

At approximately 3:15 P.M. following the preceding meetings, the Franklin County Legal Journal (corporation) will hold its annual meeting to receive reports, elect directors, and take such other action as may properly come before the meeting.

KENNETH E. HANKINS, JR.,
Secretary

Members of the Franklin County Bar Association, Please Note:

We would like to have a good attendance at the annual meeting of Franklin County Legal Journal on December 9, 1977.

This is your journal, your chance for input into policy matters, and your chance to voice criticisms and elect directors. Let us keep Bar interest in this publication high!

— *Managing Editor*

“Nothing sharpens the wits for the presentation of every possible view like the interest of opposing parties dealing with known facts in a genuine contest for victory.”

— James T. Mitchell, J., “Tyson’s Appeal,” 191 Pa. 218 (1899), p. 224

“The laws of a country are made for the protection of those who owe a permanent or a temporary allegiance to it; and where it interposes for the protection of strangers within the jurisdiction of its Courts, it is by the courtesy of nations, and not of right: for protection and allegiance are correlative duties.”

— John Bannister Gibson, C.J.,
Bollin v. Shiner 12 Pa. 205(1849)

child, a firm and positive effort is required to re-establish that relationship. He will neglect to do so at the risk of the termination of parental relationships.

DECREE NISI

NOW, October 26, 1977, the Court finds that the averments of the Petition for Involuntary Relinquishment of Parental Rights are true, that the respondent has forfeited such rights to his child;

IT IS THEREFORE ORDERED AND DECREED that all parental rights to A, minor child, C’s daughter, are being terminated forever.

The custody of the said child shall remain with B her mother, who together with her husband, shall have the right to proceed with the adoption of the child without further notice to or consent of C.

This decree nisi shall become absolute unless exceptions are filed thereto within twenty (20) days from this date.

JOHNSON v. JOHNSON, C.P. Fulton County Branch, No. 32
September Term, 1976

Divorce - Jurisdictional Requirement - Bona Fide Resident

1. The requirement that a plaintiff in a divorce action be a bona fide resident of the Commonwealth one whole year immediately prior to the filing of his Complaint is a jurisdictional requirement and may not be waived.
2. The bona fide residency requirement must be established by a preponderance of the evidence.
3. The term bona fide resident for purposes of the divorce law means residence with domiciliary intent.

Albert Foster, Esq., Master

Lawrence C. Zeger, Esq., Counsel for the Plaintiff

OPINION AND ORDER

Keller, J., October 6, 1977:

DISCUSSION

In this case the Master concluded that the conduct of the defendant constituted indignities to the plaintiff's person, but he could not recommend that a Decree of Divorce be granted upon the record in its present state because:

1. The plaintiff had not established that he was a bona fide resident of Belfast Township, Fulton County, Penna. for a period of one full year immediately preceding the filing of the complaint in divorce on August 17, 1976.
2. The evidence at the hearing indicated adulterous relationships by the defendant with several men, who were not given notice as co-respondents in the proceeding.

Counsel for the plaintiff filed exceptions to the report of the Master on June 20, 1977, and the matter was heard at regular Argument Court on August 23, 1977.

We have reviewed the pleadings and transcript of this case with great care, and we conclude:

1. Indubitably the defendant has been guilty of a course of conduct which would render the plaintiff's condition intolerable and life burdensome.
2. There is no evidence that the plaintiff is not an innocent and injured spouse.
3. The plaintiff's evidence does not clearly and unequivocally establish that the defendant committed adultery and, therefore, it was not necessary for the plaintiff to give notice to those individuals with whom the Master suspected the plaintiff had an adulterous relationship.
4. The plaintiff's evidence as to the date or even approximate date that he became a bona fide resident of this Commonwealth is totally confusing, inconsistent, contradictory and utterly fails to establish by a preponderance of the evidence that he was, in fact, a bona fide resident of the Commonwealth of Pennsylvania for a period of one whole year immediately prior to August 17, 1976.

