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Verdict

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It Just Happened: The Breakdown of a Marriage Is Not a Cognizable Event for Residency Purposes in New York

For decades, New York resisted no-fault divorce. It sat by as first California and then every other state adopted a statute allowing couples to divorce without proof of a specified form of marital fault. But in 2010, the state adopted a true no-fault provision, which allows divorce based on irretrievable breakdown. With new laws come questions, which New York courts must answer. A recent decision continues

that process with a ruling on no-fault divorce and residency requirements, which may seem pedestrian, but which reflects longstanding controversy between states over the leniency of divorce laws and New York's unique role in this history.



New York's Long and Winding Road to No-Fault

For most of its history, New York had the strictest divorce law in the nation. While every state required proof of marital fault, most states enumerated several different "grounds"—types of fault that the state had deemed sufficient to justify ending a marriage—while New York enumerated only one: adultery.

Because New York always had the strictest divorce laws in the country, its system fueled two undesirable effects. First, it was renowned for having the most corrupt divorce-law system, in which lawyers, judges, and parties were complicit. Literally hundreds of collusive divorces in New York involved fake evidence of adultery, often, according to historian Nelson Blake, with the same blonde actress portraying the husband's supposed mistress in numerous different cases. At a minimum, requiring proof of fault encourages parties to overstate the misconduct of the other; at worst, it invites outright fabrication.

Second, the state's strict approach to divorce fueled so-called migratory divorce, where couples flee their home state's restrictive divorce laws and obtain one in a laxer jurisdiction like Nevada (think the last scene of *Mad Men* Season 3, as Don's wife heads to Reno to get a divorce) or the Dominican Republic. Divorce, unlike marriage, is only available to the residents of a state. This gave states at least the illusion of control over divorce law and policy—each state could decide for itself how easy or hard it should be to get out of a marriage. So jurisdictions that wanted to attract divorce business did so by reducing the residency requirements—to a mere six weeks, in the case of Nevada.

In the mid-1960s, the New York legislature added additional grounds, including abandonment, imprisonment, and cruelty. It also eventually added a provision to allow divorce based on a period of separation, but only if preceded by a written and filed formal agreement that resolves all issues related to property, support, and custody.

As New York was catching up to such nineteenth-century changes, the rest of the country was forging ahead. The California legislature adopted the nation's first no-fault divorce law, which abandoned the traditional fault-based system in favor of a system designed to gauge true marital breakdown—and to eliminate the aspects of a system that had become plagued with perjury and fraud. It thus provided only one ground for divorce: “irreconcilable differences.” In California's wake, virtually every other state also adopted a no-fault ground—either in place of its traditional grounds or in addition. Some focused on a substantive standard of marital breakdown (like California's), while others prescribed a period of separation. Both approaches had a common purpose—to identify marriages that could not be saved.

New York, alone, resisted true no-fault divorce. The reasons for this are complex, but involved opposition from strange bedfellows: feminist advocates for economically oppressed and/or battered wives, on the one hand, and religious and conservative moralists, on the other. The New York legislature finally did adopt a true no-fault ground that took effect in October 2010. The law retains its fault-based grounds, as well as the separation agreement ground, but also adds a more typical no-fault ground.

Under the new provision, a court shall grant a divorce if the “relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath.”

As explained in the next section, the question in the recent case is whether the irretrievable breakdown of a marriage is something that can be pinpointed in time in place—in the way that an act of adultery can be.

Stancil v. Stancil

Melita and Jimmy married in 1998 in Virginia. Jimmy was in the Navy and was deployed shortly after the wedding. The parties then lived in Florida for two years, where Melita gave birth to their only child. In subsequent years, Jimmy was deployed to Japan, while Melita and the child moved to South Carolina to be with Melita's family. Jimmy returned to Virginia, while Melita attended graduate school in South Carolina. The parties jointly purchased a home in South Carolina, but never lived there together. He maintained his home in Virginia, she in South Carolina. But they visited one another's homes or met up in other places.

Enter New York. In 2013, Melita accepted an internship in clinical psychology at a Manhattan hospital and moved to New York City with her child. Jimmy never visited them there. Fourteen months later, Melita filed for divorce on grounds of "irretrievable breakdown," New York's no no-fault ground. Jimmy opposed the divorce, arguing that the parties could not divorce in New York because Melita had not been a resident of the state for at least two years preceding the filing of her petition for divorce.

But does Melita qualify for a shorter residency clock? The residency provision allows divorce after only a year of residency in several situations, including, when only one party is a resident, if the "cause occurred in the state." The question, then, is whether not the "irretrievable breakdown" of a marriage is a "cause" that can be said to have "occurred" at a particular place and time.

The residency requirements for divorce were enacted in 1966, when the legislature expanded the fault-based grounds for divorce. They were designed, as an appellate court said in a **[previous case \(https://scholar.google.com/scholar_case?q=Unanue+v.+Unanue&hl=en&as_sdt=2006&case=12651429456040952692&scilh=0\)](https://scholar.google.com/scholar_case?q=Unanue+v.+Unanue&hl=en&as_sdt=2006&case=12651429456040952692&scilh=0)**, "to preclude the use of our courts in matrimonial proceedings by spouses with no real ties with New York, who would flock here for the sole purpose of obtaining matrimonial relief unavailable in States that had substantial interests in the marital relationship." Unlike Nevada and a few other states, New York was trying hard to *avoid* becoming a divorce haven.

