

John Doe v Swelling

November 4, 2005

Virginia Supreme Court

This case discusses the interplay between the heart balm statute and professional malpractice.

The plaintiff is the husband of a woman who sought psychological counseling help with the defendant psychologist, including help to improve the status of the marriage with the plaintiff. The plaintiff was asked to enter into treatment also, and did so with the defendant psychologist, and during his treatment he gave the defendant psychological and personal information about his wife which needed to be held in confidence and some of which should not have been revealed to the wife. He also was told to take certain prescription medication and engage in certain Buddhist practices. The defendant in fact revealed the confidential information to the wife, maligned the plaintiff to the wife, with the defendant and entered into a “professionally inappropriate” relationship with the wife, which seriously damaged the marriage.

The plaintiff sued and the trial court sustained the defendant’s demurrer stating that the action was actually for alienation of affections and forbidden by statute. The Virginia Supreme Court reversed noting that some of the counts, such as improper treatment (apparently the recommended Buddhist practices and the medication) may have been professionally inappropriate, and the revealing of confidential information and the maligning of the plaintiff to the wife were, upon appropriate proof, actionable, and could be separated from the allegations of “inappropriate professional behavior,” which were covered by the heart balm act.