

DORNTON V. GALLOP (2011)

Brian Conlon

Chief Justice R. TOTEM delivered the opinion of the Court, in which Justices RAYNER, SANGLE, ORFEND, and O'HERN joined.

The question presented to this Court is: Who is the better person, Harold Dornton or Frank Gallop? The question comes to us from the mind of Ms. Helen Gavert, who "thinks very highly" of both and has been asked on a date by both, but wants to make a definite choice as to which one is better rather than be perceived as the type of person who dates multiple people at the same time. This is a novel question to this Court which has considered questions seeking the same non-justiciable end (i.e. which man should I date?), but has never considered the direct justiciable question of which man is better. While the related precedent is useful, we do not find it con-

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See e.g. Hoffman v. Carpenter (Answering Ellen Landroth's question: Who is going to be better in bed? by applying a totality of the circumstances analysis including experience, age, athleticism, empathy, adventurousness and sensuality, but refusing to credit anatomical evidence as vulgar and outside of our traditional judicial purview. Hoffman was determined to be better by a vote of 6-3, with all three female justices dissenting.); Harness v. Caron (Answering Janel Karreth's question: Who is going to be a better father? by examining exclusively the family histories

trolling in this instance and would remind our citizens of the age-old maxim, "We are judges, we are to judge things and people, full stop."²

In deciding who is better, we will address the strengths and weaknesses of both Mr. Dornton and Mr. Gallop before making our informed and final adjudication on who is, in fact, a better person. We remind Ms. Gavert, Mr. Dornton and Mr. Gallop that the Court's decision today is binding only insofar as it decides which man is better. The Court expresses no opinion on which man, if any, Ms. Gavert should date, as that question is not presented, and, in any case, is a "question of ought," outside the jurisdiction of this Court.³

Harold Dornton is an investment banker at the firm of Cain & Swarthmore. He is very well liked amongst his colleagues and seemingly everyone who has ever come in close contact with him.⁴ The

of Harness and Caron. We found the fact that Caron's Uncle Jacob propositioned a mounted police officer at a St. Patrick's Day parade determinative in finding Harness to be the better father by a vote of 8-1 (J. O'Hern dissenting).); Fern v. Locust (Answering Randy Daily's question: Which man will buy me better jewelry? using straight-forward economic analysis in unanimously holding that Fern, who had a job and a car, would buy petitioner better jewelry than Locust, who, despite constant reassurances to the Court that "he had his sources," was unable to produce evidence of a job, a car, or sources.).

² Thompson v. Thompson (1633).

³ But see Hornton v. Garb (Controversially deciding the question: Who should pay the check? because while in form "a question of ought" was in substance asking, "Who is better-equipped to pay the check?" a question within this Court's purview. (C.J. R. Totem dissenting ("Today, the Court extends itself so far outside of our traditional jurisdiction that my arm is actually sore."))).

While thirty-seven people testified about their pleasant encounters with Mr. Dornton, a representative sample will be sufficient. See Laura Hardick, Paige O'Neal High School, Mixed Doubles Tennis Partner, (2002-2003) ("Harold never had a harsh word to say about anyone. I could make ten errors a game and all he would say would be, 'It's alright; we'll get the next one,' or 'I'm sorry I didn't get over in time to cover that,' even when it was completely my fault."); Jason Corn, Cain & Swarthmore, Fellow Associate, Drinking Buddy (2008-), ("Harold always goes out of his way to make sure everyone is comfortable at the office. Once, he gave me his tickets to a game I knew he wanted to go to, just because I expressed interest."); Jeff Howser, Tacos, Tacos, Tacos, Franchise Owner, Client (2009-) ("Harold

Petitioner herself, Ms. Helen Gavert claims that Harold is "exceedingly pleasant to be around," "never demeans anyone," "always pays more than his share," and "has a golden retriever." It should be noted that there was no testimony presented by Ms. Gavert, Mr. Gallop or Mr. Dornton in which Mr. Dornton's behavior towards another human being was called into question. In short, for evidentiary purposes the Court must consider Mr. Dornton to have been absolutely benevolent towards his fellow human beings. ⁵

