

Nassau Supreme Court Decision Expands Scope of Domestic Violence

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An unfaithful spouse who recklessly transmits a sexually transmitted infection to their partner is found to have committed domestic violence, according to a recent decision issued by the New York State Supreme Court in Nassau County.

In *N.S. v. T.S.*, 87 Misc.3d 1244(A), 2025 WL 3482815 (Sup. Ct. Nassau Cty. Dec. 1, 2025), Justice Edmund M. Dane held after a non-jury trial that a husband's transmission to his wife of herpes simplex viruses and HPV, which the husband contracted through his extramarital affairs, constituted domestic violence upon the wife. The court then determined it is required to consider these facts pursuant to Domestic Relations Law §236(B)(5)(d)(14) when determining equitable distribution of marital assets.

Justice Dane reached his conclusion that the wife was a victim of domestic violence by engaging in a step-by-step analysis of statutory definitions contained in the New York Social Services Law and Penal Law. Under Social Services Law §459-a(1), a "victim of domestic violence" is any person who is "a victim of an act which would constitute a violation of the penal law," including acts which constitute reckless endangerment. N.Y. SOC. SERV. LAW §459-a(1) (McKinney's 2019).

The court next looked to New York Penal law §120.20, which states that the offense of



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reckless endangerment in the second degree is committed when a person "recklessly engages in conduct which creates a substantial risk of serious physical injury to another person." N.Y. PENAL §120.20 (McKinney's 1965).

Finally, under New York Penal Law §15.05(3), "a person acts recklessly with respect to a result... when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists." N.Y. PENAL §15.05(3) (McKinney's 1965).

With these statutory building blocks in place, Justice Dane constructed his conclusion that the husband acted reckless in transmitting STIs to the wife by engaging in unprotected sexual intercourse with her following his extramarital affairs. Such conduct "constitutes the appropriate degree of recklessness to conclude that the Husband committed reckless endangerment,"

as the “risk created by the Husband’s conduct was foreseeable... and created a risk of physical injury” to the wife. With the finding that the husband committed reckless endangerment against the wife, she is, as a matter of law, a victim of domestic violence.

Having concluded that the husband in *N.S.* committed domestic violence against the wife, the court relied upon such finding, together with other compelling factors, to equitably distribute 100 percent of certain marital assets to the wife.

With the *N.S.* case demonstrating that transmission of an STI can constitute domestic violence in a marriage affecting equitable distribution of marital property in a divorce, Justice Dane remained consistent with other courts similarly demonstrating a willingness to hold a party accountable for transmitting an STI, even when the parties are not married.

In *Martinez v. Toussaint*, 222 A.D.3d 647 (2d Dep’t 2023), the Appellate Division affirmed an order of protection issued by the Family Court involving unmarried parties who engaged in unprotected sex on two occasions. Only after the second encounter did the respondent inform the petitioner that she was HIV-positive. The petitioner was thereafter diagnosed with HIV.

After a hearing, the Family Court issued an order of protection in favor of the petitioner, finding that respondent committed the family offense of reckless endangerment in the second degree.

Justice Dane applied the equitable distribution factors set forth in DRL §236 to both compensate the victim and penalize the transmitting spouse through the distribution of marital property in a divorce action. However courts in other jurisdictions do not appear to have the same legal mechanisms available to them in divorce action and must instead employ indirect strategies to achieve an appropriate result with similar circumstances.

For example, in *Cardella v. Cardella*, 2008 WL 4367306 (Tenn. Ct. of App. Sept. 17, 2008), the Tennessee Court of Appeals affirmed the trial court’s finding that the husband negligently infected the wife with a sexually transmitted

disease and awarded the wife \$288,000 in compensatory damages.

The wife had already commenced a divorce action against the husband when she tested positive for the herpes virus simplex II following discovery of the husband extramarital affair. The wife thereafter amended her complaint to include a tort cause of action against the husband.

