the offer. On 02.03.2021, the file was closed in accordance with can. 1599 § 1 (130). On 3 March 2021, the defender of the bond for the bond submitted her comments (132-137), which were forwarded to the parties on 4 March 2021 (138-141). As none of the parties responded within the time limit set, the file was forwarded to the members of the Court to prepare the personal judgements (142).

C. The law

10. A valid marriage comes into being exclusively through the unanimous declaration of the will of two spouses who are capable of entering into marriage in accordance with Church law and Catholic doctrine. This agreement of will cannot be replaced by any human power (see. canons 1055 § 1 and 1057 § 1).

11. However, such a marital consensus may be defective if at least one of the spouses is mistaken, i.e. has an objectively false idea of the marriage or one of its essential characteristics, and if this error has a decisive influence on this will. This error may relate to the indissolubility, unity and sacramentality of the marriage.

- An error about the indissolubility of marriage means that one of the spouses experiences the marriage predominantly or even exclusively as divorceable and experiences remarriage after divorce as commonplace. This view that the marriage is not for life and not without the possibility of divorce is the basis of the decision to marry. In reality, the mistaken person assumes - almost as a matter of course - that a marriage is exclusively divorceable.
- The marriage motive is of secondary importance here.

12. A distinction must be made between this error, which determines the will to marry, and the error that has no consequences for the will and therefore the marriage. This is the case, for example, with someone who believes that the marriage can be dissolved due to an error, but wants to conclude their own marriage in the way the Church wants it to be concluded. This is a simple error that has no effect on the validity of the marriage.

13. A will-determining error is proven by

- the statements of the person who was subject to this error,
- the confirmation of the other partner and
- above all, of course, the statements of persons who, with their statements, substantiate the fact of the will-determining error for the time before, during and after the marriage.

14. According to can. 1060, a marriage enjoys the so-called "favour iuris" (= legal favour), so that a declaration of nullity is only possible if the members of the court can achieve a "moral certainty" that overcomes this presumption of law. Moral certainty is an intermediate measure between absolute certainty beyond doubt and probability.

D. The facts

15. The plaintiff's credibility is confirmed by the examining magistrate (89), which is also confirmed by the witness (1) (the plaintiff's mother), the witness (2) (the plaintiff's cousin) and also the witness (3) (the plaintiff's friend) (see. 106,23; 114,23; 122,23). The instructor of the Ecclesiastical Court of Hildesheim, who have heard the witnesses, confirm their credibility without reservation (108; 116; 124). The Respondent is also granted credibility by the witnesses (see *ibid.*), although in fact the Respondent only made a brief statement by telephone. There are no comments on the credibility of the persons involved in the proceedings in the defender of the bonds statements.

16. The unstable circumstances and relationships during the plaintiff's childhood and youth mentioned in the statement of claim (see 43) are substantiated by A.A. in his interrogation; he specifically states the situation at the time when the parties' relationship began: "My situation wasn't easy back then. You have to realise that I come from a broken family. My mother separated from her third husband at the time. She is now married for the fourth time and remarried her first husband, my biological father. ... So between the age of one and 18, I had to experience three of my mother's separations and I moved around a lot, attending several nurseries and schools. All in all, my life lacked consistency back then." (77-78,2) In his information and counselling interview, A.A. had also pointed out that his biological father was now married for the third time, i.e. he had been divorced twice (see 2 in connection with 87,26).

- The Respondent confirms these fundamental experiences that the plaintiff has had in his family or families (see 93).

- In this context, the court would have liked to have heard more concrete and exemplary statements from witness (1), the mother. However, she at least admits to the first divorce and others in her environment or that of the plaintiff (see 104,15). The testimony of witness (2), the plaintiff's cousin, also leaves something to be desired in terms of clarity at this point. However, they support what A.A. testified (see 112,15; witness (3) (acquaintance of the plaintiff) 119-120,15).
- Even though A.A. received the sacraments of the Eucharist and Confirmation as a child/young person, it can be assumed that he "did not practice faith and church". The motivation for receiving the sacraments of initiation and occasionally attending church services - "at Christmas" - was more tradition and less conviction of faith: "I didn't receive a particularly religious upbringing from my parents." (82,12) The testimony of the plaintiff's mother confirms the lack of religious commitment or practice in the plaintiff's family: "I don't know whether A.A. was Christian at the time. He had communion and confirmation. ... The baptism came from his grandparents. He took part in communion and confirmation because we or I thought that was part of it. I thought it was a duty for him to do it, to have it later on." (103,12) This impression was also confirmed by the Respondent and witness (2) (the plaintiff's cousin) (see 93; 112,12).
- In this context, it should also be mentioned that the Catholic marriage of the parties was at the request of the respondent (see 93). "N.N. and I got married in the Catholic Church mainly because it was N.N.'s wish. N.'s wish. N.N. comes from a very Catholic family. If N.N. hadn't wanted to get married in church, that would have been perfectly fine with me. I didn't need to take this step. On the other hand, nothing spoke against it for me either. My biological parents were also married in the Catholic Church. It's just a nice celebration without any particular consequences. So for me, the church marriage was above all an occasion for another celebration, without me having considered the significance of this step in terms of content." (82,11; see also witness (2) (cousin of the plaintiff) 111,8).
- There is evidence that A.A. left the Catholic Church at the beginning of December 1996, i.e. around 10 - 11 weeks after the church marriage (18). However, the reasons for this step differ: the statement of claim mentions a lack of agreement with

the doctrine of faith of the Catholic Church (43), while according to his statement, financial reasons, i.e. saving church tax, are said to have been the reason for this step (see 84.16). Both reasons given by the plaintiff for leaving the church are not to be regarded as mutually exclusive, but rather as an expression of his attitude towards the Catholic Church. This is because he writes elsewhere about a time after the separation from N.N.: "At that time, I was also concerned with the Catholic Church. I came to a very critical judgement. I found the historical Jesus much cooler than the glorified Jesus of the Catholic Church." (83,12)

