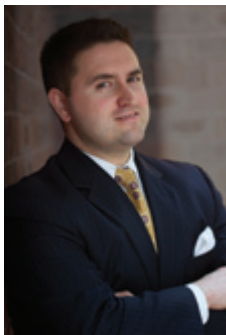


Does Marital Fault Ever Matter? Only If It Is Egregious...

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Practically speaking, in New Jersey, marital fault is irrelevant to equitable distribution, child support, and custody. So, too, is marital fault seldom relevant to an alimony determination.

There is one caveat to these general principles—fault may be relevant to an alimony determination when it is egregious and it impacts the financial status of the parties. A recent, Patch blog post answered a question briefly mentioning this factor in determining alimony. This blog post takes the discussion a step further.

So, what fault is egregious? This question, of course, is one that must be answered on a case-by-case basis by a trial judge, but there are several cases that define the boundaries of “egregious” marital fault (or conduct). As a starting point, a judge’s alimony award must be based on the following statutory factors:

- (1) The actual need and ability of the parties to pay;
- (2) The duration of the marriage;
- (3) The age, physical and emotional health of the parties;

- (4) The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living;
- (5) The earning capacities, educational levels, vocational skills, and employability of the parties;
- (6) The length of absence from the job market of the party seeking maintenance;
- (7) The parental responsibilities for the children;
- (8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;
- (9) The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;
- (10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;
- (11) The income available to either party through investment of any assets held by that party;
- (12) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment; and
- (13) Any other factors which the court may deem relevant.

[N.J.S.A. 2A:34-23(b).]

In addition, this statute, further guides a court's determination of alimony by providing an additional level of discretion in setting alimony:

In all actions for divorce other than those where judgment is granted solely on the ground of separation the court may consider also the proofs made in establishing such ground in determining an amount of alimony or maintenance that is fit, reasonable and just.

[N.J.S.A. 2A:34-23(g).]

However, even if the laws lend support to an alimony award for a spouse, if the receiving-spouse engaged in “outrageous conduct” such that “society would not abide continuing the economic bonds between the parties[.]” [Mani v. Mani](#), 183 N.J. 70, 92 (2005), a trial court may deny alimony to an otherwise deserving spouse.

For example, in [Reid v. Reid](#), a 1998 New Jersey Appellate Division case, the court determined that the wife, who embezzled significant sums of money from her husband's business and dissipated marital assets, which significantly (and detrimentally) impacted her husband, was not entitled to alimony. In reaching that conclusion, the court reasoned that the wife's conduct constituted one of the rare cases justifying denial of alimony. Although not based on similar conduct or logic, in [D'Arc v. D'Arc](#), the court stated that principles of equity would preclude any alimony award based on a spouse's attempted murder of his or her spouse. In the first case, Reid, the court looked to egregious conduct that affected the financial position of the husband (who would have been the payor-spouse). And, in the second case, D'Arc, the court looked to the outrageousness of the husband's conduct based on societal norms.

So, while marital fault is rarely considered in a divorce case there are those rare circumstances—the egregious conduct of one spouse—where fault can and will matter to the court.