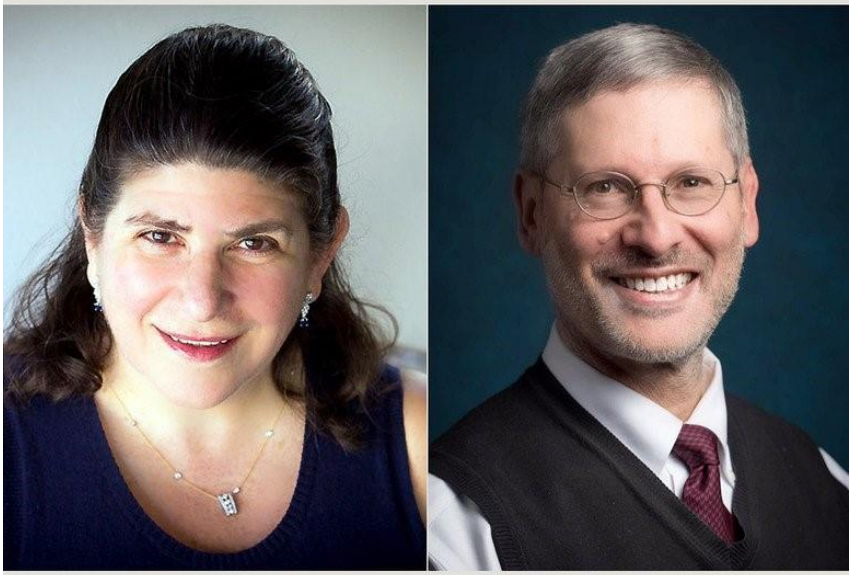
TEXAS LAWYER

Can 'cruel treatment' impact property division in divorce?

Elisa Reiter and Daniel Pollack | November 2, 2021



It seems to happen more often than not that a potential new client seeking a divorce alludes to cruel treatment by their spouse. Tennessee Williams wrote: "All cruel people describe themselves as paragons of frankness." Cruel treatment has long been a "fault" ground for divorce — but a fault ground that has had little momentum recently. On the heels of two recent cases, cruel treatment allegations may find their way into many new divorce cases.

The 14th Court of Appeals recently heard Orzechowski v. Orzechowski (No. 14-20-00055-CV). While the sole issue on appeal was whether or not the trial court abused its discretion in dividing the community estate, the underlying bench trial focused on the issues of whether the husband had engaged in cruel treatment of his wife, as well as engaging in fraud of their community estate.

The wife, Elizabeth, testified that her husband, Wes, frequently disparaged and belittled her in the presence of their children and others. He frequently maligned her appearance, calling her "ugly," "old and wrinkly," "fat pig," "fat cow," "too fat to be respected," "filth," "stupid," and "a nobody." Her vocation as a medical assistant was deemed a "low-level job," "somebody who wipes handles after patients." He even blamed his mother-in-law's death on Elizabeth, "for being a bad person and a bad daughter." At a holiday meal, Wes made the following toast in front of the Orzechowski family. "I wish this is our last Christmas. The next time, next Christmas you spend under a bridge." The statements were corroborated by the Orzechowskis' daughter and two friends.

The husband was employed as an electrical engineer, and earned far more than his wife. He testified that his wife, their friends, and their daughter, were lying and that he had "never abused his wife." The allegations of fraud included testimony that Wes withdrew thousands in cash that he ferried to his sister in Poland, and that he controlled the family finances. Wes failed to disclose all of their holdings, but Elizabeth subpoenaed records from banks. Many transactions had no legitimate explanation, despite Wes's contention that the transfers were for "safety purposes."

The trial court found that Wes depleted the community estate by approximately $572,000, reconstituted the estate, and awarded the entire illusory amount to Wes as a community asset. The trial court also awarded Elizabeth the bulk of the remaining assets and the community home. If the reconstituted portion of the estate was removed from the rest of the calculation "Wes's share would be reduced to less than 10% of the existing community estate, with the bulk of that share being his vehicle." Relying on Schleuter and Murff, the Texas Supreme Court noted that a trial court is to be given wide discretion, and further, that the trial court's decision is not to be set aside absent a clear abuse of discretion. The Texas Supreme Court relied on McCullough, which established that:

It is the settled law of this state that the cruel treatment provided by our statute as a ground for divorce is not confined to physical violence alone, but may consist of a series of studied and deliberate insults and provocations.

The 14th Court of Appeals looked beyond evidence of verbal abuse to acts of physical violence. In a drunken rage, Wes once threw hot tea in his wife's face. In another instance, he "forcibly grabbed her wrists, pushed her around the kitchen, and threatened to kill her because she had requested a divorce." After the parties separated, Wes refused his wife's request for digital copies of family photos, refused to give her money for hand surgery, and refused to forward insurance payments that Elizabeth required to purchase a replacement car.