On the other hand, Mr. Dornton made \$476,000 last year at Cain buying and selling stocks without regard for whether or not what he was doing was socially beneficial. In his testimony, Mr. Dornton stated, "I work, so that I can get paid and live comfortably. I am not doing anything actively wrong working as an investment banker, but I am certainly cognizant of the fact that I am not effecting any positive social change in society. I am not terribly bothered by this." The evidence indicates that Mr. Dornton drives a non-hybrid car to work everyday, does not buy organic or locally grown food, does not give money to people on the street who ask for it, does not investigate how his clothes are made, rarely donates to charity, has no appreciation for abstract art and, on a couple of occasions, realized that what he was about to throw away was recyclable, but threw it away anyways simply for the sake of convenience.

In short, the Court recognizes that Mr. Dornton is the type of man who does his best (which in his case is really quite extraordinary) by those he knows and encounters in his personal life, but does not go out of his way to do what is best for society generally. He is certainly personable, but is he a good person?

has always been completely honest with me and has worked extremely hard to get me the best deals possible."); Gordon Fisher, *The Terrace College*, Professor of Economics (Fall 2005) ("Harold, while never vocal, was always respectful.").

⁵ If the Court were not otherwise inhibited from extending such offers (*Ren v. Gorch*), the Court would very much like to ask Mr. Dornton if he would like to visit our Chambers after session and sip some wonderful scotch and opine about how no one appreciates good scotch nowadays. Alas, the Court recognizes the prohibition announced in *Ren*, but urges Mr. Dornton to consider the *Franklin v. Furniture* exception ("if you ask us, then it is permissible").

The Court will now consider the merits of Mr. Frank Gallop. Mr. Gallop is a social worker for the not-for-profit organization Care-For-Kids. The mission of Care-For-Kids is to "facilitate the education of children who are either unwilling or unable to go to school because of a lack of motivation or insufficient parenting." Mr. Gallop personally visits the houses of children who have had five or more unexcused absences in a given month and tries to persuade them to start going to school. If Mr. Gallop is unable to persuade the child, he is to teach the child on a one-on-one basis in the child's home for at least one hour. The evidence indicates that Mr. Gallop performs his job admirably.

In addition, Mr. Gallop makes \$32,500 a year, of which he gives \$15,000 to charity and saves \$1,000 to give away to people on the street. He was a bicycle, public transportation or the Care-For-Kids hybrid van to get himself around. He only buys locally grown organic produce and only eats meat on special occasions. Mr. Gal-

⁶ What We Do? Care-For-Kids, Employee Manual (2011).

⁷ Garron Harf, Care-For-Kids, Founder, CEO (2004-).

⁸ See Garron Harf ("Mr. Gallop has received glowing reviews from children, parents and some co-workers."); Simon Solate, Hightech Cellular Middle School, Thirteen-Year-Old Student (2011) ("Mr. Gallop always reads to me when he comes over. He tries to get me to read too, but I usually don't."); Taylor Francis, Unemployed Single Mother (2000-) ("Whenever I can't get Randall to go to school, I call Mr. Gallop and he comes over. Sometimes he drives Randall to school, sometimes he makes him do some math problems, sometimes I look into his deep blue eyes and see what I could have been.").

⁹ While the Court would expect the people on the street to speak highly of Mr. Gallop, we were not presented with any such testimony and therefore do not know whether or not Mr. Gallop's donations are appreciated by the street people.

When pressed on the issue, Mr. Gallop gave the example of a culturally traditional dinner during which it would be impolite not to partake in the meat, which might happen to be a cultural specialty. When pressed further, Gallop confessed, "And also Thanksgiving, Easter and when the meat is free, or very reasonably priced."

lop makes his own clothes and, when forced to buy something, does so second-hand and even then "ensures the stitching does not reek of child-labor." Ms. Gavert, for her part, testified that Mr. Gallop "commands a room with indignity," "is really committed to social justice," and "cooks." Furthermore, the evidence shows that Mr. Gallop always recycles, plays the didgeridoo, painted his apartment by throwing rusted paint cans at the wall and takes in various homeless cats and people for week-long stays.

