

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 11 - SUFFOLK COUNTY

PRESENT: HON. JAMES F. QUINN  
Acting Justice

**DECISION AND ORDER  
AFTER HEARING**

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Gloria Sorrentino,

Plaintiff,

- against -

Sebastian J. Sorrentino, Sr.,

Defendant.

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Plaintiff's Attorney  
Wand, Powers & Goody, LLP  
1776 E. Jericho Tpke., Suite 3  
Huntington, NY 11743

Defendant's Attorney  
Lee A. Rubenstein, Esq.  
450 Seventh Ave., Suite 1400  
New York, NY 10123

A trial in this action for divorce was held before this Court on November 16, 2011, November 17, 2011 and November 28, 2011. Trial briefs were submitted by counsel on December 9, 2011. The plaintiff was represented by Jennifer Goody of Wand, Powers & Goody, Esqs. and the defendant was represented by Lee Rubenstein, Esq.

Based upon the plaintiff's advanced age and the defendant's allegation that two of the parties' children pressured the plaintiff to pursue the divorce, the Court appointed Robert Gallo, Esq., as guardian ad litem for the plaintiff. The guardian ad litem reported to the Court prior to the trial and after meeting independently with the plaintiff, that the plaintiff appeared to be competent and wanted to pursue the action and that he supported his client's position to pursue the divorce.

Background

Mr. and Mrs. Sorrentino were married on September 11, 1955 in Queens County, New York. The parties have four children; all have long since emancipated. At the time of the trial, the parties had been married for 56 years.

The parties stipulated into evidence certain pleadings, and in addition, a separation agreement dated March 18, 1996, as well as a settlement agreement dated January 2, 2000, which amended some of the terms of the separation agreement and in effect withdrew a judgment of divorce previously granted.

The parties also put into evidence a decision by Hon. Donald Blydenburgh (retired), which denied plaintiff's motion to submit a judgment of divorce pursuant to the parties' "settlement agreement" on the grounds that the parties were bound by their agreement and directing that a new action be commenced. The plaintiff, in fact, commenced an action pursuant to DRL Section 170(7) alleging irretrievable breakdown of the marriage for at least six (6) months prior to the commencement of the action and granting the plaintiff a judgment of absolute divorce; all other issues having been resolved by the parties separation agreements. The defendant interposed one affirmative defense, failure to plead a cause of action.

### Trial Testimony

The plaintiff testified that the parties have not had marital relations in excess of five years, and although they live in the same house, they sleep in separate bedrooms, and never have meals together. She testified that she socializes with her children and that defendant does not, that they spend no holidays together and share no common friends. The plaintiff testified to her poor health, including a tumor in her ear, high blood pressure and a lump in her breast. She noted that the defendant has not taken her to her doctor's appointments in the last five years, nor has he asked about her health for the past ten years.

The plaintiff testified that the defendant has refused to give her access to her jewelry for the past twenty-five years. The plaintiff also testified that the defendant is not paying her dental bills, and fails to fix the air-conditioning or the refrigerator. The plaintiff testified that she has no hope for the marriage, that the defendant failed to live up to his obligations and that her only wish is for a divorce so that she can have one-half (1/2) of the marital assets and leave them to her four children before her demise.

The parties' daughter testified. Ms. Gloria Kleet testified that although she loves her father, she has no relationship with him and that she has not seen or spoken to him for over five years. She testified that she is very close to her mother, takes her to all doctor's appointments, sees to her almost every day. She confirmed that the parents have not spent any time together for the past five years, that the defendant was argumentative and in fact, after one argument, defendant pushed the plaintiff and the father was arrested. On another occasion her mother fell in her home and the father did not assist.

Thereafter, testimony was taken by one of the sons of the parties', Joseph Sorrentino, Jr., who substantiated the plaintiff's testimony that the plaintiff and defendant have had no relationship in the past five years, other than arguing over heating and cooling issues in the home. He noted that neither cooks or cleans laundry for the other, and that only his mother attends family functions.

The plaintiff moved at the conclusion of the plaintiff's case for an order directing the judgment of divorce, indicating that DRL Section 170(7) only requires the testimony of the plaintiff and that the Court should conform the pleadings to the proof. The defense argued that an affirmative defense was raised and that the defendant was entitled to present a case. The Court reserved decision and directed that the defendant put forth his case.

