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New York Divorce and Family Law Blog

Social Abandonment: Not a Grounds for Divorce

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Because New York remains the only state in the country that does not provide for a no-fault divorce, creative lawyers have been forced to "push the envelope" to develop theories using the statutorily recognized grounds of divorce-abandonment, adultery, cruel and inhuman treatment, imprisonment, and constructive abandonment.

In one recent case, the wife alleged that she had been "socially abandoned" by her husband. In **Davis v. Davis**, the wife of 41 years claimed that her husband:

. . .refused to engage in social interaction with the wife by refusing to celebrate with her or acknowledge Valentine's Day, Christmas, Thanksgiving, and the wife's birthday, by refusing to eat meals together, by refusing to attend family functions or accompany the wife to movies, shopping, restaurants, and church services, by leaving her once at a hospital emergency room, by removing the wife's belongings from the marital bedroom, and by otherwise ignoring her.

The Second Department, however, ruled that a social abandonment does not constitute a grounds for divorce. In order to constitute abandonment, there must be an actual abandonment, a lock out of the plaintiff by the defendant, or a constructive abandonment. A constructive abandonment has:

". . .been routinely defined as the refusal by a defendant spouse to engage in sexual relations with the plaintiff spouse for one or more years prior to the commencement of the action, when such refusal is unjustified, willful, and continual, and despite repeated requests for the resumption of sexual relations."

The Court engaged in an exhaustive explanation as to why a social abandonment should not be recognized as a divorce grounds. Perhaps the most interesting reason given was that it would burden the courts with fact finding. Since there would be no bright line as to the appropriate level of "social intercourse," courts would be forced to engage in a case by case analysis to determine

if a social abandonment had occurred. The determination would involve consideration of “family events, meals, holidays, religious activities, spousal expectations, cultural differences, and communications.”

If however, New York recognized a no-fault or an “irreconcilable differences” grounds for divorce, courts could be divested of the need to consider grounds issues. This point was not lost on the Appellate Division, which concluded that:

The interest of the matrimonial bar is borne of its frustration that New York is the only state that requires a finding of fault or the living apart of spouses as a basis for divorce. . . The New York State Matrimonial Commission determined that contesting matrimonial fault is costly to both litigants and the judiciary. An appellate recognition of social abandonment would be a significant leap, in the view of some, toward no-fault divorce in New York, either de facto or de jure. While we are sensitive to the desire of many for a reformation of matrimonial litigation in New York including, but not limited to, the enactment of no-fault divorce grounds, this case cannot provide the vehicle for that goal.

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