

Intimate Partner Sexual Abuse:

CIVIL CASE STUDY

LAURA MAGNUS V. PHILIP MAGNUS

Laura Magnus seeks a divorce from her husband of eleven years, Philip Magnus, on the grounds of extreme cruelty. She has asked for the marital home, half of the family's assets, custody of their three children and child support well above the statutory guidelines in the jurisdiction. She also seeks rehabilitative maintenance of \$6,000 per month for ten years, contending that the years she spent caring for the couple's children and supporting the respondent's career as an executive in a computer-related industry prevented her from pursuing the career she had begun as a registered nurse prior to her marriage.

In support of her allegations of cruelty, she alleges that her husband continually belittled her in public, including an incident in which he poured ice water over her head while at a dinner at their country club. She alleges as well that he was flagrant in his use of prostitutes and escort services while on business trips, and that she contracted a sexually transmitted infection from him as a result of his conduct. She includes medical records documenting her treatment as an exhibit. She also alleges emotionally abusive conduct, including continual denigration of her physical appearance, her intelligence, her housekeeping skills, her mothering skills, her hostess skills, and her golf swing. She alleges that his undermining of her confidence and independence have rendered it impossible for her to reenter the workforce at a reasonable level. She claims her husband objected to any activities on her part outside the home, other than involvement in the children's school, leaving her isolated and unskilled at adult social or professional interaction. Counseling has led her to seek divorce but has not restored her to her original self. She notes as well that the father is "addicted" to Internet and print pornography and states that his home is not an appropriate environment for the children, as she fears they will be exposed to this habit.

In his answer, Mr. Magnus counterclaims for divorce based on constructive abandonment, explaining his resort to other women and pornography as the result of his wife's long-standing "frigidity" and rejection of his sexual advances. He denies being the source of her sexually transmitted infection, and recharacterizes her assertion as an implicit admission of infidelity on her part. He seeks full custody of their children, asserting that Ms. Magnus would poison the children against him and prevent them from ever forming a healthy relationship with their father; as an example, he cites the allegations of her divorce petition. He alleges that she gladly stopped working and filled her days with manicures, golf and bridge games while he worked long hours to support her lifestyle.

Q1.

What concerns, if any, about risk and intimate partner sexual assault do these allegations raise?

What “red flags” in the pleadings lead you to those conclusions?

What else would you want to inquire about in order to come to a conclusion about the dynamics present in this marriage?

Your jurisdiction requires you to appoint a law guardian for the children, ages 11, 8 and 6. You do this. At the next court appearance, the law guardian recommends against overnight visitation with the father, as all three children express fear of him and report a high level of conflict in the home when he resided there. Moreover, they find it disruptive to their school life to reside in two different homes during the week. All three children are relieved that he has left and dread their visits, expressing worry for their mother’s well-being in their absence.

Q2.

At this point you:

[Choose all that apply]

- **Admonish the mother that she is not to speak negatively of the father and that she is to support the children’s relationship with him to the very best of her ability.**
- **Continue visits unchanged in order to strengthen the father-child bond**
- **Suspend overnight visits because the law guardian has had a better opportunity than the court to assess the needs of the children**
- **Suspend week-day visits but allow alternate weekend overnight visits to see how the relationships develop**
- **Appoint a forensic evaluator to assist the court in determining whether one or both parties are attempting to manipulate the children in order to gain advantage in the divorce proceedings.**
- **Refer the parties for mediation.**

While being cross-examined at a hearing on the issue of custody, Ms. Magnus asserts for the first time that her husband sexually assaulted her for many years. She explains that

she began sleeping in her daughter's room after she awakened on numerous occasions to find Mr. Magnus penetrating her vaginally because she believed he would not attempt such conduct in their child's presence. Moving to a different room under the guise of helping her daughter with "night terrors" enabled her to escape the incidents without confronting him directly. Ms. Magnus also alleges that her husband would sometimes choke her to the point of unconsciousness and then perform sex acts upon her. She alleges that his conduct caused her long-lasting physical injury, including pain and incontinence, and that while she sought medical treatment for her condition, she did not do so contemporaneous to an assault.

She states that she failed earlier to disclose this information to anyone (including her lawyer) because she was deeply humiliated by the experiences, and because she felt that she was obliged to engage in marital relations with her husband on whatever terms he enjoyed and had come to view it as an unhappy reality of her marriage. She also did not want their children to become aware of this aspect of their father's character.

Ms. Magnus's lawyer moves for a continuance and permission to amend the complaint to include this conduct as additional grounds of cruelty. Mr. Magnus refuses to stipulate to an amended pleading, asserting that the allegations are a recent fabrication interjected to affect the custody outcome, and that he would be irreparably prejudiced by recasting of the issues at this stage of the proceedings. He nevertheless demands production of the medical records documenting her alleged injuries as well as her therapist's notes.

Civil Rule of Procedure 3025(b) in your jurisdiction states:

A party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of the court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances.

Q3.

At this point you should:

[Choose all that apply]

- **Deny the continuance because it raises matters extraneous to determination of custody and visitation**
- **Allow amendment of the petition because of the importance of the issues involved**
- **Direct production of Ms. Magnus's medical and counseling records for in camera inspection**
- **Direct production of Ms. Magnus's medical and counseling records to counsel for Mr. Magnus**

The amended petition lists 43 instances when Mr. Magnus sexually assaulted Ms. Magnus. The alleged conduct is sadistic and disturbing. Ms. Magnus has also amended her prayer for relief, asking that Mr. Magnus's share of the marital assets be significantly

reduced because of his “egregious conduct” during the course of the marriage.

Under the State’s law governing distribution of marital property, the trial court is accorded wide discretion in property allocations and alimony decisions, and case law has established that “the conduct of the parties...is relevant and admissible” in equitable distribution.

Q4.

At this point in the proceedings, you:

[Choose all that apply]

- **Bar exploration of the husband’s alleged conduct as not sufficiently relevant to how the marital assets should be divided**
- **Direct the parties to submit to new forensic evaluations**
- **Restrict Mr. Magnus’s visits to supervised interactions in the home of the maternal grandmother until the factual issues concerning his conduct can be resolved**

In support of his cross-claim for custody, Mr. Magnus seeks to introduce the testimony of Dr. Phil Baldwin, a "nationally recognized expert" in "Parental Alienation Syndrome."

Dr. Baldwin has interviewed both Mr. Magnus and the children at length and studied the pleadings submitted by Ms. Magnus. In particular, the evaluator expresses concern that Ms. Magnus “lacks appropriate boundaries” with their children, and that in particular she has for several years shared a bed with their youngest daughter, now six, and abandoned the marital bedroom. The evaluator noted Ms. Magnus’ tendency to denigrate her husband and found that the children shared her low opinion of him. The evaluator felt that this was the result of Ms. Magnus’ negative influence on the children rather than the result of any real misconduct on their father’s part. Ms. Magnus had provided nearly all of the children’s primary care thus far, and attended to their schooling and after-school activities while Mr. Magnus was involved in furthering his career. The forensic evaluator found that Mr. Magnus was now in a position to give more time to his children, could provide them with significant advantages, and that Ms. Magnus suffered from “inadequate personality.”

Q5.

Should Mr. Magnus be permitted to present the expert testimony of Dr. Baldwin?