

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

BURL WATERTON

Appellant

v.

GAIRY WATERTON

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2350 EDA 2012

Appeal from the Decree of August 6, 2012
In the Court of Common Pleas of Delaware County
Domestic Relations at No.: 11-1323

BEFORE: STEVENS, P.J.^{*}, WECHT, J., and COLVILLE, J.^{**}

MEMORANDUM BY WECHT, J.:

FILED AUGUST 30, 2013

Burl Waterton ("Wife") appeals from a divorce decree entered on August 6, 2012, that divorced her from Gairy Waterton ("Husband") without first bifurcating the divorce proceedings. We affirm.

The relevant factual and procedural history is as follows. On March 27, 1982, Wife and Husband married "in the Co-operative Republic of Guyana." Trial Court Opinion ("T.C.O."), 10/1/2012, at 1. On February 16, 2011, Wife filed a "Complaint Under Section 3301(c) or 3301(d) of the Divorce Code" ("Divorce Complaint"), pursuant to 23 Pa.C.S. § 3301, in the Court of

* President Judge Stevens did not participate in the consideration or decision of this case.

** Retired Senior Judge assigned to the Superior Court.

Common Pleas of Delaware County, requesting a divorce decree. Wife alleged that the marriage was irretrievably broken. Wife did not raise any claims for economic relief, alimony, division of property, or lawyer's fees or expenses. T.C.O., at 1.

On May 10, 2011, Wife filed a petition for exclusive possession of the marital property located at 2517 Bethel Road, Chester, Pennsylvania. On February 1, 2012, the trial court issued an order granting Wife's petition.¹ On February 13, 2012, Husband filed an affidavit pursuant to 23 Pa.C.S. § 3301(d) in response to the divorce complaint, alleging that the marriage was irretrievably broken and that the parties had been separated for two years. The affidavit provided notice to Wife that she had twenty days to respond with a counter-affidavit if she did not agree with the allegations set forth in Husband's affidavit.

On June 11, 2012, Husband served Wife with a "Notice of Intent to Request Entry of Divorce Decree." On June 13, 2012, without obtaining either permission from the trial court or Husband's consent, Wife filed an

¹ Husband later contested this petition, claiming that he never received notice of the petition or the hearing because Wife mailed the notice to his brother in New York and not to him. Emergency Petition for Special Relief to Vacate, 2/13/2012, at 1-2. Wife filed an answer to the emergency petition and Husband filed a sur reply. On February 16, 2012, the trial court vacated the previous order, which granted Wife exclusive possession of the marital property. **See** T.C.O. at 2-3.

amended complaint that appeared to request equitable distribution.² On June 18, 2012, Wife filed a counter-affidavit pursuant to § 3301(d) opposing Husband's affidavit filed on February 13, 2012. The counter-affidavit alleged that the parties had not lived separately for two years, and that the marriage was not irretrievably broken, and also raised claims for alimony, division of property, and lawyer's fees or expenses.³ However, the counter-affidavit was filed after the twenty-day deadline provided at Pa.R.C.P. 1920.72(d) expired. T.C.O. at 3-4.

On July 11, 2012, in order to effectuate a final divorce decree, Husband filed a praecipe to transmit the record, in which he alleged pursuant to Pa.R.C.P. 1920.73(b) that the marriage was irretrievably broken, that the divorce was filed, that an affidavit pursuant to 23 Pa.C.S. § 3301(d) was filed, that there were no pending related claims, and that he properly notified Wife of his intent to transmit the record. Wife did not file an objection to the entry of a divorce decree. On August 6, 2012, the

² Between Paragraphs 11 and 12 of Wife's amended complaint, the words "EQUIABLE [*sic*] DISTRIBUTION" appear in the center of the document. The following paragraphs state that "This case needs to be scheduled before a Master" and "[Wife] would like to have all matters pertaining to the issue of equitable distribution decided once and of [*sic*] all by the Court." Wife's Amended Divorce Complaint ¶¶14-15.

³ According to the record, Wife filed the counter-affidavit, but never served the counter-affidavit on Husband. **See** Counter-Affidavit Under Section 3301(d) of the Divorce Code, 6/18/2012.

decree issued, thereby divorcing the parties. Wife neither filed an opposition to the divorce decree nor sought to vacate the decree. T.C.O. at 4.

On September 6, 2012, Wife filed a notice of appeal. On September 14, 2012, the trial court requested a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On the same day, Wife provided a concise statement. The trial court filed a Rule 1925(a) opinion on October 1, 2012.

On appeal, Wife presents two issues for review:

1. Whether the trial court erred in granting a divorce decree to [Husband], divorcing the parties absolutely from the bonds of matrimony without bifurcating the divorce proceeding?
2. Whether the trial court erred in granting a divorce to [Husband,] divorcing the parties absolutely from the bonds of matrimony, without retaining jurisdiction [over the] division of property issues raised by [Wife] in the divorce action.

