NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LAUREN KIPP Appellant v. MICHAEL ALDEN KIPP Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 460 WDA 2013

Appeal from the Order January 16, 2013
In the Court of Common Pleas of Cameron County
Civil Division at No(s): 1383-2011

BEFORE: BENDER, P.J.E, LAZARUS, J., and MUNDY, J.

MEMORANDUM BY LAZARUS, J. **FILED MAY 16, 2014**

Lauren Kipp ("Wife") appeals from the order of the Court of Common Pleas of Cameron County denying her petition for special relief filed under section 3323 of the Divorce Code, 23 Pa.C.S.A. § 3323, and Pa.R.C.P. 1920.43. Michael Alden Kipp ("Husband") has filed a motion to quash. Because the court granted Wife's motion for reconsideration, which transferred the case to Centre County to determine the viability of Wife's claims for special relief, we quash. ***See*** Pa.R.A.P. 1701(b)(3).

The parties were married on December 31, 2001 and separated in May 2011. On July 20, 2011, Wife filed a complaint in divorce pursuant to section 3301(c) of the Divorce Code. ***See*** 23 Pa.C.S.A. § 3301(c) (irretrievable breakdown). The complaint was filed in Cameron County, and

Husband accepted service.[1] Wife did not make a claim for equitable distribution in the complaint. The parties both signed affidavits of consent in November 2011, and the court entered a divorce decree on December 9, 2011.

One year later, on December 19, 2012, Wife filed a petition for special relief and a petition for transfer of venue. Wife averred that she and Husband had entered into a property settlement agreement with respect to the marital home in State College, Centre County, and that pursuant to that agreement, "[Husband] agreed to pay [Wife] one-half of the equity in the marital residence in exchange for [Wife] transferring her ownership interest to [Husband]." Petition for Special Relief, 12/19/2012, at ¶ 12. Wife also averred that the appraisal, dated, August 16, 2011, placed a value of $225,000.00 on the marital residence, that there was $110,000.00 in equity in the marital home, and that pursuant to the agreement she executed a deed on August 31, 2011 transferring her right, title and interest in the marital residence to Husband. ***Id***. at ¶¶ 14-15, 18. The property settlement agreement, dated September 23, 2011 and signed by Wife, is included in the

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[1] Neither Husband nor Wife resided in Cameron County. With respect to venue in a divorce or annulment of marriage action, with the exception of a claim for custody, the action may be brought only in the county (1) in which plaintiff or defendant resides, or (2) upon which the parties have agreed in writing or by participating in the proceedings. ***See*** Pa.R.C.P. 1920.2. This action was filed in Cameron County by Wife's "prior counsel assumedly to save money on filing fees and due to the fact the divorce was not contested." ***See*** Petition to Transfer Venue, 12/19/2012, at ¶10.

record on appeal. Husband, however, did not sign the agreement. In the petition, Wife also averred Husband continues to reside in the marital home in State College and he has taken out an additional lien on the property for $28,000.00. ***Id***. at ¶ 35.

On January 9, 2013, the trial court issued two orders, one denying Wife's petition for special relief, and one denying Wife's petition to transfer venue from Cameron County to Centre County. Both orders were docketed on January 16, 2013. On February 11, 2013, Wife filed a motion for reconsideration of both orders, ***see*** Motion for Reconsideration, 2/11/2013, at ¶¶ 11-12, and incorporated by reference both the petition to transfer venue and the petition for special relief. ***Id***. at ¶¶ 9-10. That same day, Wife filed a notice of appeal. On February 15, 2013, the court entered an order granting the motion for reconsideration. The court's order granting reconsideration transferred venue to Centre County "to determine the vitality, [sic] if any, of [Wife's] special relief claims." ***See*** Trial Court Opinion, 5/21/2013, at 2; ***see also*** Order, 2/15/2013. Both the motion for reconsideration and the court's order granting reconsideration were filed within the 30-day appeal period. Pa.R.A.P. 1701(b)(3).

By virtue of the court's order granting reconsideration, Wife's appeal is a nullity. ***See*** Pa.R.A.P. 1701(b)(3)("A timely order granting reconsideration under this paragraph shall render inoperative any such notice of appeal . . . theretofore or thereafter filed or docketed with respect to the prior order."). ***See also*** 2 G. Ronald Darlington *et al*., Pennsylvania Appellate Practice §§

1701:21 ("trial court . . . , after an appeal has been filed, retains jurisdiction to reconsider its order if certain conditions are met. First, the application for reconsideration must be timely filed. Second, the court or other governmental unit must enter an order expressly granting reconsideration within the applicable appeal period.").

As noted above, the motion for reconsideration and the order granting reconsideration were both filed within the applicable appeal period. The notice of appeal, therefore, is inoperative. ***See Heck v. Heck***, 537 A.2d 4 (Pa. Super. 1987) (where appeal and petition for reconsideration are timely filed and trial court enters order expressly granting reconsideration within appeal period, notice of appeal is rendered inoperative). We, therefore, quash this appeal so that the matter can proceed, pursuant to the trial court's order, in Centre County.

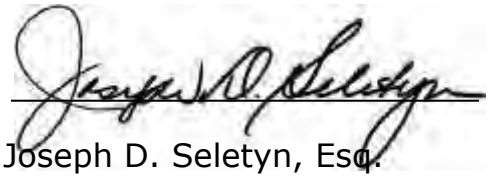
Appeal quashed.[2]

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[2] Our disposition is on grounds different from those presented in Husband's motion to quash before this Court. Husband based his motion to quash on his assertion that the court lacks jurisdiction because Wife made no claim for equitable distribution in the complaint for divorce. Motion to Quash, 7/15/2013, at ¶8. We therefore dismiss Husband's motion as moot.

The 1988 amendments to the Divorce Code placed at the court's disposal a broad array of enforcement tools. ***See*** 23 Pa.C.S.A. §§ 3104(a), 3105; ***see also*** 23 Pa.C.S.A. § 3323(f) ("In all matrimonial causes, the Court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interest of the parties or to effectuate the purposes of this part and may grant such other relief or remedy as equity and justice require against either party or against a third person over whom the court has jurisdiction and who is involved in or concerned with the
(Footnote Continued Next Page)

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/16/2014

(Footnote Continued) ———————————

disposition of the cause."). The statute permits enforcement of both merged and unmerged agreements, and the statutory enforcement options may be utilized without waiving the right to bring an action at law or in equity on the contract. ***See Sabad v. Fessenden***, 825 A.2d 682 (Pa. Super. 2003). Further, the agreement need not be incorporated into the decree to be enforceable pursuant to the Divorce Code, and, the raising of economic claims in the divorce proceeding is not a prerequisite to enforcement under the statute. ***See Annechino v. Joire***, 946 A.2d 121, 123 (Pa. Super. 2008) ("[W]e read section 3105 to permit the courts to enforce the parties' agreement even if not incorporated or merged into the decree, and even if not specifically raised in the divorce pleadings. We decline to read this section in isolation. To do so would discourage the resolution of economic claims by agreement and send economic claims relating to divorce over to the civil division as a breach of contract claim, precisely the situation the legislature intended to change by the 1988 amendments.").