



1. Whether to amend their prenuptial agreement or in some other manner provide financially for the defendant in the event plaintiff became disabled, an ongoing topic and a source of arguments from at least sometime in 2006.
2. The postponement of the defendant's play at the Westport County Playhouse in the Summer of 2007 for which the defendant blamed her husband.

These two threads leading to the breakdown in the marriage came together in or around July and August 2007. In July, defendant rejected plaintiff's financial proposal in the event of his disability, claiming that she would be at the mercy of plaintiff's daughter, and, in the ensuing heated argument (one of several on the subject), defendant threw and broke some crockery in the direction of where plaintiff was seated. Things got worse when defendant learned of her play's postponement due to the purported absence of financial backing.

It was around that time that defendant left two voice-mail messages on plaintiff's cell phone. In the first, she threatened to tell *New York Post* columnist Cindy Adams about how cheap her husband is and about his role in her play's postponement unless he came up with \$250,000 to save the play. In the second, she told plaintiff that she has spoken with Arthur Gelb, an editor of the *New York Times* and a friend of plaintiff, about the scandalous details of their marriage which she again threatened to expose unless plaintiff came up with the money to save her play. Ultimately, Ms. Adams wrote a column in the *New York Post* on August 24, 2007 which presented defendant's claims about her unfair treatment at the hands of her husband.

Defendant acknowledged that plaintiff is a private person and that he is "petrified" of the public learning about his private life. She knew that plaintiff was a person of public importance as the president of the Shubert Foundation, and that he regularly met with persons of similar status. In fact, it was that very vulnerability that allowed defendant to take her threats of exposure to another level. In April 2008, not long after she had been served with the divorce summons and after plaintiff refused to pay her credit card charges completely, defendant struck back by posting the first of several videos on the internet website, YouTube.

Not only did defendant carefully plan the first video she posted on YouTube, bringing in a film crew to the marital apartment and adding music and subtitles to the video, but she sent an e-mail to powerful acquaintances of her husband in the theater business announcing the

imminent posting of the video on YouTube. Once it was posted, she e-mailed them again, even providing a link to the video for their easy viewing. In the video, which was filmed in the parties' marital apartment, the defendant revealed intimate details of the parties' marriage and made cruel attacks on her husband and his family. After revealing that the parties did not have sexual relations due to the plaintiff's high blood pressure, the defendant called the plaintiff at work, and when his assistant told her that he was on a conference call, the defendant, on speaker phone, asked the baffled woman to interrupt him and ask him what he wants her to do with his condoms, pornography and Viagra that she claims to have found in the marital apartment. In the video, she claims that her husband has no grounds to divorce her and attacks him for unjustifiably seeking to evict her from their apartment pursuant to the prenuptial agreement. She also lashes out at his daughters for trying to take her pension away from her.

Now, of course, defendant may never in her wildest dreams have expected that her video would have been viewed more than three million times, but, once it became apparent that her video was an overnight sensation, she persisted in exploiting its popularity. She added three other YouTube videos in which she continued her public rant against the plaintiff for, among other things, throwing her out of their apartment and forcing her to live in a tent. She also asked the public for donations to the "Women Warriors of the World United" to fight her husband in court. Defendant also appeared numerous times on "The Insider" television program, during one of which airings she claimed to have a "big hammer," implicitly threatening to reveal something even more terribly hurtful and embarrassing about her husband. On *The Insider* she also said that her life had become a soap opera. Aside from *The Insider*, she appeared on other television shows and gave interviews to the *Daily Mail*, a British tabloid, and other periodicals including *New York Magazine*. These media appearances and interviews have earned her more than \$80,000 to date.

