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Adjudicating Undue Pressure in Nuptial Agreements[1]

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When the court considers the effect of a nuptial agreement, it must navigate a central tension: acknowledging that pressure may have undermined one party's decision to sign, while also recognising the legitimate reasons the other party sought the agreement. Thus, a nuptial agreement often represents a clash of two interests – particularly where there is a wealth gap between the parties – whereby one person wants the agreement and the other does not.

The irony of this tension is that very few nuptial agreements have been varied or set aside because one of the parties was under pressure to sign. According to the Supreme Court in *Radmacher v Granatino* [2010] UKSC 42, 'unworthy conduct' could (following *Edgar v Edgar* [1980] 1 WLR 1410) include 'exploitation of a dominant position to secure an unfair advantage'.[2] This suggests that power imbalance is not enough in itself, but that the party holding the power in the relationship must also have unfairly exploited that power.

This exploitation of power can be difficult to prove, and persuading the court that it is sufficiently serious to justify setting aside the nuptial agreement is harder still. In *KA v MA* [2018] EWHC 499 (Fam), the wife rejected professional advice and signed a prenup, which the husband told her she must sign to marry him. In Roberts J's view, the wife was 'psychologically torn' between proceeding with the wedding and signing an agreement 'which might well, at some point in the future, operate to her significant financial detriment'.[3] The wife was found to have been 'motivated principally by what she perceived to be in their son's best interests'[4] and did not make much attempt to ask for more under the agreement out of fear that the wedding would not go ahead.[5] But this pressure was not enough to lead the court to a conclusion that the wife's free will was overborne, and adjustments were instead made to the agreement according to her needs.[6] More recently, in *Helliwell v Entwistle* [2025] EWCA Civ 1055, the nuptial agreement in question was set aside on the basis of non-disclosure, but the Court of Appeal stated that, despite being 'highly undesirable', the 'fact that the agreement was

not produced for the husband to sign until the morning of the wedding' would not have been sufficient to vitiate the agreement.[7] These are just two examples of the court's emphasis on need and other more easily evidenced procedural factors over the impact of pressure on the agreement – a pattern that also emerges in my empirical research with barristers and FDR judges.[8]

And so, with few nuptial agreements set aside because of undue pressure, *PN v SA* [2025] EWFC 141 is notable because the separation agreement (which followed an earlier post-nuptial agreement that was adhered to) in this case *was* set aside. This article focusses upon the court's reasons for doing so, before reflecting more broadly on how undue pressure might be adjudicated in nuptial agreement cases in future.

PN v SA

This case concerned two agreements: a post-nuptial agreement providing for a 'straight and simple division of the marital assets to achieve a 50/50 split of the same'[9] and a later separation agreement which, if given effect, would have restricted the wife's access to most of the assets. Each agreement differed not just in its terms, but also in the circumstances in which each was signed. The post-nuptial agreement was found to have been 'negotiated and drafted appropriately and expertly'[10] and both parties had independent legal advice. Notwithstanding confusion as to when the separation agreement was concluded,[11] the separation agreement was also found to be flawed, for, following *Radmacher*, Cobb J held that the husband had exploited 'his dominant position in the relationship to secure an unfair advantage over the wife'.[12]

This is one of the factors that makes *PN v SA* noteworthy. Unlike the circumstances of *Radmacher*, it is one of those rare cases where the court was persuaded that the husband *had* unfairly exploited his position of power over the wife. Not only this, but Cobb J also found that the wife's will was overborne.[13] The evidence to substantiate these findings included contemporaneous WhatsApp messages that left the wife in a 'desperate emotional state';[14] allegations by a corporate lawyer and colleague of the husband that the wife had had the 'crap beaten out of her by' her husband;[15] 'scare tactics' from the husband including 'threatened litigation' and emotional blackmail;[16] and evidence that the husband 'sought to frighten' the wife by claiming he would take actions that would bankrupt the family 'and she would end up working on the tills at Tescos'.[17]

