New York's No Fault Divorce: Trial Required To Prove Marriage is Irretrievably Broken

Posted by Daniel Clement on February 08, 2011

When no-fault divorce came to New York, it was supposed to end the need for grounds trials. Fault trials are universally viewed as time consuming and needlessly expensive; no fault divorce was supposed to be the panacea.

When enacted, it was assumed that the allegation that "the marriage had irretrievably broken down with no prospect of reconciliation," would create an *irrebuttable* presumption that would, in essence, establish the ground for divorce, completely eliminating the need for a grounds trial.

However, in Strack v. Strack, an upstate judge ruled that because the new law does not explicitly abolish a right to trial in a divorce action, a party is entitled to a trial to determine:

> "whether a breakdown of a marriage is irretrievable. . .. This Court does hold, however, that whether a marriage is so broken that it is irretrievable need not necessarily be so viewed by both parties.

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> Accordingly, the fact finder may conclude that a marriage is broken down irretrievably even though one of the parties continues to believe that the breakdown is not irretrievable and/or that there is still some possibility of reconciliation."

I am not sure what a divorce defendant gains by forcing a trial on the issue of whether a marriage has irretrievably broken down. Even if the defendant prevails at trial, it is doubtful the other party will put all the problems of the marriage behind him and resume the marital relationship.

Doesn't the fact that a trial is required to resolve a conflict about the viability and the health of marriage actually prove that the marriage has irretrievably broken down?

This nonsense must end. New York's no fault divorce law must be amended to provide that mere allegation, made under oath, that a marriage has irretrievably broken down establishes this ground for divorce, thereby eliminating the need to ever try this issue.

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