

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

SHERRIE RAIKEN SAVETT,

Appellee

v.

ROBERT A. ROVNER,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1743 EDA 2013

Appeal from the Decree May 29, 2013  
in the Court of Common Pleas of Montgomery County  
Civil Division at No.: 2009-12084

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.\*

MEMORANDUM BY PLATT, J.

**FILED FEBRUARY 24, 2014**

Appellant, Robert A. Rovner, appeals from the decree granting a divorce to him and Appellee, Sherrie Raiken Savett, and incorporating by reference the parties' property settlement and pre-nuptial agreements. Appellee requests counsel fees. We affirm. We further conclude the appeal is frivolous and award counsel fees to Appellee.

The parties, both attorneys, married on May 31, 1997. Prior to the marriage, they executed a pre-nuptial agreement, dated April 13, 1997. On April 27, 2009, Appellee filed a divorce complaint. On March 14, 2011, the parties entered into a settlement agreement. The agreement provided that it, together with the parties' pre-nuptial agreement, "resolve[d] all

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\* Retired Senior Judge assigned to the Superior Court.

outstanding economic issues between the parties.” (Agreement, 3/14/11, at 1). The agreement provided for transfer of the marital vacation home to Appellee, and for Appellee to pay Appellant \$1,500,000.00 “in full settlement of all marital claims.” (*Id.*). The agreement also states:

There are no other economic or property issues in the [m]atter, and this [a]greement, and the [p]re-[n]uptial [a]greement [dated April 13, 1997] settles all marital claims between them. Neither party will pay to the other alimony, temporary alimony, spousal support, counsel fees or costs. . . .

\* \* \*

This [a]greement and the [p]re-[n]uptial [a]greement of April 13, 1997 referenced above constitute the entire understanding and agreement of the parties. . . .

(*Id.* at 2-3).

Appellant then raised claims with respect to certain jewelry retained by Appellee and a referral fee Appellee allegedly owed him.<sup>1</sup> On March 4, 2013, Appellee filed an affidavit pursuant to section 3301(d) of the Divorce Code.<sup>2</sup> On March 20, 2013, Appellant filed a counter-affidavit indicating that he intended to pursue economic relief “which m[a]y include alimony, division

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<sup>1</sup> Specifically, Appellant claims that Appellee accepted jewelry from him on the condition that she would keep it only if the parties remained married. (*See* Trial Court Opinion, 8/21/13, at 6). He also asserts that Appellee owes him a ten percent referral fee in connection with a case he referred to her law firm. (*See id.*).

<sup>2</sup> *See* 23 Pa.C.S.A. § 3301(d)(1) (governing no-fault divorce and providing that court may grant divorce where a complaint has been filed alleging that marriage is irretrievably broken and an affidavit has been filed alleging that parties have lived separate and apart for a period of at least two years).

of property, lawyer's fees or expenses or other important rights" by checking option "(b)" on the form. (Counter-Affidavit, 3/20/13, at unnumbered page 1). In accordance with Pennsylvania Rule of Civil Procedure 1920.72(e)(2), the counter-affidavit states, in pertinent part:

**I understand that in addition to checking (b) above, I must also file all of my economic claims with the Prothonotary in writing and serve them on the other party. If I fail to do so** before the date set forth on the Notice of Intention to Request Divorce Decree, the divorce decree may be entered without further notice to me, and **I shall be unable thereafter to file any economic claims.**

(*Id.*) (emphasis added).<sup>3</sup>

On March 28, 2013, Appellee sent Appellant notice of her intention to request entry of a divorce decree, advising that she could request the court to enter a decree on or after April 19, 2013. In accordance with Rule 1920.73(a)(2)(ii), the notice includes the following provision:

Unless you have already filed with the court a written claim for economic relief, you **must** do so by the above date or the court may grant the divorce and **you will lose forever the right to ask for economic relief. The filing of the form counter-affidavit alone does not protect your economic claims.**

(Notice, 3/28/13, at unnumbered page 1) (emphasis added).<sup>4</sup>

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<sup>3</sup> **See** Pa.R.C.P. 1920.72(e)(2) (setting forth required content for counter-affidavit filed under § 3301(d) of the Divorce Code).

<sup>4</sup> **See** Pa.R.C.P. 1920.73(a)(2)(ii) (setting forth required content for notice of intention to request entry of divorce decree under § 3301(d) of the Divorce Code).

Appellant did not file any economic claims with the court.<sup>5</sup> On May 2, 2013, Appellee filed a praecipe to transmit the record, indicating that the parties had settled all claims by agreement and requesting that the court enter a divorce decree with the pre-nuptial and property settlement agreements attached. (**See** Praecipe to Transmit, 5/02/13, at unnumbered page 2).

