

## **Millionaire Pursues New Marital Tort: Alienation of Children's Affection**

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In a suit that could create a new marital tort in New Jersey, a noncustodial father is suing his children's mother for alienation of their affection for him, which he says should allow him recovery of psychological damages.

There is no legal precedent in New Jersey for an alienation-of-affection suit by one parent against the other, but New Jersey has allowed other interspousal tort actions, such as for physical abuse, and plaintiff's lawyer Steven Resnick says the facts of his case warrant such treatment.

"We've tried other remedies and are asking to set a precedent," says Resnick, a partner with Budd Lerner in Short Hills, N.J.

He says his client filed suit in the Law Division on Oct. 26 because, after 14 months of litigation, he's frustrated with the usual matrimonial venue, the Chancery Division's Family Part.

"There's no serious mechanism for punishment in the family court," says Resnick. "Nobody takes alienation of a parent's affections seriously, and no one asks what kind of damage this does to the children."

The suit, *Segal v. Lynch*, was lodged by millionaire-developer Moses Segal, originally from Toronto, who came to New Jersey in pursuit of his girlfriend and common-law wife Cynthia Lynch, with whom he separated in 2001.

The separation caused headlines in the Canadian press, after the Ontario Court of Appeals awarded \$8.3 million in property to Lynch, reportedly a small part of Segal's \$100 million empire. Altogether, Lynch got \$12 million, said Resnick.

Segal alleges that in June 2006, Lynch relocated to New Jersey's Morris County, changed her phone number, blocked e-mails and cut off all contact with their two children, Emily, 13, and William, 9.

A private detective located Lynch in Millington, N.J., and Segal filed suit in Morris County to resume visitation. Resnick says he also sought an enforcement of litigants' rights order, because Lynch allegedly twice attempted to change her child's last name from Segal to Lynch.

But in the Law Division suit just filed, he says the damage was done; that he no longer has the relationship with his children he had previously. He is suing for negligence and intentional infliction of emotional distress and asks for compensatory and punitive damages.

Resnick and his associate, personal injury lawyer Christopher Paldino, say the claim is structured along the same lines as the tort claim for spousal abuse coined in *Tevis v. Tevis*, 79 N.J. 42 (1979), where the New Jersey Supreme Court allowed a wife to sue her husband for physical beatings during the marriage.

But there is narrow precedent for recognizing emotional distress in the Chancery Division. In *Ruprecht v. Ruprecht*, 252 N.J. Super. 230 (Ch. Div. 1991), the court held that for emotional distress to be actionable, the conduct must be outrageous and "exceed all bounds usually tolerated by decent society."

In *Brennan v. Orban*, 145 N.J. 282 (1996), the New Jersey Supreme Court held that the family court has discretion to decide whether or not the victim of a marital tort will receive a jury trial on her tort claim that is joined with a divorce action.

What's more, a New Jersey court rule, R. 5:7-8, requires the presiding Family Part judge's approval for bifurcating a matrimonial case, though Resnick says there is no need for approval because the tort suit was filed in the Law Division.

Cary Cheifetz, a matrimonial attorney with Ceconi & Cheifetz in Summit, N.J., says it's a mistake for the courts to allow a matrimonial litigant to use a Law Division suit to drive a wedge into a custody or visitation proceeding.

"The courts give deference to family judges," he says. "It's a crazy idea to file suit in the Law Division, because a Law Division judge doesn't have the authority to resolve these conflicts."

But, says Resnick, "The alienation doesn't take the form of custody rights or visitation rights; it's an actual alienation of affection for children and parents who experience psychological distress because of this damaged relationship."

Lynch's lawyer, Lynn Newsome, says the lawsuit may be novel but the motive isn't. "Segal is the most litigious litigant I've ever dealt with," says Newsome, of Donahue, Hagan, Klein, Newsome & O'Donnell in Morristown. "This man has shown a lack of cooperation and when a team of professionals came in to work with them, including a court-appointed unification expert, he instead files suit in another court."

New Jersey courts abolished alienation of affection as a cause of action between spouses on June 27, 1935, and other states have also abolished the action.

However, at least one court seems to have allowed a claim like Segal's to go forward. In *Raftery v. Scott*, 756 F.2d 335 (4th Cir., 1985), a federal appeals court applying Virginia law affirmed an award of \$40,000 in compensatory and \$10,000 in punitive damages in an emotional distress suit by a New York man who alleged it took a year to find his child after his former wife absconded to Virginia while the divorce decree was pending. By the time he was able to see his child, the ex-wife had allegedly turned the child against him, he alleged.

But a Wisconsin court went the other way in 1987, refusing, in *Gleiss v. Newman*, 415 N.W.2d 845 (Wis. Ct. App. 1987), to allow a noncustodial parent to sue the custodial parent and his new wife for emotional distress and alienation of affection.

Some think the case has merit. Solangel Maldonado, a Seton Hall Law School professor, says her research for a law review article disclosed that one-half to one-third of residential custodians of children -- mostly women -- interfere with visitation.

"Even though the context of bringing a claim of a parent alienated by a child is original here, claims of problems with visitation or custodial rights are not," Maldonado says. "This is a problem in New Jersey and in other states and nations with high divorce rates."

Mark Gruber, a Newton matrimonial attorney, says that alienation of a parent can take the form of not allowing the other parent access to medical or school records;

blaming the other parent for financial or emotional woes; asking the child to select one parent over another; not allowing telephone conversations with a nonresidential parent; and changing last names.

"The legal precedent for bringing this type of action is a long time coming," Gruber says of Segal's suit.

Sparta, N.J., divorce attorney Paris Eliades agrees. "We've been grappling with the issue of parental alienation in divorce litigation for years. There need to be consequences," says Eliades, of Daggett Kraemer Eliades Kovach & Ursin.