

IN THE COURT OF COMMON PLEAS  
BELMONT COUNTY, OHIO

CLARA M. WILSON

Plaintiff,

v.

CHARLES A. WILSON

Defendant.

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Case # 90-DR-158

Judge Charles F. Knapp

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TRIAL BRIEF OF PLAINTIFF

CLARA M. WILSON

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### INTRODUCTION

This is a domestic relations case involving a marital estate of over three and one-half million dollars accumulated over a 27-year marriage. There are no minor children. The parties have been unable to agree upon a division of property. The Defendant is contesting the grounds of extreme cruelty.

Exhibits believed to be pertinent are attached in a separate appendix. The exhibits are in alphabetical order as they appear in this Brief followed in parentheses by a number if they are also associated with a deposition filed in this matter. The number corresponds to the marking of that same exhibit during the extensive discovery phase of this litigation. Only those exhibits deemed relevant to these proceedings are attached.

References are also made to certain depositions taken in this case. They include the parties depositions; Plaintiff's expert accountant, James F. Kacsmar; Defendant's expert accountant, Terrence E. Lee; Sharon Lazo, M.D.; and Romeo A. Raimonde, M.D. In addition, the parties exchanged answers to interrogatories and responded to document requests.

The parties have also exchanged the names of their witnesses. Plaintiff intends to call James F. Kacsmar, a representative selected by Belmont National Bank to verify the parties' accounts, Mary Jane Vota, Robert Phillips, Jack Kigerl, Jack Whitehouse, Hanne Boger, John Vota, and Barbara Griffith. Plaintiff also intends to offer the depositions of Sharon Lazo, M.D. and Romeo A.

Raimonde, M.D. Defendant intends to call Terrence E. Lee, Dennis Link, and his four sons.

Plaintiff respectfully asks the Court to make findings of facts and conclusions of law.

### GROUNDS FOR DIVORCE

On May 15, 1990, Plaintiff Clara M. Wilson filed a divorce action against the Defendant Charles A. Wilson, Jr. on grounds of extreme cruelty and incompatibility. Defendant denied the allegations of the Complaint. The ground for divorce is now extreme cruelty, since the parties could not agree on incompatibility. The Plaintiff and Defendant have been married for 27 years and have four adult children.

Charles admits that early in the marriage he kicked and struck Plaintiff and accused her of adultery (Defendant's Deposition, pp. 190, 192, 194). Clara shall confirm the beatings, slappings, and kicking at the early stage of her marriage to the point that she was afraid to anger the Defendant and instead yielded to his demands. She also lied to third parties as to the causes of her injuries. Mrs. Wilson was the typical battered wife.

By 1989, the Defendant had substantially raised her family of four boys. She sought counselling, where she was advised that she must learn to assert herself. She did just that when she advised the Defendant on September 14, 1989, she would not resign from the American Heart Association Board as he demanded.

Charles' anger arose at his wife's daring to oppose his demands. He jumped out of his chair and grabbed her about the neck as he slammed her into the refrigerator. He then grabbed her about both arms, shaking her as they both went over to the kitchen counter which Mrs. Wilson struck with enough force to take the

breath out of her. She then fell to the floor, hitting the bottom door to the sink. As she lay there stunned, she couldn't move her head or pick up her arm.

Charles admits grabbing Plaintiff by the arms and shaking her (Defendant's Deposition, pp. 194, 207, 208-209). He admits grabbing her around the neck with one hand (Defendant's Deposition, pp. 209-210). He admits bruising Plaintiff's arms and neck (Defendant's Deposition, p. 194).

Clara was taken to the East Ohio Regional Hospital by her son Jarrett. She initially lied to the emergency room physician, claiming she had fallen down stairs. The physician's observation of a bruise on the back of the right shoulder was inconsistent with a fall down the stairs. He questioned her further and learned of her husband's assault (Raimonde Deposition, pp. 6-7).

Four days later, Clara went to her family physician, Sharon Lazo, M.D. Dr. Lazo, who shall testify by way of deposition, stated that ecchymosis or black-and-blue marks take up to twenty-four hours to appear (Lazo Deposition, p. 21). Upon examining Mrs. Wilson, the doctor observed a five-inch ecchymosis, tender to palpation over the right posterior upper arm area; a three-centimeter ecchymosis, with tenderness, over the left posterior upper arm area; several abrasions and tenderness over the left posterior scapular (shoulder) area; a five-centimeter ecchymosis and tenderness over the left posterior buttock and upper thigh area; and ecchymosis bilaterally in the neck area below the

mandibles (lower jaw), more pronounced on the right (Lazo Deposition, pp. 8-9). Dr. Lazo found her observations consistent with her patient's history of Mr. Wilson's assault and battery (Lazo Deposition, p. 9). She was given Percocet, a strong pain medication (Lazo Deposition, pp. 9-10).

Mr. Wilson left home following the incident but subsequently returned seven (7) weeks later. He suggested reconciliation and later a formal separation. When these avenues failed, Mrs. Wilson filed for a divorce.

The evidence shall be undisputed that Mrs. Wilson has lived in Belmont County, Ohio, at least six (6) months prior to the filing of her complaint for divorce. This court has jurisdiction, Ohio Revised Code § 3105.03, and venue is properly laid in Belmont County, Ohio Civil Rule 3(B)(9).

The court of common pleas may grant divorces for the following causes: . . .

(E) Extreme cruelty. . . .

Ohio Revised Code § 3105.01.

Physical violence has always been held to constitute extreme cruelty, Eddy v. Eddy, 14 Ohio Law Abs. 277 (Monroe 1932).

The determination of what facts constitutes (sic) extreme cruelty in a given case must be left to the broad, but sound, discretion of the trial court and whether sufficient evidence has been presented to establish extreme cruelty will depend upon all the circumstances of the particular case. 48 Ohio Jurisprudence 3d (1983) 272, Family Law, Section 1126.

Verplatse v. Verplatse, 17 Ohio App. 3d 99, 100-101; 17 Ohio B. 161, 163 (Hancock 1984).

Plaintiff respectfully submits that there is ample basis for this court to award her a divorce based upon extreme cruelty.