motion to strike is granted.

Defendant's preliminary objections Nos. 7 and 8 in the nature of motions for a more specific complaint are granted, and the plaintiffs will amend their complaint accordingly.

Defendant's amended preliminary objection No. 2(7) in the nature of a demurrer is overruled and the relief prayed for denied.

Plaintiffs' preliminary objection No. 1 in the nature of a motion to strike defendant's preliminary objection No. 1 in the nature of a demurrer is granted, and the demurrer will be stricken.

Plaintiffs are granted twenty (20) days from the date of this Order to file an amended complaint.

Exceptions are granted plaintiffs and defendant.

KEMPLE v. KEMPLE, C. P. Franklin County Branch, No. F.R. 1979 - 517

Divorce - Master's Hearing - Exceptions to Master's Report - Continuance

1. Failure to file exceptions to the Master's Report in a timely fashion based on the long distance between Pennsylvania and California and because defendant's California lawyers were moving their offices are insufficient reasons to justify delay in holding a hearing.

J. Edward Beck, Jr., Esq., Attorney for Plaintiff

Donald L. Kornfield, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., June 17, 1980:

In this divorce action, the master filed his report on March 28, 1980. He recommended that a divorce be granted. On April 14, 1980 the defendant filed "Exceptions to Master's Report." This was three days subsequent to the final day permitted for filing exceptions to the master's report.

Exceptions to a master's report in divorce should be self-sustaining and should strike at specific findings of fact and conclusions of law. *Stoops v. Stoops*, 61 D&C 435 (Adams, 1947); *Gerlach v. Gerlach*, 70 Dauph. 229 (1957). The master

held a hearing in this case on September 11, 1980, after delays occasioned by a representation that defendant was to be represented in the case. When defendant's attorney received no authorization to proceed on her behalf, he notified the master to go ahead with the hearing. At the hearing it was shown that plaintiff and defendant lived together in Thailand; that the defendant left there in 1972 with her father, who was being cared for by plaintiff, because it was felt there were better medical facilities for her father in the United States; and that though the defendant was repeatedly requested to resume cohabitation with her husband after her father died, she refused to do so. By 1976, the plaintiff was living in Franklin County, Pennsylvania. He obtained travel authorization for the defendant to come here to live, but the most she did was to come for a short visit and then returned to Modesto, California. The master found that the original separation in 1972 was consentual but that the defendant's unjustifiable refusal to rejoin her husband at the marital home in Thailand terminated the original consent and ripened the separation into a desertion. No mention was made in the master's conclusions of law of the visit in 1976, but even considering that that might have involved cohabitation, the court finds that defendant's failure to continue to live with the plaintiff and her leaving him evidences desertion.

The exceptions to the master's report do not contest the correctness of the master's findings and conclusions, but complain that the master erred in not granting a continuance or a further hearing. The exceptions allege that at the time the hearing was held, defendant had not forwarded a power of attorney to her attorney and he did not appear, all because, as the exceptions allege, of the long distance between Pennsylvania and California and because defendant's California lawyers were moving their offices. This excuse is the only one apparent for the failure to file the exceptions in a timely fashion. We find it insufficient to justify delay in both instances. *DiGiovanni v. DiGiovanni*, 59 D&C 2d 237 (Philadelphia, 1972).

Generally when exceptions have been taken to a Master's Report the court must consider the evidence afresh and make an independent review of the evidence to determine whether the grounds alleged do exist. *Dominic v. Dominic*, 66 Schuylkill 3 (1970). We find from reviewing the record and the report that grounds do exist for the divorce.

In defendant's brief it is stated that California law would provide for support and maintenance for the defendant. It appears the defendant is contesting this action only to bring her own and obtain a more favorable financial settlement. That is improper. *Worobey v. Worobey*, 201 Pa. Super. 41, 190 A.2d

167 (1963). In *Worobey* the lower court refused to refer a divorce back to the master to allow defendant to present a defense for the first time for this purpose.

The heart of defendant's exceptions are that she is prejudiced because she has not had the opportunity to appear and present her evidence or to cross examine the plaintiff. It is clear from the record that she had timely notice of the master's hearing. Despite the claimed problems of communication in getting a power of attorney signed, there is no indication that the defendant could not have come to Pennsylvania to appear at the hearing in person if she really wanted to testify.

We conclude that defendant's exceptions must be dismissed.

ORDER OF COURT

June 17, 1980, the defendant's exceptions to the Master's Report are dismissed and it is ordered that George C. Kemple, Plaintiff and Jean Kemple, Defendant, are divorced from the bonds of matrimony arising out of their marriage heretofore contracted in accordance with the Act of 1929 P.L. 1237, 23 P.S. Sec.1, et seq, as amended. The Plaintiff is awarded his costs against the defendant.

LAMAN v. HELMAN, P.C. Franklin County Branch, A.D. 1980 - 158

Trespass - Dog Bite - Standard of Care - Extension of Time to File Answer

1. Where a child goes to a farm to purchase eggs and is bitten by a dog, the standard of liability for the owner is whether he has knowledge of the dog's vicious propensities and fails to control the dog in accordance with such tendencies.

2. It is now negligence per se to have a dog on a farm, and the standard of reasonable and ordinary care required for a business invitee is not appropriate.

3. Despite the fact plaintiff granted defendant an extension of time to file "an answer", and defendant filed preliminary objections, the court may consider the preliminary objections as a motion for judgment on the pleadings and dispose of the matter.

Stephen E. Patterson, Esq., Attorney for Plaintiffs

David W. Rahauser, Esq., Attorney for Defendants

OPINION AND ORDER

EPPINGER, P.J., September 11, 1980:

This case raises the question whether a dog is a dog or is a puddle of oil. The unique issue arises because in the third and fourth counts of the complaint after alleging Holly Laman was bitten by the Helmans' dog on the Helmans' farm when the girl went there with her grandmother to buy eggs, the plaintiffs omit the usual allegation that the Helmans knew or had reason to know that the dog was vicious or dangerous.[1]

Defendants' demurrer to these counts is met with the contention that they are not based on the failure of defendants to curb a dog with known vicious propensities. Instead they are founded on the theory that the defendants failed to exercise reasonable care to make their premises safe for business invitees. The legal concept plaintiffs espouse is stated in Pennsylvania Legal Encyclopedia as follows:

> "The owner, occupant or person in charge of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety and is liable for injuries resulting from a breach of such duty." 27 P.L.E., Negligence Sec.45.

It is in this connection that plaintiffs say the dog is like a puddle of oil. In *Robb v. Niles-Bement-Pond Company*, 269 Pa. 298, 112 A.459 (1921), there had been a puddle of oil two feet in diameter on a cement floor for five hours. Plaintiff fell because of the puddle and the court said that the defendant had a duty to use reasonable care to keep the premises in such condition as not to expose the plaintiff to unnecessary danger. The plaintiffs in this case contend that the mere fact that the dog is on the farm premises is like a puddle of oil on a cement floor and violates this duty, even though the farmers had no knowledge that the dog was vicious.

Poulos v. Brady, 167 Pa. Super 150, 74 A.2d 694 (1950) is surely interesting. Brady owned a taproom, Poulos was a customer. Poulos said he was going to the restroom when he was bitten by a mother dog with puppies. When Poulos sued the case was tried not on the theory that Brady harbored a known vicious dog, but on a duty owed by an innkeeper to a patron or guest.

The controlling principle relied upon by the plaintiff was stated in *Rommel v. Shumbacker*, 120 Pa. 579, 582, 11 A. 779 as follows: