

**IN THE FAMILY DIVISION OF THE HIGH COURT
APPELLATE JURISDICTION**

CASE NUMBER:	11/SUV/0185
BETWEEN:	Ronal
AND:	Seema
Appearances:	Applicant in Person. No appearance of Respondent
Date/Place of judgment:	Wednesday, 07th January, 2011 at Suva.
Judgment of:	The Hon. Justice Anjala Wati.
Coram:	The Hon. Justice Anjala Wati.
Category:	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymised Case Citation:	Ronal V. Seema - Fiji Family High Court Case Number: 11/SUV/0185.

JUDGMENT OF THE COURT

Catchwords

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by wife on the ground that she did not provide her real consent to the marriage because her consent was obtained under duress by her parents- ground for duress not established - application dismissed with no order as to costs.

Legislation

Family Law Act No. 18 of 2003.

Cases/Texts Referred To

Scott (falsely called Sebright) v. Sebright (1886) 12 P. D. 2.

Cooper (falsely called Crane) v. Crane [1891] P. 369.

Szechter (orse. Karsov) v. Szecliter [1971] P. 286.

Re Meyer [1971] P. 298.

Hirani v. Hirani (1982) 4 Fam. L. R. (Eng.). 232.

In the Marriage of S (1980) 42 F.L.R. 94.

In the Marriage of Teves and Campomayor (1994) 122 F. L. R. 172.

Dickey, A, "Family Law" 4,h Edition (2002) Lawbook Co. Sydney.

The Application

1. This is a joint application by the parties to have their marriage solemnised at Suva in 2010 nullified on the ground that the wife did not provide her real consent to

the marriage as the same was obtained under duress.

The Response

2. The husband was served with the application but he did not file any response nor did he appear in court to defend the matter.

The Law

3. Section 32 (1) of the Family Law Act No. 18 of 2003 states that a party can apply for an order for nullity of the marriage on the grounds that the marriage is void. There are certain grounds under which a marriage can be held to be void. In this case the ground is alleged to be pursuant to the first limb of section 32 (2) (d) (i). I will have to state the law in respect of the ground alleged.

4. The first limb of section 32 (2) (d) (i) of the Family Law Act No. 18 of 2003 states that a marriage is void if the consent of either party to the marriage is not a real consent because it was obtained by duress.

5. Duress has been defined as follows:-

- *State of mental incompetence, whether through natural weakness of intellect or from fear (whether reasonably held or not) that a party is unable to resist pressure improperly brought to bear: (Scott (falsely called Sebright) v. Sebright (1886) 12 P.D. 21.)*
- *A person's mind is so perturbed by terror that he or she does not understand what he/she was doing or alternatively if he/she understood what he/she was doing then their powers of volition had been so paralysed that he/ she succumbed to another's will: (Cooper (falsely called Crane) v. Crane [1891] P. 369.)*
- *If there is a threat of immediate danger to life, limb or liberty: (Szechter (or se. Karsov) v. Szechter [1971] P. 286.)*
- *If there is a threat of immediate danger to life, limb (including serious danger to physical or mental health), or liberty: (Re Meyer [1971] P. 298 at pp. 306 and 307.)*
- *If the threats, pressure, or whatever it is, is such as to destroy the reality of consent*

and overbears the will of the individual: (Hiratti v. Hirani (1982) 4. Fam. L.R. (Eng.). 232.)

- *If one is caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious commitment and a culture that demands filial obedience. If these matters operate and a party has no consenting will then there is duress: (In the Marriage of S (1980) 42 F.L.R 94.)*
- *Duress does not necessary need to involve a direct threat of physical violence as long as there is sufficient oppression from whatever source, acting upon a party to vitiate the reality of their consent. It must be duress at the time of the marriage ceremony and not duress at some time earlier unless the effect of this continues to overbear the will of a party to a marriage ceremony at the time of the ceremony itself: (In the Marriage of Teves and Campomayor (1994) 122 F. L. R 172)*

The Evidence

6. The wife testified that she was forced by her father to agree to the marriage because the husband was from a rich family. She initially informed her father that she did not want to get married but the father kept requesting her to say yes and she agreed. She does not like the husband and she has told him that too. She has someone else in her life from before the marriage and she did not disclose this to her father because she knew that he would disapprove of her relationship.
7. The father also testified and stated that now the daughter is not happy to get married. At the time, he asked her, she had agreed. It is only some last two months ago that she told him that she is in love with someone else.

The Determination

8. This is a case where the father asked his daughter to get married and she agreed to do so but later reneged because she wants to marry the man she loved. There was no force by the father as per his evidence which I accept as credible. Like all parents do, this father also asked the daughter to get married and she agreed although she could have resisted. There is no evidence before me that the wife was under some stress or fear of physical or mental injury or that her will was overborne by her father's wishes.

There is also no evidence that she was caught in a psychological prison of family loyalty and culture that demanded obedience which made her get married against her wishes. The wife had the powers of volition to refuse the marriage but she did not do so. She provided her consent to get married. That is her real consent and since the real consent was present, the marriage cannot be vitiated.

9. There is no basis for the application because the evidence to meet the test for duress falls far short.

The Final Orders

10. The application for an order for nullity of marriage is refused.
11. There shall be no order for costs.

ANJALA WATI
Judge
07.09.2011