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IS MENTAL CRUELTY A GROUND FOR PARTIAL DIVORCE?

Poole v. Poole[1]

Plaintiff-appellee filed suit for a partial divorce against her husband, defendant-appellant, the bill of complaint charging that defendant had "treated her with great cruelty, harshness and brutality, and that his conduct has become so intolerable that she was obliged to leave his house". Defendant's answer denied these allegations. Evidence was introduced to show that the husband had often brought his relatives to live in his home and that the wife had strenuously objected to each of these prolonged stays. The leaving of the wife eventually resulted as a culmination of these visits. The record of the case revealed that the marital course of the parties was not a smooth one, being marred by frequent arguments and quarrels resulting from defendant's drinking and sprees, at which times he would heap curses and abusive language on the plaintiff, particularly language amounting to unjustifiable accusations of infidelity on the part of the plaintiff with a mutual friend of the parties. The plaintiff also testified to acts of physical violence, her testimony being corroborated only as to one instance of such assaults. From a decree granting plaintiff a divorce a mensa et thoro, the defendant appealed. *Held:* Affirmed.

The subject of cruelty has been treated by the Court of Appeals under four distinct phases or aspects. These phases may be generally classified as follows: first, cruelty as a distinct ground for divorce a mensa et thoro as provided by statute[2]; second, cruelty operating to cause a constructive desertion in cases where the conduct of the guilty spouse forces the other to leave, thereby entitling the innocent spouse to a divorce on the ground of desertion, absolute or partial, depending on the length of time[3]; third, cruelty as justifying the injured spouse in living apart without thereby being guilty of desertion[4]; fourth, cruelty operating to revive offenses constituting grounds for either

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[1] 176 Md. 696 (Unreported case), 6 A. (2d) 243 (1939). See also, for a recent case on cruelty, decided after this casenote was prepared, Payne v. Payne, 16 A. (2d) 165 (Md. 1940).

[2] Md. Code (1939) Art. 16, Sec. 41.

[3] Pattison v. Pattison, 132 Md. 362, 103 A. 977 (1918).

[4] Crouch v. Crouch, 150 Md. 608, 133 A. 725, 47 A. L. R. 681 (1926); Singewald v. Singewald, 165 Md. 136, 166 A. 441 (1933).

partial[5] or absolute[6] divorce which had been previously condoned. In treating the subject of cruelty under these separate headings, the Court has recognized varying degrees and types in each instance. Although the scope of this note is limited to the first type, viz., cruelty as a distinct ground for a divorce a mensa et thoro as provided by statute, it may be here noted that in some cases, divorces a vinculo have been granted on grounds of desertion, the desertion being of the constructive type, and where the cruelty giving rise thereto would appear not to have been great enough as such to constitute ground for a partial divorce.[7]

Article 16, Section 41, provides that divorces a mensa et thoro may be decreed for three causes, to wit: first, cruelty of treatment; secondly, excessively vicious conduct; thirdly, abandonment and desertion. Abandonment and desertion is, of course, a separate and distinct ground, but inasmuch as cruelty of treatment and excessively vicious conduct seem to be so closely related, it might be pointed out that the court has never had occasion to give an exact definition of "excessively vicious conduct". The closest thing to such a definition is by way of negation in cases of *Shutt v. Shutt*[8] where it was held that drunkenness did not constitute excessively vicious conduct, and in *McKane v. McKane*[9] where it was held that cursing and use of vile epithets were likewise insufficient.

The instant case seems to be somewhat of a departure from earlier cases decided by the Court of Appeals construing "cruelty of treatment". The Court has repeatedly said that divorces a mensa et thoro are not favored in this State, as the parties are thrown back on society "in the undefined and dangerous characters of a wife without a husband and a husband without a wife".[10] As a consequence of this attitude, divorces granted on the ground of cruelty seem to be limited until the present case to instances of physical violence. Moreover, even in cases where there was some evidence of physical violence, the Court has refused a divorce for the reason that there was no proof of any systematic or continued cruelty of treatment which would endanger life, limb, or health. In sev-

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[5] Hilbert v. Hilbert, 168 Md. 364, 177 A. 914, 98 A. L. R. 1347 (1935).
[6] Fisher v. Fisher, 93 Md. 298, 48 A. 833 (1901).
[7] Pattison v. Pattison, *supra* n. 3, Harding v. Harding, 22 Md. 337 (1864).
[8] 71 Md. 193, 17 A. 1024, 17 A. S. R. 519 (1889).
[9] 152 Md. 515, 137 A. 288 (1927).
[10] Coles v. Coles, 2 Md. Ch. 341 (1851), Bonwit v. Bonwit, 169 Md. 189, 181 A. 237 (1939).

eral of the cases it has been stated that mere petulance of manner, rudeness, and occasional sallies of passion" are not sufficient to constitute cruelty.[11] Evidence of a single act of violence has very often been held insufficient by the Court to constitute cruelty, probably for the reason that such a single act did not satisfy the Court that there was any danger to the plaintiff's life or limb in the future.[12]

The earliest case to be found on the subject of cruelty arose before the courts in Maryland had power or jurisdiction to grant decrees of divorce.[13] The case was one brought by the wife for separate maintenance, or alimony, for which relief it was incumbent upon her to establish facts which would in the English courts have entitled her to a divorce a mensa et thoro. Taking their definition from several English cases decided in the Ecclesiastical Court, the Court decided that "personal injury and words of menace, importing the danger of actual bodily harm, may be deemed cruel treatment, but not mere rudeness of language".