Section 16 of the Act of 1929, May 2, P.L. 1237, as amended 1955, September 27, P.L. 606; 23 P.S. 16 (p.p.) provides:

"No spouse shall be entitled to commence proceedings for divorce by virtue of this Act who shall not have been a bona fide resident in this Commonwealth at least one whole year immediately previous to the filing of his or her petition or liable: provided, That, if the proceedings for divorce are commenced in the county where the respondent has been a bona fide resident at least one whole year immediately previous to the filing of such proceedings, in such case, residence of the libelant within the county or state for any period shall not be required. The libelant shall be a competent witness to prove his or her residence."

Section 16, supra, establishes a jurisdictional requirement which may not be waived and which must be established by a preponderance of the evidence as a condition to the Court having jurisdiction to grant a decree of divorce.

In the case at bar, the plaintiff and his one witness testified to the fact that he had taken up residence on the farm of his parents-in-law in Fulton County, Penna. in January 1975. However, other testimony given by the plaintiff and repeated several times indicated quite clearly that in the Fall months of 1975 and perhaps as late as January 1976, the defendant was residing in an apartment or home in Rockville, Maryland established by the plaintiff and the plaintiff was commuting between that home and Camp Lejeune. Only in the late Fall months or in January 1976 did plaintiff become so disgusted with the defendant's antics that he quit paying the rent and in effect kicked her out of the home.

The expression "bona fide resident" of Section 16, supra, and for purposes of the Divorce Law means residence with domiciliary intent. *Smith v. Smith*, 206 Pa. Super. 310 (1965). It is hornbook law that "domicile" requires a combination of residence with domiciliary intent. In the case at bar, we find no testimony by the plaintiff that he intended to make the farm of his parents-in-law his home prior to his discharge from the service on July 9, 1976.

We agree entirely with the Master that it is unfortunate that the plaintiff was unable to establish the jurisdictional requirement of the one year's residence and we agree entirely with him that the plaintiff should be entitled to a

divorce. Unfortunately, we also agree entirely with the Master that the evidence in the case does not establish the jurisdictional prerequisite to the granting of a divorce.

Counsel for the plaintiff has suggested that the plaintiff's contradictory, confusing and sometimes ambiguous testimony concerning the date when he, in fact, established his residence in Pennsylvania was due to the Master's repeated interruptions and questions addressed to these areas. We feel the conduct of the Master in attempting to clearly establish the jurisdictional condition precedent to the granting of any divorce was entirely appropriate, and for good cause. We will, however, grant counsel's request to refer the matter back to the Master for an additional hearing to permit the plaintiff to introduce evidence as to the date that he, in fact, established his residence with domiciliary intent in Pennsylvania.

ORDER

NOW, this 6th day of October, 1977, the above captioned case is referred back to the Master for an additional hearing to give the Plaintiff the opportunity to introduce additional evidence concerning the date he first established a bona fide residence in the Commonwealth of Pennsylvania; if he desires to do so.

Exceptions are granted the plaintiff.

NOLDER v. CHAMBERSBURG AREA SCHOOL DISTRICT,
C. P. Franklin County Branch, No. 74 November Term, 1975,
No. 75 November Term, 1975

Mandamus - Civil Practice - Pleading - Defective Verification - Effect of Pa. R.C.P. 209 (b) - Discovery - Limitations upon Discovery

1. A verification to a petition by counsel does not conform to Pa. R.C.P. 206, unless it sets forth why it is not made by the petitioner, but where such defective procedure is not appropriately attacked by the opposing party, the defect will be disregarded, in the interests of the speedy administration of justice.

2. When Pa. R.C.P. 209 (b) applies, and the petitioner places the matter on the argument list without requesting a hearing or the appointment of an examiner to determine factual issues, all averments of fact responsive to the petition and properly pleaded in the answer will be deemed admitted for purposes of the rule.

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