

ORDER OF COURT

December 16, 1982, defendant's preliminary objections are overruled.

HOCKENBERRY V. HOCKENBERRY, C.P. Franklin County Branch, F.R. 1980 - 359 - D

Divorce - Equitable Distribution - Bifurcation Proceeding

1. A Court may, in its discretion, bifurcate the divorce decree from collateral issues and grant the divorce while reserving jurisdiction on all remaining matters.

2. The Court may not make an order for equitable distribution of marital property prior to the entry of a divorce decree.

Barbara B. Townsend, Esq., Counsel for Plaintiff

Robert C. Schollaert, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., December 17, 1982:

This is a divorce action filed by the plaintiff on December 18, 1980, in which she seeks a divorce on the grounds of an irretrievable breakdown of the marriage, 23 P.S. 201 (c) and (d). The grounds alleged permit plaintiff to proceed with a mutual consent divorce, or alternatively, to file an affidavit alleging a three-year separation of the parties to obtain a divorce without defendant's consent.

An amended complaint was filed on August 21, 1981, and served upon the defendant on September 1, 1981. The amended complaint alleged an additional count requesting the Court to equitably divide the parties' marital property. On March 15, 1982, plaintiff moved for the appointment of a Master to take the testimony and file a report and recommendation on the issue of equitable distribution only. Defendant filed his Motion Raising a

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LEGAL NOTICES, cont.

WALKER First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank & Trust Company executor in the estate of Edna S. Walker late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pa.

3-11, 3-18, 3-25, 4-1

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NOTICE OF LEGAL NOTICES ADVERTISING RATE CHANGE

The Board of Directors of Franklin County Legal Journal announces that, because of recent legislation reducing the number of proofs of publication required for fictitious name notices, through a centralization of filing requirements, the rate for fictitious name notice advertisements in this Journal will be \$13.50, per ad per insertion, which includes the cost of one proof of publication, only.

The rate prior to this year, had been \$14.25. Then, in January, 1983, the rate was increased to \$15.00. In each case, however, two proofs of publication were furnished for each ad. In the future, if more than one proof of publication is desired, it will be necessary for the advertiser to so inform the managing editor, and an additional charge of \$1.50 will be made for each such additional proof of publication.

Incidentally, the portion of our advertisement form which states intention of the advertiser to file the fictitious name application in the office of the Prothonotary will no longer be applicable, since such filing is no longer necessary under the new statute.

Question of Jurisdiction on July 19, 1982, wherein he asserted that the Court only has jurisdiction to equitably divide marital property in conjunction with the issuance of a divorce decree. Briefs were exchanged by the parties and argument was heard by this Court on December 2, 1982, on the issue raised by defendant's motion. The matter is now ripe for disposition.

On December 2, 1982, only the plaintiff filed the required affidavit of consent needed for the granting of a divorce pursuant to Section 201(c). Absent cooperation of the defendant, the plaintiff's only alternative is to proceed under Section 201(d) which permits a divorce to be granted following a three-year separation of the parties. According to counsel for both parties, the three-year time period will not expire until sometime in the spring of 1983. Therefore, the action is not now in proper posture to permit the granting of a divorce.

Since the new Divorce Code went into effect on July 1, 1980, many questions have arisen concerning its implementation. One of the first problems evolved from the promulgation of Pa. R. C. P. 1920.52(c) which provides that:

"The court need not determine all claims at one time but may enter a decree adjudicating a specific claim or claims."

Developing case law has interpreted this section to mean that a court may, in its discretion, bifurcate the divorce decree from collateral issues and grant the divorce while reserving jurisdiction on all remaining matters. *Casey v. Casey*, 18 D&C 3d 24 (1980); *Hostetter v. Hostetter*, 24 Adams Leg. J. 61 (1982); *Carney v. Carney*, 20 D&C 3d 749 (1981); *Warren v. Warren*, 37 Bucks L. Rep. 360 (1982); *Brookens v. Brookens*, 5 Franklin Leg. J. 146 (1982). One court held that not only was the entry of a divorce decree prior to the resolution of ancillary issues permitted, but that such a practice fosters the legislative intent and objectives of the Divorce Code as set forth in 23 P.S. Sec. 102. *Martin v. Martin*, 69 Del. Rep. 577 (1982). In *Casey*, supra, the Court found that Pa. R.C.P. 1920.52 was not void as being contrary to Sec. 401 of the Divorce Code, 23 P.S. Sec. 401.

In the instant case, however, plaintiff is asking this Court to permit "reverse bifurcation," that is, settle the property matters of the parties before the divorce decree is entered. No authority whatsoever can be found in the Divorce Code or in case law to permit such action by the Court. To the contrary, to allow the parties to proceed to a final determination of plaintiff's equitable

distribution claim would create havoc in the area of divorce law as well as property law. We can only speculate as to the chaos that would ensue if property rights of parties were determined before a divorce decree was entered and subsequent to such action, the divorce was not obtained whether it be due to a reconciliation, the death or incompetency of a party or any other one of the many reasons for which divorce actions may be terminated.