Brief for Wife at 8.

When reviewing divorce decrees, we apply a de novo standard of review. We decide independently of the lower court whether a legal cause of action in divorce exists. ***Rich v. Acrivos***, 815 A.2d 1106, 1107 (Pa. Super. 2003).

In reviewing the first issue, we find that Wife failed to follow Pennsylvania's procedural rules when attempting to petition the trial court to bifurcate the divorce proceedings. Furthermore, Wife failed to present a developed argument for the second issue that she raises for review. Accordingly, Wife has waived all matters relating to the divorce decree.

The Pennsylvania Rules of Civil Procedure govern divorce proceedings. Pa.R.C.P. 1920.1(b). All parties must tailor their pleadings to conform to the rules of civil procedure. **See *Creach v. Creach***, 522 A.2d 1133, 1136 (Pa. Super 1987); Pa.R.C.P. 1920.11 (providing that pleadings allowed in action for divorce are those authorized by Pa.R.C.P. 1017). Pleadings must conform to specific rules controlling actions in divorce. **See** Pa.R.C.P. 1920.1-1920.92.

Wife argues that the trial court erred because it did not bifurcate the divorce proceedings, separating the divorce decree from any issues involving alimony, distribution of property, or lawyer's fees or expenses. Brief for Wife at 9. We find that Wife's argument is waived. Wife made two attempts to petition the trial court to bifurcate the divorce proceedings, but both attempts failed to conform to the rules of civil procedure.

Wife first attempted to request bifurcation when she filed an amended complaint on June 13, 2012, in response to Husband's notice of intent declaring that he was seeking an entry of the divorce decree. Wife failed to obtain the consent of Husband or the permission of the trial court prior to filing the amended complaint as required by Pa.R.C.P. 1033. T.C.O. at 7-8. An amended complaint filed without permission of the opposing party or the

court is a nullity. **Catanese v. Taormina**, 263 A.2d 372, 374 (Pa. 1970).⁴

Therefore, we must treat the amended complaint as if it never existed.

Wife's second attempt to request bifurcation of the divorce proceedings occurred when she filed a counter-affidavit opposing the allegations Husband made in his February 13, 2012, affidavit. Wife filed her counter-affidavit on June 18, 2012, nearly four months after Husband filed his affidavit. Husband included notice of a twenty-day response deadline in his affidavit, which stated: "If you wish to deny any of the allegations set forth in this affidavit, you must file a counter affidavit within twenty days after this affidavit has been served upon you or the allegations will be admitted." Husband's Affidavit ¶1. This notice is derived from Rule 1920.72(d), which provides the form of an affidavit required by 23 Pa.C.S. § 3301(d) and Pa.R.C.P. 1920.42(a)(2). Wife's failure to file a counter-affidavit within the twenty-day period resulted in her admitting to the allegations contained in Husband's affidavit.

Accordingly, because the amended complaint failed to conform to the rules of civil procedure, and because Wife failed to deny the allegations

⁴ The rules of civil procedure are to be construed liberally. **See** Pa.R.C.P. 126. The trial court may employ its discretionary authority to ignore the error, as long as the error does not prejudice the other party. **See Paden v. Baker Concrete Const., Inc.**, 658 A.2d 341, 344 (Pa. 1995). But, while the trial court has discretion to ignore an error, neither is it an abuse of discretion for a trial court to apply the rules of civil procedure as written. **Id.**

contained in Husband's affidavit by filing a timely counter-affidavit, her issue has been waived. **See *Gantz v. Gantz***, 488 A.2d 17, 19 (Pa. Super. 1985) (upholding trial court refusal to bifurcate because pleadings did not contain any economic issues and appellant failed to deny allegations set forth in appellee's affidavit).

We turn now to Wife's second issue. In her brief, Wife simply declares that she "incorporates by reference the case law, facts, legal arguments and conclusions from the preceding argument." Brief for Wife at 12. Wife's first issue involved the trial court's choice not to bifurcate the divorce decree from any related economic issues. Wife's second issue raises a question of jurisdiction. These two issues differ substantially. Wife has waived review of her second issue because she has failed "to develop an argument with citation to, and analysis of, relevant authority." ***Harris v. Toys "R" Us-Penn, Inc.***, 880 A.2d 1270, 1279 (Pa. Super. 2005); **see** Pa.R.A.P. 2119(a).

For the foregoing reasons Wife has waived both issues on appeal. Consequently, we will not review them on the merits.

Decree affirmed.

J-S18027-13

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetti", written over a horizontal line.

Prothonotary

Date: 8/30/2013