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Annulment of Marriage for Duress Where Pre-marital Relations Have Occurred - Lurz v. Lurz

ANNULMENT OF MARRIAGE FOR DURESS WHERE PRE-MARITAL RELATIONS HAVE OCCURRED—*LURZ V. LURZ*[1]

Plaintiff-appellee-husband, through his father and next friend, filed a bill of complaint in equity against defendant-appellant-wife, seeking an annulment of their marriage. The bill alleged that, at a time when plaintiff was fifteen years of age and defendant twenty, the latter "by solicitation and womanly arts" induced plaintiff frequently to cohabit with her with the result that, after about two years, she became pregnant; that after discovering this the defendant "threatened and coerced by deceit and fraud" the plaintiff into marrying her, the threats including a threat to have him arrested if he failed to support the child; that the plaintiff and defendant went to Ellicott City where the defendant caused the plaintiff to "wait outside of a building in said city as he looked too young to have a marriage license issued" while she went into said building and procured the license by perjured testimony as to plaintiff's age; that before a minister in said city the parties went through a "form of ceremony which the complainant now understands and believes to have been the usual marriage ceremony." The child was born seven or eight months later and the plaintiff's parents first learned of the marriage about a month and a half after the birth. The bill was filed six days after that and sought both an annulment and that the infant child be maintained by plaintiff in a home to be selected by the Court. From an order overruling her demurrer to the bill and directing her to answer, defendant appeals. *Held,* Affirmed and cause remanded

[1] 170 Md. 428, 184 Atl. 906, 185 Atl. 676 (dissenting opinion) (1936).

for further proceedings. The case was heard by all eight of the judges of the Court of Appeals. One judge filed a concurring opinion and two dissented, one of these by opinion. The Court held that while the burden of proof on the plaintiff may be high, yet the allegations of the bill were sufficient to require an answer and to permit of a trial on the merits.

Jurisdiction to grant an annulment of marriage for the so-called "contract impediments" exists in a court of equity without the aid of any statute expressly conferring it, as an incident of the equitable jurisdiction to reform and rescind contracts.[2] Thus, upon appropriate proof, annulments may be granted for lack of contractual intention,[3] for insanity,[4] intoxication,[5] fraud,[6] and duress.[7] The theory is that no valid marriage exists, either for lack of actual contractual intention, for lack of capacity to give a valid consent, or because the apparent consent was induced by fraud or duress and is, hence, no real consent at all. This last factor explains annulments for fraud and/or duress.[8] While the bill in the principal case alleged a combination of fraud and

[2] Fornshill v. Murray, 1 Bland 479, 483 (1828); Le Brun v. Le Brun, 55 Md. 496, 502-503 (1881); Ridgely v. Ridgely, 79 Md. 298, 29 Atl. 597 (1894).

[3] Madden, Domestic Relations, Sec. 5; II Schouler, Domestic Relations, Sec. 1075; Brooke v. Brooke, 60 Md. 524 (1883) where the annulment was denied on the facts; Owings v. Owings, 141 Md. 416, 118 Atl. 858 (1922); Samuelson v. Samuelson, 155 Md. 639, 142 Atl. 97 (1928).

[4] Madden, Domestic Relations, 23; II Schouler, Domestic Relations, Secs. 1102-1104; Elfont v. Elfont, 161 Md. 458, 183 Atl. 555 (1931); see also Alexander's British Statutes, 1014, 15 Geo. II, c. 30 (1742), which as interpreted provides that where a lunatic whose insanity has been established by inquisition marries before he shall be declared sane, "Every such marriage shall be null and void to all intents and purposes whatsoever." See 38 L. R. A. (N. S.) 818n, mental capacity to marry; 28 A. L. R. 641, 649n, mental capacity to marry; 40 L. R. A. 737, 744n, marriage of person while insane, L. R. A. 1916C, 703n, Marriage of mental incompetent as void or voidable.

