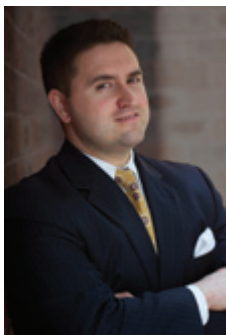


Marital Fault Re-Visited: It DOES Still Matter...Sometimes!

October 22, 2012 | by Matheu Nunn



On April 14, 2012 I wrote a [post regarding if, and when, marital fault matters](#) in a divorce.

On October 19, 2012, the New Jersey Appellate Division published a decision in *Francis N. Clark v. Denise L. Clark*. This was a case on an appeal which I argued and briefed with one of my mentors, [Bonnie C. Frost, Esq.](#) (a partner at [Einhorn, Barbarito, Frost & Botwinick, PC](#)). In its decision, the Appellate Division expounded on those circumstances upon which “fault” may matter in a divorce, insofar as it may extinguish an otherwise deserving spouse’s right to [alimony](#).

In *Clark*, the husband, Frank owned and operated a pharmacy with his wife, Denise, during the marriage; Frank was the pharmacist and his wife, the bookkeeper. Ultimately the marriage failed and the parties had a trial as to issues of alimony and equitable distribution. During the trial an expert revealed that Denise had [embezzled](#) at least \$345,690 and at times during the marriage refused to sell the business for what would have been a substantial profit. After hearing all of the testimony, the trial judge entered an Order compelling the wife to pay Frank back for the embezzled money. And, if the case ended there, the Appellate Division would not have published the opinion. However, the trial court judge then Ordered Mr. Clark to pay his wife \$600 per week in alimony notwithstanding her embezzlement scheme.

On appeal, I successfully argued that the conduct of Denise Clark fell within those rare sets of circumstances where one spouse – who otherwise may be deserving of [alimony](#) – forfeited his/her right to receive alimony in light of his/her financial defalcations.

The import of this decision cannot be understated. Prior to [Clark v. Clark](#), there existed little published guidance (meaning, binding precedent on other courts) on when one spouse's egregious marital fault would extinguish a right to alimony. The only well-defined line of cases that permitted a Court to withhold alimony, centered on circumstances where, for example, one spouse attempted to kill (of hired someone to kill) his or her spouse. To the contrary, case law had dictated that where marital fault merely affects the economic status quo of the parties (things such as gambling, excessive spending, waste of marital assets, or other acts of bad judgment), alimony may still be awarded.

Thankfully, Judge Lihotz and the rest of the panel in [Clark v. Clark](#) realized that Mrs. Clark's actions "smack[ed] of [criminality](#) and demonstrate[d] a willful and serious violation of societal norms" (Judge Lihotz's words). And, as a result, Mr. Clark's alimony obligation was vacated as a result of the decision.