



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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March 20, 2025

LETTER OPINION

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Re: ***Brian Perry Leppert v. Sandy An Leppert***
Case No. CL-2024-7695
Hearing Dates: January 22 and 23, 2025

Dear Counsel:

This matter comes before the Court on Plaintiff's Motion to Incorporate into an Order of the Court the Parties' Written Separation Agreement in Action for a Divorce from Bed and Board. For the reasons set forth below, the Court will deny Plaintiff Husband's motion.

At the conclusion of the evidentiary hearing on January 23, 2025, the Court requested that the parties submit written closing statements by February 21, 2025, and took the matter under advisement. Since that time, the Court has reviewed the pleadings in this case, each party's closing arguments, and the exhibits introduced into evidence at the hearing. The Court has fully considered the testimony of the witnesses and the arguments of each party. During the hearing the Court observed the witnesses and their demeanor and made determinations as to their respective credibility. To the extent the Court's discussion of the facts of the case today differs from a party's view of the facts, the recitation of factual matters herein will constitute the Court's findings of fact.

I. FACTUAL BACKGROUND

A. Dissolution of the Marriage

Plaintiff Husband (hereinafter Husband) and Defendant Wife (hereinafter Wife) were married on August 9, 2001. Together, they have three children: Victoria, born on [REDACTED], [REDACTED] Diana, born on [REDACTED], and [REDACTED] born on [REDACTED].

At all times pertinent to this motion, the Wife was active duty military. She was diagnosed in June 2022 with Bipolar 1 disorder. At the hearing she described how the disorder affected her daily life, including periods of depressive swings and manic behavior. The Husband testified on cross examination that he was aware of the Wife's diagnosis in June 2022. In September of 2023, Husband discovered that Wife was engaged in an emotional (but not yet sexual) relationship with her high school boyfriend, Mr. Vess. After a brief separation with Husband, Wife moved into a separate room within the marital residence and informed Husband that she had ended the relationship with Mr. Vess but needed time to decide about the marriage.

On October 20, 2023, Husband sent an email to Wife indicating that she was experiencing a mental crisis and that her actions did not exhibit a "rational thought process" and that she was "experiencing mental crisis." Husband then forwarded his email to the parties' oldest daughter, Victoria, and to Wife's father.

What ensued was a caustic and deteriorating environment within the marital residence leading up to the parties' separation on October 28, 2023. The Husband allowed the parties' daughter, Diana, to verbally abuse and denigrate the Wife and took no action to intervene or preserve the relationship between Diana and her mother. On October 27, 2023, Husband allowed Diana to take possession of Wife's cell phone and forward personal messages between Wife and Mr. Vess to a family group chat as well as to the Wife's boss. The Husband did not take any action to intervene.

On October 28, 2023, at approximately 6:00 a.m., the Wife was awakened by Diana who verbally berated her and kicked the bedpost of her bed. Diana demanded that Wife exit the marital residence, yelling at her mother to “get the fuck out of the house!” and “you can’t stay here anymore.” Again, Husband did not take any action to intervene and by this point, he had taken possession of Wife’s personal and government cell phones as well as her government issued computer. Wife fled the marital residence with only her car keys and purse. She testified that she felt suicidal and contemplated driving into traffic to kill herself. She drove to A.T. Augusta Military Medical Center where she was admitted into the mental health hospital that day with suicidal ideation.

On November 2, 2023, unbeknownst to Wife and without her consent, and while she was in the hospital, Husband sent an email from Wife’s government laptop and from her government email address to a Dr. Nemcek. In that email, Husband identified himself as the author and sender of the email. The Husband was aware that doing so was considered unauthorized use of the device and email address and as a result would be subject to a military investigation and punishment. Husband testified that he did so as he did not know Dr. Nemcek’s email address, however the Court does not find this to be compelling justification as Husband simply could have copied and pasted the email address into an email sent from his own device and email address. Husband then forwarded that email to his own personal email address for the purpose of retaining it. Husband concealed that information from Wife. The evidence strongly suggests that Husband sent this email in the hope that it would trigger an investigation of Wife, which it did. The investigation had the potential to jeopardize her job and her military pension.

Wife remained in the mental health hospital until her release eleven days later on November 8, 2023. On November 9, 2023, Wife enrolled in a daily Partial Hospitalization Program (PHP) which required her to attend group therapy sessions. She remained in this program for 45 days. Upon completion of the PHP, Wife entered an Intensive Outpatient Program (IOP) in which she participated until her discharge in April of 2024.