[5] Madden, Domestic Relations, 27; II Schouler, Domestic Relations, Sec. 1105; Montgomery v. U'Nertle, 143 Md. 200, 122 Atl. 357 (1923).

[6] Madden, Domestic Relations, 13-22; II Schouler, Domestic Relations, Ch. X; Brown v. Scott, 140 Md. 258, 117 Atl. 114, 22 A. L. R. 810 (1922); Corder v. Corder, 141 Md. 114, 117 Atl. 119 (1922). See also Oswald v. Oswald, 146 Md. 313, 126 Atl. 81 (1924). As to what misrepresentations will constitute fraud, see: 30 L. R. A. (N. S.) 302 (disposition or general character); 13 L. R. A. (N. S.) 997 (physical or mental condition); 11 A. L. R. 931 (existing pregnancy of wife).

[7] Madden, Domestic Relations, 10-11; II Schouler, Domestic Relations, Secs. 1149-1150; Harlan, Domestic Relations, 32-33; Owings v. Owings, 141 Md. 416, 118 Atl. 858 (1922); Wimbrough v. Wimbrough, 125 Md. 619, 94 Atl. 168 (1915). As to what will constitute duress, see 27 L. R. A. (N. S.) 803; 43 L. R. A. 816. As to whether such marriages are void or voidable, see L. R. A. 1916C, 706. As to whether marriage entered into to escape prosecution for seduction may be annulled, see 16 L. R. A. (N. S.) 938. For cases where duress was exercised by a third party, see 62 A. L. R. 1482.

[8] II Schouler, Domestic Relations, Sec. 1137.

duress, as a technical matter the latter is the more important legal element in the case.

With respect to duress generally, the Court of Appeals has said[9] "the duress must exist at the time of the actual ceremony, so as to disable the one interested from acting as a free agent, and protest must be made at that time" and[10] "the force or duress must be also the directly inducing cause of entering into the marriage, and if a person, although threatened with violence, refuse to enter into the marriage by reason of such threats, and only consents to the marriage after an appeal has been made to his honor, the marriage is valid."

Where pre-marital relations have occurred between the parties (as in the principal case) the Court has stated that the burden of proof imposed on the plaintiff to prove the duress is very high. Quoting from two New Jersey cases, the Court has said[11] that if "ante-nuptial incontinence has taken place, the charge of threat or menace unlawful, or fraud or duress, must be most fully and satisfactorily established before the Court will annul the marriage," and that a complainant who seeks to bastardize "the fruit of the unlawful communion . . . must prove his case with the utmost strictness."

This rule of the higher burden of proof where pre-marital relations had occurred might be paraphrased into homelier language to the effect that "where the parties ought to be married they stay married." No doubt the rule exists because of the equity in favor of a woman who, after being seduced and becoming pregnant, "shames" the man into marrying her. Most cases of annulment where duress is charged involve the husband as plaintiff and the incident of pre-marital relations between the parties. Whether the higher burden of proof would be imposed simply because of pre-marital relations not followed by pregnancy, or where the wife was plaintiff, is hard to estimate, for the reason that all of our reported cases have involved the husband as plaintiff and the pregnancy of the defendant. Thus it cannot be determined whether the high burden of proof exists to protect a woman who has simply been betrayed or to protect the child of the union from being bastardized. The *language* of the cases seems to indicate that it would be imposed in either event.

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[9] Owings v. Owings, 141 Md. 416, 419, 118 Atl. 858, 859 (1922).
[10] Ibid, 141 Md. 419, 118 Atl. 860.
[11] Ibid, 141 Md. 420, 118 Atl. 860.

No doubt the plaintiff in the principal case stressed the factor of his having been seduced by the woman as a cogent fact to put her in a bad light and deprive her of the normal sympathy existing in favor of a seduced woman who is later sued for annulment for duress. It was probably contemplated that the fact of her womanly wiles and the plaintiff's immaturity would serve to put the parties on a par with respect to the equities of the case and the problem of proof. The dissenting opinion disposed of the plaintiff's allegation that he had been "seduced" by the "womanly arts of the defendant" by saying that such an "excuse" had "been in constant use since Eve tempted Adam with the apple and is quite threadbare."[12] Be that as it may, both the majority and the concurring opinions indicated no lessening of the usual high burden of proof in cases of duress involving pre-marital relations. The concurring opinion was specifically put on the difficulty of proof of the allegations.

