

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ARTHUR L. IVES,

Appellant

v.

KATHRYN E. IVES,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1929 WDA 2012

Appeal from the Order of 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.

MEMORANDUM BY COLVILLE, J.:

FILED DECEMBER 30, 2013

Husband appeals from a divorce decree dated November 5, 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 *pendente 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

*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. 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. Husband did not appeal the December 4, 2012, amended divorce decree.¹

Husband appealed only the November 5, 2012, divorce decree, in which the court ordered divorce of the parties, but retained jurisdiction of any claims for which a final order had not yet been entered. Husband's claims on appeal challenge the court's equitable distribution opinion and

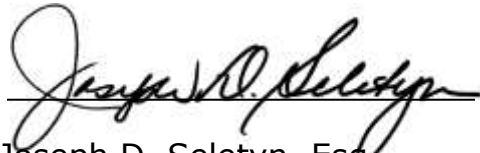
¹ Wife's appeal of the December 4, 2012, amended divorce decree is docketed separately at 134 WDA 2013 and is disposed of by separate memorandum, J-A25045-13.

order; Husband does not challenge the grounds for entry of divorce. Although the trial court subsequently amended the November 5, 2012, decree to incorporate the terms of the equitable distribution opinion and order, rendering said opinion and order final and reviewable, Husband did not appeal the amended divorce decree. Thus, Husband's appellate claims are not reviewable on an appeal from the November 5, 2012, decree. Accordingly, we dismiss the appeal.

Appeal dismissed.

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