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Domestic Relations: Single Act of Cruelty as Grounds for Divorce

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RECENT DECISIONS

Domestic Relations: Single Act of Cruelty as Grounds for Divorce: The plaintiff-husband in *Merten v. National Manufacturer's Bank of Neenah*[1] sued his wife for divorce. The wife counterclaimed on the ground of cruel and inhuman treatment. While the husband did not testify at the trial, the wife testified that on one occasion her husband had struck her with the result that she had subsequently become very nervous and upset. A witness offered corroborating testimony as to the wife's health. The trial court granted the wife a divorce on what it admitted was minimal evidence.

There had been an $8,500 property settlement in the case, made in lieu of alimony. Subsequent to the decree, the wife was killed in an auto accident and the husband moved to strike the property settlement alleging that since it was made for the purpose of supporting his wife there was no longer any need to complete it as ordered. When the trial court denied the motion, the husband appealed, challenging the validity of both the property settlement and the divorce.

In upholding the wife's divorce, the Wisconsin Supreme Court, speaking through Justice Heffernan, stated that

> The testimony upon which a finding of cruel and inhuman treatment can be based is set forth in the statement of facts. They are undeniably scanty: A bare statement that on one occasion the offended spouse was struck and rather meager and equivocally stated testimony that such treatment made the wife nervous and upset. . . .
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> Although the only evidence of cruel and inhuman treatment was the striking of a single blow, a single act of cruelty may be sufficient grounds for divorce. [citation omitted]
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> The trial judge had the parties before him and is in a better position than we are to judge the effects of the acts [sic; act?] alleged upon the other spouse. What might well in a less enlightened age, or under different circumstances, merely constitute a reasonable interspousal chastisement could constitute cruel and inhuman treatment in the case. . . .[2]

Cruel and inhuman treatment has long been grounds for divorce in Wisconsin, but it appears that this is the first case to expressly state that a single act may constitute cruel and inhuman treatment. One of the problems that the *Merten* case raises is: what type of single act will now justify a divorce in Wisconsin grounded upon cruel and inhuman treatment? This article will attempt to answer this question by comparing the rather inconclusive Wisconsin law on the subject with the developing law in other jurisdictions.

There have been three paths of development in the law of cruel

[1] Merten v. National Manufacturer's Bank of Neenah, 26 Wis. 2d 181, 131 N.W. 2d 868 (1965).
[2] *Id.* at 186, 187, 131 N.W. 2d at 870, 871.

and inhuman treatment in Wisconsin. In the first of these, the cases appear to have required a course of conduct culminating in a single act of violence. For example, in *Roelke v. Roelke*[3] the wife, who successfully sought the divorce, complained that for one year prior to the single act of violence, her husband had constantly used abusive language when speaking to her. This would seem to indicate the presence of a course of conduct, preceding the single act, which developed to the point of a great violence. However, the court said that the previous course of conduct must be more than mere unhappy relations:

> A single act of physical violence does not always justify divorce, even in connection with previous unhappy relations. Much must always depend upon the condition in life of the parties, their sensibilities, and the effect of the acts complained of upon the party complaining; and all of these matters are peculiarly within the knowledge of the trial court, and cannot be so well known to the appellate court.[4]

The second path of development began as early as 1888, when the court recognized in *Crichton v. Crichton*[5] that a course of conduct which was not consummated by a high degree of physical violence could still justify a divorce if the results of the act were great mental anguish and a certain degree of impairment of the spouse's health.

It was not until several years later, however, that the courts began to generally recognize a third development: psychological cruel and inhuman treatment.[6] Thus, even a passive course of conduct, such as failing to aid a wife when she needs help, and prolonged periods of silence broken by abusive language, may be cruel and inhuman treatment. Such as the case in *Hiecke v. Hiecke*[7] where the court said that

> It does not seem, by the later authorities, that actual impairment of the health, caused by ill treatment without violence, actual, threatened, or probable is essential to cruel and inhuman treatment. If the conduct was such as naturally to cause a great mental suffering to the plaintiff and to render impairment of health probable, so that further efforts to perform the conjugal duties would be dangerous.[8]