B. Separation Agreement

Immediately following her departure from the marital residence, Wife requested that the parties execute a separation agreement. Husband drafted an agreement and sent Wife a first draft to review on November 9, the day after she was released from the mental health hospital. Then, on November 30, 2023 Husband insisted that Wife come to the marital home to review the document. This marked the first time Wife returned to the marital home, from which she had been ejected one month prior. While Husband read the document aloud, Wife testified that she did not read the document. The parties then drove to a bank to meet with a notary. In front of the notary, two different documents were signed. Agreement One was retained by Husband and Agreement Two was retained by Wife. Agreement One is the one sought to be incorporated by the Husband into the parties’ Final Order of Divorce. The Husband testified that he prepared both

documents. The two versions contain material differences. Neither party was represented by an attorney in this process, and the discrepancy of different versions of the marital agreement was not discovered until December 2024 during a deposition.

The Agreement which the Husband seeks in the present motion to incorporate states that “[t]he parties acknowledge that each has made a full disclosure of all assets and debts owned jointly or individually. Whether community or separate property, nothing has been withheld and each party believes the other has been truthful in their disclosure.” Pl.’s Mot. to Incorporate, Ex. 1, at ¶ 6. Further, the signature block contains a statement that reads:

By executing this Agreement I swear that to my knowledge the information contained herein is a full and complete disclosure and it is my intention that this Agreement is a full and final division of the property and debts involved in this marriage and that I am satisfied with the agreement contained herein.

The Agreement states that Wife’s income is \$13,000.00 per month and the Husband’s income is \$5,966.00 per month. *Id.* at ¶ 7. In fact, Husband’s gross monthly income as reflected on his 2022 W-2 was \$10,156.42 and \$11,480.67 in 2023.

The Assets are divided by Agreement as follows:

To the Wife	To the Husband
50% of the Disney Vacation Club Property	50% of the Disney Vacation Club Property
50% of Roth IRA [REDACTED] (Value at the time of Agreement was \$132,043.78)	50% of Roth IRA [REDACTED] (Value at the time of Agreement was \$132,043.78)
Personal Property in her Possession at time of Agreement	Personal Property in the Residence
	USAA [REDACTED] Savings Acct
	USAA [REDACTED] Checking Acct
	Wells Fargo [REDACTED] Act (\$7,897.69)
	Entirety of Roth IRA [REDACTED] (Value at the time of Agreement was \$132,043.78)
	Charles Schwab Joint Tennant [REDACTED] (\$90,007.58)
	Charles Schwab Checking [REDACTED] (\$40,956.22)
2013 Honda Pilot (\$8,000)	2021 Model 3 Tesla (\$29,000)
	2020 Ford F250 (\$30,500)
	2019 Ford Ranger (\$28,000)
	DoD Life Insurance Policy (\$400,000)
	DoD Death Gratuity (\$100,000)
	Household Furniture and Bedding

	All pictures and artwork in family residence
	Household electronics
	All Tools
50% Mortgage of Marital Residence Gingerbread Lane Home (Total outstanding debt: \$1,200,000)	50% Mortgage of Gingerbread Ln Home (Total outstanding debt: \$1,200,000)
	Proceeds of Sale of Gingerbread Ln Home will be applied to the Mortgage at 5407 Flint Tavern Pl. (Fair Market Value of \$1,517,724)
	Mortgage at 5407 Flint Tavern Pl. (Total outstanding debt: \$400,000)
	Residence at 5407 Flint Tavern Pl. (Fair Market Value of \$912,800)
Debt on Tanzanite Ring (\$14,661.17)	

It should be noted that the Roth IRA [REDACTED] account is listed twice, once as going entirely to Husband, and once as being shared 50-50. It is unclear as to how the Agreement intended for this asset to be divided. Further, the Agreement, despite containing a recital that it is a full and complete disclosure of the parties' assets, does not contain a provision regarding Husband's Thrift Savings Plan (TSP). Husband's TSP had a value at the time of the execution of the Agreement of \$65,202.94.

Regarding the parties' real properties, the Agreement contains additional provisions. Wife is to pay \$6,800 less the cost of child support and alimony (\$4,571.00 per month) until the sale of the Gingerbread Lane Home. Wife is also to fund the movement of household goods (retained by Husband) to the Flint Tavern Home.

The Agreement also contains the following support provisions: "Wife shall pay \$1,571.00 per month to Husband until the children graduate high school and reach the age of eighteen. Rather than splitting Wife's DoD Retirement, Wife shall pay \$3,000 per month in spousal support indefinitely until such time as either spouse's death."