On May 2, 2013, the trial court entered an order decreeing the parties divorced. On May 9, 2013, Appellant filed a motion to strike the court's May 2, 2013 order, alleging that Appellee was aware of his claims for economic relief. On May 29, 2013, the court "mistakenly issued" an order granting Appellant's motion to strike. (Trial Ct. Op., at 1). On that same date, the court entered an amended decree divorcing the parties and incorporating the pre-nuptial and property settlement agreements by reference. On May 30, 2013, the court entered an order vacating its prior, erroneously entered order granting Appellant's motion to strike and the divorce decree dated May 2, 2013. On June 13, 2013, Appellant timely filed this appeal from the court's May 29, 2013 amended divorce decree.<sup>6</sup>

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<sup>5</sup> Appellant concedes that he did not file economic claims. (**See** Appellant's Brief, at 19; Trial Ct. Op., at 6).

<sup>6</sup> Pursuant to the trial court's order, Appellant filed a timely Rule 1925(b) statement of errors on July 16, 2013. The court entered a Rule 1925(a) opinion on August 21, 2013. **See** Pa.R.A.P. 1925.

On appeal, Appellant raises two issues challenging the trial court's entry of the amended divorce decree:

I. Did the [trial] court commit errors of law and/or abuse its discretion in reversing and striking its own orders without a hearing on the economic claims issues therefore depriving Appellant of the opportunity to present his economic claims in the proper forum?

II. Did the trial court commit errors of law and/or abuse its discretion in reversing and striking its own orders on the ground that Appellant failed to file his economic claims in writing when the trial court generally does not enforce this requirement?

(Appellant's Brief, at 4).<sup>7</sup>

"Our standard of review in divorce actions is well settled. [I]t is the responsibility of this [C]ourt to make a *de novo* evaluation of the record of the proceedings and to decide independently of the . . . [trial] court whether a legal cause of action in divorce exists." **Frey v. Frey**, 821 A.2d 623, 627 (Pa. Super. 2003) (citations omitted).

In his first issue, Appellant claims that the trial court erred by entering the divorce decree without holding a hearing on his economic claims, depriving him of the opportunity to present his claims in the proper forum. (**See** Appellant's Brief, at 11). We disagree.

Pennsylvania Rules of Civil Procedure 1920.72 and 1920.73 specify the required content for documents filed by parties involved in no-fault divorce

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<sup>7</sup> In addition to disputing Appellant's claims, Appellee asserts the appeal is frivolous, obdurate, and vexatious; Appellee requests counsel fees. (**See** Appellee's Brief, at 13-15).

actions. Under the rules, both a counter-affidavit and a notice of intention to request entry of a divorce decree must include provisions notifying the parties of the consequence of waiver of economic claims if a party fails to act promptly with respect to asserting such claims. **See** Pa.R.C.P. 1920.72(e)(2), 1920.73(a)(2)(ii).

Here, Appellee filed an affidavit pursuant to section 3301(d)(1) of the Divorce Code on March 4, 2013. Appellant filed his counter-affidavit on March 20, 2013, in which he checked the option reflecting his intention to pursue economic relief. In accordance with Rule 1920.72(e)(2), the counter-affidavit specifically directed that, in addition to indicating a request for economic relief on the form, a party must also file economic claims in writing with the court and serve them on the other party prior to the date listed on the notice of intention to request entry of a divorce decree. **See** Pa.R.C.P. 1920.72(e)(2); (**see also** Counter-Affidavit, 3/20/13, at unnumbered page 1). The counter-affidavit further stated that failure to comply with this directive would result in the preclusion of economic claims. (**See** Counter-Affidavit, 3/20/13, at unnumbered page 1). On March 28, 2013, Appellee sent her notice of intention to request entry of a divorce decree, advising Appellant of the requirement to file any economic claims in writing before April 19, 2013. (**See** Notice, 3/28/13, at unnumbered page 1). In accordance with Rule 1920.73, the notice expressly warned: “[t]he filing of the form counter-affidavit alone does not protect your economic claims.” (**Id.**); **see also** Pa.R.C.P. 1920.73(a)(2)(ii). Despite these clear

directives and ample time to file his claims, Appellant, who, as previously noted, is an attorney, never filed any economic claims with the court.

Appellant acknowledges that he did not file economic claims with the court, but argues that he is nonetheless entitled to a hearing because he raised the claims in the counter-affidavit, and Appellee was aware of his claims regarding the jewelry and referral fee. (**See** Appellant's Brief, at 14-15, 17, 19). However, our Rules of Civil Procedure provide that a party who does not act promptly to preserve economic claims by formally filing them with the court prior to entry of a divorce decree will forever lose those claims. **See** Pa.R.C.P. 1920.73(a), 1920.72(e)(2). Appellant was repeatedly notified that he must file any economic claims in writing with the court, that if he failed to file the claims he would lose them, and that the mere filing of a counter-affidavit would not preserve his claims. (**See** Counter-Affidavit, 3/20/13, at unnumbered page 1; Notice, 3/28/13, at unnumbered page 1). Appellant's first issue does not merit relief.<sup>8</sup>

