

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

ARTHUR L. IVES,

Appellee

v.

KATHRYN E. IVES,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 134 WDA 2013

Appeal from the Order of December 4, 2012,  
in the Court of Common Pleas of Warren County,  
Civil Division at No. 355 of 2010

BEFORE: FORD ELLIOTT, P.J.E., ALLEN and COLVILLE\*, JJ.

MEMORANDUM BY COLVILLE, J.:

**FILED DECEMBER 30, 2013**

Wife appeals from a divorce decree dated December 4, 2012. We dismiss the appeal.

The relevant facts are as follows. Husband initiated this action on January 12, 2010, by filing a complaint raising counts of divorce and equitable distribution. Wife filed an answer to the complaint and counterclaim for equitable distribution, alimony, alimony pendent lite, counsel fees, costs and expenses. Husband and Wife both filed affidavits of consent and waivers of notice of intention to request entry of a divorce decree under the Divorce Code, 23 Pa.C.S.A. § 3301(c). An equitable distribution hearing was held before a hearing officer. Following the hearing, the hearing officer filed an equitable distribution report and recommended

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\*Retired Senior Judge assigned to the Superior Court.

order. Husband filed exceptions to the hearing officer's report and recommended order. Thereafter, Wife filed exceptions to same. Following argument on the parties' exceptions, the trial court issued an opinion and order of September 28, 2012, overruling, in part, and sustaining, in part, the parties' exceptions.

Thereafter, Wife filed a praecipe to transmit the record for entry of a divorce decree. Husband filed a petition to vacate, arguing, *inter alia*, that he was prevented from appealing the September 28, 2012, equitable distribution opinion and order as no divorce decree had been entered. On November 5, 2012, the court entered a divorce decree. Argument on Husband's petition to vacate occurred on November 28, 2012. On December 4, 2012, Husband appealed the November 5, 2012, divorce decree.<sup>1</sup> On the same date, the court entered its findings and decree in divorce in which the court, *inter alia*, denied Husband's petition to vacate and amended the divorce decree to incorporate the September 28, 2012, equitable distribution opinion and order. Wife's appeal of the amended divorce decree followed.

Wife's issues on appeal are all dependent upon this Court's disposition of Husband's related appeal of the November 5, 2012, divorce decree at 1929 WDA 2012, in which Husband challenged the trial court's equitable distribution opinion and order. Specifically, Wife argues that Husband should be equitably estopped from asserting that his pension is not a marital

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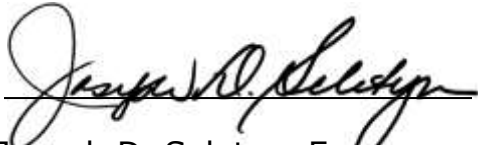
<sup>1</sup> Husband's appeal of the November 5, 2012, divorce decree is docketed separately at 1929 WDA 2012 and is disposed of by separate memorandum, J-A25044-13.

asset subject to equitable distribution and that, in the event the trial court order with respect to Husband's pension is overturned, the case should be remanded for further consideration of Wife's claims for alimony and alimony *pendente lite*. By separate memorandum, J-A25044-13, we dismissed Husband's appeal. Thus, the trial court's equitable distribution order, including the portion of the order equitably distributing Husband's pension, has not been disturbed on appeal. Accordingly, the appellate review sought by Wife is not required as no relief could result therefrom. We dismiss the appeal.

Appeal dismissed.<sup>2</sup>

President Judge Emeritus Ford Elliott files a Dissenting Statement.

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: 12/30/2013

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<sup>2</sup> Husband's motion to quash is denied.