If the Agreement intended for the Roth IRA to be split 50-50 between the parties and the TSP is left out of the division of assets, then Husband would receive \$2,222,907.38 and Wife would receive -\$540,639.28. If the TSP is included, then Husband's share of the assets would be \$2,288,110.32. If the Agreement intended for the Roth IRA to be given to Husband in its entirety, then Husband would receive \$2,354,132.21 with the TSP and \$2,288,929.27 without the TSP, while Wife would receive -\$606,661.17 under either circumstance. Under any circumstance, the Wife receives several hundred thousand dollars of debt while Husband receives millions. At a minimum, he receives \$2,222,907.38.

Under the Agreement, Wife is to pay spousal support to Husband in lieu of splitting her pension. If we consider Husband's estimated payout of her pension over 30 years, then Wife will receive approximately \$3,000,000. This approximates to \$100,000 per year and 8,333.33 per month. Husband will receive \$3,000 per month in indefinite spousal support. Over the course of 30 years, that amounts to \$1,080,000. If we include those numbers in the above calculations, using the amount most favorable to Wife and least favorable to Husband, then Wife will receive \$1,379,360.72 while Husband will receive \$3,302,907.38, resulting in a gross disparity even assuming the most favorable calculations to the benefit of the Wife.

Finally, and equally significant, the Agreement grants joint legal custody and sole physical custody of the parties' children to the Husband. The Agreement allows the children to make determination of visitation frequency and requirements.

II. ANALYSIS

"[M]arital property settlements entered into by competent parties upon valid consideration for lawful purpose are favored in the law and as such will be enforced unless their illegality is clear and certain." *Cooley v. Cooley*, 220 Va. 749, 752 (1980). The party seeking to invalidate the Agreement must prove by clear and convincing evidence that the Agreement is unconscionable and should be rescinded. *See id.* Unconscionability is determined by a two-pronged test. *Galloway v. Galloway*, 47 Va. App. 83, 92 (2005) (citing *Drewry v. Drewry*, 8 Va. App. 460, 472 (1989)). First, the Court must examine whether there was a "gross disparity in the value exchanged." *Drewry*, 8 Va. App. at 472. If the Court finds that there was a gross disparity, then the Court must consider "whether oppressive influences affected the agreement to the extent that the process was unfair and the terms of the resulting agreement was unconscionable." *Id.*

A. Gross Disparity in Value Exchanged.

"When a court considers whether a contract is unconscionable, adequacy of price or quality of value transferred in the contract is of initial concern." *Drewry*, 8 Va. App. at 472. In *Derby*, the court found a gross disparity where Wife received the bulk of the parties' marital property valued at \$260,000 as apartments or \$423,000 as condominiums and the right to request spousal support and Husband received the conditional right to stay in one of the units. *See Derby*, 8 Va. App. at 30.

Under the present Agreement, the Husband retains the vast majority of the parties' assets. Again, considering the division of assets under the Agreement, Wife comes out net negative while Husband receives over two million. These figures do not account for the value of Wife's DoD Retirement as that was not a liquidated figure *and* at the time of the Agreement was in jeopardy due to the investigation of Wife by the military triggered by the Husband's email sent

on the Wife's government laptop and using her email address. At the time Husband drafted the Agreement, and at the time of signing, Husband was aware of the investigation of the Wife and was aware that she risked losing her income and her pension as a result. Husband argues that if Wife were to live thirty years from the date of her anticipated retirement, Wife will receive over \$3,000,000 from her pension over the course of her life, or \$8,333.00 per month. With \$3,000 going to spousal support each month indefinitely, this brings Wife's monthly income from her pension to \$5,333.00 per month. While the Pension may rest solely in Wife's name, due to her spousal support obligations, a significant portion of that may be considered as going to the Husband as well. Further, Wife owes child support to Husband in the amount of \$1,571.00 per month. For the years that wife will be paying child support in addition to spousal support, Wife will receive \$3,762 of her pension and Husband will receive \$4,571 each month.

Here, as in *Derby*, one party receives the bulk of the marital property, in this case, valued in the millions. However, unlike in *Derby*, in this case, the other party receives primarily debt and is guaranteed to have to pay spousal and child support. Like in *Derby*, the party relinquishing the bulk of the assets does not obtain a guaranteed property value. *See Derby*, 8 Va. App. at 31. While in *Derby*, the Husband retained a conditional right to live in one of the apartment units, here the Wife retains the *possibility* of sole possession of her pension. *See id.* At the time the Agreement was entered into, there was no guarantee that the pension would ultimately be available to Wife.

