

IN THE FAMILY DIVISION OF THE HIGH COURT	
CASE NUMBER:	10/SUV/0355
BETWEEN:	RAYMOND
AND:	DIPSHIKA
Appearances:	Mr. D Prasad for the Applicant Mr. Daveta for the Respondent
Date/Place of judgment:	Tuesday, 25th January, 2011 at Suva.
Judgment of:	The Hon. Justice Anjala Wati
Category:	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.
Anonymised Case Citation:	RAYMOND V. DIPSHIKA - Fiji Family High Court Case Number: 10/SUV/0355

JUDGMENT OF THE COURT

MARITAL STATUS PROCEEDINGS - APPLICATION FOR AN ORDER FOR NULLITY - application by husband on the ground that he did not provide his real consent to the marriage because his consent was obtained under duress by his parent-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. Szechter [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 Canipomayor (1994) 122 F. L. R. 172.

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

The Application

1. This is an application by the husband to have his marriage solemnised at Suva on the 10th day of February, 2010 nullified on the ground that he did not provide his real consent to the marriage as the same was obtained under duress.

The Response

2. The wife was served with the application. She filed a response to the application and she also appeared in court to defend the matter.
3. Through her response, the wife sought an order for the application to be dismissed on the grounds that the husband had given his consent at the time of the marriage. He genuinely wanted to marry her and there was no duress. The wife further stated that both parties were willing to marry each other.

The Law

4. 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 particular 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 grounds alleged.⁵ 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.
6. 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. 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: (Hirani v. Hirani (1982) 4. Fam. L.R. (Eng.). 232.)
- o 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

7. The husband gave evidence in chief by filing affidavit evidence in chief, hi the affidavit he deposed as follows:-
- © He is an automotive electrician by profession and he had been in the profession for the past 7 years. He is 29 years of age and had been residing in Suva with his parents, brothers and their wives in an extended family.
 - © His family is originally from the Naitasiri Province and his parents have been very religious and primitive thinking in that one should get married at a very young age.
 - o He is the 3rd youngest in the family and all his brothers and sisters are married with children.
 - o Ever since he finished his tertiary education, his father had been saying to him that he should settle down and have a family. His father works in a hair salon.
 - © He had always obeyed his parents and respected their wishes. He had been brought up from a poor family. His father had worked hard to educate him.
 - o His parents have always pushed him to settle down and had in the past arranged several girls for him to see but he was not ready and turned all proposals down.
 - o He was employed with a timber company as an electrical and mechanical officer for the last 3 years and he wants to pursue his profession overseas and has travelled to New Zealand. There is a big demand for his profession. He has been offered a job in a company in Auckland and he has accepted the job.

- o Since 2008 his parents started forcing him to get married and there were instances that his father used to say out in front of all his family members that he will put shame to the family as he is not getting married. His father was worried about the other people's reaction to him being single.
- o The pressure of marriage became so tensed that his father went to the extent of saying that he was having chest pains and that the son will cause his death one day.
- © His mother is like his father and she would stand by his father and put pressure on him to get married. She would emotionally blackmail him.
- o In 2009, his parents told him that if he did not get married then he should leave the house and never see their face. His mother was crying everyday and tension mounted in the family. The happiness started fading.
- The family went under stress, pressure, emotional, anger, and frustration. It was all because of him and he decided that he would get married to whoever his parents chose for him so that they are happy and he would later decide with what to do with his life.
- © In January, 2010 his parents told him to be ready in the afternoon so they could go and see a girl from Nausori to consider her for marriage. He agreed to whatever the parents said. He then got legally married to the wife.
- o He does not know the wife. He only spoke to her a day before and on the day of the marriage.
- © In his reception his parents invited all the family members and showed all of them that he was married.
- o He never consummated the marriage and refused to go through the traditional ceremony as he does not wish to spoil the wife's life in anyway.
- o He only got married to please his family. He was forced into this marriage. He was also under fear that his parents will cause some harm to themselves as they always said that if he did not listen to them than it is better for them to take poison and die so that they do not have to hear the other people talk against them.
- His parents now understand that they never considered his happiness. He does not love his wife. He wants this marriage to be annulled and the wife to be called a spinster so that she could move on with her life. He cannot live with a person he does not love.

8. Under cross examination, the following material evidence was extracted from the husband where he said that:-o He went to Nausori to see the girl. His parents liked her

so he agreed to get married.

- © He had conversation through mobile text messages where he said to the wife that he loved her. He texted her after the marriage. He does not remember the number of texts he sent but it was more than 1.
- © What makes him change now is that the wife is now causing problems. She is accusing him of having a girlfriend. She started saying all this when he was out of the country. She also asks him what property he has.
- © She also asked him for money when he went to New Zealand. He gave money and she asked again. He refused and she started blaming that he had girlfriends. She texted him through mobile phone and she also texted his aunty.
- o She created tension and he said to her that he does not want any tension in his life.
- o He only visited one girl before this marriage when he turned down the proposal. The wife was the 2nd visit to consider marriage. He did not see the several girls he mentioned in the affidavit evidence in chief.
- He has been in New Zealand for the past three years. He was in New Zealand when he got married. He was living alone then. Parents lived in Fiji.

