

Elizabeth M. Vance, Plaintiff, vs. Jeffrey D. Vance, Defendant,
Franklin County Branch Civil Action - Law, No. F.R. 1997-321, In
Divorce

Vance v. Vance

Divorce complaint under 23 Pa.C.S.A. section 3301(c); plaintiff compelled to execute and file her affidavit of consent; issue of bifurcation not ripe for disposition until grounds for divorce exist.

1. The court has no authority to bifurcate proceedings where no grounds for divorce have accrued because a plaintiff has not executed and filed her affidavit of consent.
2. The court can compel a plaintiff to execute and file an affidavit of consent where he or she has neglected to pursue the divorce proceedings or has intentionally delayed such pursuit in order to gain some advantage in the litigation.
3. Even where the plaintiff has not been neglectful or dilatory, it is proper for the court to compel her to execute and file her affidavit of consent where she offers no reason why the court should not do so, thereby allowing the case to proceed to the issue of bifurcation.

D. L. Reichard, Esquire, Counsel for Plaintiff/Respondent
Deborah K. Hoff, Esquire, Counsel for Defendant/Petitioner

MEMORANDUM OPINION AND ORDER OF COURT

Herman, J., December 5, 1997:

The plaintiff in this divorce action, Elizabeth M. Vance, filed her complaint on May 21, 1997 alleging grounds for a divorce under Section 3301(c) and 3301(d) of the Divorce Code. The defendant in this divorce action, Jeffrey D. Vance, filed a petition for bifurcation with this Court on October 9, 1997. On October 31, 1997 the plaintiff filed an answer to the defendant's petition and rightly claimed in the answer that no grounds for divorce have accrued at this time since there is neither a period of two years separation of the parties nor the required consents to the divorce properly filed with the Court.

The defendant's petition for bifurcation requests the Court to compel the respondent/plaintiff to execute an affidavit of consent which would create grounds for a divorce under Section 3301(c). On November 14, 1997, the Court held a hearing on the defendant's petition for bifurcation and the plaintiff argued that the Court did not have authority to order bifurcation at that point in the proceedings since no grounds for a divorce had accrued. Defendant correctly points out, however, that the Court has authority to compel a party to file an affidavit of consent which would then provide the basis for the

Court to enter a divorce decree and grant a petition for bifurcation. *Way v. Way*, 35 D&C 3rd 653 (1985) and *Mellott v. Mellott*, 1 D&C 4 618 (1988).

No evidence was taken at the hearing on November 14, 1997 since the Court agreed that the issue of bifurcation was not yet ripe. However, the defendant has requested the Court to grant his request to compel the plaintiff to file an affidavit of consent so that he may proceed to the bifurcation issue. Plaintiff argues the authority which the defendant cites in favor of compelling a party to file an affidavit of consent should only be exercised in those situations where that party has demonstrated a neglect in pursuing the proceedings or has actually delayed the proceedings for some advantage. The plaintiff insists no such situation exists in this case and has demonstrated by reference to the record that she is pursuing the action on a timely basis. As evidence of this, plaintiff points to the filing of an amended complaint on September 17, 1997 and the filing of interrogatories on October 31, 1997. The Court notes, as stated previously, the original complaint in divorce was filed May 21, 1997.

Assuming we would agree with the plaintiff's characterization of her prosecution of the divorce action, we note that plaintiff has not offered to the Court any reason other than this diligent pursuit of the action as to why the divorce portion of the matter should not proceed to bifurcation and entry of a decree. All other claims have been preserved and are being litigated. While we agree with the plaintiff that in the authorities cited by the parties, a delay or neglect had existed, we also believe that in a situation such as this where the party opposing bifurcation or settlement of the divorce action cannot provide the Court with adequate reason not to proceed, even diligent prosecution of the action could result in undue delay of the disposition of the divorce matter.

Therefore, the Court intends to enter an Order granting the defendant's request to compel the plaintiff to execute an affidavit of consent.

ORDER OF COURT

NOW this 5th day of December 1997, the Court having held a hearing on the defendant's petition for bifurcation and it appearing to the Court that no grounds for divorce have accrued until such time as

the appropriate affidavit of consent have been filed, and it further appearing that the plaintiff has failed to show sufficient cause why she should not file an affidavit of consent, the Court hereby GRANTS the defendant's request to compel the plaintiff to file the affidavit of consent and directs that the plaintiff to do so forthwith. On filing of such consent, either party may request a hearing on the defendant's petition for bifurcation.

MODERN MYTHS

MYTH #1: The disease of alcoholism is caused by drinking alcohol.

MYTH #2: Alcoholism is caused by stress.

MYTH #3: Alcoholism is the symptom of an underlying psychological disorder.

MYTH #4: Alcoholics must drink to excess on a daily basis.

MYTH #5: Alcoholism is cured by not drinking.

Alcoholism is:

a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic impaired control over drinking, preoccupation with drug/alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial.

There is no cure for alcoholism; however, with proper treatment the disease can be placed in remission.

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24 Hours a Day
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