The Tennessee Court of Appeals cited the established precedent in that state recognizing a claim for negligent transmission of a venereal disease. In *Cardella*, the evidence credibly presented to the trial court by the wife “strongly suggested” that the husband was unfaithful on multiple occasions with various partners and was “on notice” that he might have some type of sexually transmitted disease.

The trial court further found that, by continuing to engage in sexual intercourse with the wife during his infidelity, the husband placed the wife in “a position of risk” and his conduct was the “cause in fact” of the wife becoming infected.

Upon finding that the husband was the cause of the wife’s injuries, the trial court awarded the wife monetary damages for lifetime medication and medical care costs, pain, suffering, and “loss of enjoyment of life.” Although the decision in *Cardella* does not address the details of the division of the marital estate between the parties, and does not identify that domestic violence occurred, the court ultimately compensated the wife for the unfortunate position in which she was placed as a result of the husband’s actions.

In yet other jurisdictions, transmission of a sexually transmitted disease between spouses is viewed merely as evidence of grounds for divorce and not as a direct basis for any compensation.

For example, in *Farris v. Farris*, 202 So.3d 223 (2016), the Mississippi Court of Appeals held that exposing one’s spouse to a sexually transmitted disease is a form of habitual cruel and inhuman treatment as a ground for divorce. The *Farris* court reached its conclusion by relying on the precedent in numerous other jurisdictions, including Rhode Island, Iowa, Maryland, and

Pennsylvania, among other states, that STD exposure may be a ground for divorce.

Although the Farris court found, as in the cases cited above, that one spouse “was committing a continuous systematic cruel act” of exposing the other spouse to disease transmission each time they engaged in unprotected sex, there is no explicit indication that the wife was compensated for her injuries, either with tort damages or through an unequal distribution of marital property in the divorce.

Justice Dane’s decision continues the trend of expanding the scope of conduct that constitutes domestic violence. For example, in 2024, New Jersey codified “coercive control” as domestic violence under the state’s Prevention of Domestic Violence Act, defining such conduct as “any pattern” of behavior which “unreasonably interferes with... a person’s liberty, freedom, bodily integrity, or human rights.” N.J.S.A. 2C:25-29(a)(7) (2024).

Examples of “coercive control” include but are not limited to isolating a person from friends, relatives, medical care, or other source of support; depriving a person of basic necessities; monitoring a person’s movements, communications, and finances, or; threatening to harm or kill a person’s relative or pet, among other examples.

In awarding a wife 85 percent of marital assets, the Supreme Court in New York County concluded that a husband committed “domestic violence of an emotional nature” against the wife, finding that she “was subject to consistent, persistent verbal and emotional abuse.” *J.N. v. T.N.*, 77 Misc.3d 894, 931 (Sup. Ct. N.Y. Cty. Sept. 15, 2022); see also *Matter of Aisha R.*, 79 Misc.3d 1106, 1111 (Fam. Ct. Kings Cty. June 5, 2023) (holding that “[c]ourts have begun to recognize the nonphysical aspects of domestic violence and to provide relief to survivors of coercive and controlling relationships just as if they had experienced physical injury”).

Courts are also recognizing the existence of financial/economic abuse as domestic violence. See, e.g., *M.B. v. C.B.*, 88 Misc.3d 1243(A), 2026 WL 875071, at *16 (Sup. Ct. Westchester Cty. Mar. 25, 2026) (finding that “Defendant’s actions constitute an unmistakable pattern of domestic violence against plaintiff which, in part, are economic in nature seeking to cause her financial and professional reputational harm.”).

It remains to be seen how courts in New York follow Justice Dane’s decision to expand domestic violence, and to what extent they protect victims and hold accountable the spouses in situations beyond traditionally accepted definitions of domestic violence.

Compensating the victimized spouse through an unequal distribution of marital property provides the victim with some measure of financial relief and is consistent with other jurisdictions where courts may award monetary damages for transmission of sexually transmitted diseases.

One can only hope that definitively identifying the egregious conduct of the infecting spouse for what it is—domestic violence—brings the victim some validation and additional healing.

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