

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**NOTE: PURSUANT TO S 169 OF THE FAMILY PROCEEDINGS ACT 1980, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE**

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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2019-095-008096**

**[2020] NZFC 3392**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	MARK JOSEPH BENJAMIN Applicant
AND	ELSA LAURA BENJAMIN Respondent

Hearing: 20 May 2020

Appearances: Applicant appears in Person  
Respondent appears in Person

Judgment: 20 May 2020

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**ORAL JUDGMENT OF JUDGE K MUIR**

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[1] I have before me today the matter of Mark Joseph Benjamin v Elsa Laura Benjamin. This is an application for an order for dissolution of marriage that was brought by Mr Benjamin who he filed his application on 3 December 2019.

[2] In the affidavit that accompanied that application, he said at para 6, (and it is as appears in the printed form):

We will at the filing of the application have been living apart for a period of two years immediately preceding the filing of this application. We ceased living together on 10 September 2015.

[3] The application was accompanied by an original of the marriage certificate and by the information that would normally be required to establish the grounds for granting an order for dissolution of marriage.

[4] On 3 February 2020 Ms Elsa Benjamin filed a request for appearance, and she accompanied that with an affidavit in which she stated, among other things, that she did not consent to the order dissolving the marriage being made, but she said:

I do not disagree with dissolution, but I request to be present.

[5] She went on to say:

I do not accept that we separated on 10 September 2015, and say instead that we separated on 20 April 2015.

[6] She went on to discuss the detail of that.

[7] In discussions with the parties who appeared in person in Court today, I was able to establish that neither of them required me to make a finding as to the actual date of separation today. I indicated that I did not think that it would be appropriate for me to do that either nor do I think it necessary.

[8] I am told that they are still attempting to resolve relationship property issues, and they have lawyers engaged in that process. It may be that for some reason relevant to relationship property issues, determining the actual separation date is important. What is important today is that they both conceded, in addressing me, that they had been living apart for more than two years before this application was filed.

[9] The other issue that was raised by Mrs Benjamin in her notice of appearance was her concern that the applicant applies for, "Dissolution of the Jewish marriage. An addition to the process, is it needs to be done by the groom."

[10] My limited understanding of rabbinical law is that it is correct that it is only the husband that can initiate the process required to obtain a "Get", that it does require

the attendance in person of one or more experts in rabbinical law, and that a particular formal process needs to be followed.

[11] I was encouraged to note in the written submissions that were handed up by Mr Benjamin today that he has undertaken to obtain a Jewish divorce (or Get) as soon as that becomes possible. He points out that it requires a senior Rabbi from Australia to be able to visit New Zealand, and that is not yet possible under our current COVID-19 level 2 restrictions. He has confirmed in oral submissions that he gives that undertaking freely, and I record that undertaking in this decision.

[12] The sole ground for dissolving a marriage or civil union is that the marriage has broken down irreconcilably. Proof is on the balance of probabilities. That ground is established if the parties to the marriage are living apart and have been living apart for a period of two years immediately preceding the filing of the application.

[13] I am satisfied on the balance of probabilities that Mr and Mrs Benjamin have been living apart for a period of two years, indeed, more than two years immediately preceding the filing of this application.

[14] I am also satisfied that there are no infant children of the marriage, so I do not need to be concerned about arrangements for custody, maintenance or other aspects of their welfare. Their daughter, [name deleted], is 21 and she is at University, or at least that is where she is when the universities are open.

[15] I am satisfied that at least one of the parties is domiciled in New Zealand. Indeed, they are both domiciled here.

[16] All of the relevant issues that Mrs Benjamin raised in her notice of appearance have been satisfied, and she has not raised any valid defence to the application, such as lack of jurisdiction, failure to prove irreconcilable breakdown of marriage, or any other ground.

[17] I am therefore make an order that the marriage of Mr and Mrs Benjamin is dissolved.

Judge K Muir  
Family Court Judge

Date of authentication: 20/05/2020

In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.