

Divorce Virginia Style

by

*Jeremiah A. Denton, III**

It was a bellwether day for Virginia lovers. Sallying forth once again into the sticky thicket of divorce Virginia style, our state Supreme Court came face to face with the twin evils of matrimonial infidelity and frigidity.

In the divorce case of *Dooley v. Dooley*, decided June 12, 1981, the husband alleged adultery. The wife, a veteran of three marriages, denied the adultery and asked for alimony. Since the parties had already been separated a year, the only real issue was whether the wife's alleged adultery would bar her claim to alimony.

To prove the adultery the husband produced three male witnesses. One witness, mercifully unidentified in the Supreme Court's opinion, was the attorney the husband had employed initially to represent him in the divorce. This hapless barrister admitted a long-term dalliance with his former adversary, and acknowledged that it featured overnight encounters ("I had fallen asleep on occasion... and I'm very difficult to wake up...") and a joint vacation in Myrtle Beach, South Carolina, all in the

presence of his erstwhile client's six-year-old son. Despite this abundance of opportunity, he disclaimed any consummation of the liaison.

The second witness, a private detective hired by the husband to stake out the wife's separate apartment and look for an automobile fitting a specified description, testified that he observed the auto and its male driver on several occasions under circumstances such as the following: "The downstairs part of the apartment was completely dark. Occasionally, every hour or so, a flash of light was observed momentarily...and at 12:45 a dim light came on downstairs. At 1:10 a.m., Mrs. Dooley and a man stood, embraced and kissed in the open doorway of her apartment. The man got into the vehicle I was watching...and departed..."

The third witness, a male neighbor of the wife, admitted visiting with her in their respective apartments, but denied being more than "friends and neighbors."

On the basis of the foregoing, the divorce court judge was convinced

* Mr. Denton is a sole practitioner in Virginia Beach.

that the wife had committed adultery on numerous occasions. He therefore denied the wife's claim for alimony, and she appealed. Two years and one marriage later the Supreme Court reversed, ruling that the evidence at trial had been insufficient to prove adultery.

Noting the circumstantial nature of the evidence, and stating that a charge of adultery must be supported by "clear and positive" evidence that "convinces the judicial mind affirmatively," the Court said that "when measured by the rules of human conduct and experience as of this day and time," Mrs. Dooley's conduct was "not inconsistent with freedom from actual guilt." This legalese translates into English, roughly, as: Mr. Dooley's circumstantial evidence proved no more than that his wife was exceptionally popular with the men; popular enough, that is, to attract a following, but not so overwhelmingly appealing as to get herself seduced.

The decision was not unanimous. Justice Richard H. Poff's judicial mind was affirmatively convinced that the evidence was "fully sufficient to support the...conclusion that the wife had committed multiple acts of adultery with several paramours." Predicting that the decision will eliminate adultery as a ground for divorce, except in cases of confessions or eyewitnesses, Poff asked by what "curious logic" factual findings by judges in divorce courts are routinely second-guessed by the Supreme Court, when identical findings by judges in criminal courts are routinely

presumed correct.

Heartening though it is to be told that there exists some common ground between Virginia divorce law and the "rules of human conduct and experience as of this day and time," it strains credulity that anyone living today could infer that Mrs. Dooley had maintained strictly platonic relationships with each of her male acquaintances. And it certainly strains notions of basic fair play that more proof should be required to relieve a husband of the obligation to pay alimony, than to incarcerate him in the penitentiary.

If anyone other than an ecclesiastical law buff could be enthusiastic about *Dooley*, perhaps it would be the more ardent of the feminists - not because the case strengthens a woman's grip on her husband's livelihood, but because it so generously expands the ambit of her legally protected interests. Now, so long as she is discreet enough to avoid close-range eyewitnesses, bright enough to eschew written confessions and flush enough to appeal to the Supreme Court, she can safely maintain at least three extramarital relationships.

But whatever credence the Court might have unwittingly garnered with feminist persons in *Dooley*, it straightaway squandered in the titillating frigidity case of *Goodwyn v. Goodwyn*, decided the same day. There the husband sought a divorce simply because the wife had removed herself from the marital bed. Though the evidence was in sharp conflict as to whether she intended to leave the bedroom permanently

or temporarily, the husband again prevailed in the divorce court, and the wife again appealed.

This time without so much as a wink at "rules of human conduct and experience as of this day and time," the Court invoked the precedent of a venerated 1923 Virginia divorce case to resurrect a quiescent common-law malignancy: the rule that the "mere" withdrawal of sexual intercourse, "although based on no just cause or excuse," is insufficient grounds for divorce. To obtain a divorce for conjugal desertion, the Court explains, the aggrieved spouse must also prove neglect of some other marital duty, like "cleaning," "cooking" or "caring for the children."

Presumably this means that, had Goodwyn also proved that his wife had consistently refused to, say, feed the dog or empty the garbage, his divorce would have been upheld. But the opinion no more explained the practical implications of its ruling, than it explained the mental processes by which one comes to the conclusion that a wife's performance of chores in the household equates in legal dignity with her performance in bed.

Dooley and *Goodwyn* are classic examples of the Court's overweening and frequently counterproductive attempts to protect the health, welfare and morals of society by applying excruciatingly close attention to all manner of detail concerning the libido of divorcing adults. Read in the abstract, these cases are merely amusing and mildly charming anachronisms, reminiscent of the plantation era wisdom in which

the Commonwealth's divorce law is rooted. Read in the context of this day and time, however, the cases are disturbing portents of things to come.

Goodwyn tells jilted spouses they cannot get a divorce for the "mere" denial of sexual relations. *Dooley* then offers a consoling invitation to seek succor from up to three minimally discreet "friends and neighbors." The matrimonial mayhem apt to result could do considerably more to undermine health, welfare and morals in the Commonwealth than simply permitting divorce on grounds of incompatibility; awarding support on the basis of need; and leaving health, welfare and morals to therapists, social workers and priests.

TRAVEL TIME, INC.

**"Call us for all your travel needs,
both domestic and international"**

No charge for our services

Major credit cards accepted

Charles H. Winberg,
President



"it's time to travel"

(804) 282-3157
5609 Patterson Avenue
Richmond, VA 23226