There are two notable aspects of this case that set it apart from other cases where undue pressure has been argued. First, the consequences of setting aside the separation agreement do not mean party autonomy has been displaced by judicial discretion. This is because the terms of the earlier post-nuptial agreement were still given effect. It is therefore unclear whether the agreement would have been disregarded because of undue pressure had it been a standalone pre-nuptial agreement. It is conceivable that, in this scenario, the judge would instead have departed from the agreement to ensure the parties' needs were met, instead of engaging with the behaviour of the husband and the effect this behaviour had on the wife. Indeed, my research has found that, in FDR hearings, circumstances where threats might have been genuinely coercive in the context of nuptial agreements are not brought before the judge. In many cases, barristers told me they have learned not to run the argument that the pre-nuptial agreement should be vitiated because of undue pressure, and that the best strategy is to focus upon needs. As one interviewee put it: 'my learning point … was, sometimes it's just needs, needs, needs. In so many of these cases, your only way really to repudiate is needs'.[18]

The second notable aspect is that the pressure the wife was under when signing the separation agreement was severe. Indeed, the extent of undue pressure in this case was comparable to other cases, such as *NA v MA* [2006] EWHC 2900 (Fam), where the husband's coercion of the wife rendered the agreement unenforceable.[19] In *NA v MA*, the court found actual undue influence, an equitable doctrine that can vitiate any contract.[20] And the pressure in *PN v SA* was exacerbated by other clear procedural flaws, such as an absence of legal scrutiny of the agreement.[21]

From this perspective, Cobb J's decision does not tell us anything new about how undue pressure might affect nuptial agreements in future. Neither does it appear to make it easier for lawyers to argue that their client has been subjected to undue pressure, because the circumstances in this case were egregious.[22]

Nevertheless, reducing this case to its unique facts renders a rather narrow interpretation of Cobb J's judgment. It misses important insights that point to the need for a more holistic, contextual and relational approach to understanding how coercive control can detrimentally impact a person's ability to autonomously agree to the terms of a nuptial agreement.

The 'subjective evaluation' in *Edgar v Edgar*

The rationale for enforcing nuptial agreements was first set out in *Edgar v Edgar*, the case which clarified the legal status of separation agreements. In upholding such agreements, Oliver LJ explained that the parties' 'actual respective bargaining strengths will in fact depend in every case upon a subjective evaluation of their motives for doing it'.[23] Oliver LJ's phrase 'subjective evaluation' signals that the court may look beyond the formal act of agreement to the relational context in which it was made. This opens the door for consideration of power imbalances, disparities in bargaining position, and disadvantages incurred during the marriage – particularly through caring responsibilities or other non-financial contributions.

This appeared to influence *PN v SA* because Cobb J's assessment of undue pressure looked to the cumulative impact of the husband's actions upon the wife, instead of focusing solely upon the pressure surrounding the time the agreement was signed. Cobb J reasoned that the husband's behaviour 'had the effect of increasing the wife's sense of vulnerability … at this crucial time'[24] and proceeded to consider in detail how this impacted her:

> '[T]he wife was, in truth, doing no more than trying to make the best of a situation which I am satisfied she found to be traumatic and in which she found herself placed under sustained and intense pressure from the husband and his scare tactics. In the whole of the period in which the negotiations were taking place she was, I find, both isolated and anxious. She may well have scrutinised the document for its terms, seeking to improve on them to protect herself, but that does not detract from the fact that she saw her situation as "torture"; I find that she felt threatened by the husband, and I accept her evidence when she said that she felt "cornered", "insecure", "trapped" and "controlled" by him in this period.'[25]

Cobb J's subjective evaluation of how the wife was affected by her circumstances underscores the untapped potential of *Edgar v Edgar*. In cases involving pre-nuptial agreements, similar threats may not have had as much sway because so often the judge will conclude that the other party had the choice not to marry, or that the controlling behaviour was not evident when that agreement was signed. Indeed, as an FDR judge in my empirical study of unreported nuptial agreements stated: 'The only evidence you can take into account is what was [available] at the time of the agreement'.[26] But in applying *Edgar*, and Cobb J's more recent judgment, it is clear that a subjective assessment should, at least in theory, recognise more holistically the impact a controlling and coercive relationship will have on one's decision to marry and to sign a nuptial

agreement. A judge should not assume that someone can simply call off a wedding at the last minute; rather, they must consider how the specific pressures affected the individual before them. Those effects are not necessarily diminished by procedural safeguards such as independent legal advice or disclosure.

