

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BRIAN P. REYES,)	FCD DI CIVIL ACTION NO. 97-0167
)	
Plaintiff,)	WRITTEN DECISION FOLLOWING
)	ORAL RULING GRANTING
v.)	PLAINTIFF'S MOTION TO DISMISS
)	COUNTERCLAIMS ALLEGING
JEANETTE P. REYES,)	ASSAULT AND BATTERY AND
)	INTENTIONAL INFLICTION OF
Defendant.)	EMOTIONAL DISTRESS
<hr/>		

I. Facts and Procedural History

Plaintiff and Defendant were married on June 13, 1980. The parties separated in October, 1995. The petition for dissolution of marriage was filed on November 21, 1997. On that date the parties had three minor children:

Marjorie P. Reyes, born September 25, 1981;
Brian P. Reyes, Jr., born September 7, 1987; and
Joshua P. Reyes, born June 18, 1993.

On December 12, 1997, defendant filed her answer and counterclaim, alleging, *inter alia*, the tort of assault and battery in count V¹ and the tort of intentional infliction of emotional distress in count VI.² Plaintiff filed a motion to dismiss the counterclaims (“motion”) on January 6, 1998. Defendant filed an opposition to dismiss on January 23, 1998, and Plaintiff filed a reply on February 6, 1998.

The court heard the motion on February 10, 1998. Plaintiff and his then counsel, Pamela Brown, Esq., were present at the hearing. Defendant and her counsel, Stephen Nutting, Esq., were not present. The court heard argument by counsel for Plaintiff and took the matter under [p. 2] advisement. On July 28, 1998, an order was filed substituting The Law Offices of Atalig & Chang as counsel for Plaintiff. In a hearing on August 4, 1998 on the issue of divorce only, the court first addressed the matter of the motion, orally granting the motion to dismiss without

¹ Answer and Counterclaim at 5.

² *Id.* at 7.

FOR PUBLICATION

prejudice the counterclaims alleging assault and battery and intentional infliction of emotional distress. The court now renders its written decision in support of its oral ruling.

II. Issue Presented

Whether the court may dismiss Defendant's counterclaims alleging and seeking a jury trial for the tort of assault and battery and the tort of intentional infliction of emotional distress from the instant divorce action.

III. Analysis

An action for divorce in the Commonwealth is a creature of statute with very specific requirements. *See* 8 CMC § 1101 *et seq.*; 8 CMC §§ 1331-1334; 8 CMC § 1311. Because the Commonwealth is a fault-based jurisdiction, the petition must contain specific allegations to establish statutory grounds for divorce. *See* 8 CMC § 1102(c) and § 1331. In addition, no divorce may be granted unless one of the parties has resided in the Commonwealth for the two years immediately preceding the filing of the complaint. 8 CMC § 1332. In contrast, there is no similar residency requirement for filing a civil action for assault and battery or intentional infliction of emotional distress. In a divorce action, there is no right to trial by jury. 7 CMC § 3101(b). However, the right to a trial by jury otherwise extends to any civil case where, as here, the amount claimed or value of the property involved exceeds \$1,000 exclusive of interest and costs. *See* 7 CMC § 3101. Therefore, Defendant may be entitled to a separate trial by jury on her counterclaims sounding in tort.

An action for divorce may include matters related to the division of marital property, child support, child custody and visitation, and spousal support, as these are expressly permitted under 8 CMC § 1311. There is no statutory provision that expressly permits matters of a tortious nature to be raised other than as grounds for divorce in a divorce proceeding. *See* 8 CMC § 1331. Although it is possible that defendant's tort counterclaims may be raised as compulsory or permissive counterclaims pursuant to 8 CMC § 1103(b) and Rule 13 of the Commonwealth Rules [p. 3] of Civil Procedure ("Com.R.Civ.P."), the court has sound discretion under Com.R.Civ.P. 41(b)(3) on whether they shall remain part of the divorce action, or whether they shall be tried separately under Com.R.Civ.P. 42.

Under Rule 42, the court may order a separate trial of the counterclaims in furtherance of

convenience or to avoid prejudice or when separate trials will be conducive to expedition and economy. Here, Defendant requests that her tort counterclaims be tried to a jury. However, as stated earlier, a trial by jury is not permitted in a divorce action. 7 CMC § 3101. Therefore, an order for a separate trial by jury under Rule 42 would be inappropriate.

The court may order a dismissal of counterclaims for reasons not provided for under Com.R.Civ.P. 41. Such a dismissal operates as an adjudication upon the merits, unless the court in its order for dismissal specifies otherwise. Com.R.Civ.P. 41(b)(3) and 41(c). The court concludes that the dismissal of defendant's tort counterclaims from the present divorce action is appropriate, in light of Defendant's demand for trial by jury, and the dismissal will be conducive to the expeditious and economical resolution of the other matters inherent and statutorily permitted in the divorce action. In short, Defendant's tort counterclaims must be brought separately from the action for divorce.

IV. Conclusion

Based on the foregoing reasons, Plaintiff's motion to dismiss Defendant's counterclaims alleging assault and battery and intentional infliction of emotional distress is **GRANTED**. Both counterclaims are hereby dismissed without prejudice. This dismissal shall not operate as an adjudication upon the merits. Defendant is permitted to refile the counterclaims as a separate action within thirty days after the entry of this Order. The date on which the complaint is filed shall be retroactive to the date of filing of Defendant's answer and counterclaim in the instant divorce action, or December 12, 1997.

SO ORDERED this 22nd day of October, 1998.

/s/ Virginia Sablan Onerheim
VIRGINIA SABLAN ONERHEIM
Associate Judge