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**CASE NOTE: FRAUD NEGLIGENT MISREPRESENTATION AND INFLICTION OF EMOTIONAL DISTRESS AFTER 20 YEARS OF VOID MARRIAGE**

**VANCE v. VANCE, \_\_\_ Md. \_\_\_, 408 A.2d 728 (1979)**

by Mark D. Woodard

On December 12, 1979, the Maryland Court of Appeals affirmed the opinion of the Court of Special Appeals that Muriel Vance was entitled to recover money damages from her husband of eighteen years, Dr. Arnold Vance, for negligent misrepresentation.

Arnold and Muriel participated in a religious marriage ceremony in Arlington, Virginia on September 29, 1956. They lived together as husband and wife for eighteen years, and had two children. On February 1, 1974, Arnold left Muriel. Muriel sought and received a decree in the Circuit Court for Howard County awarding her alimony and child support. Arnold successfully filed a motion to strike the decree and annul their marriage as he had not been divorced from his first wife at the time of his marriage to Muriel.

As a result, Muriel was precluded from any share of the couple's property or alimony. She was left without judicial remedy to require her purported husband to support her, thus suffering both emotional and legal trauma.

In response, Muriel filed suit against Arnold for the intentional infliction of emotional distress, and the negligent misrepresentation by Arnold of his marital status, praying for damages on both counts.

At trial, the evidence indicated that Arnold separated from his first wife in July, 1954, and initiated suit for an absolute divorce. He erroneously believed that he obtained his final divorce decree on September 12, 1956. About one month after his September 29, 1956, marriage to Muriel, Arnold discovered that his divorce decree had not become final until October 16, 1956, but he never told Muriel of this fact at any time prior to the 1974 annulment motion.

Muriel's mother testified that Muriel was in a state of emotional collapse after Arnold filed to annul their marriage. Muriel testified to the emotional distress she had suffered as a consequence of a twenty year deception. Further mental anguish, Muriel testified, was caused by her belief that her two teenage children were now illegitimate.

Walter Hess, Muriel's son from a previous marriage, testified as to her emotional condition following the discovery that her marriage to Arnold was void. Hess was worried by her emotional depression and the change in her appearance from "a woman of beauty to a person who looked 'a wreck', with unkept hair, sunken cheeks, and dark eyes." He also testified that he had great diffi-

culty in communicating with his mother since she "seemed unaware of her own presence and spent long periods crying and sobbing," and he feared she would end up in an asylum. However, Muriel did not present any medical evidence to substantiate her claim for damages based on her physical condition.

At the conclusion of all the evidence, Arnold was granted a directed verdict on the intentional infliction of emotional distress count. The jury returned a verdict for Muriel of \$50,000 for the negligent misrepresentation, but the trial judge entered judgment N.O.V. for Arnold on this second count.

Muriel appealed both rulings to the Court of Special Appeals. In a decision reported at 41 Md. App. 130, 396 A. 2d. 296 (1979), the court reversed both judgments of the trial court. It reasoned that Muriel's nervousness, spontaneous crying, hollowed appearance, and inability to relate to the present, all constituted evidence of an external condition manifesting a physical injury. The court rejected the belief there can be no injury to the mind without an overt showing of bodily harm, and concluded: "the psyche is as susceptible of injury as the body, and absence of apparent physical damage does not serve to lessen the extent of the mental injury." *Id.* at 137, 396 A. 2d at 301. They held that there was legally sufficient evidence to establish all elements of the tort of intentional infliction of emotional distress.

The court explained that the traditional rule allowing recovery for emotional distress required a "physical impact" to the plaintiff concurrent with the incident producing emotional distress. There was no recovery allowed for emotional distress alone, for physical injury resulting from emotional distress, or for the negligent infliction of emotional distress under any other circumstances.

Maryland rejected the "physical impact" rule in *Green v. Shoemaker*, 111 Md. 69, 73 A. 688 (1909), and permitted recovery for negligent infliction of mental distress, if a physical injury results. The court noted the traditional rationale that mental distress can be easily simulated and that no clear standard exists for measuring such suffering, and concluded that a cause of action exists only when the mental distress results in a physical injury. See also, *Tea Company v. Roch*, 160 Md. 189, 153 A. 22 (1931).

The Maryland standard for recovery for the negligent infliction of emotional distress was established in *Bowman v. Williams*, 164 Md. 397, 165 A. 182 (1933). In this case, the plaintiff was frightened for his own safety and that of his children when he observed a truck, out of control, coming toward his house. After the truck crashed through the foundation of the house, the shock to his nervous system resulted in emotional distress which kept him under medical supervision for two weeks and prevented him from working for six months.

