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## If a Spouse is Charged With Battering, Should a Judge or a Jury Decide?

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In New Jersey, a woman who has been battered has more legal options than in many other states. She can get a restraining order against her partner at any time of day or night. She can obtain immediate financial relief so that she does not have to depend on her abuser. And often she can sue her partner in a jury trial for the damage he inflicted.

But if the victim is married to her batterer and decides to sue him for abuse in the course of a divorce, her right to have the case tried before a jury is sharply limited. On Wednesday, the New Jersey Supreme Court heard arguments in a divorce case between two prominent lawyers that could change that.

Under a longstanding practice meant to make the courts more efficient and prevent piecemeal justice, a domestic-violence suit filed in the course of a divorce must be heard by the family court judge who is

hearing the divorce rather than by a jury.

Lawyers for Mary Brennan argued last Wednesday that she should have the same right to a jury trial as any other injured person. Ms. Brennan has charged that her husband, Joseph S. Orban Jr., terrorized her since shortly after their 1991 marriage and beat her unconscious in 1994, cutting her head and injuring her neck and back. Mr. Orban has denied the charges and filed countercharges of abuse, although he is not seeking a jury trial.

"The bottom line is that no one's constitutional rights should be abridged or limited because of their marital status," said Beth Baldinger, one of Ms. Brennan's attorneys. "It's a step backward."

Attorneys for Mr. Orban asked the court to overturn a ruling by the appellate panel that granted Ms. Brennan the right to a jury trial in August. They argued on Wednesday that allowing jury trials in divorce cases would draw out divorce proceedings.

"The balance has already been struck," said Steven Warner, a lawyer for Mr. Orban. Mr. Warner also argued that the right to a jury trial is not automatic, even in personal

injury cases.

The court could issue its decision any time in the next several months. The case is such a contentious one that the New Jersey Bar Association, which usually files "friend of the court" briefs in major cases, could not decide which side to support.

"We were split 50-50, literally divided" said John P. Paone Jr., chairman of the Bar Association's family law section. "The

question of whether an individual loses their right to a jury just because they happen to be married to the defendant raises not only cost concerns but pragmatic concerns. The family court is undergoing an analysis on how to become more efficient, and if jury trials are going to be part of family court, it's really going to throw a monkey wrench into moving cases in an expeditious fash-



ion."

Ms. Brennan's lawyers said a jury trial would not necessarily slow a divorce proceeding. "The family court already has to hear the tort," said Robert Durst, one of the lawyers. "The question is, How do you try it?"

Mr. Paone said that domestic violence victims can generally expect more generous awards from juries than from judges.

"People will tell you that if the injury is serious enough, they would rather have a jury than a judge call the number," he said.

Though Ms. Brennan's lawyers sidestepped questions from the Supreme Court justices on whether they hoped a jury trial would yield a higher award, Ms. Baldinger said later that a family court judge, armed with knowledge of the couple's finances, might award damages based on what he

thought the defendant could afford.

Ms. Baldinger would not comment on the financial stakes in the case. Mr. Orban is a lawyer for Johnson & Johnson. Ms. Brennan works for the Hospital Alliance of New Jersey.

Ms. Brennan's appellate court victory in August was tied to another appellate ruling last year that battered wives were entitled to separate jury trials if they could prove that their injuries were "serious and significant, resulting in permanent physical or psychological injury."

"What these parties both are looking for is a clear rule," said Bruce Greenberg, a Woodbridge lawyer and co-author of a law review article on the right to civil jury trials in New Jersey. "Brennan wants a clear rule saying always yes; Orban says the rule has always been no and should stay no."

Mr. Greenberg said he thought the court might rule in Ms. Brennan's favor.

"The Supreme Court of New Jersey has a very strong reputation of being progressive and looking at practical realities and fairness of situations," he said.