

Third District Court of Appeal

State of Florida

Opinion filed July 10, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-86
Lower Tribunal No. 17-10602

Hector Ziegler,
Appellant,

vs.

Raquel Alonso Natera,
Appellee.

An appeal from a non-final order from the Circuit Court for Miami-Dade County, Migna Sanchez-Llorens, Judge.

Jarbach Peña Law Group, P.A., and Fritznie Jarbach, for appellant.

Law Office of Rick Yabor, P.A., and Rick Yabor, for appellee.

Before LINDSEY, HENDON, and MILLER, JJ.

MILLER, J.

Appellant, Hector Ziegler, the husband, challenges the trial court's order invalidating an antenuptial agreement prepared by his counsel and executed by appellee, Raquel Alonso Natera, the wife, on the eve of their wedding in Venezuela. We assign no error and, accordingly, affirm.¹

FACTS

In 2011, the parties planned to marry in Venezuela. Six days before their wedding, the husband presented the wife with a draft of an antenuptial agreement. At the time, the wife was four months pregnant with their second child. The only financial disclosures contained within the document were perfunctory references to the husband's ownership of certain nominal non-convertible bearer shares with corresponding assigned nominal values. The agreement did not provide for equitable distribution or alimony. The husband allowed the wife to peruse the document and then assured her that he would furnish full financial disclosures prior to the wedding.²

The day before the wedding, having not yet provided any financial documentation, the husband threatened to cancel the ceremony if the wife did not

¹ Although it appears that the trial judge considered both unconscionability and duress in invalidating the agreement, as a finding of duress is amply supported by the record evidence, any error as to the unconscionability analysis does not dictate reversal. Dade Cty. Sch. Bd. v. Radio Station WQBA, 731 So. 2d 638, 644 (Fla. 1999) (“[I]f a trial court reaches the right result, but for the wrong reasons, it will be upheld if there is any basis which would support the judgment in the record.”).

² The agreement did not contain an express waiver of any right to disclosure.

sign the agreement, and advised her that a failure to obtain the marriage certificate on the planned date would thwart the couple's imminent plan to emigrate to the United States.³ The wife reluctantly signed the agreement and the marriage was solemnized, however, the union did not endure.⁴

Less than six years later, the husband initiated dissolution proceedings in Miami-Dade County, Florida. The wife sought to invalidate the antenuptial agreement, contending it was the product of "duress, coercion, or overreaching," and was unconscionable, as it had been executed in the absence of full and fair financial disclosure, and thus, was properly avoidable under Florida law.⁵ See § 61.079(7)(a), Fla. Stat. (2019). Following an evidentiary hearing, convened to determine the circumstances surrounding the execution of the agreement, the court entered an order

³ The following week, the parties were due to appear at the United States Embassy in Venezuela with certain documents, including the marriage certificate, in order to establish expatriation eligibility.

⁴ Several years later, the husband retained another attorney and sought to have the wife execute a postnuptial agreement, indicating he believed the antenuptial agreement to be unenforceable under Venezuelan law.

⁵ As the contract is devoid of a choice of law provision and was entered into by the parties in Venezuela, pursuant to the principle of *lex loci contractus*, Venezuelan law should govern matters of execution, interpretation, and validity. See In re Estate of Nicole Santos, 648 So. 2d 277, 280 (Fla. 4th DCA 1995) (citing Scudder v. Union Nat'l Bank, 91 U.S. 406, 23 L. Ed. 245 (1875)). Nonetheless, both parties urged the application of Florida law and it appears that the trial court ratified this tacit stipulation. Thus, we conduct our analysis under Florida law.

concluding the agreement had been executed under duress and in the absence of both full financial disclosure and waiver of said disclosure.⁶ This appeal ensued.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iii)c. “We review a trial court's determination of the voidability of an antenuptial agreement for competent, substantial evidence.” Bakos v. Bakos, 950 So. 2d 1257, 1259 (Fla. 2d DCA 2007) (citing Simzer v. Simzer, 514 So. 2d 372, 373 (Fla. 2d DCA 1987)). “[T]he findings of the trial court come to this court clothed with a presumption of correctness[,] and will not be disturbed absent a showing that there was no competent evidence to sustain them.” Baker v. Baker, 394 So. 2d 465, 466 (Fla. 4th DCA 1981) (citations omitted); see also Schreiber v. Schreiber, 795 So. 2d 1054, 1057 (Fla. 4th DCA 2001); Snedaker v. Snedaker, 660 So. 2d 1070, 1072-73 (Fla. 4th DCA 1995).