One point of difference between the majority and the dissenting opinions was whether the threat to have plaintiff arrested if he did not support the expected child constituted an actionable duress. While the majority opinion did not specifically rule that it would be duress, yet it said: "The averment as to her threat of sending the plaintiff to jail, which could not have been enforced at the time of the marriage (citing the *Allen* case[13] and the applicable statute[14]) was sufficiently definite to apprise the defendant as to the ground of the alleged fraudulent coercion." The dissenting opinion aptly disposed of this point by pointing out that "he could not support the child until after it was born, so that her statement was in entire accord with the statutory law of this state."

It would seem that a threat to do that which the law permits could not be considered an actionable duress in the light of the language of the *Wimbrough* case to the effect that "where a man marries to escape arrest or imprisonment for seduction or bastardy he cannot avoid the marriage on the ground of duress, nor is a marriage induced by threats of lawful prosecution, arrest or imprisonment, to redress or punish a wrong, open to impeachment on that ground."[15] Unless we treat the majority's point as in-

[12] 170 Md. 435, 185 Atl. 678.
[13] Allen v. State, 128 Md. 265, 97 Atl. 362 (1916).
[14] Md. Code and Md. Code Supp., Art. 12.
[15] This rule seems to be in accord with the weight of authority, see Madden, Domestic Relations, 12; II Schouler, Domestic Relations, Sec. 1150; 16 L. R. A. (N. S.) 938.

volving the possibility that the defendant fraudulently persuaded the plaintiff to believe that he could immediately (during the pregnancy) have been arrested, it would seem that the dissenting opinion the better reflects the law on the point. While fraudulent representations as to matters of law are usually held not actionable, yet the *Corder* case[16] had decided that fraudulent representations as to the parties being old enough to obtain a marriage license, among other things, were sufficient for an annulment for fraud.

The majority and the dissenting opinions also disagreed on the matter of laches. The majority held the defense of laches not to be sustainable in the case while the dissenting opinion contended that the husband's wait for almost a year was entitled to consideration as showing his acquiescence. The dissenting opinion said that the diligence of the parents could not compensate for the infant husband's delay. This makes one wonder if it be the law of Maryland that an infant may, at one and the same time, be incapable of litigating in his own right and yet be capable of committing laches therein?

The dissenting opinion doubted the relevancy of the *Corder* case, which the majority opinion cited. It would seem that the *Corder* case has little application. In that case the annulment was granted for false representations as to past moral character and as to the capacity of the parties to get a marriage license without parental consent. There were no such representations of the former type in this case and there could have been none of the latter type for the reason that plaintiff knew he was too young to get a license without parental consent as he alleged that he waited outside while defendant got the license, for fear that his appearance would excite suspicion.

This latter fact would also seem aptly to dispose of plaintiff's contention that he did not understand the nature of the marriage ceremony.[17] The dissenting opinion went into an aspect of this by saying: "His statement that he did not understand what the ceremony was is wholly inconsistent with his statement that he was induced to go through it by threats of imprisonment."

The dissenting opinion indicates a view that plaintiff has placed himself in an unfavorable light by asking for the an-

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[16] Corder v. Corder, supra note 6.

[17] As to mistake as to the nature of the ceremony, see Madden, Domestic Relations, 9. Samuelson v. Samuelson, supra note 8.

nulment, which would bastardize the child, and then asking to have it remain in his custody. But *quaere,* does the bill specifically ask that plaintiff have the custody of the child? It asks that it be placed in a home to be selected by the Court, where plaintiff may maintain it. This is susceptible of the construction that plaintiff is willing to support the child while in the custody of another. If so, this puts him in a slightly more favorable light than the dissent indicates. One wonders if it be the law of Maryland that the only way the father of an illegitimate child may show interest in its welfare is by marrying and staying married to the mother?

