

Alienation of Affection And “Criminal Conversation”

Illinois law offers relief to the suffering spouse of an adulterer.

Lawsuits for alienation of affections may be brought against the paramour, and possibly even against third parties like a business that allowed or encouraged the affair to happen. In one noted case¹ a husband sued his wife’s lover **and** her employer arguing that the employer was partly responsible for the affair because that is where the lovers met and where the affair began.

To prevail in an alienation of affections lawsuit, a plaintiff must prove that the defendant’s actions were the sole, proximate, cause of the break-up of the marriage. The test was explained by one court this way: We must determine whether (the spouse’s love and affections for the plaintiff) just drifted away (whether the spouse) voluntarily floated them away, (whether the spouse) voluntarily floated them away, or whether the defendant pirated them away. The liability of the defendant must rest upon the last of these three alternatives.²

Alienation of Affections lawsuits usually carry little financial value. Damages are limited to “actual damages,” there is no award for “pain and suffering” or “emotional distress.” Still, what they lack in finances they more than make up for in emotional impact and psychological power. For starters, they assume that the “stolen” spouse (almost always the wife) has no autonomy or decision-making ability. The stolen spouse is treated by the law as a piece of property and the jilted spouse is looked at as a property owner who has suffered a mere financial loss. That’s no surprise, of course, since the law harkens back to a time when wives were considered by the law to be their husband’s property. Second, an alienation of affections lawsuit necessarily throws a wrench in the lives of the runaway spouse and the paramour. If married, the paramour usually ends up divorced, too, as a result of the lawsuit’s publication of the affair and the messiness of the lawsuit itself. Subpoenas can be sent to employers, friends, unsuspecting spouses, etc. Likewise, the runaway spouse must bear the stress of knowing that all of the details of the infidelity are being made public in the court filings. Third, the testimony at such trials can be excruciating. The runaway spouse must listen to the detailed testimony of how the marriage had been built and about the mutual love and effort each spouse poured into the marriage. Then, the testimony turns to the lurid details of the affair: gifts, credit card receipts, getaway weekends, hotel registers and phone logs. It can be wrenching.

As the case progresses, all of the stress and anxiety of a lawsuit is brought to bear on the adulterous lovebirds. The ugly testimony will have been heard. The lovers’ lives will have been turned upside down. The plaintiff will have accomplished his ultimate objective.

Then, the *coup de grace* is delivered: the award of money damages: Remember that damages are limited to actual damages; that is, out-of-pocket losses. There is no award for “pain and suffering” or loss of love. The law does not try to mend broken hearts, it only hands out money. Illinois’ alienation of affections law used to contemplate that “actual damages” would amount to the investment lost by a jilted spouse left at the altar: invitations, renting the church, the reception hall, a band, food, drink, etc. Today, however, cases put a value on the stolen spouse: specifically, the lost income formerly contributed to the marriage and the costs of replacing the adulterous spouse’s non-monetary contributions to the household. For example, a stay-at-home mom who breached her marriage vows (the law views her as having been led away) must see her sacrifices and contributions to the marriage reduced to financial terms: like the cost of baby-sitters, a house cleaning service, grocery deliveries, laundry services, etc. The award of damages can be the most offensive, painful, and humiliating part of the case.

Consider the bizarre case of the Friedmans: married at 25, after ten years their love life had lost its spark. At the trial of their alienation of affections case, testimony showed that Arthur Friedman suggested to his wife that they expand their love lives: he wanted to have sex with other couples and to watch her have sex with other men. She assented and, eventually, became attracted to one of the men she met satisfying Arthur’s request (indeed, the man was an acquaintance of Arthur’s – he introduced them for the purpose). Arthur sued the lover for alienation of affections. Amazingly, a Cook County jury sided with Arthur and found that the “lover” had lured Arthur’s wife away from him. The “interloper” ended up divorced. The jury awarded Arthur the paltry sum of \$4,802.87 representing the value of his wife’s contributions to their marriage for a period of time. The wife said to the Chicago Sun Times “This law allowed him to put a price tag on me. That hurts more than anything”

Criminal Conversation: When an adulterer convinces his or her spouse to forgive, the injured spouse need not forget. A cause of action known as "criminal conversation" allows a loyal spouse who has suffered through an affair to sue the interloper even if the marriage stays intact. Sometimes money is beside the point – often, the mere filing of such a suit brings relief. One case, for example, alleged that once the plaintiff went off to military service, "[the] defendant, well knowing the happy condition of his home life, by subterfuge, contrivance and design, did wickedly and wantonly overcome the devotion and love of said [wife] toward him; that intending to injure him and intending to deprive him of the society and assistance of his wife, the defendant... wantonly and maliciously destroyed and alienated the affection of the said [wife]; that he carried on an illicit affair with her... and since [husband's] return [from military service] to the hospital, [wife] has refused to be a dutiful wife and has failed to visit him or take any interest in his plight." The lawsuit goes on to complain that because of the defendant's actions, the plaintiff has been wholly deprived of the society, affection, assistance, comfort, and consolation of his wife.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.