

**IN THE FAMILY DIVISION OF THE HIGH COURT
AT SUVA**

ORIGINAL JURISDICTION

<u>CASE NUMBER:</u>	<u>11/SUV/0180</u>
<u>BETWEEN:</u>	<u>JAYDEN APPLICANT</u>
<u>AND:</u>	<u>VIOLA RESPONDENT</u>
<u>Appearances:</u>	<u>Applicant in Person. No appearance of Respondent.</u>
<u>Date/Place of Judgment:</u>	<u>Wednesday, 08th June, 2011 at Suva.</u>
<u>Judgment of:</u>	<u>The Hon. Justice Anjala Wati.</u>
<u>Category:</u>	<u>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all person referred to. Any similarities to any persons is purely coincidental.</u>
<u>Anonymised Case Citation:</u>	<u>JAYDEN V. VIOLA - Fiji Family High Court Case Number: 11/SUV/0180.</u>

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 wife - ground of 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 Campomayor (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 in December 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 but she did not file any response nor did she 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: (Hiram 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. R172)

The Evidence

6. The husband testified that he had sexual relationship with the respondent prior to marriage and after having the relationship the respondent demanded that he gets married to

her and if he refused she would report the matter to the police and ask that he be investigated for raping her. She also threatened him that she will commit suicide if he did not get married to her. He got very scared of her threats because he did not wish to get involved with the police nor did he want the parents to discover that he has had an affair with the respondent. He quietly got married and after the marriage they lived separately and apart. He was however happy after the marriage but the respondent started going to night clubs and being with other boys. He asked her to stop all that but she continued. One day he caught her in a motel with another man. He now does not wish to remain in the marriage. He would anyway not want to be in the marriage because she is a Fijian girl and she will not be accepted by his family at all.

7. The applicants' mother also gave evidence. She testified that neither her husband nor she knew about the son getting married to the respondent. After a few days of the marriage, some relatives told her that the son is married. She then enquired from the son and he admitted that he had got married to the respondent. Before marriage, she knew that the son was involved with the respondent and whenever she asked him about the relationship, he would say that she is just a good friend. Now he does not wish to remain in the marriage because she is not a person of good character and he has discovered that aspect of her personality.

The Determination

8. I do not believe and accept the evidence of the husband in that the respondent threatened to report him to the police if he did not get married to the respondent. If the act of coitus was consensual then there is no room for fear and allegation that there was an element of force in the relationship.

9. The husband was capable enough of resisting the threat and he was capable enough of getting assistance of his parents to resist the threat made by the respondent. Whilst I do not believe that he got married under duress and or threat, even if he was, his powers of volition had not been paralysed.

10. I am of the judgment that the husband was happy to get married and he did get married without disclosing this to his parents because of the difference in the race. He wanted to continue with the marriage until such time he discovered that the respondent has been dishonest to him and that it was difficult to improve her personality. He later caught the respondent red-handed after which he was crestfallen and decided to end the marriage.
11. The applicant himself said that he was upset with her many affairs and behaviour for which he wants to get out the marriage.
12. I am of the judgment that the reason why the husband wants to get out of the marriage is because of matters occurring after the marriage. He gave his real consent at the time of the marriage but now because he wants to get out of the marriage and maintain his single status, he has concocted the evidence of duress at the time of the marriage.
13. The mother also testified that the son wants to get out of the marriage because he has found out that the respondent is not of good character. I accept the evidence of the mother who also impressed me with her honesty. The mother's evidence shows the real reason why the application was filed, not because of duress but because of the respondent's alleged bad character.
14. This application has no leg to stand on and must be dismissed.

The Final Orders

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

ANJALA WATI

Judge

08.06.2011

To:

Applicant.

Respondent.

File Number 11/SUV/01S0.