As set forth in 23 P.S. Sec. 301(a)(1):

“The courts of this Commonwealth as defined in section 104 shall have original jurisdiction in cases of divorce. . . and, where they have jurisdiction, shall determine *in conjunction with any decree granting a divorce* or annulment the following matters. . . and may *retain continuing jurisdiction thereof*.”

(1) The determination and disposition of property rights and interests between spouses. . . .” (italics ours)

Clearly this section permits the court to bifurcate issues and enter a divorce decree while retaining jurisdiction over property matters. However, to resolve ultimate property questions and reserve jurisdiction over the divorce action is an unreasonable and unthinkable interpretation of the above-quoted section. It is only when a divorce decree is entered that the Court may dispose of other related claims in conjunction therewith or alternatively, retain continuing jurisdiction thereof. To resolve ultimate property issues and retain jurisdiction of the divorce action could only result in confusion, expense, and additional litigation contrary to the expressed intent of the Legislature.

We consider defendant’s Motion Raising a Question of Jurisdiction a misnomer, for the Court does indeed have subject matter jurisdiction over both the divorce action and the claim for equitable distribution. However, the objection raised to plaintiff’s request for equitable distribution at this stage of the proceedings is certainly a proper one. In *Oliver v. Oliver*, 39 Bucks Co. L. Rep. 130 (1982), Judge Mims observed there can be no basis for the equitable distribution of marital property where there are no grounds for divorce. We agree! On the grounds alleged by the plaintiff this Court may not grant a divorce without mutual consent or a three-year separation of the parties. Neither is found to exist in the case at bar. Therefore, defendant’s request for a vacation of the Master’s commission will be granted.

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LEGAL NOTICES, cont.

for the conducting of a business under the assumed or fictitious name of SPECIAL EVENTS MANAGEMENT with its principal place of business at P. O. Box 833, Chambersburg, Pa. 17201. The names and addresses of all persons owning or interested in said business are Carole M. Fries, 4359 Sycamore Grove Rd., Chambersburg, Pa. 17201. and Phyllis Y. Conrad, 809 Lorty Ave., Chambersburg, Pa. 17201.
4-8

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on or after April 8, 1983, an application for a certificate for the conducting of a business under the assumed or fictitious name of UNION LABEL INSURANCE AGENCY with its principal place of business at 72 N. Second St., Chambersburg, Pa. 17201. The names and addresses of all persons owning or interested in said business are Donna G. Dillon, 72 N. Second St., Chambersburg, Pa. 17201.
4-8

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA - ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: May 5, 1983.

ELLIOTT First and final account, statement of proposed distribution and notice to the creditors of the Farmers and Merchants Trust Company of Chambersburg, executor for the estate of John L. Elliott late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

HIGHLANDS First and final account, statement of proposed distribution and notice to the creditors of Kathryn E. Highlands and Blanche Hawbaker, executrices of the estate of Barbara

LEGAL NOTICES, cont.

Elmira Highlands late of the Borough of Mercersburg, Franklin County, Pa. deceased.

MCDOWELL First and final account, statement of proposed distribution and notice to the creditors of Carolyn M. Wood, executrix of the estate of Milton McDowell late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

QUIVERS First and final account, statement of proposed distribution and notice to the creditors of Charles M. Quivers and Charles H. Davison, executors of the will of Eleanor M. Quivers late of the Borough of Chambersburg, Franklin County, Pa. deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pa.
4-8, 4-15, 4-22, 4-29

NOW, this 17th day of December, 1982, the Order of Court dated March 15, 1982, appointing Thomas B. Steiger, Esq., Master, to take the testimony and file a report and recommendation on the issue of equitable distribution in the above-captioned matter is vacated. The Master shall return all papers in his possession to the Prothonotary and submit a statement for services rendered to the Prothonotary for payment from the deposit made by the Plaintiff.

Exceptions are granted the Plaintiff.

COMMONWEALTH VS. SHERVANICK, C.P. Franklin County Branch, No. 163 of 1982

Criminal Law - Interference with child custody - locus of crime

1. The locus of a crime is always an issue, since a court has no jurisdiction of a crime unless it occurs within the county of trial or unless by some statute, it need not have occurred within that county.
2. When a statute uses the word "knowingly" the essential element is knowledge.
3. Where a court order gave a father 8 hours visitation and he took his child from Franklin County to Colorado, due to the limited time allowance for visitation, a jury could find intent to remove the child in violation of 18 C.P.S.A. Sec. 2904.
4. If a jury finds a defendant took the child from Pennsylvania for a period in excess of the time allowed, and if the intent to take the child was formed at the time the child was picked up, Defendant could be in violation of 18 C.P.S.A. Sec. 2904.

John R. Walker, District Attorney, Attorney for the Commonwealth

Michael B. Finucane, Esquire, Attorney for the Defendant

OPINION AND ORDER

EPPINGER, P.J., January 17, 1983:

Thomas Shervanick and Sandra Elizabeth Pardun are the