

Websites can play role in divorce cases

Social networks have become troves of evidence in divorce cases

By Will Higgins

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Mary Foley Panszi, an Indianapolis divorce lawyer, fondly recalls her discovery of a photograph of her client's husband with his new girlfriend.

The young woman in the photo held high her left hand, the better to show off her gaudy new ring.

The image "helped us apply pressure in mediation," Panszi said.

Panszi came by the photo not by spying or other traditional sleuthing but instead by making a few keystrokes on her computer.

She simply looked up the girlfriend's Facebook page.

Such social networking sites, remarkable for their candor and often protected by lax security, have become treasure troves of dirty laundry that increasingly are aired, or are threatened to be aired, as couples divorce.

The American Academy of Matrimonial Lawyers in a recent survey found that 81 percent of its members have had cases where information from Facebook, MySpace, Twitter or other such sites was a factor.

Previously, lawyers got the skinny on their opponents by hiring private detectives or obtaining phone records, said Marlene Eskind Moses, the academy's president, "but now with the social networking sites, you can go and pluck the information without any costs and gather all kinds of data."

Data that's hard to deny, such as photos of a divorcing dad with a bong. Kena Hollingsworth, an Indianapolis divorce lawyer who has conducted legal seminars on the use of social networking sites in divorce cases, twice came across such pay dirt.

"It gives your client a better bargaining position," she said.

"There's a basic human need to be known by others," said Sam Gosling, a University of Texas psychologist who is an expert on social perception. "And we don't always think things through."

Indiana is a so-called no-fault divorce state, meaning there is no legal penalty for extramarital affairs. In Panszi's case of the husband with his new girlfriend, the issue was not the girlfriend but the girlfriend's ring.

"Unless you can tie (an affair) to dissipation of marital moneys, it doesn't help you in terms of having evidence," said Andrew Soshnick, an Indianapolis divorce attorney.

But if there is a link, social networking can expose it. Soshnick has seen an opposing attorney's client boasting on Facebook of spending "significant amounts of money on jewelry and travel with a paramour," having forgotten to de-friend his soon-to-be ex-spouse.

"A thing like that can cost tens of thousands of dollars," he said.

Indiscretion is nothing new, but with social networking, a secret is more easily brought to the surface.

"The old way would be to tell a friend" of some exploit, said Melissa Avery, a divorce lawyer since 1994, "and even back then, word would get around. People talk."

But hauling in somebody's loose-lipped confidant to testify in court "would have been a lot more cumbersome than bringing in a Facebook posting."

Despite the availability of privacy settings on social websites, online identities may be more widely accessible than users realize -- either by accident, through a misunderstanding of the technicalities of such settings or through old-fashioned betrayal.

"Chances are somebody would be willing to access the site," said Eskind Moses of the lawyers' academy. "It's like, 'Can you keep a secret?'"

Such information rarely makes it to court before a judge, because most divorces are settled before going to a formal hearing, but its impact is felt during pretrial negotiating between opposing attorneys, most commonly in determining custody or visitation of children.

The Domestic Relations Counseling Bureau, which provides reports on parents' fitness to Marion County judges, frequently receives copies of incriminating posts, such as photos showing a parent intoxicated.

"Alcohol is often the issue," said Janice Davidson, the bureau's director. "People want to present themselves as not abusing alcohol, but with pictures, it's harder to slip away from that allegation. We don't base our decision on a few pictures, but it gives you another dimension in understanding who this person is.

"Pictures don't lie," Davidson said.

But they can be open to interpretation. Divorce lawyer Avery had a client who posted on his Facebook page a photo of him with his new girlfriend in a "sort of" suggestive pose, and also in the frame was his toddler. The man's wife tried to use the photo to press for custody arrangements to her liking, but the man insisted the photo was not suggestive and was being misconstrued.

He refused to be cowed, and the photo went all the way to a judge, Avery said. The judge ordered the girlfriend not to have contact with the child.

"People have a level of comfort in posting that they probably shouldn't have," Avery said.

"What I tell clients is, 'Don't post anything you wouldn't mind seeing in court.' "