One inconsistency appears in the dissenting opinion. The marriage license was allegedly secured by perjury as to plaintiff's age, he being under the age as of which he should have obtained a license without parental consent.[18] The dissenting opinion pointed out that this fact would not of itself affect the validity of the marriage performed under the license, however secured. While no Maryland case has yet squarely decided that the fact of one of the parties being below the age for parental consent (18 for females[19] and 21 for males) does not affect the validity of the marriage, yet it has been assumed in Maryland, because of the similar rule in Anglo-American jurisdictions generally, that the requirement of parental consent is directory rather than mandatory (lay belief to the contrary) so that if parties under that age actually are married by a proper ceremony the marriage is valid.[20] This would seem to follow from the *Feehley*[21] case which decided that a marriage (of adults) without any license at all was nevertheless valid.[22] If a marriage without any license may be valid, so should one with a license that had been improperly secured without requisite parental consent and by perjury as to the ages of the parties. Thus it is that the fact of one of the parties being under the age for parental consent does not affect the marriage. This would also seem to follow from the *Corder* case, where the annulment was granted, not because

[18] Md. Code, Art. 62, Sec. 7.

[19] Another Maryland statute Md. Code, Art. 27, Sec. 363, enacted before the statute requiring parental consent for the issuance of a marriage license to those under age, punishes a minister who marries a female under 16 or a male under 21 without parental consent.

[20] Madden, Domestic Relations, 65; Payne v. Payne, 295 Fed. 970 (Ct. of App. of D. C. 1924).

[21] Feehley v. Feehley, 129 Md. 565, 99 Atl. 663, L. R. A. 1917C, 1017 (1916).

[22] Consider Madden's comment on the Feehley case, Madden, Domestic Relations, 65.

the parties were actually below the age for parental consent (which was lacking), but on the basis of the defendant's fraudulent representations that they could secure the license without the parental consent. Surely the Court would not have gone to the trouble of putting the case on the more difficult ground of fraud if the law were that non-age as such affected the validity of the marriage.

But then the dissenting opinion in the principal case went on to say that "the only possible ground for an annulment would be the non-age of the complainant, Albert, which would make the marriage not void, but voidable."[23] It is hard either to see the consistency of this statement with the former one, or to find authority for it.[24] The only rule of "non-age" affecting the validity of marriages is the common law one setting up the ages of 12 for girls and 14 for boys, above which marriages otherwise properly performed (in Maryland by religious ceremony) are completely valid.[25] To the knowledge of the writer, no Maryland case or statute has altered this common law rule. Both parties at the time of the marriage were well above these ages and so it would seem that there is no ground of non-age available when we remember, as the dissenting opinion did, that the statutory ages for parental consent of 18 and 21 have reference only to whether the license ought to issue and not to the validity of the marriage performed under the license or without one.

If we view the bill of complaint as a whole, it might be said that the dissenting opinion represents the preferable view, i. e., that no case for an annulment is made out. On the other hand if we visualize the possibility of sufficient proof being adduced under the bill to make a case of fraudulent coercion, then it would seem that the majority was correct in ordering the case to be tried on its merits.

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[23] 170 Md. 438, 185 Atl. 679.

[24] Occasional statements in cases and texts seemingly holding that the fact of one of the parties being below the age defeats the validity of the marriage turn out, on examination, to involve statutory rules raising the common law "ages of consent" from 12 for females and 14 for males to higher ages, rather than setting up a requirement of parental consent for the issuance of the license, as is the Maryland situation. To be sure, clear cut expression by the legislature of an intention to have parental consent mandatory would make the rule otherwise than is the situation now in Maryland.

[25] See Long, Domestic Relations (3rd Ed.), Sec. 27 for a treatment of the common law ages.