

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

GREGORY J. HAUCK,

Appellee

v.

SARA A. HAUCK,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1984 WDA 2011

Appeal from the Order Entered December 9, 2011
In the Court of Common Pleas of Washington County
Civil Division at No(s): No. 2009-1258

GREGORY J. HAUCK,

Appellee

v.

SARA A. HAUCK,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1985 WDA 2011

Appeal from the Decree Entered December 1, 2011
In the Court of Common Pleas of Washington County
Civil Division at No(s): No. 2009-1258

BEFORE: BENDER, J., MUNDY, J., and STRASSBURGER, J.*

DISSENTING MEMORANDUM BY STRASSBURGER, J. FILED: May 16, 2013

Because the trial court abused its discretion in denying Wife's petition to open the divorce decree, I respectfully dissent.

* Retired Senior Judge assigned to the Superior Court.

Husband filed his praecipe to reinstate the complaint on August 17, 2011, and properly served it on Wife on September 12, 2011. Wife asserts that at that point, Husband was required to file a new affidavit pursuant to 23 Pa.C.S. § 3301(d). Wife's Brief at 15 ("Upon the filing and service of the Praecipe to Reinstate the Complaint on September 12, 2011, the entire process should have been recommenced."). **See *Givens v. Givens***, 46 Pa. D. & C. 3d 111 (Fayette 1986) (In an analogous situation, the trial court held that the 90 day period for a mutual consent divorce under 23 Pa.C.S. § 3301(c) ran from the date of the reinstated complaint, not the original complaint.).

In this case, the only 3301(d) affidavit Husband filed was dated August 11, 2011, which was prior to the filing of the reinstated complaint.¹ I recognize that the time period at issue here is very short. However, the purpose of the 3301(d) affidavit is to verify for the trial court that the marriage is irretrievably broken and that the parties have lived separate and apart for at least two years. One or both of these circumstances could change at any given point in time. Likewise, it is possible that a defendant's financial situation could change, and he or she might want to seek financial

¹ The Divorce Code provides that "[t]he court may grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a period of at least two years and that the marriage is irretrievably broken..." 23 Pa.C.S. § 3301(d)(1).

relief. Accordingly, it is reasonable to require Husband to file a new affidavit contemporaneously with or subsequent to the reinstated complaint for divorce. Thus, I agree with Wife that Husband did not comply with the rules.

Such compliance with the rules is of particular importance in this case where the trial court and Husband hold Wife to that standard. The trial court disregards Wife's attempt to oppose the entry of the divorce decree and claim economic relief as she indicated in her counter-affidavit filed on August 31, 2011. The trial court concluded that

Wife never filed any document with the [trial court] in response to Husband's initiation of the divorce action, therefore, any economic claims Wife may or may not have had would be extinguished by operation of law when the Divorce Decree was entered. By merely filing her incomplete Counter-Affidavit without also submitting and serving her economic claims, as required by rule, Wife has failed to preserve such claims...

Trial Court Opinion, 11/20/2012, at 10.

In ***Lazaric v. Lazaric***, 818 A.2d 523 (Pa. Super. 2003), a panel of this Court stated that "[t]he procedural requirements imposed by the Rules of Civil Procedure must be satisfied in order to endow the court with the authority to enter the decree in divorce." ***Id.*** at 525. In this case, at a minimum, neither party followed the rules; thus, neither party should benefit.

Moreover, the interests of justice require a different result.

The Divorce Code confers on the courts broad equitable power in the interests of justice in matrimonial cases. The Code specifically provides:

In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue ... orders which are necessary to protect the interests of the parties or to effectuate the purposes of this Act, and may grant such other relief or remedy as equity and justice require against either party ...

Fenstermaker v. Fenstermaker, 502 A.2d 185, 187 (Pa. Super. 1985)
(citing 23 P.S. § 401(c)).

Husband and Wife were married for twenty-three years; it is simply inequitable for the trial court to require her to relinquish all of the rights she accumulated during the marriage when Husband did not follow the rules to the letter. Just as Husband insisted Wife must comply with the rules where she improperly filled out her section 3301(d) affidavit; Husband, too, should be forced to comply with the rules. Thus, the trial court erred in refusing to open the divorce decree to allow Wife to pursue her economic claims.