In many cases subsequent to this case, there was evidence of the use of abusive language by the defendant, and in some of them, unjust accusations of unchastity. No serious consideration seems to have been given the evidence of harsh or abusive language in any of these cases until the case of *Schwab v. Schwab*,[14] decided in 1923, in which, in addition to the evidence of the defendant husband having called the plaintiff obscene names and having accused her of illicit intercourse with himself before marriage and with other men, there was also conflicting evidence as to physical violence. The Court decided that viewing the evidence as a whole, the acts of the defendant over a long period of time were of such a character as to

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[11] This language, originally used by Chancellor Kent in the New York case of Barrere v. Barrere, 4 Johns Ch. 187 (1819) can be found, either in its original form or in similar words, in almost all of the cruelty cases decided in this state, among which are Daiger v. Daiger, 2 Md. Ch. 335 (1850); Harding v. Harding, 22 Md. 237 (1864); Childs v. Childs, 49 Md. 509 (1878); Hawkins v. Hawkins, 65 Md. 104, 3 A. 749 (1885); Sharp v. Sharp, 105 Md. 581, 66 A. 463 (1907); Outlaw v. Outlaw, 122 Md. 695, 91 A. 1067 (1914); Bounds v. Bounds, 135 Md. 220, 108 A. 870 (1919); Hastings v. Hastings, 147 Md. 177, 127 A. 743 (1925); Short v. Short, 151 Md. 444, 135 A. 176 (1926); Hillwood v. Hillwood, 159 Md. 167, 150 A. 286 (1930); Singewald v. Singewald, 165 Md. 136, 166 A. 441 (1933); Porter v. Porter, 168 Md. 296, 177 A. 464 (1935); Timanus v. Timanus, 177 Md. 686, 10 A. (2d) 322 (1940).

[12] Hoshall v. Hoshall, 51 Md. 72, 34 A. R. 298 (1879); Goodhues v. Goodhues, 90 Md. 292, 44 A. 990 (1899); Hastings v. Hastings, 147 Md. 177, 127 A. 743 (1925); Gellar v. Gellar, 159 Md. 236, 150 A. 717 (1930).

[13] Helms v. Franciscus, 2 Bland 544, 20 A. D. 402 (1832).

[14] 144 Md. 47, 124 A. 405 (1923).

wreck the health and happiness of a person of ordinary sensibility, and thus sufficient to constitute legal cruelty.

The next case in which accusations of infidelity were given consideration by the Court was that of *Silverberg v. Silverberg*,[15] decided in 1925. In this case the Court said "No form of cruelty is so intolerable as to make a wanton and public charge of infidelity against a wife under circumstances which expose her to shame and contumely". The Court then decided that these unjust accusations of unchastity "considered in relation to the other acts of the husband," (the nature of which acts are not revealed by the reported opinion) were sufficient to constitute cruelty.

It is to be noted that in both of these cases the Court seemed unwilling to base its decision entirely on the evidence of the imputations of adultery but cautiously added the "other acts", whatever they may have been. Consequently, there appears to be no case until the instant one wherein the Court seems to have relied on language alone in granting a partial divorce or alimony without a divorce. Such a conclusion seems inevitable in the instant case, as the Court expressly states that the evidence of physical violence would not avail the plaintiff, and that there was no necessity to decide whether such evidence of physical violence was sufficient reason for the desertion of the defendant by the plaintiff.

Whether this case portends a somewhat less stringent interpretation of the meaning of cruelty within our divorce statute, it is of course impossible to decide. However, in view of the repeatedly strict interpretation heretofore placed on this statute, it seems unlikely that the Court would go beyond this case as to any form of abusive language other than accusations of infidelity constituting legal cruelty. This conclusion seems to be at least partially justified by the direct holding in the case of *Oertel v. Oertel*,[16] decided in 1924, after the *Schwab* case, in which it was held that the statement by the defendant husband in the presence of others that the plaintiff-wife was "nutty" and "feeble-minded", although unkind and inconsiderate, could hardly be regarded as sufficient to justify granting a divorce a mensa et thoro and would not constitute cruelty within the meaning of the statute as construed by the Court of Appeals.

A final query may be here injected as to whether, the adoption by the Court of the view that unfounded imputa-

[15] 148 Md. 682, 130 A. 325 (1925).
[16] 145 Md. 177, 125 A. 545 (1924).

tions of unchastity made by the husband will afford the wife ground for a divorce a mensa et thoro, will be applied in the reverse situation, i. e., where the wife is the accuser and the husband the accused. As the status of the female chastity has seemingly always been exalted over that of the male, it is very probable that the husband who is stigmatized unjustly as an adulterer, by a suspicious spouse, would find less sympathy on the part of the Court. The Legislature of Maryland has in at least two instances demonstrated its esteem for the presumptive virtue of the female. The first example may be found in Article 88 of the Code providing that all words spoken falsely and maliciously touching the character and reputation for chastity of any woman shall be deemed slander. This Article has of course been construed to make any defamation of a woman's reputation for chastity slanderous per se, while it is incumbent upon the male, so defamed, to allege and prove special damages resulting therefrom. The other instance of this legislative discrimination occurred in Article 16, Section 38, of the 1924 Code, which has since been repealed by amendment in the 1939 Session, providing that, inter alia, the premarital unchastity of the wife would constitute ground for a divorce a vinculo matrimonii at the suit of the husband. Like relief was never afforded the wife for the philanderings of the husband consummated prior to the marriage. The refusal by the Court to grant relief to the male, unjustly accused of extra-marital relations, would certainly appear to be justifiable from a practical standpoint, as neither the lay nor legal mind would ordinarily classify such accusations as "cruelty" to him.