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## News

### Jury's Finding on Suitable Grounds for Divorce Vacated

**Judge Says Husband Failed to Prove Serious, Substantial Misconduct**

By Mark Fass

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A Suffolk County judge's decision last week to overturn a jury's finding that a woman's actions constituted grounds for divorce illustrates the divide between popular notions of suitable grounds to terminate a marriage and New York's requirements under its Domestic Relations Law.

"[W]hile the incidents of cruel and inhuman treatment to which plaintiff testified undoubtedly served to make cohabitation unpleasant and stressful at times, the proof failed to establish, as a matter of law, the requisite 'serious or substantial misconduct' by defendant which so endangered plaintiff's physical or mental well-being as to render it unsafe or improper for him to cohabit with the defendant," wrote Justice Joseph C. Pastoressa in *E.D. v. M.D.*, 02-26662. The ruling vacated the jury's verdict.

**The decision will be published Friday.**

In the past, attorneys seeking to prevent a divorce often demanded a jury trial on the issue of grounds, according to matrimonial attorney Myrna Felder. The belief then, she said, was that the populace generally disfavored divorce.

Now, attorneys petitioning for divorce believe that jurors may be more sympathetic about a bad marriage, and thus more likely to be flexible regarding Domestic Relations Law requirements.

"The law still requires substantial cruel and inhuman treatment," said Ms. Felder, a Law Journal columnist.

Until there is a no-fault bill in New York, the law is that "mere incompatibility is insufficient, that an unpleasant or tense marriage is not grounds for a divorce," she added. "This [decision] is a working example of that principle."

At issue in the present case was whether the conduct of the wife, defendant Ms. D., constituted the requisite "cruel and inhuman" treatment.

Mr. and Ms. D., whose names were redacted from the decision, married in September 1991. Both worked in Suffolk County as nurses.

Mr. D. filed for divorce in October 2002. Ms. D. contested the divorce because, among other reasons, an equitable distribution of the marital assets would require her to sell the couple's house in which she still lives, according to her attorney, Sari Friedman, of Sari Friedman PC in Garden City.

Ms. Friedman, who said that colleagues advised her that Suffolk juries were hesitant to grant divorces, demanded a trial by jury.

At trial, the husband's attorney presented numerous examples of allegedly actionable mistreatment. The decision lists nine of those events.



In December 2001, for example, Ms. D "refused to accompany plaintiff to the wedding of a co-worker and shortly thereafter ignored plaintiff while seated together at a Christmas Eve Dinner at defendant's sister's home," Justice Pastorella wrote. "In March 2002 [she] refused to open birthday presents plaintiff had given her because...they were given in a perfunctory manner."

After a week-long trial, the six-person jury found 6-0 that Ms. D.'s behavior constituted cruel and inhuman treatment.

Ms. D. moved for an order to set aside the jury's verdict and to direct entry of judgment in her favor as a matter of law.

### **High Standard**

After enumerating the high standard that such a finding requires, Justice Pastorella nonetheless granted her motion.

"Evidence of a 'stressful relationship,' verbal abuse, and of a failure to speak or communicate for periods of time simply does not, under the applicable statute and controlling case law, constitute cruel and inhuman treatment," the judge held, citing Domestic Relations Law Section 170(1).

The judge's decision to vacate the jury's verdict illustrates the tension between contemporary juries who hesitate to prevent a couple from divorcing and judges who must follow the letter of New York's law.

"Many of [the potential jurors] said, no I will not apply the law," Ms. Friedman said in an interview. "I got six that said they would, and I don't think that they did."

Mr. D. was represented by Dorothy Courten of Hauppauge, who did not return a call seeking comment.

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