The *Bowman* court affirmed a jury award of damages

for mental distress, noting that medical and other evidence indicated that the plaintiff had suffered a nervous disorder as a result of the accident. The court observed:

"The nervous shock of fright sustained by the plaintiff was based on reasonable grounds for apprehension of an injury to the plaintiff and his children, and was one which naturally produced physical deterioration as distinguished from those shocks which primarily work on the moral nature, to the exclusion of actual physical injury." *Id.* at 402, 165 A. at 184.

The *Bowman* court reaffirmed the *Green* rationale that suits seeking recovery for injuries resulting from fear, fright, or other emotional distress should be allowed notwithstanding the possibility of simulated, feigned or speculative claims.

The court concluded:

"A plaintiff can sustain an action for damages for nervous shock or injury caused without physical impact, by fright arising directly from defendant's negligent act or omission, resulting in some clearly apparent and substantial physical injury as manifested by an external condition or by symptoms clearly indicative of a resultant pathological, physiological, or mental state." *Id.* at 404, 165 A. at 184.

For cases applying the *Bowman* "physical injury" standard, see *Mahnke v. Moore*, 197 Md. 61, 77 A.2d 923 (1951) and *H&R Block v. Testerman*, 275 Md. 36, 338 A.2d 48 (1975).

In *Vance*, the Court of Special Appeals indicated that the requisite "physical injury" resulting from emotional distress may be proved in various ways; through evidence of an external condition, by symptoms of a physiological state, or through evidence indicative of a mental state. The word "physical" means the injury is capable of objective determination.

The Court of Special Appeals held that Muriel "... established symptoms of a mental state evidencing a physical injury within the meaning of the *Bowman* standard." The court noted that the realization that her twenty year marriage was void had a "devastating" effect on Muriel. In addition to experiencing symptoms of an ulcer, Muriel reflected her emotional collapse in her "significantly deteriorated physical appearance—unkept hair, sunken cheeks, and dark eyes". The court concluded that Muriel suffered an objectively manifested nervous disorder that was the foreseeable result of Arnold's negligent misrepresentation concerning his marital status. *Id.* at 137, 396 A.2d at 301.

On appeal Arnold contended that Muriel had presented no medical evidence to support her claim for emotional distress. The Court of Appeals found that while expert medical testimony may be advisable it was not a prerequisite to recovery. Maryland courts have permitted persons to testify about their physical injuries and mental

distress without supporting medical testimony. *Wilhelm v. State Traffic Comm.*, 230 Md. 91, 185 A.2d 715 (1962). However, in a situation involving complex medical questions and in cases involving a significant time lapse between the purported injury and the negligent act, expert medical testimony is required.

The Court of Appeals agreed with Muriel that there was legally sufficient evidence to establish the separate tort of intentional infliction of emotional distress.

The elements necessary to prove intentional infliction of emotional distress are:

- "1) The conduct must be intentional or reckless;
- 2) The conduct must be extreme and outrageous;
- 3) There must be a causal connection between the wrongful conduct and the emotional distress; and
- 4) The emotional distress must be severe."

*Harris v. Jones*, 281 Md. 560, 380 A.2d 611 (1977).

The court found that "Arnold's negligent misrepresentation regarding his marital status in 1956 and subsequent concealment of that fact for almost twenty years, could not, of itself, have caused Muriel to suffer emotional distress because she had no knowledge of it. . . . In 1956, when Arnold told Muriel he was free to marry her, he could not have anticipated that under circumstances existing some twenty years later, he would reveal what he previously concealed and cause Muriel to suffer severe emotional distress." *Id.* 408 A.2d at 737.

#### CONCLUSION

The equities of the case were on the side of Muriel. While this was not expressly articulated in the court's opinion, it was at least an important, if not decisive, consideration. Muriel was saddled with a double burden of emotional distress after Arnold left her. On top of the ordinary pain of ending a marriage, Muriel found her "marriage" a legal nullity from which she had no legal right of recovery for alimony or property after eighteen years of living in reliance on that "marriage". The discovery of Arnold's misrepresentation did lead to a greatly increased emotional burden and would seem to argue for the justice of the Court of Appeals result.

It is important to note that the doctrine of interspousal tort immunity was not addressed in this suit. However, sub silencio, this suit of a husband by a wife, under admittedly unique circumstances, is an instance of a breach of interspousal immunity. (See the accompanying article "Wife v. Husband in Maryland after *Vance v. Vance*").