LEGAL ANALYSIS

“[I]t is black letter law that the parties to an antenuptial agreement do not deal at arm[']s length with each other.” Lutgert v. Lutgert, 338 So. 2d 1111, 1115 (Fla. 2d DCA 1976). Rather, “[t]heir relationship is one of mutual trust and confidence.” Id. (footnote omitted). As such, “the parties must exercise the highest

⁶ The wife was the sole testifying witness, as the husband did not appear at the evidentiary hearing.

degree of good faith, candor[,] and sincerity in all matters bearing on the terms and execution of the proposed agreement, with [f]airness being the ultimate measure.” Id. (footnote omitted).

Section 61.079(7)(a), Florida Statutes (2019), in relevant part, provides: “A premarital agreement is not enforceable in an action proceeding under the Florida Family Law Rules of Procedure if the party against whom enforcement is sought proves that . . . [t]he agreement was the product of fraud, duress, coercion, or overreaching.” Duress is defined as “a condition of mind produced by an improper external pressure or influence that practically destroys the free agency of a party and causes him [or her] to do and act or make a contract not of his own volition.” Herald v. Hardin, 95 Fla. 889, 891, 116 So. 863, 864 (1928) (citation omitted). In order to prove duress, “[i]t must be shown (a) that the act sought to be set aside was effected involuntarily and thus not as an exercise of free choice or will and (b) that this condition of mind was caused by some improper and coercive conduct of the opposite side.” City of Miami v. Kory, 394 So. 2d 494, 497 (Fla. 3d DCA 1981). Thus, duress involves a “dual concept of external pressure and internal surrender or loss of volition in response to outside compulsion.” Id. (quoting 17 C.J.S. Contracts § 168 (1963)).

“It is not . . . duress for the proponent of the agreement to make it clear that there will be no marriage in the absence of the agreement.” Eager v. Eager, 696 So.

2d 1235, 1236 (Fla. 3d DCA 1997). Nonetheless, a party may not exploit another “for his [or her] *own pecuniary advantage*.” Berger v. Berger, 466 So. 2d 1149, 1151 (Fla. 4th DCA 1985) (emphasis in original) (citing Paris v. Paris, 412 So. 2d 952 (Fla. 1st DCA 1982)).

Here, the testimony established that the husband initially presented his pregnant wife with the disputed document six days before the wedding. At that time, the wife requested he produce evidence regarding his holdings and net worth. The husband assured the wife such evidence would be forthcoming.

In lieu of honoring his pledge, the day before the wedding, the husband demanded execution, with the added ultimatum of “[n]o agreement, no wedding.” Lutgert, 338 So. 2d at 1116. He further threatened life-altering consequences, by imperiling their shared, long-term plan to begin life anew with their children in the United States. We conclude that these circumstances, unrebutted by the husband, are sufficient to support a finding of duress. See Hjortaas v. McCabe, 656 So. 2d 168, 170 (Fla. 2d DCA 1995) (“First, the timing of the signing of the document indicates that [the wife’s] signature was the product of duress. Two days before the wedding [the wife] was presented with a document, the actual terms of which were previously unknown to her and which contained no information about [the husband’s] finances. She had only one day to seek counsel from her own attorney, to make an independent evaluation of the contract, or to

cancel her wedding. The only rational conclusion is that her signature was the product of unwarranted compulsion, and the document should have been set aside on that basis.”) (citation omitted).

CONCLUSION

As the wife made “a convincing showing that the agreement was coerced by means of a wrongful threat such that the exercise of free will was precluded,” we find no error and affirm. 107 Am. Jur. Pof. Duress, Coercion, or Undue Influence in Execution of Separation Agreement § 10 (2019) (citation omitted).

Affirmed.