

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

SHERRI SPLAIN,	:	
Plaintiff	:	
	:	
v.	:	NO. 06-21623
	:	
JAMES SPLAIN,	:	CIVIL ACTION - LAW
Defendant	:	DIVORCE

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

The Defendant has appealed this court’s order of May 6, 2008¹, in which this Court refused to enforce a marital settlement agreement entered into by the parties on September 23, 2006. This Court’s refusal to enforce the subject agreement was based upon clear and convincing proof of duress.

The facts as found by this Court are as follows:

On September 23, 2006, Sherri and James Splain were both at the parties’ residence located at 193 Anderson Road. On that evening, Mr. Splain produced the marital settlement agreement at issue and told Mrs. Splain that she would not be leaving the house until she signed the document. (Transcript of Hearing on Petition to Enforce Agreement 6:2-8, May 2, 2008). Mr. Splain then took both sets of keys to Mrs. Splain’s personal vehicle, leaving her only with the keys to Mr. Splain’s truck, which was not at her home at the time. Id. When Mr. Splain produced the marriage settlement agreement, Mrs. Splain did not know what the document was, nor was she aware that Mr. Splain had sought legal counsel. (Id. at 8:16-19; 32:22 – 33:2). Mrs. Splain told

¹ Although the Defendant’s Notice of Appeal indicates that the Order appealed from was entered on May 6, 2008, the Court Order is dated May 5, 2008 and bears a file-stamp date of May 6, 2008.

Mr. Splain she was not signing the agreement and she wanted her keys and wanted to leave. (Id. at 7:18-19). After refusing to sign the agreement countless times, Mr. Splain became very agitated. (Id. at 13:13-15). By his own admission, Mr. Splain began calling his wife names, such as “whore,” “bitch,” and “slut.” (Id. at 34:19- 35:3). When she tried to get her keys from him, Mr. Splain put his arm across her chest and using his leg, pushed her to the floor. (Id. at 13:24-25). This occurred several times. (Id. at 14:2-5). Mrs. Splain testified that throughout the parties’ marriage, Mr. Splain had been violent many times. (Id. at 44:11-13). Mrs. Splain testified, “Violence comes and goes in our household, it always has.” (Id. at 12:1). At other times in the parties’ marriage Mr. Splain had pushed her down, hit her and had bruised her legs “because he didn’t want [her] to wear skirts to work.” (Id. at 45:1-4). Mrs. Splain testified that she became afraid when he pushed her down. (Id. at 17:14-15).

Her specific testimony regarding the night of this incident was as follows:

Q: So your reason for not [sic] signing the agreement was because he told you if you didn’t sign the agreement you couldn’t leave the house?

A: Part of it.

Q: And you wanted to leave the house because you wanted to go and get your children?

A: I wanted to leave the house because I needed to get away from him.

Q: Okay, and why did you need to get away from him?

A: Because he is very violent, he is very nasty, he pushed me down twice, why would I not want to get out of the house? Why would I want to stay there?

(Id. at 9:8-16).

According to Mrs. Splain, the parties’ residence was located at least 10 miles from any big town, and the house was situated in the woods, an eighth of a mile off of

the road. (Id. at 12:18-23). Her options in leaving the residence on foot were to go to her brother-in-law's home, or to her in-law's home. (Id. at 2-4). Mrs. Splain additionally testified:

Q: Okay, but you could have left the home without the car?

A: We lived in the middle of nowhere.

Q: Okay, but you could have left and he didn't –

A: For what? For him to come outside and chase me down the road like he had before.

Q: He didn't threaten to hit you did he?

A: He pushed me down, that is hitting me. That is assaulting me.

(Id. at 9:19-25).

Mrs. Splain testified that she subsequently signed the marital settlement agreement that night “so I could get away from him at that day, at that time, at that moment.” (Id. at 19-20).

Prior to Simeone v. Simeone, 581 A.2d 162 (Pa. 1990), a prenuptial agreement was considered to be valid only if it made reasonable provision for the spouse, or in the absence of such provision, if full and fair disclosure of the spouse's financial worth was provided. In Simeone, the Supreme Court abolished inquiry into the reasonableness of the provisions for the intended spouse, but retained the requirement of full and fair disclosure of assets and liabilities at the time of the agreement. While the Court in Simeone eliminated the requirement of reasonableness, the Simeone decision also made it clear that a prenuptial agreement may be challenged on the basis of duress. Id. at 165. To invalidate a prenuptial agreement on the grounds of duress, a party must prove by clear and convincing evidence “that degree of restraint or danger, either actually

inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness.” Carrier v. William Penn Broadcasting Co., 233 A.2d 519, 521 (Pa. 1967). The principles applicable to antenuptial or prenuptial agreements are equally applicable to postnuptial agreements, such as the one involved in the present action. *See* Stoner v. Stoner, 819 A.2d 529, 533 (Pa. 2003), *citing* In re Ratony’s Estate, 277 A.2d 791, 793 (Pa. 1971).

Pursuant to the evidence of record, this Court finds that in obtaining Mrs. Splain’s signature to the marital settlement agreement, Mr. Splain prevented Mrs. Splain from leaving her home and verbally and physically abused her. Such testimony clearly supports Mrs. Splain’s claim that she signed the marital settlement agreement as a result of “restraint or danger” sufficiently severe as to overcome the mind of a person of “ordinary firmness.”

Although Mr. Splain additionally contends that this Court erred in finding Mrs. Splain’s testimony credible, Pennsylvania courts have clearly held:

The question of whether a particular witness is testifying in a truthful manner is one that must be answered in reliance upon references drawn from the ordinary experiences of life and common knowledge as to the natural tendencies of human nature, as well as upon observations of the demeanor and character of the witness. Commonwealth v. Crawford, 718 A.2d 768, 772 (Pa. 1998), *quoting* Commonwealth v. Seese, 517 A.2d 920, 922 (Pa. 1986).

Moreover, even if portions of Mrs. Splain’s testimony were not entirely consistent, this Court is not required to disregard Mrs. Splain’s testimony, but is permitted to determine the extent to which her testimony is to be believed.

Commonwealth v. Joyce, 197 A.2d 226 (Pa.Super. 1963). Decisions of credibility are to be left to the province of the fact-finder who are in the best position to judge the “appearance, general bearing, conduct on the stand, demeanor [and] manner of

testifying.” Danovitz v. Portnoy, 161 A.2d 146 (Pa. 1960); See also Criswell v. King, 834 A.2d 505, 513 (Pa. 2003). Accordingly, the evidence supports this Court’s denial of Mr. Splain’s Petition to Enforce the Settlement Agreement.

BY THE COURT,

Richard A. Gray, J.

cc: Janice Yaw, Esq.

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