- In this context, it should also be mentioned that he also caused the respondent to leave the church (see *ibid.*). In particular, the detailed statements made during the informational interview (cf. 3-4) leave no doubt that A.A. is anti-Catholic or anti-church. He expressly declares that he did not want his four children to be baptised; in the second civil marriage, he apparently enforced this (see *ibid.*; 85,18).

17. A.A. explicitly states in his statement: "It was and is part of my self-image that every person has the chance of a new beginning. In this respect, I would never have thought that a marriage, once entered into, could bind someone for life and beyond. The idea of finding out in heaven that you are still married to your first wife seems absurd to me. I didn't realise for a long time that, according to the Catholic understanding, marriage is binding even after a divorce. This was beyond my imagination. I didn't grow up like that. I experienced separation and divorce in my family as something normal. ... It was only when I met my current wife, who is a Catholic religious education teacher, that I first came across the idea of absolute indissolubility." (83,12) And elsewhere, and with regard to the separations and divorces he experienced in his own family environment, the plaintiff states: "In this respect, it was absolutely self-evident to me that you can separate and get divorced if necessary. I hadn't learnt anything else; I didn't know and didn't want anything else. The idea of being tied to a partner, even if the relationship has failed, has always been alien to me. But that doesn't mean that I made my marriage vows lightly... This vow is more like a resolution." (84,14)

- The respondent is unable to say anything about the plaintiff's attitude to the issue of indissolubility/divorce (see 93). The plaintiff's mother is also unable to provide any concrete statements, but she assumes that her son did not consciously deal

with the question of divorce or indissolubility at the time, although she does refer to the principle that probably applies in the family: If it no longer works, then you separate and get divorced." (see 103-104,14 and 15) Witness 2 (cousin of the plaintiff) explicitly refers to the "family background, where the mother has also been through many divorces" (112,14), and to a corresponding attitude of the plaintiff to be able to separate and divorce at any time (see also 112,15). Witness 3 (friend of the plaintiff) is certain that a marriage vow "until death do us part" does not apply to the plaintiff, because for A.A. love is something that can change, but which is ultimately not binding despite all endeavours to achieve a successful, happy marriage (see 119,14).

18. It is clear from the evidence that the plaintiff's marriage to N.N. ended when his first great love of his youth () returned. According to the statement of claim, the marriage of the parties was an agreement for the plaintiff, which he "dissolved after it was no longer sustainable for me." (42)

- The respondent formulates it differently, but in terms of content, as follows: "The separation was initiated by A.A.. The reason for this was that he had met his first great love again. ... For her, a world had collapsed with the separation. She had tried everything to change A.A.'s mind, but he had made up his mind. You could perhaps compare it to flicking a light switch. Suddenly there was only the young woman in A.A.'s life." (93)
- Witness 3 (friend of the plaintiff) does not describe it any differently either, whereby he expressly states that there was no attempt (on the part of the plaintiff) to save the marriage because he was already emotionally with (), the childhood friend (cf. 121.22). But even more revealing is the witness's statement that "actually ... everything repeated itself in the second marriage, it broke up just like the first time." (120.18) With this statement, the witness is not only referring to the plaintiff's sudden attraction to another partner, but also to the abrupt, irreversible ending of a relationship.

19. There is no doubt that the parties also liked each other and initially met in their desire to start a family. The factual and classic division of roles in the family - the woman takes care of the household and children - the man takes care of the income and livelihood - also shows that the parties were close, at least at the beginning of their relationship and marriage. The extent to which the parties' disagreements regarding child rearing played a decisive role in the parties' drifting apart may ultimately remain undecided at this point. The extent to which the age difference of more than seven years may have played a role in the relationship between the parties cannot be satisfactorily deduced from the evidence. It is also possible that the sterilisation that A.A. had carried out was an act that put a strain on the marriage (see 85,20).

E. Evaluation of evidence and judgement

20. The defensor's statement is correct: there is virtually no evidence or circumstantial evidence in () A.A.'s case to "present substantial grounds against the nullity of the marriage ..." (137). The plaintiff A.A. was inwardly convinced - not least because of his experiences as a child, adolescent and young adult - that a relationship and a marriage can be unilaterally terminated, can be "dissolved" (see 42), if it supposedly no longer works - for whatever reason. He ultimately lived through and realised this pattern once again in his second civil marriage with his childhood sweetheart.

21. It is established with moral certainty that the marriage between A.A./N.N. is null and void due to an error regarding the indissolubility of the marriage on the part of the husband.

22. It is not only the reference made by the instructor (cf. 89) that makes it necessary to arrange for an entry to be made in the plaintiff's baptismal register, but also the result of the taking of evidence: A.A.'s view of the indissolubility of marriage is a negative one. It must be ensured that a new marriage in church does not therefore lead to nullity - due to the exclusion of the indissolubility of the marriage.

The judgement was therefore as follows.