Concluding thoughts

That undue pressure rarely suffices to vitiate a nuptial agreement is unsurprising. Such claims are inherently difficult to prove, particularly where the pressure falls short of the egregious conduct seen in *PN v SA*, but may nonetheless have impaired a party's ability to enter the agreement freely. By contrast, issues of needs and disclosure are more straightforward to assess – an important consideration in an overburdened court system where judicial time and resources are severely constrained.

Crucially, however, this does not justify the court's reluctance to consider undue pressure as Cobb J did. His approach shows how important it can be not just to consider the conduct of the 'dominant' party, but also its effect on their spouse. While this is not new – after all, the 'subjective evaluation' comes from *Edgar* in 1980 – it does serve as an important reminder of why the enforcement of nuptial agreements should not depend solely (or even primarily) upon procedural, tick box requirements.

There are clear parallels with the wider debate about personal conduct[27] in financial remedies cases. *PN v SA* involved controlling and coercive circumstances. And, on the crucial question of how courts should respond to coercive control, Master Bell has rightly observed: '[s]olicitors, counsel and the judiciary all need to develop diagnostic skills to recognise what is, and what is not, coercive given that it is a "covert" form of domestic abuse'.[28] It remains vital to continue discussing how best to evaluate the impact of such dynamics on the parties in financial remedy proceedings.

Notes

[1] I am grateful to Dr Charlotte Bendall for her feedback on an earlier draft, and to the Leverhulme Trust for funding support.

[2] *Radmacher v Granatino* [2010] UKSC 42 [71]. See other comparative jurisdictions such as New York, which use similar language, as detailed in S Thompson, *Prenuptial Agreements and the Presumption of Free Choice* (Hart, 2015).

[3] *KA v MA* [2018] EWHC 499 (Fam) at [63].

[4] *KA v MA* at [65].

[5] *KA v MA* at [63].

[6] For discussion of what this means for autonomy in the context of nuptial agreements, see S Thompson, 'Pre-nuptial agreements – a good route to autonomy?' [2024] 2 FRJ 163.

[7] *Helliwell v Entwistle* [2025] EWCA Civ 1055 at [125].

[8] S Thompson, 'Unreported Nuptial Agreements in England and Wales' (2025) 39(1) *International Journal of Law, Policy and the Family* 1, p 12.

[9] *PN v SA* [2025] EWFC 141 at [134].

[10] *PN v SA* at [121].

[11] *PN v SA* at [124]–[131].

[12] *PN v SA* at [138].

[13] *PN v SA* at [137].

[14] *PN v SA* at [138].

[15] *PN v SA* at [140].

[16] *PN v SA* at [141].

[17] *PN v SA* at [152].

[18] Thompson (n 7 above), p 12.

[19] The wife was given an ultimatum to sign the postnup or end the marriage, and the court found severe pressure because the husband 'knew that she wanted above all else to save the marriage, felt overwhelmingly guilty and did not want her affair to destroy her children's lives': *NA v MA* [2006] EWHC 2900 (Fam) at [128].

[20] See Thompson (n 1 above), pp 112–113.

[21] *PN v SA* at [142].

[22] For example, Cobb J is clear that 'fractious' behaviour 'would not be nearly enough' to constitute undue pressure. *PN v SA* at [138].

[23] *Edgar v Edgar* [1980] 1 WLR 1410 at pp 1420–1421.

[24] *PN v SA* at [146].

[25] *PN v SA* at [151].

[26] Thompson (n 7 above), p 16.

[27] As categorised by Mostyn J in *OG v AG* [2020] EWFC 52.

[28] *G v G* [2024] NIMaster 5 [83]. Guidance on what may amount to coercive control was provided in *F v M* [2021] EWFC 4 (Fam).