Defendant's behavior was admittedly calculated to pressure the plaintiff into a better financial settlement and earn money for herself in the process, and has had a significant effect on the plaintiff's well-being. He is 76-years old, approximately 25 years defendant's senior, and suffers from heart disease. During their arguments over the prenuptial agreement and the

postponement of her play, plaintiff was routinely exposed to defendant's anger and profanities, remaining longer at work to avoid potential new arguments at home.<sup>1</sup> He was anxious, unhappy and under great mental stress. In particular, her cell phone voice-mail messages threatening to create a scandal by speaking with Ms. Adams and Mr. Gelb made him so upset that he consulted his doctor after experiencing an irregular heart beat.

Things became exponentially worse after defendant posted her first video on YouTube. As conceded by defendant, plaintiff regards himself as a private person who seeks to avoid public attention. He is a self-made man who started as a theater usher and worked his way up to being president of the Shubert Organization, the largest theater owner and operator in the United States. In that capacity he is in the public eye. He is a board member of the League of New York Theaters and Producers and executive vice president of the Actors Fund. In addition to all the meetings within his company and industry associations, he is expected to attend all the Broadway theater openings, something he regularly did with the defendant during the happier times of their marriage. His prominence in the entertainment industry naturally attracted more publicity than an ordinary business person might have. The exposure of his private life and defendant's berating of him and his daughters on the YouTube videos caused him enormous mental distress. In his own words, he was "mortified, shocked, humiliated, embarrassed, hurt and violated in every sense of the word." Immediately following the defendant's posting of her first video on YouTube, the plaintiff moved out of the marital residence and has not returned since. He continued consulting his doctor about his heart condition.

Plaintiff was upset for himself, but particularly hurt about defendant's comments concerning his daughter Linda whom he loves dearly. The expressions of sympathy from others about his plight made him feel worse. He did not want to be the object of people's pity. He simply wanted to be left alone. Defendant, however, made sure that was not possible. She continued her public rant against him posting new videos on YouTube, and engaging in a media

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<sup>1</sup> That the defendant is capable of such vitriolic behavior is especially corroborated by her fifth YouTube video, filmed in the hallway outside of the marital apartment, in which she screams and curses at the woman who defendant claims has wrongly taken credit away from her for directing her first YouTube video.

campaign, giving interviews for television and the print media and updating her own web site. To this day, plaintiff is uncertain whether, in defendant's words, a "big hammer" will fall on him, exposing even more embarrassing details of his personal life.

#### CONCLUSIONS OF LAW

To sustain a cause of action for cruel and inhuman treatment under Domestic Relations Law §170(1), plaintiff is required to establish that the conduct of his wife so endangered his physical or mental well-being so as to render it unsafe or improper for him to cohabit with her. In that regard, it is well established that the standard of proof required to prove cruelty is less in a marriage of short duration than that required in a long-term marriage. *Brady v. Brady*, 64 N.Y.2d 339 (1985). That is, what would be considered "transient discord" in a marriage of long duration could well compel a finding of substantial misconduct in a short-term marriage. *Hessen v. Hessen*, 33 N.Y.2d 406 (1974). As a general rule, childless marriages of less than ten years are regarded as short-term marriages. *See e.g. Israel v Israel*, 242 AD2d 891 (4<sup>th</sup> Dept 1998).

While each case will rest on its own facts, the appellate courts have provided some guidance as to how to determine whether the claimed misconduct rises to the level of cruel and inhuman treatment. For example, in *Rieger v. Rieger*, 161 A.D.2d 227 (1<sup>st</sup> Dept 1990), in a short-term marriage, the Appellate Division, First Department, upheld a finding of cruel and inhuman treatment consisting of "verbal abuse, public and private humiliation and fear-inducing temper tantrums." In *Soto v. Soto*, 216 A.D.2d 455 (2<sup>nd</sup> Dept 1995), also involving a marriage of short duration, the Appellate Division, Second Department, found that the evidence of verbal abuse, both public and private, and of physical harassment was sufficient to establish cruel and inhuman treatment. More specifically, in *Pfoltzer v Pfoltzer*, 9 A.D.3d 615 (3<sup>rd</sup> Dept 2004), the Appellate Division, Third Department, predicated a finding of cruel and inhuman treatment in part on proof that the wife had embarrassed and humiliated her husband by publically accusing him of engaging in sexually-related criminal conduct, of having a venereal disease and of suffering from AIDS. Similarly, in *Xu v. He*, 24 A.D.3d 862 (3<sup>rd</sup> Dept 2005), the Appellate Division, Third Department, found evidence of cruelty where the wife left her husband

threatening phone messages, sent him hundreds of harassing e-mails, and insulted him in front of his colleagues.

