

# Landmark Case on Intentional Infliction of Emotional Distress: Ten Year Retrospective

by Lane Harvey, J.D.\*

Intentional infliction of emotional distress (IIED) is a powerful legal remedy for victims of domestic violence. The tort received a tremendous boost when the Illinois Supreme Court recognized it in **Feltmeier v. Feltmeier**, 798 N.E.2d 75 (Ill. 2003). **Feltmeier** held that physical and emotional abuse during and after an 11 year marriage was sufficiently extreme and outrageous conduct to constitute the tort of IIED.

Ten years have passed since the **Feltmeier** decision. As the attorney for plaintiff, Lynn Feltmeier, I have often reflected on the case. The case was a landmark decision for many reasons. Below I explore the significance of the case, including its implications for the future of domestic-violence-related tort litigation. First, I present some essential background.

## Background

**Feltmeier** was not the first case that I litigated on the theory of IIED. It was the fourth. I brought this case, and three cases before it, because I have always hated bullies. I had first worked through the theory in the early 1990s. In the first such case, my client had been abused both physically and mentally on a regular basis by her husband. Because there were no assets other than his trust fund (which we could not invade in the divorce), I had to come up with an alternative theory for her to get any money. The IIED theory was a tort-personal injury type claim to which the marital or non-marital classification of assets was irrelevant. The continuing course of conduct by the husband caused the wife significant depression and continuing fear, e.g., "emotional distress." I filed the IIED action which was ultimately settled. It provided assets for my client's treatment and some degree of compensation.

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My first two IIED cases settled. The third case went to trial and resulted in a judgment against an abusive husband. Knowing abusers' litigious mentality, I was certain that the defendant would appeal. So, I have to admit that I was a little disappointed when he paid the judgment, primarily to avoid the publicity of an appeal.

Lynn Feltmeier found her way to my office in 1999. The purpose for which Lynn initially retained me was for fairly typical post-judgment matters. Robert was not paying child support as ordered, was abusing visitation, and had not complied with some property provisions in the divorce judgment. As I have a longstanding family law practice in this area, Lynn initially sought my assistance to enforce the dissolution judgment. As our relationship developed, I learned more about what she had endured. The facts of her case were clearly egregious. As I mentioned earlier, I hate bullies and the defendant in **Feltmeier** certainly fit that description. His abusive acts are well-documented in the reported case. They consisted of 45 episodes of abusive conduct, including striking, kicking, shoving, pulling his wife's hair (often in the presence of their children), bending and twisting her limbs and toes, hurling insults and demeaning epithets at her, throwing items at her, stalking her, preventing her from leaving the house to escape the abuse, isolating her from friends and family, and interfering with her employment. The abuse continued throughout their 11 year marriage and even for two years afterwards.

The **Feltmeier** appellate court ruled, and the state supreme court affirmed, that these acts of domestic abuse were sufficiently extreme to be actionable as IIED. When the defendant appealed, first to the Illinois Appellate Court<sup>1</sup> and later to the Illinois Supreme Court, I was ecstatic. It had taken me a decade to get this issue before an Illinois court that was capable of chiseling the result in stone. Arguing the case before the highest court in our

state was undoubtedly one of the most satisfying professional experiences of my life. For me the outcome was never in doubt.

**Feltmeier** was not the first case in any jurisdiction to recognize IIED in the context of domestic violence. But, in my humble opinion, it is the most important. Before **Feltmeier**, domestic violence victims in courts across the country—like Lynn Feltmeier—had litigated IIED claims. Initially, plaintiffs were not successful.<sup>2</sup> Slowly, however, state courts began recognizing the cause of action.<sup>3</sup> **Feltmeier** took place in the middle of this groundswell of legal opinions. **Feltmeier's** contribution to the law reform movement goes far beyond that of prior cases, not only because of its legal impact but also because of its understanding of the nature and consequences of domestic violence.

The case involved three questions of law. The first issue concerned whether an action for IIED would lie for acts of domestic violence in the marital context. Some prior case law had suggested, and, indeed, the defendant in **Feltmeier** argued, that the tort of IIED should not be recognized in the marital setting for the reason that physical expressions of intense anger are "normal" in marital relationships. The Illinois courts in **Feltmeier** flatly rejected that justification in our civilized society.

**Feltmeier** addressed two other issues that had rarely been explored: whether claims for abusive conduct that occurred during the *entire* course of a marriage were barred by the statute of limitations; and whether an action for IIED was barred by the release of claims in the marital settlement agreement.

Statutes of limitations present a major obstacle to tort recovery for victims of domestic violence. They restrict the time in which a victim may bring an action for personal injuries. The limitations periods are

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sufficiently short (e.g., two years in Illinois for torts of assault, battery, and IIED) that they can preclude inclusion in lawsuits of a considerable number of abusive acts that occur during an intimate relationship if those acts took place before the limitations period.