The Court is reluctant to give great weight to the thirty-year estimated pension payout in the calculations regarding gross disparity because at the time of drafting and due to Husband's own actions, the pension was in jeopardy. Neither party could be certain that Wife would receive her pension as the investigation was ongoing at the time. While Husband received millions in guaranteed assets, guaranteed child support, and unmodifiable spousal support for life, Wife received hundreds of thousands in debt, a 2013 Honda Pilot worth \$8,000, and the possibility of receiving a pension.

Husband also asks that the Court consider the non-monetary value conferred by the Agreement. Wife was engaged in an extramarital emotional affair with Mr. Vess. As a military officer, Wife was not able to engage in a sexual nonmarital relationship prior to separating from Husband for risk of losing her military pension. Husband argues that this value to Wife was significant enough to overcome the disparity in values from the terms of the agreement.

The Court agrees that there was value to Wife in executing this Agreement. However, the Court also considers the fact that at the time of the signing of this Agreement, Wife's pension was already in jeopardy due to the investigation caused by Husband's actions. The Court also considers the non-monetary value conferred to Husband in the Agreement, including full custody of the parties' children and the lack of guaranteed visitation for Wife. Visitation with Wife was left to the parties' children to decide. Given the parental alienation that occurred in the final days

of the parties' relationship, it would be reasonable to assume that this could amount to no visitation for Wife. In addition to the custody and visitation provisions, Husband retains all personal property including sentimental objects such as family photos and artwork. Wife was allowed to retain only what she took with her when she checked herself into the mental health hospital.

In considering all the above factors, the Court finds clear and convincing evidence that there was a gross disparity in the value exchanged under the Agreement.

B. Overreaching or Oppressive Influences

Once a Court has found a gross disparity in the value exchanged, it must then consider "whether oppressive influences affected the agreement to the extent that the process was unfair and the terms of the resulting agreement unconscionable." *Derby v. Derby*, 8 Va. App. 19, 28. "[G]ross disparity in the value exchanged is a significant factor in determining whether oppressive influences affected the agreement to the extent that the process was unfair and the terms of the resultant agreement unconscionable." *Id.* A party may prove the "overreaching or oppressive influences" prong in one of two ways. *Sims v. Sims*, 55 Va. App. 340, 349 (2009).

When the accompanying incidents are inequitable and show (a) bad faith, such as concealments, misrepresentations, undue advantage, or oppression on the part of the one who obtains the benefit, or (b) ignorance, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like, on the part of the other, these circumstances, combined with evidence of the first prong, inadequacy of price, may easily induce a court to grant relief, defensive or affirmative.

Id. at 349-350 (quoting *Derby*, 8 Va. App. at 28-29).

1. Bad Faith

First, the Court examines whether bad faith was present and finds that it was. Husband was entirely responsible for the drafting of the Agreement. The Agreement severely misstated his income. While his W-2s for 2022 and 2023, respectively, show his gross monthly income was \$10,156.42 and \$11,480.67, the Agreement states his gross monthly income as \$5,966.00. Wife's income is stated as \$13,000 per month. The disparity in wages according to the Agreement was \$7,034 monthly. Under these facts, if Wife were to pay \$3,000 monthly in spousal support, it would not even equalize their incomes. Wife's adjusted income would be \$10,000 monthly and Husband's would be \$8,966. However, using Husband's lower W-2 income (2022 W-2), Husband's income including spousal support would actually be \$13,156.42 while Wife's would be \$10,000. This is a material difference and is a misrepresentation by Husband.

Further, the Agreement fails to account for Husband's TSP which had a value at the time of signing of \$65,202.94. The Agreement purports to have a complete disclosure of the parties'

assets, yet a substantial asset of Husband's was not included. The Agreement also contains an unclear provision. It is unclear whether the Husband retains the entirety of the Wife's Roth IRA account or 50%. These are indicative of concealment and bad faith.

Finally, at the time of signing two different Agreements were signed. The different Agreements contained material differences. One was retained by Wife and the other retained by Husband. The Husband testified that he prepared both documents. Wife's un rebutted testimony was that Husband maintained complete control and possession of the documents until execution.

These actions, collectively, are acts of bad faith on behalf of the Husband. Upon reviewing the testimony and evidence regarding each of these incidents, the Court finds it extremely unlikely that these were the result of inadvertence. Instead, they appeared to be acts of bad faith, misrepresentation, and concealment that benefitted the Husband.

As further evidence of bad faith, Husband had an undue advantage and was aware of this advantage. Husband was aware that Wife was suffering from a mental breakdown. On October 20, 2023, Husband indicated that he believed his Wife's actions did not support a rational decision process and indicated that she was "experiencing mental crisis." At the time, Husband was aware of Wife's diagnosis of a Bipolar 1 disorder.

