

Divorce - Indignities - Domestic Disputes - Master's Findings

1. In reviewing a Master's Report in divorce the Court will consider the evidence de novo and reach an independent conclusion as to whether a legal cause for divorce has been established by a preponderance of clear and satisfactory evidence.
2. Domestic disputes over a period of two years on a frequency of two or three times per week, which compel spouse to leave the marital home rise to a magnitude and importance that renders the injured spouse's condition intolerable and life burdensome.
3. Where the defendant persists in conduct which has proven to make plaintiff's condition intolerable and life so burdensome that he has vacated his home; where this conduct consists of habitual intemperance, verbal abuse, an incident of physical violence (throwing a stick of wood at plaintiff), and acts calculated to humiliate and embarrass plaintiff (taking his clothes to his place of employment and leaving them there in a box); then the combination of these acts which are calculated to be an affront to the person of the spouse amount to indignities and entitle the plaintiff to a divorce.
4. A Master is not required to state specifically why he credits some testimony but not other testimony, particularly in a case where neither party presents corroborating witnesses or evidence since implied in the Master's findings is the fact that he found one witness credible, while rejecting contentions of the other.

Dennis A. Zeger, Esq., Attorney for Plaintiff

Thomas B. Steiger, Esq., Attorney for Defendant

OPINION AND ORDER

KELLER, J., October 23, 1979:

A hearing was held on February 23, 1979, at which testimony of the plaintiff and the defendant in the instant action was presented before the Master. The Master filed her report, including Findings of Fact, Opinion and Recommendation on July 26, 1979. The defendant filed exceptions to the Master's Report in which the defendant takes issue with certain findings of fact, alleging that the evidence taken at the hearing does not support such findings.

The Master, after a searching analysis of the evidence

presented, essentially concluded that the plaintiff had demonstrated that defendant's course of conduct had rendered plaintiff's life burdensome and his condition intolerable, and that the testimony of defendant was only partially contradictory, and, on the whole, the defendant was not a credible witness.

This Court considers the evidence in a divorce de novo and must reach an independent conclusion as to whether a legal cause for divorce has been established by a preponderance of clear and satisfactory evidence. *Thrush v. Thrush*, 6 Cumb. L. J. 99 (1955). The evidence indicates that after enduring two years of arguments on a frequency of two or three times per week, the plaintiff felt compelled to leave his home and take up residence in a shed on the property of the marital domicile. The defendant continued to harass the plaintiff, visiting the shed to argue with and berate him on a nightly basis for approximately two years. "Domestic disputes are not a cause for divorce unless they rise to a magnitude and importance that renders the injured spouse's condition intolerable and life burdensome. *Ramsey v. Ramsey*, 157 Pa. Super. 292." *Thrush* at 101. In the present case, the evidence shows that the marital disputes were of a magnitude and importance to be unendurable by the plaintiff who sought to avoid these altercations by relinquishing the comforts of his own home. Yet, defendant's course of conduct was not altered. She testified that she would often seek out the plaintiff in the shed after she had been drinking at the Mansion House, a local tavern. It seems apparent that defendant's drinking was a problem, but while mere intoxication, no matter how excessive, does not amount to an indignity, neither is it an excuse for improper conduct constituting indignities. *Irlenborn v. Irlenborn*, 82 Montg. 318 (1965). Where the defendant persists in conduct which has proven to make plaintiff's condition intolerable and life so burdensome that he has vacated his home; where this conduct consists of habitual intemperance, verbal abuse, an incident of physical violence (throwing a stick of wood at plaintiff), and acts calculated to humiliate and embarrass plaintiff (taking his clothes to his place of employment and leaving them there in a box); then the combination of these acts which are calculated to be an affront to the person of the spouse amount to indignities and entitle the plaintiff to a divorce.

The course of conduct amounting to such indignities as would justify a divorce is incapable of exact definition. Each case must depend on its own facts. *Mashack v. Mashack*, 59 Sch. L. R. 25 (1964). An "indignity" to a person is an affront to the personality of another, a lack of reverence for the personality of one's spouse. *Paterson v. Paterson*, 37 West. 33 (1955). The facts of the present case demonstrate such a lack of reverence.

BAR NEWS ITEM

At the annual opening convocation of Wilson College, for the Spring Semester of 1980, held in Chambersburg on January 27, 1980, the honorary degree of Doctor of Laws was conferred upon the Honorable Sylvia H. Rambo, Judge of the United States District Court for the Middle District of Pennsylvania. Judge Rambo was a practicing member of the Bar of our neighboring county of Cumberland for a number of years, served as Judge of Common Pleas there, and was appointed to her present judicial position by President Carter last year. Judge Rambo's achievements are a mark of distinction for the women of our profession and we extend our congratulations to her in this honor.

Defendant made no serious effort to return her living situation to a normal marital cohabitation after defendant was compelled to vacate his home by her conduct. Instead, she continued her drinking and berating of plaintiff, seeking him out in the shed in which he sought refuge and peace. This situation was extremely protracted; it seems that the indignities were established as a grounds for divorce some time ago. The offense of "indignities to the person" is complete when a persistent course of conduct demonstrates that the love and affection upon which the marital status rests has been replaced by hatred and estrangement. *Sims v. Sims*, 188 Pa. Super. 439, 149 A. 2d 528 (1959). Defendant manifested this hate and estrangement through her acts of incivility and indifference, through her continued verbal abuse and unmerited reproach.

