

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CANDACE S. IVORY,	§	
	§	No. 342, 2012
Respondent Below,	§	
Appellant,	§	Court Below: Family Court of the
	§	State of Delaware in and for
v.	§	New Castle County
	§	
DARREN S. IVORY	§	File No. CN08-05175
	§	
Petitioner Below,	§	Pet. Nos. 10-29669, 12-03736
Appellee.	§	

Submitted: June 18, 2013

Decided: July 11, 2013

Before **STEELE**, Chief Justice, **BERGER**, and **RIDGELY**, Justices.

ORDER

On this 11th day of July 2013, it appears to the Court that:

(1) Respondent-below/Appellant Candace A. Ivory (“Wife”) appeals from an order of the Family Court which vacated the Final Decree of Divorce between Wife and Petitioner-below/Appellee Darren S. Ivory (“Husband”). Wife raises two claims on appeal. First, she claims that the Family Court’s *sua sponte* decision invalidating the parties’ decree of divorce was erroneous. Second, she claims the Family Court lacked a basis for exercising *in personam* jurisdiction over Wife. We remanded this case for a determination as to whether the parties could consent to *in rem* jurisdiction and reverse the order to vacate on those grounds. The Family

Court found the parties could so consent. We accordingly dismiss this appeal as moot.

(2) Husband and Wife married in Montana in 2006. Husband served in the armed forces and Wife lived in Delaware while he was deployed. Upon Husband's return to the states, the parties resided in Delaware for a brief period before moving to Silver Spring, Maryland. In 2008, Husband filed a Petition for Divorce in Delaware. At the time of the Petition, Wife resided in Silver Spring. Husband filed an Affidavit of Publication with the News Journal. Husband attempted to serve Wife notice of divorce by notifying her by mail and publication. He mailed one letter to Wife's Maryland address and another to the Philippines' Embassy in Washington. The embassy confirmed receipt, but the letter to Wife was returned for unclear reasons. Wife failed to appear for any divorce proceedings and did not file any motions, requests, or reports. The Family Court judge granted a Final Decree of Divorce on March 18, 2009, and later granted a default judgment against Wife relating to the division of marital property.

(3) In 2010, Husband filed a Rule to Show Cause petition ("RTSC-1") seeking enforcement of the Default Order through attachment of wages. The Family Court denied RTSC-1. In 2011, Husband filed a second Rule to Show Cause petition ("RTSC-2"). In 2012, Wife filed a Motion to Declare Void all *in personam* Orders and to Dismiss the both RTSCs. The Family Court found that

Husband's service of process was insufficient under the Delaware code, and therefore it lacked *in personam* jurisdiction and dismissed Husband's petitions.¹ The Family Court also, *sua sponte*, found that the insufficient service of process meant it lacked *in rem* jurisdiction over the divorce and vacated the 2009 Final Decree of Divorce.² This appeal followed.

(4) As the issue of *in rem* jurisdiction for the original divorce decree was never argued before the Family Court, we remanded for such argument and asked the Family Court to issue another order. On remand, the Family Court stated:

For the reasons set forth on the record, which includes an agreement of the parties as to the issue, the Court hereby determines that it does have "*In Rem*" jurisdiction over the divorce of these parties."³

Wife now argues her appeal should be dismissed as moot. The Family Court's finding on remand extinguishes the need for her first claim.

(5) This sole issue is now resolved by the Family Court's disposition on remand.⁴ Though Husband makes an argument in his Answering Brief as to why

¹ *Ivory v. Ivory*, File No. CN08-05175, Pet. Nos. 10-39669 and 12-03736 at 10 (Del. Fam. Apr. 20, 2012) ("Therefore, the Court must hold that Husband has not complied with the requirements of 12 *Del. C.* § 1508(b) and (d), and thus, has not established *in personam* jurisdiction over Wife for purposes of property distribution.").

² *Id.* ("*In rem* jurisdiction applies only to the dissolution of the marriage, and although does not require minimal contact between the nonresident spouse and the state executing the divorce decree, it does require mailing *and* publication. As discussed previously, the Court finds that mailing has not been accomplished in regards to Husband's Divorce Petition.").

³ *Ivory v. Ivory*, File No. CN08-05175; Pet. No. 10-39669; 12-03736 (Del. Fam. Apr. 1, 2013) (civil disposition announced in court).

⁴ Wife fashions this appeal as raising two claims. Her second claim argues as to why the Family Court lacks *in personam* jurisdiction over her. This claim does not seek affirmative relief, as the

the Family Court also erred in finding it lacked *in personam* jurisdiction over Wife, Husband never filed a cross-appeal. “A cross-appeal is necessary if the appellee seeks affirmative relief from a portion of the judgment, i.e., enlarging the appellees' own rights or lessening the rights of an adversary.”⁵ Husband’s argument that the Family Court erred in finding it lacked *in personam* jurisdiction seeks affirmative relief. The question is not properly before this Court.

(7) NOW, THEREFORE, IT IS ORDERED that this appeal is **DISMISSED** as moot.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

Family Court agreed with Wife on this point. Accordingly, we do not consider this claim on appeal.

⁵ *Haley v. Town of Dewey Beach*, 672 A.2d 55, 58 (Del. 1996) (citing *United States v. American Railway Express Co.*, 265 U.S. 425 (1924)).