The 14th Court of Appeals also dealt with the issue of cruel treatment in the Hultquist case. Shawndell Alicia Hultquist and Paul Cook married in May 2011, with divorce pleadings filed in October, 2018. There was a

bench trial in September 2019, and a final decree entered on November 1, 2019, dissolving the parties' marriage "on the grounds of insupportability and cruelty by [Cook] against [Hultquist]." The 14th Court of Appeals noted that "the division of the parties' estate need not be equal, and fault is one of the factors a trial court may consider in dividing the community estate," citing Kaley v. Kaley. Clearly, the Texas Family Code allows for fault based divorced, including cruelty. At least one experienced lawyer defines cruelty as an advanced case of insupportability. Insupportability? When the legitimate ends of the marital relationship have been destroyed, and there is no reasonable expectation of reconciliation, the marriage has become insupportable.

In Hultquist, Cook, who was a school teacher, resigned from his teaching position as a result of testing positive for drugs, then plied his trade as a carpenter. He lived with his mother, who paid his bills, including legal fees associated with the divorce. Cook testified that his wife, Hultquist, was aware of his addiction issues when they first met. There was testimony regarding the cost of a modification case regarding Cook's access to or possession of a child from a prior relationship. Cook could not provide information as to the modification case, testifying "I never made any effort to do that. Sorry." He acknowledged owing $12,000 in credit card debt. While he claimed not to have had an extramarital affair, he acknowledged creating a profile on a dating website where he identified himself as "single." Information proffered during the litigation from Cook was sparse. There was no inventory, no disclosure as to what was in his retirement account, and no appraisals on the parties' three motor vehicles. Nor had Cook offered any fair market value as to his carpentry business. While Cook had not contributed to mortgage payments for at least six months, he nonetheless asked to be awarded

the marital home, as well as $500/month in spousal maintenance from his wife.

Hultquist testified that she worked in a law office earning $17-$20 per hour. She requested dissolution of the marital relationship on the ground of cruelty. In support of this request, she offered testimony that Cook called her names, including "bitch" and "gold-digging whore." She also testified that her husband had told her about "relationships he has with other people." She also noted that "[i]f [she] did not have sex with [Cook], he would get really mad and angry." Prior to the trial, Cook called Hultquist, "screaming" at her that she "had to take his deal or else," according to Hultquist's testimony. Hultquist testified Cook incurred $11,000 in legal fees in his modification case, and that during the modification case, she learned he was smoking methamphetamine. Her attorney introduced Cook's positive drug test results in support of that allegation. Hultquist had, by the time of trial, paid the mortgage on the marital home for two years. She asked to be awarded that home. She also offered to pay Cook $25,000 for his interest in the marital home. Cook had a retirement account, accumulated from his teaching years, valued at approximately $50,000. At the conclusion of the bench trial, Cook was awarded his tools and shop items, valued at $50,000, all of his retirement accounts, valued at $50,000, all sums of cash in his possession (under $350), and the 2018 Nissan Titan (equity of $40,193). Hultquist was awarded the marital home, valued at $299,000, the household furnishings, valued under $8,000, the cash in her possession ($1400), and two vehicles. Debts were allocated as follows: Cook was responsible for the $11,000 in legal fees incurred in his modification case, and Hultquist was responsible for the promissory note on the marital home ($111,853.82), as well as the balances due on two credit cards ($1,451).

The 14th Court of Appeals held that "the evidence in the record supports the trial court's dissolution of Cook's and Hultquist's marriage on the grounds of cruelty." Why? Cook had called his wife derogatory names and bragged about relationships outside of the marriage. Hultquist testified that "her hair was falling out, she got stress rashes, and she developed high blood pressure." She also testified that her husband denied his drug use until confronted with positive drug tests, and further, that Cook spent at least $10,000 on drugs during the parties' marriage.

The trial court, as the trier of fact, reasonably could have relied on this testimony to conclude that Cook's conduct rose to such a level that rendered the parties' living together insupportable. This finding regarding cruelty also supports the trial court's disproportionate division of the community estate.

The overall estate was valued at approximately $403,000; the wife was awarded just over 56% of the estate; the husband was awarded just under 44%. The appellate court found that this was not a punitive difference. Moreover, the appellate court noted Cook's testimony as to the financial assistance he received from his mother, and that it would "lessen the impact from the unequal division of the parties' community estate." Hultquist's request for an award of damages in the form of legal fees was denied. The trial court's findings were affirmed.

Will the floodgates open as a result of the holdings in Orzechowski and Cook? Will there be attorneys who attempt to offer up claims of cruel treatment in the hopes of obtaining a disproportionate division in favor of their clients? It remains to be seen.

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