

March 21, 2011

Intentional Torts of Spouse May Lead to Personal Injury Claims and Punitive Damages in New Mexico

Though New Mexico is a no-fault divorce state, there is nothing stopping one spouse from suing the other spouse for intentional torts. In fact, the general rule in New Mexico is that a spouse may sue another spouse for intentional torts even when they occurred during the marriage.

No-fault divorce protects the parties and the courts from hearing all the lurid details that led to the divorce. However, there are acts that will lead to personal injury claims above and beyond the typical assertions of wrongdoing and blame that fall within the scope of no-fault divorce.

The New Mexico Court of Appeals addressed the issue of spousal tort liability for intentional torts in *Papatheofanis v. Allen*. In that case, the husband was awarded \$257,500 in compensatory and punitive damages for the wife's intentional torts of fraud, breach of fiduciary duty, malicious abuse of process, and defamation.

The torts committed by Allen are not particularly uncommon in divorce proceedings. Most notable and promising for those spouses that have suffered at the hands of a malicious and dishonest spouse were the malicious abuse of process and defamation claims. It is not clear what percentage of the jury verdict was related to these claims but these were in my opinion the most reprehensible and the most symptomatic of high conflict divorce and child custody disputes.

Allen filed false domestic abuse allegations stating that he had battered Allen's mother. She also reported Papatheofanis to his employer falsely accusing him of embezzlement and fraud. Fortunately, Papatheofanis was able to disprove both allegations and was cleared of all charges. This is often much easier said than done particularly when dealing with a spouse that is willing to commit perjury.

Sadly, such false allegations are not uncommon in high conflict divorce. False reports of domestic violence for gains in child custody are perhaps the most common. However, there are those that will not stop there making false allegations of sexual abuse of the children for advantage in the custody fight and sometimes just purely out of malice.

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As in this case, defamation can have potentially devastating employment consequences since a conviction for fraud, embezzlement or other crimes of dishonesty will act as a bar to many jobs. A finding of domestic violence has terrible and permanent consequences for the alleged offender from lifetimes bars on gun ownership to loss of employment opportunities, and for New Mexico often most damaging, loss of security clearances.

A finding of sexual abuse is absolutely catastrophic with lifetime sex offender registration and mandatory minimum prison sentences for most offenses. These cases, often regardless of the factual basis, are prosecuted very aggressively. The innocent accused is put in a literal life and death struggle with a very heavy and difficult burden to overcome. It is hard to imagine a more malicious and devastating act than false allegations of sexual abuse.

There are far too many that engage in this kind of outrageous conduct. It is good to see that the New Mexico Courts have given the wrongfully accused a remedy, including punitive damages. Hopefully, cases such as *Papatheofanis v. Allen* act as a deterrent to what seems to be a growingly popular tactical approach to divorce and child custody disputes.

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