

NOT DESIGNATED FOR PUBLICATION

ELIANA AMPARO SOTO * **NO. 2016-CA-0471**
VERSUS *
ALIREZA SADEGHI * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2014-11550, DIVISION "K"
Honorable Bernadette D'Souza, Judge

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Judge Daniel L. Dysart

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(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome,
Judge Daniel L. Dysart)

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AFFIRMED

DECEMBER 21, 2016

Eliana Amparo Soto (Soto) appeals a judgment of the trial court denying her petition for divorce pursuant to La. Civ. Code art. 103(4). For the following reasons, we affirm the ruling of the trial court.

BACKGROUND:

Soto and defendant, Alireza Sadeghi (Sadeghi), were married in 2004. On December 4, 2014, Soto filed a Petition for Divorce pursuant to La. Civ. Code arts. 103(4) and (5)¹, in which she alleged that Sadeghi was physically and sexually abusive to her during the marriage (Art. 103(4)), and that she was entitled to a divorce as a protective order had been issued against Sadeghi (Art. 103(5)).

Simultaneous with the filing of the Petition for Divorce, Soto filed a Petition for

¹ La. Civ. Code Art. 103 provides in part: “Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that: ... (4) During the marriage, the other spouse physically or sexually abused the spouse seeking divorce or a child of one of the spouses, regardless of whether the other spouse was prosecuted for the act of abuse. (5) After a contradictory hearing or consent decree, a protective order or an injunction was issued during the marriage, in accordance with law, against the other spouse to protect the spouse seeking the divorce or a child of one of the spouses from abuse.”

Protection from Abuse.² The trial court signed a temporary restraining order on December 8, 2014.³

On September 15, 2015, Sadeghi filed an answer to the petition for divorce, and reconvened seeking a divorce pursuant to La. Civ. Code art. 103(1).⁴

Soto moved on October 16, 2015, to set the divorce for trial, which was set for January 28, 2016.⁵

Soto testified at trial that Sadeghi had on numerous occasions during their ten year marriage, forced her to have anal sexual intercourse against her will. The last incident was April 1, 2014. She testified that she protested, told Sadeghi that he was hurting her, and that she did not want to participate. Despite her protestations, Sadeghi forced himself upon her, sometimes physically restraining her. Soto claimed that she was physically injured, and experienced pain and bleeding after the anal sexual intercourse, but never sought medical treatment or reported the abuse to the police. Soto admitted that she continued to have other consensual sexual contact with Sadeghi throughout their marriage.

Soto also testified that Sadeghi took pictures of her, or the both of them, while engaging in anal sexual intercourse, all without her knowledge. She testified

² Technically, Soto's petition for a divorce pursuant to La. Civ. Code art. 103(5) was premature as the protective order had not yet issued.

³ On December 18, 2014, Soto entered into a consent judgment whereby the protective order was dissolved, rendering her cause of action as to La. Civ. Code art. 103(5) moot. The judgment was signed by the duty judge on February 12, 2015.

⁴ La. Civ. Code Art. 103(1) provides for a divorce to be granted if the spouses have lived separate and apart for 365 days, when there are minor children of the marriage.

⁵ Numerous other pleadings and motions were filed by both parties in the interim, mostly concerning custody and visitation. None of those proceedings are relevant to this appeal.

that she discovered a webcam in the couple's bedroom after Sadeghi had moved out of the home. Nude photos of her were recorded by the webcam.

Sadeghi denied ever raping his wife, or having sex with her against her will. He admitted that on one occasion in 2007, Soto complained of pain while having consensual anal intercourse, and he stopped immediately. He further admitted that he again asked his wife to engage in anal intercourse, despite her complaints of pain on the previous occasion. He testified that Soto consented and made no complaints. Regarding the two incidents in 2014, Sadeghi testified that Soto did not complain during the first incident. However, when she complained of pain during the second incident, he stopped.

As to the filming of either party, Sadeghi denied that Soto asked that her face be left out of pictures. He also testified that she was aware of the webcam in the bedroom, which Sadeghi had installed prior to a trip to Hawaii. He claimed to have forgotten to disconnect it after the couple returned. Sadeghi also testified that Soto took numerous photos of him naked.

Sadeghi testified that Soto asked him to leave the family home after he admitted to her that he was having an affair with his office manager, and was in love with her.

The trial court ruled in open court on January 28, 2016, denying Soto's request for an immediate divorce pursuant to La. Civ. Code art. 103(4). The judgment was signed on February 24 and written reasons were issued February 26, 2016.

DISCUSSION:

The trial court stated in its reasons that it denied the Article 103(4) divorce as Soto had failed to prove by a preponderance of the evidence that Sadeghi had sexually abused her during the marriage.

In her sole assignment of error, Soto argues that the trial judge erred in failing to find that she had proven her case. She agrees that the manifest error-clearly wrong standard generally should be applied; however, in this case, she claims that various legal errors, mainly evidentiary errors, so interdicted the fact-finding process, that this Court should conduct a *de novo* review. Soto's main objection to the trial court's handling of the trial was that it allowed Sadeghi's counsel to interrupt Soto's counsel with constant objections.

We do not agree. Louisiana Civil Code art. 103(4) permits a trial court to grant a divorce to a party based upon proof that, during the marriage, the other spouse physically or sexually abused the spouse seeking the divorce. A finding of fault is an "issue that turns largely on evaluations of witness credibility." *Gisleson v. Deputy*, 13-0150, p. 8 (La.App. 4 Cir. 8/7/13), 122 So.3d 1089, 1095.

In this case, the only proof of sexual abuse offered by Soto was her own testimony. As stated by the trial court in its reasons, there was no other corroborating evidence offered, e.g., witnesses, medical reports, emergency room records, to prove Soto's claim. It is clear that the trial court, which was in the best position to weigh the testimony and judge the credibility of the parties, found Sadeghi to be more credible. A reviewing court cannot upset such a finding. The

trial court's findings are factual and deserving of much deference by this Court. We will not upset such findings absent manifest error. *Id.*; also see, *Ficarra v. Ficarra*, 15-368, p. 3 (La.App. 5 Cir. 12/23/15), 184 So.3d 161, 162; *Saacks v. Saacks*, 612 So.2d 925 (La.App. 4th Cir. 1993).

Accordingly, following our thorough review of the record, we find no error in the ruling of the trial court, and affirm the judgment.

AFFIRMED