

CLEMENTLAW

THE LAW OFFICES OF DANIEL E. CLEMENT

New York Divorce and Family Law Blog

Samurai Sword Attack Is Not Cruel and Inhuman Treatment- Divorce Denied

Posted on April 13, 2010 by [Daniel Clement](#)

In yet another odd case, a husband who was attacked by his wife with a three foot samurai sword, was not entitled to a divorce based upon his wife's cruel and inhuman treatment.

Although the Court found that the wife would have killed the husband, but for his daughter's intervention, the Court in the case [S.K. v. I.K.](#) found that:

. . . at no time did the husband testify that the alleged cruel and inhuman treatment of him by the wife so endangered his physical or mental well being as to render it unsafe or improper for him to cohabit with his wife as required by DRL §170(1). Plaintiff did not sustain his burden of proof with respect to physical or mental injuries. The testimony was that no one sustained any physical injuries, neither party was seen at a hospital or by any doctor. In fact he never contacted the police nor did he seek protection from the Family Court, and he testified that he continuously pleaded with Wife to return to the marital residence to work on their marriage.



To obtain a divorce on the grounds of cruel and inhuman treatment, a plaintiff must show "a course of conduct by the defendant which is harmful to the physical or mental health of the

THE LAW OFFICES OF DANIEL E. CLEMENT
420 LEXINGTON AVENUE, SUITE 2320
NEW YORK, NEW YORK 10170
(212) 683-9551
DCLEMENT@CLEMENTLAW.COM

plaintiff such that it makes cohabitation unsafe or improper." A plaintiff must demonstrate more than incompatibility or that they have irreconcilable differences — serious misconduct must be shown.

In a marriage of a long duration a higher degree of proof is required to establish cruel and inhuman treatment. In this case, where the parties were married since 1979 and the husband failed to offer any medical records evidencing physical or mental injury or police reports evidencing a course of conduct, this single incident was insufficient to establish a cause for divorce of action for cruel and inhuman treatment.

Certainly this marriage has irreconcilably broken down. How ironic, that in a case where one spouse nearly murders the other, the parties could not sustain a cruel and inhuman fault grounds for divorce. Is this case an argument for no-fault divorce?