



## Administrative Office of the Courts

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### **NM Supreme Court issues opinion abolishing lawsuits for “alienation of affections”**

SANTA FE – The New Mexico Supreme Court today issued a precedent-setting opinion eliminating legal claims for damages for the loss of a spouse’s affections in a marriage.

The Court’s unanimous opinion provides the legal reasoning for a ruling from the bench last August ordering a trial court to dismiss a civil lawsuit that sought to hold a New Mexico resident liable for the breakup of a Colorado man’s marriage. The Colorado couple are now divorced.

The ruling by the state’s highest court abolished the “tort of alienation of affections” by overturning a legal precedent from a 1923 decision by the Court in the case *Birchfield v. Birchfield*, which first recognized alienation of affections as a civil wrongdoing or tort in New Mexico for which a person could be held liable for damages.

New Mexico was among only a handful of remaining states in which spouses could sue a third party for maliciously damaging a marriage.

“The core of alienation of affections claims and the proof they demand are irreconcilable with the legal developments that followed our holding in *Birchfield*,” the Court concluded in an opinion written by Chief Justice David K. Thomson. “And beneath the legal progress of the last one hundred years is a sweeping undercurrent of social change that robs the tort of any lingering justification in the law.”

The *Birchfield* case was brought by a woman against her father-in-law for intentionally causing the breakup of her marriage to his son.

The Court explained that “the tort originated in the English common law when wives were property of their husbands.”

“Those profoundly patriarchal origins do not reflect the law as it stands today,” the Court wrote.

“Indeed, the inherently dehumanizing nature of the tort is reflected in the fact that, regardless of gender, it treats affections as property and presumes that a spouse has *no agency* regarding to whom they give their affections,” the Court stated. “Instead, the tort purports to take interlopers to task for effectively *stealing* the affections of the spouse just as one might steal an inanimate object.”

Legal principles governing contractual relationships in New Mexico and claims for the loss of consortium – the emotional distress caused by the loss of a loved one’s companionship from a physical injury or wrongful death – do not support the tort of alienation of affections, the Court explained.

There “is no underlying legal interest in affections that might be subject to a contract,” the Court wrote. “Nor could a spouse bring a breach of contract claim against their partner, the other contract party, for lack of affections — setting marital contracts apart from others.”

The Court stated, “Instead, the legal recourse for lack of affection in a marriage is dissolution of the marriage and alimony. In 1973, New Mexico became the first state to adopt no-fault divorce on the ground of incompatibility.”

“The decision by the Legislature reflected ‘the public policy of New Mexico to avoid inquiry into what went wrong in a marriage.’ And in stark contrast to that clear policy preference, alienation of affections cases *require* ‘inquiry into what went wrong.’ They demand disclosure of a couple’s most intimate and painful choices in search of causation, all while treating one spouse as a passive, helpless bystander upon which the defendant acted and asking courts to reach that exact conclusion,” the Court stated.

The lawsuit by James Butterworth alleged that a Taos County man initiated an extramarital affair with his wife after meeting her at a party in Colorado. The district court in Taos County allowed Butterworth’s civil lawsuit to move forward, and his ex-wife appealed. The legal dispute reached New Mexico’s highest court when the state Court of Appeals asked the justices to determine whether legal claims for alienation of affections remained valid or should be abolished.

The justices heard oral arguments in the case last year at San Juan College in Farmington as part of the Court’s Rule of Law Program, in which students observe an appellate proceeding to learn about New Mexico’s legal system and the role of courts in resolving disputes.

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To read the decision in *Butterworth v. Jackson*, S-1-SC-40623, please visit the New Mexico Compilation Commission's website using the following link:  
<https://nmonesource.com/nmos/nmsc/en/item/537798/index.do>