There is no evidence that the plaintiff in this case, Melita, was "flocking" to New York to avoid more stringent divorce laws elsewhere. Indeed, that would be a surprising move given the laxness of divorce laws nationwide. Although it was not the original intent of most legislatures, no-fault laws have slowly been transformed into laws that allow unilateral divorce on demand. Yet, the residency requirements apply, whether or not needed to prevent a particular type of misuse for which they were designed.

Melita argued that the "cause" is the irretrievable breakdown of her marriage, which occurred in New York. But is a no-fault breakdown a "cause" in the same way "adultery"

is a cause for divorce? The trial judge noted that this is a case of first impression, but not unlike others that have found conflicts between the new no-fault provision and the already-existing provisions of the divorce law.

For example, the new provision provides for divorce upon the sworn statement of one party that the marriage has been irretrievably broken for six months, but another provision of the divorce law confers a right to trial in divorce actions. Most trial courts have concluded that the no-fault provision eliminates the need for a trial—there is no defense if divorce is allowed based solely on the sworn testimony of one party—but some have allowed trials nonetheless. The *Stancil* judge noted a similar conflict between the no-fault provision, which allows divorce based on a simple sworn statement, and another provision that requires that in an action for “divorce, the nature and circumstances of a party’s alleged misconduct, if any, and the time and place of each act complained of, if any, shall be specified in the complaint.” Again, courts have concluded that extensive allegations are not required for a divorce based on irretrievable breakdown, but there is a conflict in the wording of these various provisions.

A third conflict has arisen over the statute of limitations for divorce actions. The law prevents divorce based on acts that occurred more than five years before the commencement of the action. Could it thus be said that a marriage that has been dead for a long time can no longer be dissolved on grounds of irretrievable breakdown? Courts have found ways around this unintended result, but the statutory language makes the job difficult.

Perhaps, the *Stancil* court observed, “in its eagerness to provide relief to divorcing New Yorkers, the legislature did not comprehensively consider how this new [no-fault] provision would interact with other language in the [divorce law].” It thus saw its task as resolving “yet another conflict” between the no-fault law and other provisions of the domestic relations code.

What is a “cause” for divorce? It must be, the court wrote, “an event which resulted in plaintiff deciding to file for divorce.” The other grounds “inherently describe specific acts that occur at a particular time and place,” while irretrievable breakdown is designed to *avoid* the need for a spouse to pinpoint “the cause of a marriage’s demise.” Indeed, eliminating such messy and often artificial assessments of a failed marriage is the very purpose behind no-fault divorce laws. And whether a marriage is broken, irretrievably so, is “in the eye of the beholder, a subjective state of mind.”

Clearly, the legislature in 1966 did not contemplate the application of the residency requirement to a no-fault divorce, as the concept hadn’t even been invented (not even in California). The legislative history thus does not illuminate the meaning of the statutory

text. The law does not refer to a “cause of action” or a “ground for divorce,” the *Stancil* court notes, either of which would clearly encompass a no-fault divorce as well. The term “cause” is narrower, or at least different. And the plain meaning of “irretrievable breakdown” is that it is not “a specific act.” To treat it as a “cause” for “purposes of invoking the one-year residency requirement . . . would seem to contradict the legislature’s stated intention of keeping other ‘procedural maneuvers’ in effect.”

Moreover, given that nearly all newly filed divorces are based on the no-fault ground, the effect of shortening the residency requirement would be “vast” and would undermine the purpose of ensuring “that litigants who divorce in New York have connections to the state sufficient to avail themselves of our laws” and protecting non-resident defendants from the burden of “traveling to distant states to litigate where the plaintiff has an insignificant state connection.”

The court thus ruled against Melita Stancil. Although her ties to New York were not insignificant, they were “less than substantial.” Her limited-term internship in New York was not enough to qualify her for residency for divorce purposes. And her husband had no ties to the state. Whether she sought a divorce in New York for strategic reasons, or simply because she happened to live there when she decided the marriage was over, she did not qualify for relief.

The court conceded that its ruling may “cause hardship for plaintiff” because she may have to file a separate action in New York dealing with custody of the child, while simultaneously seeking a divorce in South Carolina, where the couple still jointly owned a home. But in spite of these difficulties, “permitting the case to go forward would be making a legal determination that would render the two year residency requirement meaningless.” While the “no-fault divorce statute has brought immeasurable value to the citizens of the state and to its courts, if the legislature to lower the residency requirement to one year where the irretrievable breakdown ground is plead, it will have to say so.”

Conclusion

While perhaps minor and technical, *Stancil v. Stancil* reinvigorates longstanding concerns about interstate divorce conflicts—and reinforces New York’s tendency toward tight control over divorce, even when applying the ground designed to make divorce simpler. But the court here is probably right: if the legislature wants to rewrite the statute to reconcile this and other conflicts that have arisen from the new ground, it can do so. And so it should.



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