

LEGAL NOTICES con't

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JACQUELINE F. KELSO, Plaintiff vs. CHARLES P. KELSO,  
Defendant, Fulton County Branch, Civil Action - Law No. 70 -  
1995-DR SUPPORT

*Kelso v. Kelso*

*Divorce - Indignities - Course of Conduct - Spousal Support*

1. Dependent spouse is entitled to support until it is shown that the dependent spouse's conduct constitutes grounds for a fault divorce.
2. A finding of indignities as grounds for divorce depends on the facts and circumstances of the individual case.
3. Indignities requires a course of conduct which is humiliating and degrading.
4. There is no prescribed minimum length of time necessary to prove a course of conduct.
5. Where dependent spouse lied about her age and her financial condition, insulted and hit the nondependent spouse, and left him in such fear that he left the marital home after 58 days of marriage, taking only the clothing he was wearing at the time, the court can find that the nondependent spouse suffered indignities such as to excuse him from providing spousal support.

*Beth Ann C. Gabler, Esq., Counsel for Plaintiffs*  
*William F. Kaminski, Esq., Counsel for Defendant*

WALKER, J., October 31, 1996:

**Factual and Procedural Background**

This matter is before the court for ruling at the conclusion of a support appeal hearing. The appeal followed a support conference which was held before Fulton County Domestic Relations Hearing Officer Belinda J. Richards. In response to her recommendation, an order of court was entered compelling the defendant, Charles P. Kelso, to pay spousal support to the plaintiff, Jacqueline F. Kelso, in the amount of \$160 biweekly plus arrearage. Defendant timely filed a demand for a Hearing by Judge which hearing was held on Tuesday, August 27, 1996.

At the support appeal hearing, the court heard testimony that the parties had first become acquainted by telephone. Daily telephone conversations continued for several months before the parties met. After a very brief courtship, the parties were married. Fifty-eight days later, the defendant left the marital home.

## Discussion

The issue before the court is whether the defendant was justified in leaving the marital home. Only by showing that he was justified in leaving may he avoid his obligation of spousal support. A dependent spouse is entitled to support until it has been shown that the dependent spouse's conduct constitutes grounds for a fault divorce. Furthermore, the spouse seeking to avoid the obligation of support bears the burden of proving the dependent spouse's misconduct by clear and convincing evidence. *Crawford v. Crawford*, 429 Pa. Super. 540, 633 A.2d 155 (1993).

In the instant case, the defendant asserts that he was warranted in leaving the marital home after only 58 days of marriage. He further declares that his reasons for leaving would entitle him to a divorce based on the grounds of indignities.

Indignities as defined by Pennsylvania courts may consist of "[V]ulgarity, unmerited reproach, habitual contumely, studied neglect, intentional incivility, manifest disdain, abusive language, malignant ridicule, and every other plain manifestation of settled hate and estrangement." *McKrell v. McKrell*, 352 Pa. 173, 180, 42 A.2d 609, 612 (1945). A finding of indignities depends on all of the facts and circumstances of each individual case. *Boniewicz v. Boniewicz*, 266 Pa. Super. 210, 403 A.2d 999 (1979).

It is well-settled that the conduct complained of must be part of a course of behavior which is humiliating and degrading. The conduct must have rendered the injured spouse's condition intolerable and his or her life burdensome. A single act of offensive conduct is not enough. *Ryave v. Ryave*, 249 Pa. Super. 78, 375 A.2d 766 (1977).

However, the courts have never prescribed a minimum length of time necessary to show a course of conduct. In *Parry v. Parry*, 197 Pa. Super. 321, 178 A.2d 851 (1962), the court found a wife was entitled to a divorce on the ground of indignities after a period of cohabitation of only nine days.

This court heard conflicting testimony at the hearing. The defendant testified that the plaintiff had lied to him about her age, first telling him she was 32 years old and then later that she was 42 years old, when in fact she was 48 years old. He also alleged that she told him that she lived with two siblings. He later learned that the siblings were her children from a prior relationship. Defendant also learned too late that the plaintiff had filed for bankruptcy and was deeply in debt. He further alleged that the plaintiff urged him to persuade his father to refinance her home. When his father refused, the marital relationship broke down and there ensued episodes when the plaintiff shouted insults and hit the defendant. The defendant testified that he was afraid of the plaintiff and that he left the marital home taking only the clothes he was wearing at the time.

The plaintiff does not deny the testimony concerning her monetary difficulties except to assert that the defendant voluntarily offered to ask his father for financial assistance. She denied making any hostile comments to the defendant or hitting him. The plaintiff asserts that the defendant has not established a course of conduct necessary to terminate his duty of support.

At the hearing a letter written by the plaintiff to the defendant after the separation (hereinafter "the June 15, 1995 letter") was entered into evidence. In the letter, the plaintiff asks for an annulment, stating that she is now in love with her attorney. She declares that the defendant is a thief and that she is glad he is out of her life.

As the finder of fact, it is the court's obligation to assess the credibility of the witnesses. In this case, the court finds the defendant's testimony to be the more credible. During their brief courtship, the plaintiff lied about her age and about the fact that she had children. She either lied or failed to tell the defendant about her bankruptcy and her substantial delinquent debts. Behavior of that sort demonstrates to the court that the plaintiff was engaged in a course of deception from the very beginning of the relationship, perhaps designed to enhance her image in the defendant's eyes. But for whatever reason, her credibility is diminished in the court's eyes.

ly compelling that the defendant  
king with him any of his clothing  
unusual action adds weight to his  
and humiliated by the plaintiff.

at the June 15, 1995 letter shows  
the plaintiff. Plaintiff's attorney  
y a reaction of a "woman scorned"  
The court believes that the letter  
the plaintiff and, although written  
o indicate and to affirm that the  
generally suffered indignities during

at the actions of the plaintiff over  
or to separation were sufficient to  
ds for a fault divorce on the basis  
on the defendant was justified in  
is excused from any obligation to

#### **ORDER**

the court finds that the defendant was  
al home and is excused from any  
upport.

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