

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

of property held by both spouses has been established, "all property of the parties held by the entireties is affected, not merely the unit that has been improperly drawn upon".

256 Pa. Super. at 96, 389 A.2d at 918, citing *Stemniski v. Stemniski*, 403 Pa. 38, 42, 169 A.2d 51, 53 (1961).

We conclude therefore, as we are urged to do by John, that if Rosa misappropriated joint property, all of the parties' entireties property should be partitioned.

Even our brief review of the testimony establishes that Rosa left with her husband's consent and that whatever she took with her, he was pleased to see her and that property go. He did not then consider it to be misappropriation of property and consented to her taking it. He never manifested any displeasure by asking her to return any of the property to him or to permit him to use it. We conclude therefore that in these circumstances Rosa did not misappropriate any jointly owned property and that, therefore, there are no grounds to partition the parties' jointly owned property.

DECREE NISI

December 4, 1979, the prayer of John A. Hampton's complaint to partition the jointly owned property of John A. Hampton and Rosa M. Hampton is denied. The costs of these proceedings shall be paid by John A. Hampton.

This decree nisi shall become absolute unless exceptions are filed within ten (10) days.

KNEPPER v. KNEPPER, C.P. Fulton County Branch, No. 95 of 1978 - C

Divorce - Pa. RCP 1009(a) - Reinstatement of Complaint - Jurisdiction - Indignities

1. The effect of failure to serve a divorce complaint within the prescribed thirty day period is to render the service a nullity.

2. Service of an expired complaint does not give the court jurisdiction

over the person of the defendant.

3. An attempt to correct late service by filing a Praeipce for Reinstatement Nunc Pro Tunc is an ineffective procedure.

4. A defendant's drunkenness, no matter how excessive, is not an indignity.

5. Plaintiff's hearsay testimony regarding defendant's association with other women is insufficient to establish indignities.

Merrill W. Kerlin, Esq., Master

Lawrence C. Zeger, Esq., Attorney for Plaintiff

OPINION AND ORDER

KELLER, J., December 4, 1979:

The Master in the above-captioned case has recommended to the Court that the plaintiff be denied a divorce a.v.m. from the defendant because of a procedural defect, and on the basis of a failure to establish legally sufficient grounds for divorce under Pennsylvania law. The record shows that the Complaint in Divorce was filed on May 19, 1979, and was served on June 20, 1979. Pennsylvania Rule of Civil Procedure 1121(b) provides, "Except as otherwise provided in this chapter, the procedure in the action shall be in accordance with the rules relating to the action of assumpsit." Pa. R.C.P. 1009(a) states that the complaint "shall be served by the sheriff within thirty (30) days after issuance or filing." The Complaint in Divorce in the present action was served on the thirty second (32) day after filing, using Pa. R.C.P. 106 for the computation of time. The effect of a failure to serve the complaint within the prescribed thirty (30) day period is to render the service a nullity; no valid service had been made upon the defendant. The procedure for reinstating a complaint which has not been served within the prescribed thirty (30) day period is stated in Pa. R.C.P. 1010. The law is clear on this point. If a complaint in divorce has not been served within thirty days after filing, valid service cannot be made upon the defendant unless and until the complaint is reinstated upon praecipce to the prothonotary.

In the present case, plaintiff caused the complaint to be served more than thirty days after it was filed and reinstated it afterwards. This error in sequence is fatal to the action. The defendant is clearly prejudiced by such an impermissible procedure. Defendant was served with a complaint which had expired, and, therefore, was under no legal compulsion to