Thus, we see that there are three phases of development in the Wisconsin law on cruel and inhuman treatment: (1) the characteristically

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[3] 103 Wis. 204, 78 N.W. 923 (1899).
[4] *Id.* at 206, 78 N.W. at 923.
[5] 73 Wis. 59, 40 N.W. 638 (1888).
[6] Hiecke v. Hiecke, 163 Wis. 171, 157 N.W. 747 (1916); Bird v. Bird, 171 Wis. 219, 177 N.W. 4 (1920); Mayhew v. Mayhew, 239 Wis. 489, 1 N.W. 2d 184 (1942); Voigt v .Voigt, 21 Wis. 2d 421, 124 N.W. 2d 640 (1963); Grosberg v. Grosberg, 269 Wis. 165, 68 N.W. 2d 725 (1955); Heffernan v. Heffernan, 27 Wis. 2d 307, 134 N.W. 2d 439 (1965).
[7] 163 Wis. 171, 157 N.W. 747 (1916).
[8] *Id.* at 177, 157 N.W. 2d at 750.

violent physical act preceded by a course of conduct; (2) a hybrid development consisting of a milder course of conduct superimposed on mental abuses tending to humiliate the other spouse; (3) psychological attacks on the sanity and general mental health of the other party.

Many of the courts throughout the United States recognize the fact that in certain situations a divorce action grounded on cruelty may lie, even though only a single act is offered as evidence. A leading Missouri case on single act holds that, "It is not every act of cruelty on the part of the husband that will entitle a wife to a divorce. A single slight blow, slap, or push not threatening bodily harm is not sufficient for divorce under the statute."[9] The court further held that the single act must be more than one which merely causes theother spouse a certain amount of indignity. Generally, cruelty statutes which include indignities as possible grounds, however, require a series of these to constitute sufficient matter for a divorce action.

The Missouri court gave further definition to the state statute when it denied the husband a divorce in *Weisheyer v. Weisheyer.*[10] The case was based upon the wife's single act of striking him with a candlestick. The candlestick was very light, and broke the moment it touched the husband's arm, causing him little or no injury.

Of all the cases in this area, the one which presented the most unequivocal single act was *Crabtree v. Crabtree.*[11] Here the defendant-wife, with no previous history of any such conduct, wildly confronted and threatened her husband with a straightedge razor. She cut his throat with the razor and proceeded to chase him about their home, slashing and cutting him on the arms and back as they ran. He ran out of the house and over to the home of a neighbor, with his wife in hot pursuit. Before they managed to subdue her, she had slashed him again. The husband sued for divorce and based his complaint on his wife's "cruel and inhuman treatment which rendered cohabitation unsafe and improper."[12] The Arkansas court held that, although the wife had since come out of this sudden fit and now sought reconciliation, she had perpetrated an act which rendered future cohabitation with plaintiff unsafe. Therefore, the divorce was granted.

In the case of *Wiggins v. Wiggins,*[13] the wife in an outburst of temper shot at her husband with a shotgun, narrowly missing him.

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[9] Johnston v. Johnston, 260 S.W. 770, 772 (Mo. Ct. App. 1924).

[10] Weisheyer v. Weisheyer, 6 S.W. 2d 989 (Mo. Ct. App. 1928). However, in Thomas v. Thomas, 288 S.W. 2d 689 (Mo. Ct. App. 1956), the wife's single act of driving the husband's relatives out of the house and calling them unbelievers was found to be a sufficient basis, in the light of past conduct, to grant the husband a divorce.

[11] 154 Ark. 401, 242 S.W. 804, 24 A.L.R. 918 (1922).

[12] ARK. CODE §427 (Williams, 1934).

[13] 171 Pa. Super. 298, 90 A. 2d 275 (1952).

The Pennsylvania court found that the evidence justified a divorce based on cruel and barbarous treatment.

In the Nevada case of *Johnson v. Johnson*,[14] the husband, on one occasion, beat his wife. The result of the assault was a fractured rib, bruises about the head, and other injuries to the wife. The court found defendant-husband guilty of extreme cruelty, without cause or provocation, which caused plaintiff intense suffering and seriously interfered with her health and made future cohabitation impossible.

