

DOES THE USE OF SOCIAL MEDIA EVIDENCE IN FAMILY LAW LITIGATION MATTER?

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The use of social media evidence in family law litigation has increased exponentially over the last several years. However, evidence of Bad Behavior¹ has been an integral part of these disputes, probably since the beginning of time. Arguments that “he did this” and “she did that” are omnipresent in most divorce cases, litigated or not. In the past, the evidence presented in court was mostly limited to he said/she said testimony, and the use of physical evidence such as income tax returns, paycheck stubs, bank statements, bills, letters, and photographs. Nowadays, evidence of Bad Behavior can be supported through the use of social media such as Facebook, MySpace, YouTube, Twitter, LinkedIn, Instagram, text messages, and email, just to name a few.

This Article examines whether or not social media evidence has made a difference in the final outcome of family law cases. In other words: Does the use of social media evidence actually have a noticeable impact on family law litigation? Simply said, does the use of social media evidence matter; is the ultimate outcome of the case any different from pre-social media days? Is the decision a court makes actually influenced by the introduction of social media evidence in a hearing or trial?

The main thesis of this Article is that the use of social media evidences in family law cases changes nothing. Family law cases, and all of the blaming and shaming testimony and evidence, continue on the same path they always have, with or without the introduction of social media. Litigants still need to “tell” on the other side to the judge. Litigants still want to see the court punish the other side for what he or she did or did not do. Litigants continue to expect the judge to understand how the other side wronged them and why they deserve some retribution.² Social media evidence is definitely more sophisticated and more technologically impressive than a bank statement or a paycheck stub, but the reality is that it also falls into the age-old category of evidence used to prove Bad Behavior. And, this continued use of Bad Behavior evidence means that litigated domestic relations cases will stay on the same road that they have been on for decades.

Evidentiary concerns regarding social media evidence, such as hearsay, authentication, relevancy, materiality, and any other admissibility issues are not the focus of this Article. Similarly, discovery issues and concerns are also beyond the scope of this Article. Instead, the focus remains on social media’s *impact*. That is, assuming all evidentiary and discovery issues are resolved, what relationship or impact, if any, does the use of social media have on the outcome of a family law case?

¹ We are loosely defining Bad Behavior as anything a party puts before the court that is intended to denigrate, shame or embarrass the opposing party, somehow implicate the opposing party, and/or otherwise harm the opposing party’s chances of winning the battle.

² See, e.g., Barbara Bennett Woodhouse, *Sex Lies, and Dissipation: The Discourse of Fault in a No-Fault Era*, 62 Geo. L.J. 2525, 2545-48 (1994). Among other issues, the author discusses how fault based divorce puts the parties in a position of creating a narrative of their marriage.