**Feltmeier's** contribution was its recognition of the "continuing tort doctrine" in the domestic violence context. The appellate and state supreme courts recognized that domestic violence is more than a series of isolated, unrelated incidents. Rather, it is an integrated process, a continuing course of conduct giving rise not only to periodic physical injuries but also to a cumulative, ever-increasing mental and psychological toll on the victim. As such, **Feltmeier** ruled that for purposes of the statute of limitations, a course of continuing domestic abuse was a *single act* beginning with the first act of abuse and ending with the last, no matter how many years intervened. The statute of limitations would begin to run only after the *last* act. Therefore, Lynn Feltmeier could recover for injuries stemming from abusive conduct that took place during her entire 11 year marriage.

The third legal issue involved the effect of the mutual release of claims in the marital settlement agreement (MSA). The MSA called for the mutual release of all claims, including tort claims, which either party had or might have against the other. The divorce decree had incorporated the terms of the parties' MSA. The defendant argued that the provisions in the marital settlement agreement released him from liability for Lynn's IIED claim.

The appellate and state supreme courts disagreed. They reasoned that the contractual release could not be construed to include claims, such as Lynn's for IIED, that were not within the contemplation of the parties. The general boilerplate language was simply not applicable to such specific claims. The courts also concluded that the MSA could not be construed to extend to claims that might arise in the future, such as Lynn's claims for

the IIED that occurred during the post-dissolution period.

### Significance of Case

**Feltmeier** was groundbreaking. Admittedly, other state courts previously recognized the tort of IIED in the domestic violence context. An occasional case even had applied the continuing-tort doctrine to overcome the bar of statute of limitations.<sup>4</sup> Yet, **Feltmeier's** legacy stems from its deep understanding of the nature of domestic violence and its application of that knowledge to effectuate law reform.

The **Feltmeier** courts put their knowledge to use in order to reach their conclusion that Lynn Feltmeier had, indeed, suffered serious emotional harm. The defendant in **Feltmeier** contested the facts that Lynn had suffered emotional harm or that

According to the state supreme court, the "particularly relevant" factor, when determining whether the conduct was sufficiently outrageous, was the *degree* of power or authority that the defendant had over the plaintiff, and its impact on the victim. *Id.* at 82.

In addition, both the appellate and state supreme courts revealed insights into the subtle pattern of abuse. The appellate judge, for example, elaborated on aspects of domestic violence that are not readily apparent to the outside observer; the abuse is not necessarily constant or frequent, and long periods of normal routine family life occur. This recognition facilitated proof of the victim's injuries and her damages. That is, the long periods of calm prompt victims to stay in the relationship based on the hope that the abuse would end, thereby causing the victims to wait until the emotional

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her emotional distress was sufficiently severe. He argued that her complaint "contains no factual allegations from which the level of severity of the emotional distress could be inferred." 798 N.E.2d, 75, 83-84. In fact, the husband contended—as many people mistakenly believe—that if you can't see the physical injuries of abuse, then those injuries do not exist. The inevitable inference is that the victim must be lying.

Both **Feltmeier** opinions rejected this argument based of their understanding of the psychological dynamics of domestic violence. The appellate and state supreme courts probed, at considerable length, the nature of systematic domestic violence and its cumulative impact upon the victim. The state supreme court recognized that the source of domestic violence is invisible: it is power and control.

damage is severe and irreversible. The appellate court saw—through the victim's eyes—the nature and severity of her emotional distress: the "daily psychic torment," and the "constant state of silent fear, generated by the knowledge that their spouse, the very person with whom they sleep every night, harbors the capacity to hurt them." 777 N.E.2d at 1039. The court understood that the abuse leaves the victim with the certainty, after each incident of violence, that there will be another incident. But uncertainty reigns as to the precise time and form of the impending violence. Such uncertainty instills the constant numbing fear that is a significant component of the psychological damage arising from repeated, systematic domestic abuse.

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Finally, both **Feltmeier** courts relied on an understanding of the “battered wife syndrome” to reach their determination that the husband’s conduct mandated application of the continuing tort theory. The state supreme court cited extensively from our psychological data regarding the effects of such an ongoing pattern of domestic abuse upon the victim. 798 N.E.2d at 88. Both courts recognized that the intensity and duration of the abuse led to the victim’s continuing and severe posttraumatic stress symptoms. And, both courts referred to evidence submitted by Lynn’s psychologist, Dr. Michael Althoff, who described the process of intimate partner violence as one that unfolds over time. It is the process by which the abusing spouse exerts coercive control over the abused spouse and is based upon a systematic repetitive infliction of psychological trauma designed to instill terror and helplessness. Dr. Althoff was clear that the psychological impact on Lynn and, inferentially, on any victim of such systematic abuse, is the result of the *entire* series of abusive acts and not just the result of individual isolated acts. This understanding was critical to the court’s holding that the statute of limitations did not bar the inclusion of the vast majority of the defendant’s abusive acts because the abuser’s conduct must be viewed as an uninterrupted continuous process of power and control.

