

Failure to Appear: Is a Missing Person Eventually Presumed Dead?

Adapted from the writings of Dayan Yitzhak Grossman

July 20, 2023

The AP reports:

A Texas man who went missing as a teenager in 2015 after last being seen walking his dogs in Houston has been found alive, his family and police said Monday.

Police and firefighters found Rudolph “Rudy” Farias IV around 10 p.m. Thursday...It was not immediately known where Farias had been the last eight years, Cannon said...Farias was 17 years old when he was reported missing on March 6, 2015, after taking his two dogs for a walk near his family’s home in northeast Houston. The dogs were later found. Houston police, along with Texas EquuSearch, a civilian search and recovery team, looked for Farias but found no signs of him...

Cannon said Farias’ family did report to police investigators that they had seen him in September 2018, staying behind the home of a relative. Police investigators followed up on the 2018 sighting and went to the relative’s home. But “they could not observe him. They could not locate him,” Cannon said...

Possible sightings like the one Houston police followed up in 2018 were common in the case, said Martin Renteria, a private investigator with Checkmate Investigative Field Services in suburban Houston, who had been hired by Farias’s mother a few months after Farias went missing. Renteria recalled at least a dozen such reports that turned up nothing. Renteria, who worked the case with his wife, Barbara, also followed up on possible sightings in other cities. “After a couple of years...we finally just had to give up on it,” Renteria said Monday. He added he also considered that Farias, who had become an adult in the time he was missing, might have run away and didn’t want to be found.[1]

In this two-part series, we discuss the question of whether a person’s disappearance for a substantial period of time creates a halachic presumption that he is dead, or whether we are obligated to consider the possibility that, as in the case of Rudolph Farias, he is alive.

This question is first discussed in the Gemara, which concludes that the absence of any news of a missing person does not create a presumption of death sufficiently strong to allow his wife to remarry:

Rav Ashi said: That which the *Rabanan* said that if a man falls into water that has no end, his wife is forbidden to remarry, these words are stated with regard to an ordinary man only, but not if he is a *talmid* chacham. For if a *talmid* chacham were to emerge from the water, the matter would become widely known.

But that is not so. It makes no difference whether he is an ordinary man or a *talmid* chacham; after the fact, yes (if she already remarried, she may remain with her new husband), but initially, no (she may not

remarry).[2]

R' Yisrael Isserlin (the Trumas Hadeshen), however, maintains that although the absence of news does not allow the wife to remarry ab initio (*lechat'chilah*), it does allow her to remain married if she has already remarried upon the ruling of a reputable halachic authority (despite the fact that we consider that authority to have erred). He initially asserts this with respect to the particular missing husband in his case, who was "a prominent figure, with many relatives in many countries," of whom nothing had been heard for years, because

Due to our many sins, currently (he is writing in the first half of the fifteenth century) in our Diaspora we are scattered abroad and dispersed,[3] a few in every place, and if he were alive, even two or three hundred *parsah* distant, he would be known to and heard of by us.[4]

But he subsequently extends it to any missing person in his time:

And it seems that in our time, even with respect to an ordinary person, there is a presumption that if he were still alive, there would have been publicity of this over the years, much more so than the publicity associated with a *talmid* chacham in the time of the Chachmei HaGemara, when the Jewish people consisted of large communities in many places.

In addition to the absence of news, the Trumas Hadeshen also relies upon the presence in his case of a "rumor that does not cease" (*kala dela pasik*)[5] that the husband had died. The Rama codifies the general principle of the Trumas Hadeshen that a woman who has already remarried based on the ruling of a reputable authority may remain married if there are proofs and circumstantial evidence (*ra'ayos ve'umdenos*) of the husband's death (i.e., despite the insufficiency of these indications to allow her to marry ab initio), although he does not mention the specific proof from the absence of news of the husband.[6]

In a follow-up article, we will *iy"H* discuss the positions of subsequent authorities regarding the idea of the Trumas Hadeshen.

NOTE: As we go to press, the Rudy Farias story has taken a shocking turn. It has emerged that Farias actually returned home on March 7, 2015—one day after he went missing—but his mother, Janie Santana, hid her son from the authorities, who kept looking for him. Farias says his mother "brainwashed" him into staying hidden all these years.

[1] Juan A. Lozano. A Texas man who went missing as a teen in 2015 has been found alive, his family and police say. AP News.

<https://apnews.com/article/texas-man-missing-teenager-found-alive-4087515aa1f83ef9bf25eca0d54b6794>.

[2] Yevamos 121a.

[3] Esther 3:8.

[4] Trumas Hadeshen, *Psakim, siman* 139.

[5] See Yevamos 25a.

[6] Shulchan Aruch E.H. 17:15 (and see Chelkas Mechokeik *ibid.* s.k. 33 and Bais Shmuel *ibid.* s.k. 50).

R' Chaim Jachter (Gray Matter 2 p. 134) writes: "The reasoning of the Trumas Hadeshen was not accepted as normative (see Shulchan Aruch E.H. 17:34)." I do not understand the basis for this assertion, in light of the fact that the basic holding of the Trumas Hadeshen is codified by the Rama (and, as is noted in the follow-up to this article, defended and accepted by various later authorities as well). Perhaps Rav Jachter means that the Trumas Hadeshen's reasoning is not accepted as a basis to allow the wife to remarry *lechat'chilah*—but the Trumas Hadeshen himself (as opposed to some later *Acharonim*, as we note in the follow-up) never makes such a suggestion! Alternatively, perhaps Rav Jachter means that while the general principle that *ra'ayos ve'umdenos* are an acceptable basis for leniency may be normative, the specific proof from the absence of news of the husband is not accepted as normative, although this specific proof is indeed defended and accepted by later authorities, as above.

Rav Jachter seems to misconstrue the Trumas Hadeshen's position in his preceding paragraph as well: "He reasons that the Gemara did not wish to distinguish between a wife of a Torah scholar and others because of the principle of *lo plug* (that the Rabbis do not make special exceptions to their rules). However, reasons the Trumas Hadeshen, in a time of improved communication, the reasoning that a husband's surviving *mayim she'ein lahem sof* would be communicated to the wife applies to everyone equally, so there should not be any need to rule strictly in cases of *mayim she'ein lahem sof*."

Rav Jachter here implies once again that the Trumas Hadeshen intends his argument to justify remarriage even *lechat'chilah*. Moreover, he characterizes the Trumas Hadeshen's rationale for the inapplicability of the Gemara's *lo plug* as rooted in the fact that "the reasoning...applies to **everyone** equally," whereas what the Trumas Hadeshen actually writes is that the *lo plug* applies only to remarriage *lechat'chilah*, but not to remaining married *bedieved*.

The truth is that this understanding of the position of the Trumas Hadeshen (and of that of the Chasam Sofer cited in the follow-up) appears in Shu"t Igros Moshe E.H. *cheilek 1 siman 48 s.v. Al kol panim* as well, but Shu"t Maharsham *cheilek 3 siman 252 os 8*, on the other hand, explicitly states that the entire discussion of the Chasam Sofer (and presumably that of the Trumas Hadeshen as well) is only with respect to avoiding the possibility of a Torah prohibition against the woman remarrying, "but it never occurred to him to be lenient (with respect to allowing her to remarry) *ab initio*."