

**COURT ALLOWS BATTERED WOMEN'S  
SYNDROME AS A NEW CAUSE OF ACTION**

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ACROSS THE COUNTRY, there has been an explosion of tort actions involving family members over the past several years. Some of these causes are new and created, others are ephemeral.

Prosser, in the *Handbook on the Law of Torts*, 3-4 (5th ed. 1984), comments:

New and nameless torts are being recognized constantly, and the progress of the common law is marked by many cases of first impression, in which the court has struck out boldly to create a new cause of action, where none has been recognized before it....When it becomes clear that the plaintiff's interests are entitled to legal protection against the defendant, the mere fact that the claim is novel will not of itself operate as a bar to the remedy.

In keeping with this trend, a New Jersey trial judge has allowed in a case of first impression, the use of the "battered women's syndrome" as a new cause of action in a civil suit by a woman against her live-in-lover. *Cusseaux v. Pickett*, No. BER-L-6086-92 (N.J. Super. Ct. Law Div.).

**A Cumulative Cause of Action**

In this unreported case, Wilson Pickett was sued civilly by his girlfriend, Jean Marie Cusseaux, for repeated abuse over a ten-year period. The complaint against Pickett alleged that he mistreated Cusseaux, "jeopardized her health and well-being, and caused her physical injuries on numerous occasions," and that his "actions were part of a continuous course of conduct and constituted a pattern of violent behavior, frequently associated with being intoxicated."

While assault and battery as a tort action between strangers has always been recognized as a viable cause of action, and has been allowed as a cause of action between spouses in New Jersey since *Tevis v. Tevis*, 79 N.J. 42, 400 A.2d. 1189 (1979), this case is novel because

the court has allowed (1) a "cumulative" cause of action (referring to it as one continuous cause of action) and (2) a cause of action based on what, until now, was used as a defense in a criminal case.

Generally, under New Jersey law, the statute of limitations would have prohibited any cause of action based on an act or conduct which occurred more than two years before the suit was filed. By allowing cumulative torts, Judge Andrew Napolitano refused to condone "the continuous abusive treatment in the domestic sphere." While using the Louisiana case of *Laughlin v. Breax*, 515So.2d 480, to support his decision to recognize battered women's syndrome as a cause of action, the judge rejected that case's decision that the complainant had to sue on each individual incident of abuse and not on a continuing tort. The court stated:

It would be contrary to the public policy of this state, not to mention cruel, to limit recovery to only those individual incidents of assault and battery for which the applicable statute of limitations has not yet run. The mate who is responsible for creating the condition suffered by the battered victim must be made to account for his actions - all of his actions.

### **An Affirmative Cause of Action**

Furthermore, until now, the "battered-women's syndrome" has not been an affirmative cause of action recognized by the courts of this state, and, in fact, has been cognizable under the law only as a defense in criminal actions. Although he recognized this, Judge Napolitano allowed this new cause of action to stand despite the motion to have the action dismissed for failure to state a claim for relief, stating that the New Jersey Supreme has expressly held that trial courts must accord any plaintiff's complaint a "meticulous" and "indulgent" examination. The court also looked to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-2 to 2C:25-16, to the effect that the Legislature had found that "domestic violence is a serious crime against society; that there are thousands of persons in this state who are regularly beaten, tortured, and in some cases even killed by their spouses or cohabitant." The statute further stated that it was the responsibility of the courts to protect victims of violence that occurs in a family or a family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions.

### **Elements of Cause of Action**

The court then set down the elements of cause of action for battered women's syndrome:

- \* Involvement in a marital or a marital-like intimate relationship;
- \* Physical or psychological abuse perpetrated by the dominant partner over an extended period of time;
- \* Recurring physical or psychological injury caused by the abuse over the course of the relationship; and
- \* A past or present inability on the part of their plaintiff to take any action or improve or alter the situation unilaterally.

### **Fashioning a Necessary Palliative**

Finally, in analyzing the need for such a cause of action, the court stated:

"The efforts of the Legislature to this end should be applauded. However, they are but steps in the right direction. As is the case with the domestic statute where existing criminal statutes were inadequate, so too are the civil laws of assault and battery insufficient to address the harm suffered as a result of domestic violence. Domestic violence is a plague on our social structure and a frontal assault on the institution of the family. The battered women's syndrome is but one of the pernicious symptoms of that plague. Although the courts could be hard-pressed to prescribe a panacea for all domestic violence, they are entrusted with the power to fashion a palliative when necessary. The underpinning of our common law and public policy demand that, where the Legislature has not gone far enough, the courts must fill the interstices."

This case is just one more example of a court "stretching the envelope" of the law to create new and inventive causes of action. Although this is a non-reported trial level case, it illustrates the current thinking of some jurists: If a wrong has to be remedied and there is no existing law, do not deny relief, but create new causes of action.

The case also provides a lesson to matrimonial practitioners: Do not hesitate to be inventive in your approach to novel issues. Research the law and see what attorneys in other jurisdictions have attempted, whether successful or not, and see if it can be applied to your case.