9. The husbands' father also gave evidence. His evidence in chief was through an affidavit where he deposed the material evidence as follows:-

- o He and his family had his sons marriage arranged. His son did not want to get married which was not right. His family value has been to get married and have a family when one is independent.
- o He and his wife had arranged a lot of girls for his son to see. They came from good families and each time Richard refused. This painted a bad picture on his family. It was not good when they saw the girls, had meals at their place and then said no to the family members.
- ® His son refused to listen to him or his mother. He has been brought up in a honest way and is a very good boy but sometimes he does not realise the values of the family.
- o The son kept turning down the offers and after a lot of embarrassment he decided to put an ultimatum to his son that he either listens to them or leaves the house and does his own things in life.

© He told his son that he would eat poison and die because of the embarrassment of using people and their food and turning down proposals. He gave his son choice to marry or see his father dead. He said this because he was frustrated and he should not have done this.

® He put a lot of pressure on his son and he married to please him and the family. He is not happy with the marriage. He never was. He will never honour the marriage as he does not love her.

10. The father was cross examined and under cross examination, the following material evidence was extracted:-

- o He initially said that he arranged more than 2 or 3 girls for his son. Later he said that he had arranged more than 4 or 5 girls for his son.
- He himself got married through arranged marriage system. It was up to his son whether he married his choice or theirs but he wanted the son to get married.
- Nowadays children get married to their own preference so the parents do not interfere.

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11. The wife gave evidence in chief through an affidavit and also through oral evidence. Her material evidence is as follows:-

- The husband's family came to see her at her place. There her husband declared that he liked her and she said the same. His family members gave her \$30.00. They took her date and time of birth so that they could show the same to a priest to match the stars. The stars did not match but the husband liked her from all other girls. o On 8th February, the husband's family called and said that the husband wanted to marry her and her mother then said for them to come to their home.

o On 9th February, her family went to buy the gifts and the ring for the husband.

e On 10th February they got married.

o On 11th February they exchanged gifts.

o She did not ask the husband about his property or bank balance. He was the one who proposed her to marry him. After marriage he texted messages to the effect that he

loved her more than his life, that she is her first life, that she meant the world to him.

o From New Zealand he sent her a gift of \$250.00.

® He talked to her on 6th April.

® The husband says that he loves her but his mother thinks otherwise.

o On 9th April she went to her in-laws place and when she went back home, she texted her husband. She received a missed call from a new number and she called back on the missed call number. On the other end was a girl who started telling her that she was her husband's girlfriend for the past two years. She was 19 years and a student. She told her that the applicant had lied to her by saying that he was going to Fiji to see his parents. She had also picked him up from Auckland Airport.

® His aunty has sworn at her and refused to help her. His aunty also said that her husband has got a Muslim girlfriend and has bought a car for her as well.

12. Under cross examination the wife said that she would like to go to her husband in New Zealand. There was no traditional marriage.

The Determination

13. I have found the applicant husband very dishonest. He endorsed in Iris application that his residential address was Narere, Nasinu. He gave his residential address where his parents actually reside. He resides in New Zealand. He has been there for the past three years. He had not been living with his parents as he made out in his evidence in chief. This is deliberate non-disclosure on his part.

14. He also failed to disclose the text messages he sent to his wife saying how much he was fond of her.

15. His evidence also suggests that his assertion that he had refused several proposals prior to the marriage which caused his family embarrassment was a lie. He had just turned down one proposal prior to the marriage.

16. I have no doubt that he has exaggerated his evidence and concocted the same with his father to get out of this marriage. His demeanour is also of a person who does not treat the institution of marriage seriously.

17. He said that his family had put pressure on him every day. His mother was crying. His parents said that they will cause harm to themselves and die. Pressure, anger and frustration mounted his family. I do not accept the husband's evidence. He had been in New Zealand for three years prior to the marriage. He is a matured, educated, financially dependent and lived on his own. He did not live with his parents to say that everyday his family suffered and his mother cried and that put him under pressure.
18. There was no reason for his father to give him a choice to get married or leave the house, the son was already living out of the house. Why was there failure to disclose this? The father also supported the son's evidence to assist him. I do not accept his father's evidence at all.
19. I find it unbelievable that the husband's parents would say to him that they would eat poison and die if he did not listen to them. His parents would not treat his grown up son like a little boy expecting him to be emotionally blackmailed. He is a mature person who could resist pressures and statements of this kind, and he could also engage into family discussion and explain his parents his position. He has not convinced his family on his views but rather decided to give in for the sake of keeping everyone happy. That does not amount to duress or oppression sufficient to paralyse his powers of volition.
20. The husband had the powers to resist the marriage like he has done now. There would be much more embarrassment to his parents to turn down a traditional marriage after a

legal marriage. If he was so conscious about his family's dignity, he would have been upfront than, rather now.

21. I do not find established to my satisfaction that there was oppression at all on the husband or oppression sufficient enough to overbear his will. I find, after accepting the evidence of the wife, whom I find to be the only truthful witness that the husband was ready and willing to go through the marriage. He in fact provided his consent and now there is change of heart and he wants to get out of the marriage.
22. The marriage was validly entered into. I find that the test for duress has not been met and this application must be dismissed.

The Final Orders

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

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ANJALA WATI

Judge

25.01.2011

To;

1.

Mr. D. Prasad, Solicitor for the Applicant.

2. *Mr. Daveta, Solicitor for the Respondent.*

3. *File Number: 10/Su v/0355.*