The previous cases illustrate situations where the conduct of the defendant was quite outrageous. However, some courts have seemed to indicate that a single act of a less volatile nature may also be a basis for a divorce action.

An Ohio Court of Appeals, interpreting the indignities section of its cruelty statute, flirted with the possibility of a single act when it said there must be a plan or purpose "calculated by the defendant to permanently destroy the peace of mind and happiness of one of the parties to the marriage and thereby render the marital relation intolerable."[15]

Most commonly, the use of cursing and vile language on a single occasion, even when coupled with some physical violence, is not enough upon which to grant a divorce, especially if it occured during an argument between the spouses.[16] But one court has said, via obiter dicta, that violent language may be sufficient if the conduct of the parties goes far beyond the fairly common marital argument, resulting in the impairment of the health of one of the parties, or creates in the individual a reasonable fear for his personal safety if he or she continues to live in the same household.[17]

Various state courts have made many statements as to what they feel may or may not be a sufficient act. In Illinois, the court is bound by its cruelty statute which requires that the acts be more than one in number. Thus, two probable instances of the types of cruelty thus far mentioned could give grounds for a divorce.

In Connecticut, the single act must be one which constitutes "intolerable cruelty," that is, the act must be intolerable in the sense of rendering continuance of the marital relation unbearable.[18] The Mary-

[14] Johnson v. Johnson, 76 Nev. 318, 353 P. 2d 449 (1960).
[15] Dean v. Dean, 70 Ohio L. Abs. 33, 126 N.E. 2d 819, 820 (Ohio App. 1953).
[16] Scheinin v. Scheinin, 200 Md. 282, 89 A. 2d 609 (1952); Souza v. Souza, 332 Mass. 316, 125 N.E. 2d 120 (1954); Tillery v. Tillery, 304 S.W. 2d 156 (Civ. App. 1957); Rankin v. Rankin, 181 Pa. Super. 414, 124 A. 2d 639 (1956); Brown v. Brown, ——R.I.——, 177 A. 2d 380 (1962); Brown v. Brown, 217 Ga. 671, 124 S.E. 2d 399 (1962); Gordon v. Gordon, 270 Wis. 332, 71 N.W. 2d 386 (1955).
[17] Johnson v. Johnson, 76 Nev. 318, 353 P. 2d 449 (1960); Anderson v. Anderson, 68 Cal. App. 218, 228 Pac. 715 (1924).
[18] Beck v. Beck, 102 Conn. 755, 129 A. 275 (1925); McEvoy v. McEvoy, 99 Conn. 427, 122 A. 100, 102 (1923) where the court said: "It is only when the cumulative effect of the defendant's cruelty upon the suffering victim

land court, in dealing with the problem of single act of cruelty, has held that it must be more than slight in character and must indicate an intention to do serious bodily harm.[19]

A reasonable, or even somewhat forceful request for normal marital relations is generally held not to constitute cruelty.[20] This is true even when the other spouse resists, or at least finds such an experience unpleasant. As long as the requesting spouse does not intentionally impair the health or endanger the safety of the other spouse, his acts do not constitute cruelty.

The reprimanding of children in front of the other spouse, even though the discipline may be somewhat harsh, is generally not held to be cruelty.[21] But the Louisiana court has said, via obiter dicta, that such conduct may become a basis for a divorce action if it is carried on in the presence of the other spouse "solely to give him grief and affect his health."[22]

The courts have found that there are many ways of seriously impairing a spouse's health. Among these is the questioning of the other's sanity. If the party is somewhat nervous in the first place, a spouse's conduct in this area might do much to further unsettle his mate's mental health. However, here again, the conduct which it takes to establish an intolerable situation generally amounts to a course of conduct.[23] The situation may also be such that the complaining spouse

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has become such that the public and personal objects of matrimony have been destroyed beyond rehabilitation that the condition of fact contemplated by the intolerable cruelty clause of the statute . . . should be found to exist." (Citation omitted.)