However, the evidence also indicates that Mr. Gallop has, frequently and without any kind of remorse or provocation, treated people with disdain and displayed a lack of fundamental human decency.¹² When questioned about his interactions with people in his

¹¹ Mr. Gallop gave no explanation of how to determine when stitching "reeks of child labor" and this Court is unwilling and unable to provide one for him.

¹² While forty-two people testified about their unpleasant encounters with Mr. Gallop, the following four people are representative. See Caroline Stuebert, Care-For-Kids, Co-Worker, Ex-Girlfriend (2009), ("We went out on Friday and then the next Monday at work he completely ignored me, and continued to do so for the next week. Finally, I just quit. It was as if those two-months we spent together meant nothing to him or that he was punishing me for ordering dessert. But that was their specialty!"); Rodger Gope, University of The Enlightened, Fellow Student, Intramural Softball Opponent, (2004-2007) ("He was one of those guys who took it way too seriously. He was constantly yelling at the umpires who were just volunteers from the local girls' high school softball team. He often tried to play it off as a joke, but he was serious. He also charged the mound once. He took the bat with him, lucky our catcher was a beast."); Frankie Vortex, Top and Tail: Erotic Animal Depot, Cashier, Motorist (2010-) ("He pulled out in front of my car with his bicycle and just stopped in the middle of the street so I couldn't get by. He gets off his bike, motions for me to roll down my window and then starts yelling at me, spitting in my face, "You need to look where you're going, you stupid b---, maybe you were too busy chewing your gum you blond . . ." and this went on for 5 minutes, until finally I started crying, he mumbled something about capitalism, slapped the hood of my car and then got back on his bike. Really the worst person I've ever met."); Luke Stork, Care-For-Kids, Student Assistant, (2011) ("I did this project for him and he ripped it apart in our private meeting, really made me feel like trash. Then, as I was working on editing it to meet his very specific and angry requests, I found out he had submitted it unedited to Mr. Harf. Apparently Harf loved it and Gallop took full credit for all my work. Later, Mr. Harf fired me for not contributing more to Care-For-Kids. The definition of D-Bag.").

everyday life, Mr. Gallop said, "I do what I have to to make the world a better place. If certain people stand in my way, or have no meaning to me in my life, then why should I put on a show? Isn't it better to focus on really changing what's wrong in society than worrying about what other people think of you? If people don't get it, that's their problem. I'm the one trying to better the world." Mr. Gallop is a humanitarian, but is he a good human being?

The lives of Mr. Dornton and Mr. Gallop present the Court with the exceedingly difficult task of determining whether it is better to be good to people around you and ignore the greater problems of the world, or to ignore and mistreat the people around you while taking great care to better humanity generally and the disadvantaged in particular.

This question is so difficult that the Court is unable to decide it as a matter of absolute judgment.¹³ Instead, the Court must turn to our traditional means of deciding impossible to decide questions that leave a choice between two individual human beings: that is, the Court must determine which man is more physically attractive.¹⁴

Mr. Dornton is not without his attractive qualities.¹⁵ He is 6'3", weighs 190lbs, is in relatively fine physical condition, clean-shaven, has most of his hair, only slightly yellowed teeth, and he dresses in fine and conservative suits which highlight the fact that his shoulders

¹³ See Cavern v. Stream (Court unable to decide whether a cavern or a stream is better for purposes of survival in a remote, uninhabited area, as both are desirable, but neither absolutely necessary). But see J. Sangle dissenting ("A stream, a stream is better! You can always build shelter, you can't build water!").

¹⁴ George Gains, *The Workings of the Judgment* (1821) ("When a judge is stuck and has no means of choosing between two competing individuals, the judge should, and in fact, must, choose the individual who is objectively more physically attractive."); *Lane v. Plork* (Finding Plork the victor in a school board election which on recount proved to be an absolute tie, because he was physically much more attractive than Lane. "Those eyes, those blue eyes, just wow.").