The defendant testified on plaintiff's direct case as well as on his own direct case and his testimony was consistent. He denied the allegations of the plaintiff and testified that he took his vows of marriage seriously and worked hard to acquire everything the parties had, and that only after his wife aborted a pregnancy he no longer had a relationship with his wife.

He testified that his daughter in laws have interfered with the family's relationships and that two of his children are putting her up to this divorce.

He stated his daughter keep his wife's medical appointments from him and that for many years he took her to the doctors.

The defendant testified that he has complied with his prior agreements and did not want the divorce.

#### Issues

The parties stipulated into evidence the Separation Agreement and Amendment thereto, which addresses all the financial issues between the parties. No defense was raised by either party as to the Agreements and their validity. Accordingly, the only issue to determine is whether or not the plaintiff has plead and proved a sufficient case under the new grounds of DRL Section 170(7); irretrievable breakdown of a marriage.

In addition, the Court may decide whether or not the plaintiff was entitled to her relief at the conclusion of plaintiff's case, without considering the defense as interposed by the defendant, or in the alternative, whether a defendant is entitled to a hearing if an affirmative defense is interposed.

#### The Law

DRL Section 170 states:

An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds . . . (7) The relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath. No judgment of divorce shall be granted under this subdivision unless and until the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and expert's fees and expenses as well as the custody and visitation with the infant children of the marriage have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce.

There have only been two (2) recent cases that have dealt with the issue in motions.

In A.C. v. D.R., 32 Misc.3d 293, 927 N.Y.S.2d 496 (Nass. Cty. 2011), Justice Falanga held that:

... a plaintiff's self-serving declaration about his or her state of mind is all that is required for the dissolution of a marriage on the grounds that it is irretrievably broken . . . Therefore, in this court's view, the Legislature did not intend nor is there a defense to DRL Section 170(7).

The Court in Strack v. Strack, 31 Misc.3d 258, 916 N.Y.S.2d 759 (Essex Cty. 2011), determined that the new cause of action for divorce was not a means to avoid trial, the Court held that:

... whether a marriage is so broken that it is irretrievable need not necessarily be so viewed by both parties. Accordingly the fact finder may conclude that a marriage is broken down irretrievably even though one of the parties continues to believe that the breakdown is not irretrievable and/or that there is still some possibility of reconciliation.

Since so little case law exists on the issue, the Court looks to the Legislative intent of the Statute. See N.Y.S. Senate Bill #A9753A, revised 7/26/10:

Title of Bill: An act to amend the domestic relations law, in relation to no fault divorce.

Purpose or general idea of the bill: This bill would allow a judgment of divorce to be granted to either party to a divorce action without assigning fault to the other party. However, a divorce could only be granted after the major ancillary issues have been resolved.

Summary of specific provisions: Section 1, Section 170 of the Domestic Relations Law is amended by adding subdivision 7 allowing divorce when a marriage is irretrievably broke[n], for a period of at least six months, provided that one party has so stated under oath.

This judgment can only be granted after the following ancillary issues have been resolved: The equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and expert fees and expenses, and custody and visitation with the infant children of the marriage.

A judgment of divorce under this subdivision could not be issued until all these issues are resolved.

Section 2 establishes that this act shall take effect on the sixtieth day after it shall have become law.

Justification: New York is the only state that does not have a no-fault divorce provision.

Currently, a divorce can only be procured by alleging fault such as cruel and inhuman treatment, adultery, abandonment or confinement of the defendant in prison (in addition to the parties living apart pursuant to a separation agreement or judicial decree for more than one year). Yet many people divorce for valid reasons that do not fall under these classifications. They are forced to invent false justifications to legally dissolve their marriage. False accusations and the necessity to hold one partner at fault often result in conflict within the family. The conflict is harmful to the partners and destructive to the emotional well-being of children. Prolonging the divorce process adds additional stress to an already difficult situation.

A study cited at the 2007 Forum on the Need for No-Fault Divorce presented by the NYS Office of Court Administration's Office of Matrimonial and Family Law Study and Reform showed a large decline in domestic violence in states with no-fault divorce. The 27 states studied that have adopted no-fault divorce statutes have seen female suicide rates decline approximately 20 while reports of domestic violence committed by husbands against wives were reduced by more than one-third.

This legislation enables parties to legally end a marriage which is, in reality, already over and cannot be salvaged. Its intent is to lessen the disputes that often arise between the parties and to mitigate the potential harm to them and their children caused by the current process. Because a resolution of all the major issues must be reached before a divorce judgment is granted, this legislation safeguards the parties' rights and economic interests.