[19] Hoshall v. Hoshall, 51 Md. 72, 34 Am. Rep. 298 (1878); Hawkins v. Hawkins, 65 Md. 104, 3 A. 2d 749 (1886); Shutt v. Shutt, 71 Md. 193, 17 A. 1024, 17 Am. St. Rep. 519 (1889); Goodhues v. Goodhues, 90 Md. 292, 44 A. 990 (1899); Hastings v. Hastings, 147 Md. 177, 127 A. 743, 744, 745 (1925) where the court stated: "A single act of violence, slight in character, does not ordinarily constitute cruelty of treatment as a cause for divorce a mensa. . . . [I]t depends on whether such single act indicates an intention to do serious bodily harm or is of such a character as to threaten serious danger in the future." See also McKane v. McKane, 152 Md. 515, 137 A. 288 (1927); Martin v. Martin, 159 Md. 46, 149 A. 616 (1930); Gellar v. Gellar, 159 Md. 236, 150 A. 717 (1930); Bonwit v. Bonwit, 169 Md. 189, 181 A. 237 (1937); Stern v. Stern, 183 Md. 59, 36 A. 2d 695 (1944); Collins v. Collins, 184 Md. 655, 42 A. 2d 680 (1945).

[20] Record v. Record, 244 Iowa 743, 57 N.W. 2d 911 (1953).

[21] Addison v. Addison, 149 So. 2d 249 (La. App. 1963), here the stepson reprimanded was larger than the father.

[22] Dunlap v. Dunlap, 49 La. Ann. 1696, 22 So. 929 (1897).

[23] Heffernan v. Heffernan, 27 Wis. 2d 307, 134 N.W. 2d 439 (1965); Reinhard v. Reinhard, 96 Wis. 555, 558, 71 N.W. 803, 804 (1897) where the court said: "The effect of such conduct upon a nervous, sensitive woman can better be imagined than described, and may have seriously injured the plaintiff's health, as found by the court. This court has repeatedly held that personal violence, whether actual or threatened, or even gross abusive language, is not absolutely essential to constitute cruel and inhuman treatment." See also Mayhew v. Mayhew, 239 Wis. 489, 1 N.W. 2d 184 (1942); Voigt v. Voigt, 21 Wis. 2d 421, 124 N.W. 2d 184 (1963); Crichton v. Crichton, 73 Wis. 59, 40 N.W. 638 (1888) where defendant-husband's verbal abuse of wife and children and series of threats held sufficient.

is not himself the direct victim of such abuse, that is, for some reason the other spouse has slipped into a frame of mind which makes life unbearable for the healthy spouse.[24]

It will be difficult for a court to judge the seriousness of a single act because a distinction must be made by the courts between a series of marital difficulties and a cruel course of conduct. Often when a plaintiff is incensed or injured by a single act, he or she may look back upon recent problems and feel that they actually constituted cruelty. This is where the trial court must step in and decide whether or not there was a history of such treatment by the defendant. If the court does not find such a course of conduct, it must determine whether the background and social level of the parties is such that the single act is a sufficient basis upon which to grant a divorce. The court must determine whether the act was of such a nature as to place the complaining spouse in reasonable fear or apprehension of harm or danger to health. It must inquire whether the act complained of would render the couple's continued living together impossible.[25] Generally, the Wisconsin trial courts reached such a conclusion, only when there had been a course of cruel conduct, culminating in a physically violent or, at least, an overtly cruel act. The conduct must put the innocent spouse in a state of fear for his or her safety.[26]

In conclusion, it is difficult to ascertain just where Wisconsin stands in relation to other single act jurisdictions. The evidence given in the case was minimal, making it impossible to ascertain exactly how violent the single striking blow of the husband was; it certainly wasn't an aggravated battery. In fact, whether *Merten* is even a single act case is open to speculation because the wife had instituted a divorce action a year earlier, but had discontinued it in its early stages.[27]

Since *Merten* is not definitive of the degree of mistreatment necessary in a single act case, one may only theorize on what sort of single act will be sufficient. The single act most likely to be grounds, of course, is the act of physical violence. The cases involving non-physical acts, such as mental harassment of the spouse, would seem to require a persistent course of conduct,[28] but as discussed *supra,* the door has

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[24] Johnson v. Johnson, 107 Wis. 186, 83 N.W. 291 (1900), the fact that the husband became sullen after his wife refused to supply money for a business scheme was held insufficient; Hiecke v. Hiecke, 163 Wis. 171, 157 N.W. 747 (1916); Gordon v. Gordon, 270 Wis. 332, 71 N.W. 2d 386 (1955), wife on many occasions was unreasonably angry and hostile towards husband.