¹⁵ In dissent, Justice P. Totem focuses on Mr. Dornton's smile. While the Court recognizes Mr. Dornton's remarkable smile, it would like to remind Justice P. Totem of *Haftley v. Canton*, which held that a person's smile is not an aspect of physical attractiveness, but an outward expression of personality not to be considered in standard attractiveness analysis.

are fairly broad. His face is adequate in every respect, though his eyes and hair are both brown and unremarkable ¹⁶ and his nose and ears are slightly too large for the size of his skull. ¹⁷

Mr. Gallop, on the other hand, is quite striking. He is so proportional that a lesser judge would blush at the sight of him. He is 5'10'', weighs 175 lbs, has a torso which begins just as it should, broadly and powerfully, tapers to his muscular mid-section and nearly fades to oblivion when the tails of his plaid shirt are exposed. His tight, but not quite European, jeans highlight the fact that his legs are no less well-defined. His face exudes an angelic quality, rarely found in the youth of today, blue eyes, a perpetual two-day scruff of a beard, and dark hair, which has not retreated an inch from when he was a mere boy of ten. ¹⁸

In short, Mr. Gallop is far more attractive than Mr. Dornton and therefore a better person.¹⁹ Remember Ms. Gavert, this decision is binding, but does not make you do anything in particular, except acknowledge Mr. Gallop is a superior person to Mr. Dornton. We wish all three of you the best and appreciate the opportunity to decide this important and interesting question.

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Justice VORGETH, concurring in part and concurring in the judgment.

Although I agree with the ultimate decision of the Chief Justice, I write separately to note that I disagree that Lane v. Plork analysis is

¹⁶ While not a per se bar to a finding of relative attractiveness, brown eyes and hair have been held to be disfavored in a number of our attractiveness opinions (*Lane v. Plork, Hoffman v. Carpenter*). *But see Sanders v. David* (Brown hair and eyes are generally preferred to no hair and green eyes, especially when considering two women).

¹⁷ See Dr. Glenn Howerton, How Do I Measure Up? A Novice Guide to Finding Out Whether People Think You are Attractive Through Objective Measurement, Sunny University Press (2009).

¹⁸ Pictorial evidence is on the Court's website, which we urge you to visit. justice-andjudgmentevenandemptyhanded.gov/DorntonGalloppics/tenyearoldGallop.

¹⁹ However, the Court does not desire a drink of scotch with Mr. Gallop.

necessary or appropriate to decide this case. Based on the facts, I would decide that Mr. Gallop is a better person than Mr. Dornton independent of his undeniably alluring looks. The evidence clearly demonstrates that Mr. Gallop has helped a greater number of people through his philanthropy and commendable occupation than Mr. Dornton has, despite Mr. Dornton's considerably superior financial situation and interpersonal skills. ¹

The best measurement of a person's worth is to what extent they help other people. Whether such help is personal, occupational, philanthropic or conservationist should and does not matter. What matters is the total amount of good a person does in the world. Mr. Gallop's good deeds are far broader and deeper than those of Mr. Dornton and should therefore be credited as such. I would hold that Mr. Gallop is simply a better person than Mr. Dornton, full stop.

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Justice P. TOTEM, with whom Justice CONTRAVAL joins, dissenting.

While I agree with my dear brother's assessment of the merits of the case as it relates to Mr. Dornton and Mr. Gallop's lives and commend my brother's impeccable legal analysis, I must dissent because Mr. Dornton is far more attractive than Mr. Gallop.

Harold is the classical epitome of the dashing, tall, dark and

We have found in the past that those with more capital or inherent ability are held to a higher standard than those who lack such privileges. See Hollandsworth v. Kaine (Finding a movie executive more culpable for the horror movie The Giant Hallo Attacks: With Razorblades, than impoverished fifteen year-old pop music sensation Cavy Kaine for her hit single Then I Took Off My Training Bra). Why this is conspicuously absent in the Court's analysis, I do not know. I sincerely hope the Court is not returning to the unprincipled bourgeois jurisprudence that haunted these chambers thirty years ago.

