

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

ARTHUR L. IVES	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	No. 1929 WDA 2012
	:	
KATHRYN E. IVES	:	

Appeal from the Order, November 5, 2012,
in the Court of Common Pleas of Warren County
Civil Division at No. A.D. 355 of 2010

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

DISSENTING STATEMENT BY FORD ELLIOTT, P.J.E.:

FILED DECEMBER 30, 2013

I respectfully dissent from the majority’s decision to dismiss Husband’s appeal. The trial court issued a divorce decree on November 5, 2012 without incorporating its September 28, 2012 order addressing the parties’ exceptions. Ironically, the final order from which this appeal lies was the November 5th order regardless of whether the September 28th order was incorporated. **See Colagioia v. Colagioia**, 523 A.2d 1158, 1160 (Pa.Super. 1987) (an equitable distribution order is not final and appealable until a divorce decree is entered). Husband next filed a motion to vacate the court’s September 28, 2012 order. Wife subsequently filed a motion to amend the divorce decree. Argument was heard in late November 2012 at which time the trial court voiced its intention to correct the defect in the divorce decree.

* Retired Senior Judge assigned to the Superior Court.

On December 4, 2012, Husband filed his notice of appeal. On that same date, the trial court issued an amended divorce decree incorporating its September 28, 2012 order and denying Husband's petition to vacate. Wife filed a notice of appeal to the December 4, 2012 decree on January 3, 2012. Wife's appeal is docketed at No. 134 WDA 2013.

We note that 42 Pa.C.S.A. § 5505 establishes a 30-day time limit for a trial court to modify or rescind any final order. As shown by the above procedural history, the trial court acted within the 30-day time frame to correct its mistake in the divorce decree. We reiterate the mistake was the trial court's failure to incorporate the September 28, 2012 opinion and order into the divorce decree.¹ Husband's appeal concerns the exceptions that were addressed in the September 28, 2012 order and accompanying opinion.

Based on the preceding, I do not agree with the majority that Husband should be required to take a new appeal from the December 4, 2012 decree. Husband timely appealed the November 5, 2012 divorce decree which the trial court later corrected on December 4th. In the interest of fairness, Husband's appeal should not be dismissed. ***Cf. Johnston the Florist, Inc. v. TEDCO Construction Co.***, 657 A.2d 511, 513 (Pa.Super. 1995) (Judgment was entered after appellant filed his notice of appeal. Since the

¹ The December 4, 2012, Findings and Decree in Divorce states: "The Court hereby amends the former divorce decree to incorporate the September 28, 2012, Opinion and Order."

J. A25044/13

entry of final judgment was done during the pendency of the appeal, it is sufficient to perfect our jurisdiction).