NOT DESIGNATED FOR PUBLICATION

ALONZO RUFFIN	*	**NO. 2000-CA-0383**
VERSUS	*	**COURT OF APPEAL**
UNIVERSITY OF NEW ORLEANS, RON MAESTRI, MICHAEL BUJOL, AND MELANIE RICHARDSON	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-11469, DIVISION "D"
Honorable Lloyd J. Medley, Judge
* * * * * *
Judge Patricia Rivet Murray
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Dennis R. Bagneris Sr., Judge Max N. Tobias Jr.)

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AFFIRMED

Alonzo Ruffin appeals the trial court judgment maintaining an exception of *res judicata* filed on behalf of the University of New Orleans, Ron Maestri, Michael Bujol and Melanie Richardson. For the following reasons, we affirm.

FACTS:

Mr. Ruffin was employed by UNO for ten years, for one year as an assistant track coach and nine years as head track and field coach. However, on April 19, 1999, he was summoned to the office of Ron Maestri, the UNO Athletic Director, and, in the presence of Mr. Bujol and Ms. Richardson, informed that his employment with UNO was to be terminated. He was advised that if he would agree to compromise and release any claims he might have related to his employment with UNO, the university would agree

to continue his employment at his regular pay and benefits for thirty days and allow him to resign in lieu of being discharged. Although the parties disagree as to what motivated this action by UNO, they agree that Mr. Ruffin was told that he would have to make his decision immediately, and execute the Waiver and Release that had been prepared. Mr. Ruffin asked for, but was refused, time to discuss the matter with his wife. He chose to sign the agreement.

On July 15, 1999, he filed suit against UNO, Ron Maestri, Michael Mujol and Melanie Richardson, alleging racial discrimination, tortious interference with his employment relationship with UNO, retaliation, conspiracy to deprive him of his civil and constitutional rights, and wrongful termination. UNO filed exceptions of *res judicata* and no cause of action on the basis that the Waiver and Release that Mr. Ruffin had executed on April 19 had compromised any and all claims he had related to his employment at UNO, including those asserted in the petition. Following a hearing on the exceptions, the trial court maintained the exception of *res judicata*. Mr. Ruffin appeals that judgment.

DISCUSSION:

In his first assignment of error, Mr. Ruffin contends that the trial court erred because it refused to consider evidence of the facts and circumstances under which the release was executed, but relied solely on the fact that a release had been signed. The record does not support this contention.

In support of this argument, counsel for Mr. Ruffin quotes a portion of the transcript in which the court stated "[i]t's not that I am not interested in the facts. At some point he was fired. At some point he left and a release was signed. Let's talk about the release because I think that's the whole case."

A review of the entire transcript of the hearing shows that this quote has been taken out of context. When the statement was made, counsel was relating the history of Mr. Ruffin's entire nine year career with UNO. The court interrupted and advised that it needed to hear the facts surrounding the execution of the Waiver and Release by Mr. Ruffin. Counsel then explained to the court that Mr. Ruffin had been summoned to Ron Maestri's office, where Mr. Bujol and Ms. Richardson also were present. The door was locked, and he was told that either he was going to resign or he would be fired. He was presented with the release document providing that he would

be allowed to resign and be given an extra thirty days. When he asked if he could discuss the decision with his wife, he was told that he could not, that he would have to sign the agreement "on the spot." The court then inquired as to Mr. Ruffin's level of education, and was told that he had some college, but no degree.

Counsel then was allowed to argue that these circumstances constituted duress. He also presented his argument that there was a lack of consideration and that Mr. Ruffin was fraudulently induced into signing the Waiver and Release. It is apparent from the record that the trial court considered the circumstances surrounding the signing of the release as well as the arguments advanced by his counsel before ruling on the exception. Unlike the plaintiff in *Watkins v. Sentry Ins. Co.*, 502 So.2d 1132 (La.App. 4th Cir. 1987), cited in support of his argument that the judgment should be reversed, Mr. Ruffin was allowed to fully present his defense to the exception.

In his next assignment of error, Mr. Ruffin contends that the court erred when it maintained the exception on the basis of the Waiver and Release, which he argues is invalid.

As between the parties, a compromise has the same force and effect as a judgment and can support an exception of *res judicata* . *Brown v. Drillers, Inc.*, 93-1019 (La. 1/14/94), 630 So.2d 741, 747. The burden of proving the invalidity of a compromise agreement such as the one at issue herein is on the party who attacks its validity. *Cochennic v. City of New Orleans*, 98-0464, p.2 (La. App. 4 Cir. 11/10/98), 722 So.2d 325, 327. Thus, Mr. Ruffin bore the burden of proving that the Release and Waiver executed by him was invalid.

Mr. Ruffin contends that there was a failure of consideration for his having signed the agreement. The stated consideration was that he would not be fired immediately so that he would collect his salary for an additional thirty days. He argues that this cannot be consideration as it is something to which he was entitled under the by-laws of the university.

UNO counters that Mr. Ruffin was dismissed for cause; thus, the provision relied upon by him to contend that he was entitled to "reasonable notice" is not applicable to him. Therefore, the fact that he was allowed to remain on the payroll for an additional thirty days constituted consideration. In addition, UNO argues that allowing Mr. Ruffin to resign, in lieu of being

fired, also was valuable consideration.

The trial court apparently agreed, and so do we. By allowing Mr. Ruffin to resign pursuant to a confidential agreement, UNO enabled him to avoid the stigma of a public firing. In addition, although the provision requiring reasonable notice may have been applicable to Mr. Ruffin, by signing the Release he was guaranteed that he would continue to receive pay for an additional thirty days, regardless of the reason for his termination.

Mr. Ruffin also argues that he was under duress when he signed the Waiver and Release because he was intimidated by being locked in a room with Mr. Maestri and the two other assistant athletic directors, and was not allowed to discuss the release with his wife.

Louisiana Civil Code art. 1959 provides that:

> Consent is vitiated when it has been obtained by duress of such a nature as to cause a reasonable fear of unjust and considerable injury to a party's person, property, or reputation.
>
> Age, health, disposition, and other personal circumstances of a party must be taken into account in determining reasonableness of the fear.

Legal duress, duress that will vitiate consent, is determined by applying a subjective as well as an objective standard. The subjective

element is a party's personal reaction to the circumstances, and the objective element is the reasonableness of the fear based on how reasonable persons would react to the circumstances. *Averette v. Industrial Concepts, Inc.*, 95-1286 (La.App. 1 Cir. 4/30/96), 673 So.2d 642, *writ denied*, 96-1510 (La. 9/20/96), 679 So.2d 442. The duress that will invalidate a release is that which proceeds from fear or force of violence. *Shepherd v. Allstate Ins. Co.*, 562 So.2d 1099, 1011 (La. App. 4th Cir. 1990). Mr. Ruffin does not contend that he was coerced to sign the agreement by fear or violence. Rather, he alleges that he felt pressured into signing the Waiver and Release because the three persons present at the time it was presented to him were all college graduates. Although not a college graduate, Mr. Ruffin is an educated man who was head track coach of a Division I university for more than nine years. We cannot say that the trial court erred when it rejected his claim that he was threatened by the presence of his three co-workers to an extent sufficient to qualify as legal duress.

Based on the record, Mr. Ruffin did not carry his burden of proving that the compromise agreement signed by him was invalid. The judgment maintaining the exception of *res judicata* based on that agreement is affirmed.

AFFIRMED