Because neither party presented corroborating witnesses or evidence, the parties' credibility governed the case. *Hargrove v. Hargrove*, Pa. Super. , 381 A. 2d 143 (1977). This Court's independent review of the hearing record indicates that the Master was correct in her evaluation of the evidence and recommendation. The Pennsylvania Superior Court in *Gehris v. Gehris*, 233 Pa. Super. 144, 148, 334 A. 2d 753, 755 (1975) articulated legal guidelines controlling that court's review of a lower court's confirmation of a Master's recommendation:

"[I]f the ultimate decision rests on a statement asserted by one party and denied by the other, where there is no corroborative evidence, demeanor on the stand is necessarily dispositive of the issue and is the kind of evidence that cannot effectively be reviewed by an appellate court."

The Pennsylvania Superior Court added in *Dougherty v. Dougherty*, 235 Pa. Super. 122, 127, 339 A. 2d 81, 84 (1975) that:

"[A] master is not required to state specifically why he or she credits some testimony, but not other testimony. Particularly in a case such as this which amounts to little more than 'a swearing contest,' implied in the master's findings is the fact that he found one witness credible, while rejecting the contentions of the other."

Therefore, great weight must be accorded to the Master's findings if the issues of credibility are ones that are necessarily resolved by personal observations. *Gehris*, supra. *Yohey v. Yohey*, 205 Pa. Super. 329, 208 A. 2d 902 (1965).

In the present case, the hearing record confirms the Master's evaluation of defendant's credibility. The Master has re-

viewed the testimony, and the Court agrees that although the defendant denies certain statements made by the plaintiff, her testimony actually indicates the truth of those statements (i.e., the cashing of plaintiff's paychecks, his continued support, the preparation of meals while plaintiff lived in the shed, the frequency and extent of her drinking, the frequency of arguments.) The Master's "lack of confidence in the defendant's statements" (Master's Report, p. 18) is borne out upon a reading of the record. Defendant's testimony is confused to the point of incoherence.

Therefore, this Court believes that plaintiff has shown by a preponderance of the evidence that defendant's course of conduct rendered his life burdensome and his condition intolerable, that her conduct manifested an intent to offer an affront to his person and that the totality of circumstances amounted to indignities sufficient to entitle him to a divorce a vinculo matrimonii.

ORDER OF COURT

NOW, this 23rd day of October, 1979, the Exceptions of the defendants are dismissed.

The divorce recommended by the Master will be granted.

Exceptions are granted the defendant.

HAMPTON v. HAMPTON, C.P. Franklin County Branch, Equity Docket Vol. 7, Page 172

Equity - Partition - Tenancy by Entireties

1. Where defendant left marital home with plaintiff's consent and did not show any displeasure by asking plaintiff to return property taken from the home, the defendant did not misappropriate joint property and there are no grounds to partition the parties' jointly owned property.

2. Once misappropriation of jointly held property has been established, all property of the parties held by entireties is affected, not merely the unit improperly drawn upon.

Lawrence C. Zeger, Esq., Attorney for Plaintiff

Richard L. Shoap, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., December 4, 1979:

With marital discord affecting both John A. Hampton and Rosa M. Hampton, Rosa left their jointly owned home, after John's urgings, and took certain items of joint personal property with her, leaving others for him.

Before Rosa left the home, John had made it impossible for her to cook, rendered the home's heating system inoperative and verbally and physically abused her. He had himself removed some things from the home and had signed Rosa's signature to the title of a truck so he could sell it. When he was prosecuted for this forgery, he paid Rosa her share of the profits as part of being admitted to an Accelerated Rehabilitative Disposition program.

This is an action by John to partition all of the joint property of the parties. Rosa, who still has the items which she took from the joint residence is now living by herself, but contends that she is not excluding John from the use of them. Moreover, she contends that John has not been wrongfully excluded from the use of the property because after her departure he called to tell her that he was never so happy in his life as when he returned and found her and her Goddamn junk gone. Her argument is that the facts indicate a clear intention on the part of the plaintiff that she should leave and take some of the joint property with her. There is no testimony that John ever demanded a return of any of the property or attempted to use it.

A summary of the law applicable in this case is found in *Vento v. Vento*, 256 Pa. Super 91, 389 A.2d 615 (1978). In *Vento* the court found that the defendant wrongfully appropriated jointly owned funds to his own use and excluded the plaintiff therefrom. He withdrew money from a bank account and refused to give his wife any of it. After he withdrew it, he hid it in his house for about two years and spent more than \$7,000 of the \$9,500 withdrawn on household and living expenses for himself and his children.

The Plaintiff in *Vento* sought partition of all the joint property, including the jointly owned house. Defendant objected, saying that the partition of the real estate by the lower court was erroneous because he did not exclude the plaintiff from the house. The Superior Court Responded:

This contention ignores the rule that once misappropriation