[25] Hiecke v. Hiecke, *supra* note 24; Bird v. Bird, 171 Wis. 219, 177 N.W. 4 (1920); Voigt v. Voigt, 21 Wis. 2d 421, 124 N.W. 2d 640 (1936); Gordon v. Gordon, 270 Wis. 332, 71 N.W. 2d 386 (1955); Heffernan v. Heffernan, 27 Wis. 2d 307, 134 N.W. 2d 439 (1965).

[26] Hansen, *Wisconsin's Family Code—After Five Years,* 18 OKLA. L. REV. 69, 71 (1965).

[27] Brief for Appellant, p. 119, Merten v. National Manufacturer's Bank of Neenah, 26 Wis. 2d 181, 131 N.W. 2d 868 (1965).

[28] Crichton v. Crichton, 73 Wis. 59, 40 N.W. 638 (1888); Mayhew v. Mayhew,

been left open by several courts for such non-physical acts amounting to gross humiliation,[29] severly punishing children in the presence of the other spouse,[30] and vile language.[31] In light of these cases, then, the *sine qua non* does not seem to be whether the act is physical or non-physical, but rather, what the *effect* of the act is on the other spouse.

It is submitted that what the court will look to in future single act cases is whether the conduct of the offending spouse is unreasonable in that it has, or may have, a detrimental effect upon either the physical or mental health of the offended spouse, thereby rendering the marriage state intolerable. This is the reason for the often penetrating inquiry by a court into the background and social status of the parties to a divorce action. Along with the development of our society has come a degree of social refinement which no longer tolerates "wife beating" as an accepted practice. The age we live in has required our divorce courts to look seriously at conduct by one human being which lowers the dignity of another. The courts, during this transition, have been distilling the old clear cut law in order to refine it to modern living conditions.

Thus, at the present time, it seems that a physically violent single act is clearly grounds for divorce because the health of the affected party is visibly impaired. Also, since many of the courts today are searching the facts in order to see if the act is likely to recur, i.e., if impairment of the health is probable, it would seem that many non-physical acts may also constitute cruel and inhuman treatment.

This is not to imply that the court in *Merten* greatly relaxed the grounds for divorce in Wisconsin; this remedy is now, and will in all likelihood continue to be, a possibility only in extremely difficult and delicate situations. The difficulty created by *Merten* is that since little outright indication is given as to when a single act may give a spouse sufficient grounds, much can be implied upon analysis. As life continues to grow more complex, it is a verity that the law of domestic relations will be forced to cope with these complexities. It seems upon analysis, that *Merten* may well be a key to a new era of interpretation in this area of divorce law in Wisconsin, but its analysis and reasoning leave much to speculation.

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239 Wis. 489, 1 N.W. 2d 184 (1942); Grosberg v. Grosberg, 269 Wis. 165, 68 N.W. 2d 725 (1955); Chapman v. Chapman, 3 Wis. 2d 559, 89 N.W. 2d 207 (1958); Voigt v. Voigt, 21 Wis. 2d 421, 124 N.W. 2d 184 (1963); Heffernan v. Heffernan, 27 Wis. 2d 307, 134 N.W. 2d 439 (1965).

[29] Fomby v. Fomby, 329 S.W. 2d 111 (Civ. App. 1959), where the court held that a false charge of infidelity constitutes cruel treatment. The cruelty section of the Wisconsin statute is very similar to that of Texas, but see Garot v. Garot, 24 Wis. 2d 88, 128 N.W. 2d 393 (1964).

[30] Dunlap v. Dunlap, 49 La. Ann. 1696, 22 So. 929 (1897).

[31] Cases cited note 16 *supra*.