Husband was also aware that Wife had checked herself in to the mental health hospital and that she had been admitted. Husband was aware that following her discharge eleven days later, she began a forty-five-day stint in a Partial Hospitalization Program (PHP). Husband was aware that during the time of signing Wife was still in the PHP.

Not only was Husband aware of Wife's mental condition at the time, he was also aware of her motivation for signing the Agreement. Husband argues that Wife entered into the Agreement because she knew that if she were to pursue a relationship with Mr. Vess, she would risk losing her job and her military pension. Husband was also aware that at the time Wife had been completely alienated from her children. Husband also presented evidence that Wife expressed concerns that the Agreement was "all in [Husband's] favor[.]" When asked what should be changed, Wife stated "[n]othing. Just let's get it signed so we can be done with it." H. Ex. 7 at 230. While Husband uses this as evidence that Wife was involved in the drafting, it appears to this Court that Wife was not in a position to advocate for her interests. Husband was aware of Wife's desperation and fragile mental condition and used this to his advantage in drafting the Agreement.

Finally, not only did Husband demonstrate bad faith in the drafting of the Agreement, the Court finds that he engaged in bad faith when he chose to send an email from Wife's government issued computer using her government email address. Husband was aware that doing so was a violation that would subject Wife to investigation and the possibility of losing her income and pension.

Husband argues that Wife was willing to accept the gross disparities in the division of assets in order to secure her pension and ensure that she would not lose it if she were to pursue a sexual relationship with Mr. Vess. However, Husband was aware that regardless of her relationship with Mr. Vess, her pension was in jeopardy and that signing the Agreement would not guarantee her pension. Husband did not inform Wife that he had sent the email from her government address and computer, intentionally concealing this fact from her.

In considering all the above factors, this Court finds by clear and convincing evidence that bad faith on the Husband's part was present in the drafting and execution of the Agreement.

2. Weakness of Mind

Though bad faith alone is sufficient to find that there were overreaching and oppressive influences, the Court examines further whether there was "ignorance, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like, on the part of the other[.]" *Sims*, 55 Va. App. at 349-50 (2009).

On October 28, 2023, Wife was admitted to the hospital for suicidal ideation. She remained in the hospital for eleven days at which point she was admitted to a forty-five-day PHP. After completion of the PHP, she was admitted to an Intensive Outpatient Program (IOP) until April of 2024.

Wife was diagnosed with Bipolar 1 Disorder in June of 2022 and Husband was aware of this diagnosis. Wife testified as to how this disorder affected her in her day-to-day life. She described periods of mania and depression. Husband was acutely aware of Wife's mental state in October and November of 2023. On October 20, 2023 Husband stated that he believed that Wife's decisions and actions did not support a "rational decision process" and indicated that he believed she was "experiencing mental crisis."

Even with this knowledge, Husband allowed their daughter to berate Wife on multiple occasions. On October 27, 2023, Husband allowed their daughter to abuse and denigrate Wife and eventually take possession of her phone and forward personal messages between Wife and Mr. Vess to a family group chat and Wife's boss. On October 28th, Husband allowed their daughter to verbally berate Wife and then kick her out of the house.

Wife then drove straight to the hospital stating that she had the overwhelming desire to commit suicide by driving into traffic. Husband knew that Wife suffered from mental illness, knew that he had allowed their daughter to verbally abuse her and publicly shame her by forwarding her private messages to her family and boss, and knew that Wife had admitted herself to the hospital beginning on October 28th. He was aware that she then stayed in the hospital for eleven days before checking into the PHP. Husband was aware of all of these circumstances when he drafted the Agreement and presented it to her for signature on November 30, during

Wife's PHP and less than one month after Wife had admitted herself to the mental hospital due to suicidal ideation.

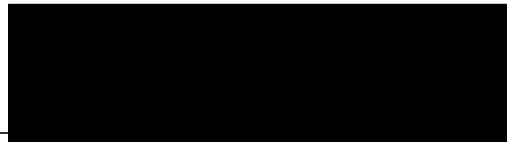
The Court finds that the Defendant has shown by clear and convincing evidence that she was suffering from weakness of mind at the time of signing the Agreement.

C. CONCLUSION

This Court finds clear and convincing evidence that there was a gross disparity in the values exchanged in the Separation Agreement that the Husband seeks to incorporate, and that there was both bad faith on the part of the Husband and weakness of mind on the Wife's part. As a result, there is sufficient evidence before the Court that the Agreement is unconscionable and should not be enforced or incorporated into the Parties' Final Decree of Divorce.

The Court therefore denies the Plaintiff Husband's motion to incorporate.

It is SO ORDERED.



Manuel A. Capsalis
Judge, Fairfax County Circuit Court