¹ The legal reasoning, writing and eminence of my brother, the Chief Justice, is really a point of pride for the Totem family. I owe everything I am to him and do not want my dissent to in any way detract from his impeccable record. However, when such a fundamental error in judgment is made as occurs in the final three paragraphs of my dear older brother's opinion, I would be shirking my duties as a Justice of this Court and as a responsible younger brother not to point out that mistake.

handsome American male. My brother addressed his attributes generally, and I agree insofar as he praises them, but I must disagree that his ears and nose are imperfectly proportioned and therefore not attractive. Unlike my brother, I am not well-read on the relation between proportionality and attractiveness, but I have to say I find nothing disagreeable in his long ears and slightly pointy nose. And his cheekbones, somehow left unmentioned by my dear brother, are really as defined as one could hope for. Furthermore, he has a full five inches on Mr. Gallop and this Court has recognized that "height is a factor to be considered in weighing the desirability of individuals, especially men."2 While I acknowledge the presumption against brown eyes and brown hair, I must say that there is something about Harold's eyes which should overcome that presumption. Furthermore, my brother's inability to recognize the importance of Harold's smile borders on clear error.3 Throughout the proceedings Harold's smile lit up the courtroom, while his counterpart could not be bothered to even look in the direction of this learned Justice.

While it is true that Mr. Gallop does have a certain "I'm too good for you" quality to his appearance, I must disagree that his vertically average and sublimely proportional form overcomes Harold's exceptional qualities.

For these reasons I must disagree with my brother's *Plork* analysis and find that Harold is far more attractive than Mr. Gallop and as such a far better person.⁴

² Lane v. Plork.

I find my brother's reference to *Haftley v. Canton* unconvincing. *Haftley* was wrongly decided and out of step with popular notions of attractiveness when it was decided twenty-three years ago and whitening technology has only further cast a shadow on our misguided judgment. *See* Newton Fostems, *The Meaningless Smile? Why* Haftley *is Contrary to Traditional and Contemporary Notions of Attractiveness*, S.E.N.W. FACE AND LAW JOURNAL, 73-215 (2001). Insofar as *Haftley* holds that a smile is irrelevant to attractiveness analysis, I would overrule it.

⁴ Harold, I join my brother in his offer for you to offer to drink scotch with us. My wife will make biscuits!

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Justice DORPH dissenting.

I would hold that Mr. Dornton is a better person than Mr. Gallop without reaching the *Plork* question. The question of which man is better is clearly and decisively answered by the evidence presented to this Court and there is no reason to turn to the rarely applied, and even more rarely accurately applied, attractiveness test.¹

The goodness of a man should be measured by how he interacts with other human beings. It is nonsense to say that Mr. Gallop is a good person who just so happens to not be good to people. If Mr. Gallop is, as the evidence indicates, mean, insensitive, selfish, unwarrantedly competitive and violent in his everyday interactions with people, he is not a good person no matter how much money he donates to sick children or how many stray cats he saves from euthanasia.

I do not understand how the Court reaches the conclusion that Mr. Dornton and Mr. Gallop are morally equivalent. Mr. Dornton has *never*, based on the evidence presented, had an abrasive encounter with anyone and has demonstrated kindness, competence and selflessness in all of his social interactions. The Court takes pains to note that Mr. Dornton makes \$476,000 a year, as if being successful were somehow an indication of moral depravity. Mr. Dornton is a successful businessman who is benevolent, or at least benign, in all his interpersonal interactions. Mr. Gallop is a social worker who

I express no opinion on the Court's analysis in this case, but would simply note that the Court's and Justice P. Totem's enthusiasm for this approach is potentially troubling for a test meant to be "approached dispassionately, as if deciding the winner of a beauty competition without ever meeting the contestants" (*Frangle v. Storsenrich*).

² Justice Vorgeth's concurrence particularly overstates our holding in *Hollandsworth v. Kaine*, which only stated that affluence "might be a factor" in considering the culpability of artists for culturally tortious works. *Hollandsworth* has always been limited to its facts and Justice Vorgeth's attempt to slip subtle wealth-based discrimination into the precedent of this tribunal in the only footnote in a two paragraph concurrence is as disturbing as the Court's earlier, much maligned, wealth as a plus factor jurisprudence of the 1980s.

does not care for the social well-being of anyone he comes in contact with, but somehow happens to care a great deal about the indirect harm he might cause to people he has never, and will never meet.

The question of who is a better person, Mr. Dornton or Mr. Gallop? is much like the question: What is better to carry in the rain, an umbrella or an open bag of mixing cement? While I choose the umbrella, the Court today decides to trudge through the puddles, lugging the cement over its shoulder until it gets so heavy that the Court drops it and it spills out, permanently encasing the Court's feet.