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<sup>8</sup> We note that Appellant's reliance on **Lowers v. Lowers**, 911 A.2d 553 (Pa. Super. 2006), is misplaced. (**See** Appellant's Brief, at 14). In **Lowers**, this Court determined that, although Husband's divorce complaint did not specifically claim economic issues, he did not waive economic claims where the parties filed inventories and engaged in discovery after the complaint was filed; correspondence between counsel indicated that the parties were actively negotiating a settlement of all economic issues; and the parties discussed appointment of a master should they not be able to resolve their economic issues amicably. **See Lowers, supra** at 556. In the instant case, the parties were not involved in ongoing active negotiations and they executed a property settlement agreement on March 14, 2011, two years (*Footnote Continued Next Page*)

In his second issue, Appellant argues that, because the Montgomery County Court of Common Pleas generally does not enforce the requirement that a party file economic claims in writing, the court should have overlooked his “minor error” of failing to file his claims. (Appellant’s Brief, at 19). In support of this argument, Appellant cites to Pennsylvania Rule of Civil Procedure 126 (providing for liberal construction and application of rules),<sup>9</sup> and our Supreme Court’s decision in ***Paden v. Baker Concrete Constr., Inc.***, 658 A.2d 341 (Pa. 1995). (**See** Appellant’s Brief at 19-20). This issue fails for the following reasons.

First, Appellant provides no evidence to support his bald assertion that it is a routine practice in Montgomery County for the court to allow parties to disregard clear instructions set forth in form documents pursuant to the Rules of Civil Procedure. (**See *id.***). Further, the trial court flatly denies

(Footnote Continued) \_\_\_\_\_

before Appellant filed the counter-affidavit indicating his intention to pursue economic relief.

<sup>9</sup> Rule 126 states:

The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

Pa.R.C.P. 126.

Appellant's contention, stating that it "is unaware of any unspoken practice not to adhere to the instructions on the form counter-affidavit. This [c]ourt can only hold the parties responsible for the express and clear instructions set forth on the counter-affidavit so as to maintain a definite and consistent requirement." (Trial Ct. Op., at 6).

In addition, to the extent Appellant argues that Rule 126 and our Supreme Court's decision in ***Paden, supra***, obligate the court to overlook the requirement that economic claims be filed in writing, we disagree. Appellant mischaracterizes the holding in ***Paden*** as supportive of his arguments when the case supports an opposite result. Specifically, in ***Paden***, our Supreme Court considered whether a trial court abused its discretion by declining to implement Rule 126 to disregard a plaintiff's procedural error. ***See Paden, supra*** at 411. The ***Paden*** Court concluded that, although a trial court may apply Rule 126 to overlook procedural errors made by a party, it is not necessarily an abuse of the court's discretion to enforce the rules of procedure. ***See id.*** at 414. The Court held:

Though Rule 126 would have permitted the trial court to overlook the procedural errors of trial counsel, it is not an abuse of the trial court's discretion to enforce the rules of civil procedure, even when the result has a serious adverse effect on the party violating the rules; the rules are essential in order to insure the orderly and equal administration of justice and it is within the discretion of a trial court to require compliance.

***Id.***

Based on the foregoing, we discern no error with respect to the trial court's entry of the divorce decree. Accordingly, we affirm the decree entered by the trial court.

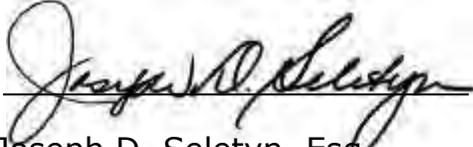
Finally, we address Appellee's request for counsel fees under Pennsylvania Rule of Appellate Procedure 2744 based on her belief that this appeal is frivolous, obdurate, and vexatious. (**See** Appellee's Brief at 13-15); **see also** Pa.R.A.P. 2744(1) (providing that appellate court may award a reasonable counsel fee if it determines that an appeal is frivolous). Upon review, we conclude that the appeal is frivolous. **See** Pa.R.A.P. 2744(1); **Rohm & Haas Co. v. Lin**, 992 A.2d 132, 151 (Pa. Super. 2010), *cert. denied*, 132 S. Ct. 852 (2011) ("An appeal is frivolous if the appellate court determines that the appeal lacks any basis in law or in fact.") (citations and some quotation marks omitted). Appellant never filed economic claims with the trial court despite repeated notification that failure to do so would result in loss of such claims, and he filed this appeal advancing arguments unsupported by pertinent legal authority. Of particular note is Appellant's argument that the Montgomery County Court of Common Pleas generally does not enforce the Rules of Civil Procedure requiring the written filing of economic claims, a bald assertion for which he provides no support and the trial court plainly denies. Accordingly, pursuant to Rule 2744, we award counsel fees to Appellee and remand the case to the trial court to determine a reasonable counsel fee.

J-S78039-13

Decree affirmed. Case remanded for the imposition of counsel fees.

Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 2/24/2014