Applying these principles of law to the facts found, the Court concludes that plaintiff has proven his cause of action for cruel and inhuman treatment. This is a marriage of relatively short duration, lasting approximately eight years from the date of marriage on October 21, 1999 until the commencement of the action for divorce on October 24, 2007. Before the posting of the defendant's videos on YouTube, plaintiff largely suffered his wife's verbal abuse in private. She repeatedly berated him for what she regarded as his unwillingness to financially provide for her in the event he became disabled and for his purported role in postponing production of her play. Defendant's verbal attacks on him became so fierce that he stayed late at work to avoid defendant's confrontational behavior. On one occasion, defendant was so out of control that she threw crockery in his general direction. Her threats to reveal the "scandalous" details of their marriage to Ms. Adams and Mr. Gelb caused him even greater anguish and physical distress resulting in consultation with his doctor.

The posting of the defendant's first YouTube video was a watershed event in this marriage, elevating what was still primarily a private dispute into a public spectacle. However, the extortion-like conduct engaged in by defendant on the videos she posted on YouTube and later in appearances on television and newspaper and magazine interviews, was already foreshadowed by her conduct in August 2007 when she threatened to tell all to the *New York Post* and the *New York Times*. What she threatened to do then was precisely what she accomplished by publicly posting her videos on YouTube.

Defendant has argued that given what she regarded as her desperate financial plight, she had no other option but to resort to this form of public self-help. This argument is compromised by the plight of so many other spouses who have either experienced financial travail or faced its threat without having gone public the way defendant has done. It is hard to say defendant had no other choice when no one else before her had ever exercised that choice.

Once the defendant's first video appeared on YouTube, it is safe to say that both plaintiff's and defendant's lives changed dramatically. Defendant continued on her calculated

and callous campaign to embarrass and humiliate her husband and his daughters by appearing on new videos and in numerous other media so as to pressure him into settling the case on more favorable terms or, at least, provide her with the money to continue to wage her battle against him. Although the plaintiff stated during her interview on The Insider that her life had become a soap opera, more importantly, pertaining to this action, she has attempted to turn the life of her husband into a soap opera by directing, writing, acting in and producing a melodrama. While defendant has thrived on being in the public spotlight, plaintiff has suffered tremendously from this attention. He has been publically humiliated and embarrassed to an unprecedented extent. Upon the defendant's first posting on YouTube, the plaintiff immediately left the marital residence and suffered heart problems causing him to consult with his physician. His marriage has been the object of worldwide media attention and its intimate details revealed for all to see. He is a proud, self-made man who anguishes over being the object of other people's pity. He fears new revelations and accusations about himself and his daughters, and worries that the career that he spent a lifetime building will come crumbling down.

Had defendant not posted her videos on YouTube, a case could be made that her previous marital misconduct did not rise to the level of cruel and inhuman treatment, a claim that ironically she herself made on YouTube. However, with the posting of the videos on YouTube and her exploitation thereof in the media circus that followed, there is no doubt that her conduct, taken in its totality, has now so endangered the plaintiff's physical or mental well-being as to render it unsafe or improper for him to cohabit with the defendant. Accordingly, the Court grants the plaintiff a judgment of divorce on the grounds of cruel and inhuman treatment.

This constitutes the decision and order of the Court.

**DATE: July 21, 2008**

**ENTER:**

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**HAROLD B. BEELER, J.S.C.**