### Implications for the Future of Domestic Violence Tort-Related Litigation

The tort of IIED holds tremendous potential for practitioners for several reasons. First, until **Feltmeier** and its kin, no remedy existed to extract financial compensation from the abuser for the injuries he inflicted on a victim. **Feltmeier**’s legal remedy enables victims to recover money to compensate them, at least in some measure, for their serious physical and psychological damages. The long-term mental and psychological impact of domestic abuse is deep-seated and severe, and its extent may not be immediately known. As a result, victims must undergo years of counseling to recover from the resulting depression, loss of

self-esteem, and post-traumatic stress symptoms. Such therapy is lengthy, intensive, and expensive. IIED provides a route to monetary compensation that forces the wrongdoer to compensate the victim for the toll (monetary and emotional) of dealing with the long-term effects of *his* conduct.

Secondly, the tort of IIED holds abusers accountable for their actions. Too often abusers evade the criminal justice system. Because victims rarely disclose abuse and many injuries are invisible, many abusers go unpunished. Divorce, unfortunately, provides no relief because it fails to compensate victims for their injuries. In the vast majority of cases, abusers *never* suffer any real consequences for their infliction of abuse. This lack of accountability contributes to the increasing severity of the abuse. It is my experience, after dealing with abusers for almost four decades, the only differences between one abuser and the next is their birth date and social security number. The personality type is common. They must be in control. Whatever the abuser decides is always right by virtue of the mere fact that he decided it. Every time he commits an act of abuse without consequences, his right to commit the next act of abuse is reinforced. Every time he commits such an act, his sense of dominance increases. As a necessary concomitant of his actions, the partner’s fear continues to increase, and her self-respect and self-image continue to decline. After each episode, she realizes that the only certainty in her life is that there will be another event. She just does not know when or how severe. Her sense of helplessness increases. As time passes with no consequence to the abuser, she feels more hopeless and depressed, whereas the abuser feels more and more confident in his ability to abuse so that the frequency and the severity of the abuse increases. IIED holds promise to stop this inevitable process and to hold batterers accountable.

Third, IIED carries the opportunity for the legal system to expose the abuser’s conduct to the public. Such a tort suit finally unmasks the abuser for what he really is. In a large number of these cases, the existence of the abuse is unknown to the public. Frequently, the abuser purports to be a respected

member of the community. Certainly that was true in **Feltmeier**. The exposure of the abuse humiliates the abuser, an outcome that may be as difficult for him to accept as the serious financial consequences of his actions.

Fourth, public exposure of the abusive conduct and the victim’s financial compensation is not only just but also therapeutic. For the victim, it is the first step to restoring her dignity and reminding her that she is a person of worth. The recognition by the court that she is a person of worth, she is entitled to the protection of the law, and she deserves to be compensated for the harm she has suffered, is a significant first step in the long road to recovery. It certainly was for Lynn Feltmeier.

In the 10 years since the **Feltmeier** case, it has been gratifying to see the extent of attention that the case has garnered. The case has been cited in courts across the country, in legal commentary, and in legal casebooks. Some states have relied on **Feltmeier** as the basis for extending similar remedies to victims of abuse.<sup>5</sup> The case has served as a vehicle to spark public awareness of domestic violence and also to further recognition of a realistic financial remedy to compensate the victim, and punish and deter the abuser. On a very practical level, its remedy serves as a powerful arrow in the quiver of the attorney representing the innocent victim of repeated abuse.

### End Notes

1. 777 N.E.2d 1031 (Ill. App. Ct. 2002).
2. See, e.g., *Hakkila v. Hakkila*, 812 P.2d 1320 (N.M. Ct. App. 1991) (holding that spousal abuse was not sufficiently outrageous to qualify as IIED, even when it involved long-term assault, battery, and acts of public humiliation that left the victim physically disabled and emotionally impaired).
3. See e.g., *Christians v. Christians*, 637 N.W.2d 377 (S.D. 2001); *McCulloch v. Drake*, 24 P.3d 1162, 1170 (Wyo. 2001); *Henricksen v. Cameron*, 622 A.2d 1135 (Me. 1993); *Massey v. Massey*, 807 S.W.2d 391 (Tex. 1991).
4. See *Curtis v. Firth*, 850 P.2d 759 (Idaho 1993); *Cusseaux v. Pickett*, 652 A.2d 789 (N.J. Super. Ct. Law Div. 1994); *Henricksen v. Cameron*, 622 A.2d 1135 (Me. 1993).
5. *Pugliese v. Superior Court*, 53 Cal. Rptr. 3d 681 (Cal. Ct. App. 2007); *Watts v. Chittender*, 22 A.3d 1214 (Conn. 2011). ■



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