

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

LEMLEM S. KEBEDE,

CIV. 06-1011

PLAINTIFF,

-vs-

PLAINTIFF'S TRIAL BRIEF

HAYLEY R. HILTON

DEFENDANT.

For her Trial Brief, Lemlem S. Kebede, by and through her attorney, submits the following:

FACTUAL BACKGROUND

This is a civil case brought by plaintiff against defendant for the alienation of the affections of her spouse. Plaintiff, Lemlem Kebede, alleges that the affections of her husband, Ernie Christiansen, were alienated by defendant, Hayley Hilton, and that she was damaged thereby. Ms. Hilton admits having a personal and romantic relationship with Ernie Christiansen, which began while Christiansen was living in South Dakota for work reasons.

Plaintiff is a resident and citizen of Minnesota, and Defendant is a resident and citizen of South Dakota. The amount in controversy is in excess of \$75,000.00. The acts which led to the alienation of Christiansen's affections occurred primarily in South Dakota during a period of approximately a year, beginning approximately February 2002.

Plaintiff's then-husband, Ernie Christiansen moved to Aberdeen, South Dakota for work reasons in October 2001. His wife, Lemlem Kebede, helped him move. Christiansen returned home nearly every weekend to visit his wife in Minnesota. The couple talked regularly by phone. Plaintiff also came to visit her husband in Aberdeen. In addition, the couple spent six weeks together over the holidays traveling together to Ethiopia, and other international destinations.

Hilton was living in Aberdeen and worked in the same building as Christiansen. The alleged wrongful acts of Hilton occurred largely in South Dakota, from a time period beginning in approximately February 2002. During that time, Hilton made advances toward Christiansen. She and Christiansen took brief trips together to other locations, including Oregon and Atlanta. However, the vast majority of the time Hilton spent with Christiansen was in Aberdeen, and the vast majority of the alleged acts of alienation occurred in South Dakota. In addition, after Christiansen moved back to Minnesota, Hilton continued the relationship, promised Christiansen that she would divorce her own spouse so the two could be together; and sent a series of love letters from Aberdeen to a secret post office box in Minnesota.

The impact of Hilton's actions resulted in the break-up of the marriage, and the alienation of the affection and consortium of her husband. Like all marriages, Lemlem & Christiansen's was not perfect. However, the evidence at trial will show that the couple shared a substantial degree of affection; supported each other emotionally; and enjoyed a strong sense of companionship and adventure.

RULES OF LAW

Jurisdiction in this case is based on diversity of citizenship. In a diversity case, a federal district court applies the substantive law of the forum state in which it sits. *Warren v. State Farm Fire & Cas. Co.*, 531 F.3d 693, 698 (8th Cir. 2008); *Nesladek v. Ford Motor Co.*, 46 F.3d 734, 736 (8th Cir.1995). The Federal District Court of South Dakota applies South Dakota's substantive law here.

South Dakota has long recognized the cause of action for alienation of affection. SDCL 20-9-7; *Veeder v. Kennedy*, 589 N.W.2d 610, 616 (S.D. 1999). To recover on a claim for alienation of affections, the plaintiff must prove each of four essential elements by the greater convincing force of the evidence. *Id.* The four essential elements plaintiff must prove in this case are:

- (1) Wrongful conduct of the Defendant.
- (2) Loss of affection or consortium of Plaintiff's spouse.
- (3) That the acts of the Defendant were a proximate cause of the loss of affection or consortium; and
- (4) The nature and extent of damages suffered by the Plaintiff as a result of the Defendant's conduct.

Id.; *Jones v. Swanson*, (unreported) (D.S.D. 2002), (PACER 4:00-cv-04112-KES, Document 174, page 8 of 17 (Instruction No. 7), February 8, 2002.)

In order to recover on a claim for alienation of affections, the plaintiff must prove by the greater convincing force of the evidence that defendant's wrongful

conduct was intentional and done for the purpose of alienating the consortium or affection of plaintiff's spouse. *Id.*

Notably, actual intent to alienate the affections of the spouse need not necessarily be shown if defendant's conduct is inherently wrong and tends to, and does, have that effect. *Jones v. Swanson*, (unreported) (D.S.D. 2002), (PACER 4:00-cv-04112-KES, Document 174, page 9 of 17 (Instruction No. 8), February 8, 2002); *Veeder v. Kennedy*, 1999 S.D. 23, 589 N.W.2d 610. In other words, every person is presumed to intend the consequences of her own voluntary acts. *Id.*

Also significant about this tort is that "love" is not an element to be proved. Affection and consortium are distinct from "love". Affection is much broader than love, and consortium is a legal term describing the rights growing out of the marital relationship. This term includes the right of a spouse to enjoy the society, companionship, and affections with his or her spouse. *Pankratz v. Miller*, 401 N.W.2d 543 (S.D. 1987). There is no dispute that there was affection in the marriage between Kebede and Christiansen. (Whether it was a perfect marriage is not the question raised in this type of case.)

Finally, because this is an intentional tort, Defendant cannot argue or imply a defense based on concepts of "contributory negligence".

If Defendant is found to have intentionally alienated the affections of Plaintiff's spouse, Plaintiff can recover damages, including the reasonable value of the loss of affection and consortium of plaintiff's spouse; and the reasonable value of mental suffering and distress suffered by plaintiff. *Jones v. Swanson*, (unreported)

(D.S.D. 2002), (PACER 4:00-cv-04112-KES, Document 174, page 13 of 17 (Instruction No. 12), February 8, 2002); *Veeder v. Kennedy*, 589 N.W.2d at 617 (plaintiff must show “loss of affection or consortium”).

In addition to any actual damages, Plaintiff seeks punitive damages. South Dakota permits punitive damages under certain circumstances. SDCL 21-3-2. Plaintiff alleges her injuries were the result of intentional misconduct, or willful or wanton misconduct of the defendant. *Jones v. Swanson*, (unreported) (D.S.D. 2002), (PACER 4:00-cv-04112-KES, Document 174, page 14-15 of 17 (Instruction No. 13), February 8, 2002); *Schaffer v. Edward D. Jones & Co.*, 1996 S.D. 94; *Holmes v. Wegman Oil Co.*, 492 N.W.2d 107 (S.D. 1992); *Veeder v. Kennedy*, 1999 S.D. 23. The plaintiff has the burden of proof on the issue of punitive damages. *Id.*

Dated at Sioux Falls, South Dakota on this 19th day of August, 2008.



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