It is the intent of this legislation to grant full recognition and respect to valid marriage of same-sex couples to obtain relief under New York State laws and in New York's courts. While the Domestic Relations Law uses the terms "husband and wife" in some places and "plaintiff and defendant" in others, in using the terms "husband and wife", it is not the intent of this legislation to preclude access to relief under the Domestic Relations Law by same-sex couples with valid marriages performed outside the state. Current New York law, written to apply to "husband

and wife”, has been properly interpreted by New York courts to allow relief for same-sex couples with valid marriages. It is not the intent of this legislation to alter the interpretations of this case law including *Martinez v. County of Monroe*, 50 A.D.3d 189, 850 N.Y.S.2d 740 (4<sup>th</sup> Dept. 2008), *Beth R. v. Donna M.*, 19 Misc.3d 724, (Sup. Ct., N.Y. County 2008), and *C.M. v. C.C.*, 867 N.Y.S.2d 884, (Sup. Ct., N.Y. County 2008), nor is it the intent of this legislation to alter New York State’s policy to recognize out-of-state same-sex marriage.

Prior legislative history: A9398A of 2007-2008.

(The Court underlined key provisions.)

It is interesting to note that the legislature wanted to create a no-fault provision, but maintained all six other grounds for divorce in the statute. It appears that New York is a quasi-no-fault state based upon the availability of grounds, and no-fault provisions.

If the Court examines fault, the legislative intent of the statute, there appears to be only two indicia of its intent with respect to DRL sub(7). “This legislation enables parties to legally end a marriage which in reality, is already over and cannot be salvaged. Because a resolution of all the major issues must be reached before a divorce judgment can be granted.” [Emphasis added.]

It appears that the legislature provided a no-fault provision for marriages that were agreeably over.

In other states that have adopted the no-fault approach, the legal assignment of blame is replaced by a search for the reality of the marital situation, whether or not the marriage has ended in fact. (See, *DeBurgh v. DeBurgh*, 250 P. 2d 598, 601, 39 Cal.2d 858, 863-44 (1952) “when a marriage has failed and the family has ceased to be a unit, the purpose of family life are no longer served and divorce will be permitted.”)

Although procedurally Courts from different states may approach the issue of irretrievable breakdown differently; they all seem to agree that the determination of whether the marriage is irretrievably broken is a matter for determination by the Court. See *Shields v. Utah Idaho Central RR Co.*, 59 S.Ct. 160, 305 U.S. 177, 83 L.Ed. 111 (1938) *Justin Bros. v. Christgau*, 7 N.W.2d 501, 214 Minn. 108 (1943); State ex rel. *Ellis v. State Road Com.*, 131 S.E.7, 100 W.Va. 531 (1925).

(For an excellent discussion see the Comments of the Conference for The Uniform Marriage and Divorce Act, which concluded “the determination of breakdown should be a judicial function rather than a conclusive presumption arising from the parties’ testimony or from the petition.” [See, Family Law Uniform Laws Affecting the Family, 2012 Edition, Pg. 525-526, West Publishers]).

In the case at bar, the defendant clearly disputed the breakdown of the marriage and in fact made

allegations that the plaintiff was of advanced age, frail and not in her right mind, and that she was subject to the undue influence of her children. These are, in effect, affirmative defenses under CPLR 3018(b), which the Court was required to consider. The legislature did not abrogate fault nor did it relieve any provision under DRL 170 from the requirements of particularity in specific actions of CPLR 3016. The defendant, in this Court's opinion, had the right to put forth a defense.

Accordingly, it is the decision of this Court that the plaintiff was not entitled to a divorce on the conclusion of the plaintiff's case alone, and her motion for a divorce is *denied*.

However, upon hearing all the evidence in this case, including the defendant's defense testimony, it is this Court's determination that the parties' relationship has so deteriorated irretrievably for a period in excess of six months and that the defenses of fraud, and undue influence, and incapacity were without merit, and that all other economic issues having been previously resolved by way of Agreement and on file with the Court, the plaintiff is entitled to a judgment of absolute divorce and that the terms of the Agreements incorporate into the judgment of divorce. Judgment of divorce *granted*.

Submit judgment on notice.

Dated: Central Islip, New York  
January 12, 2012

ENTER:

**JAMES F. QUINN**

Hon. James F. Quinn, A.J.S.C.