IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

DELORES BROWN, Plaintiff	: :	
v.	:	No. 01-21,698
DANIEL L. BROWN, Defendant	: :	

OPINION

Issued Pursuant to R.A.P. 1925(a)

Daniel Brown has appealed this court's denial of his petition to vacate the decree in divorce entered on July 23, 2002.[1] He claims his ex-wife, Delores Brown, hid the mail from him and therefore prevented him from knowing about the impending decree. After a hearing held on September 23, 2002, this court denied Mr. Brown's request for relief because we did not find him credible. Rather, we believe Mrs. Brown's testimony and find that Mr. Brown received all the documents sent to him and simply chose to ignore them until it was too late. Realizing he had lost his chance to claim alimony because of his ostrich-like behavior, he then decided to pull his head out of the sand and try to make up for his error in the only way possible at this late date: by claiming he was a victim of fraud, rather than a victim of his own negligence.

Factual Background

Some time in early 2001, Mr. and Mrs. Brown began discussing how to settle their financial affairs in the event of a divorce. On Februray 2, 2001, Mrs. Brown's attorney, Christina Dinges, sent Mr. Brown a letter stating that she represented his wife in resolving the couple's domestic issues, that Mrs. Brown wanted to reach an amicable division of property, and that he should contact Mrs. Dinges or have his attorney contact

[1] We note that this is a final order. Flowers v. Flowers, 612 A.2d 1064 (1992).

her to discuss resolution. A draft settlement agreement was prepared by Mrs. Brown's attorney. Mr. Brown took the agreement to his own attorney, Janice Yaw, who told him to contact her whenever he received anything else.

On November 19, 2001 Mrs. Brown filed a complaint in divorce under 23 Pa.C.S.A. § 3301 (c) (irretrievable breakdown and (d) (living separate and apart for two years), along with a Notice to Defend and Claim Rights. Mr. Brown signed the certified letter verifying receipt of the complaint on November 23, 2001. Included with the complaint was a letter from Mrs. Brown's attorney, Christina Dinges, stating that Mrs. Brown had retained her for the divorce action, that Mrs. Brown would like to resolve all matters amicably, and that he should call her or have his attorney call her to discuss resolution. Mr. Brown filed no documents, did not contact his attorney, and did not contact Mrs. Dinges.

On May 8, 2002, Mrs. Dinges' office mailed Mr. Brown a Notice and Affidavit under §3301(d) of the Divorce Code, a Notice of the Praecipe to Transmit the Record, and a Counter-Affidavit under §3301(d). This packet also included a letter from Mrs. Dinges which specifically drew to Mr. Brown's attention that unless he filed objections within ten days from the date the Praecipe was filed, the divorce decree would be entered. This package was sent out certified mail, and it was returned "unclaimed." The package was sent again on May 29, 2002, via first class mail, and it was not returned.

On June 19, 2002, Mrs. Dinges' office sent Mr. Brown a Notice of Intention to Request Entry of Divorce Decree under §3301(d), the proposed Decree, the Praecipe to Transmit the Record, and a Notice of the Praecipe to Transmit the Record. On July 23, 2002 the decree was entered, reserving jurisdiction over any claims which had been raised. On August 5, 2002, Mr. Brown filed a Motion to Vacate the Decree.

Discussion

A trial court may not modify a decree if more than thirty days have passed after the entry of the decree in the absence of extrinsic fraud,[2] a fatal defect apparent upon the face of the record, lack of jurisdiction over the subject matter, or some other evidence of extraordinary cause justifying intervention by the court. 42 Pa.C.S.A. §5505; 23 Pa.C.S.A. §3332; Egan v. Egan, 759 A.2d 405 (Pa. Super. 2000); Stockton v. Stockton, 698 A.2d 1334 (Pa. Super. 1997); Justice v. Justice, 612 A.2d 1354 (Pa. Super. 1992). The purpose of this rule is to protect the finality of judgments.

Mr. Brown has attempted to prove Mrs. Brown committed extrinsic fraud by stealing his mail. He claims he saw only the complaint and the final packet, which he claims Mrs. Brown handed to him on July 22, 2002. He asserts she squirreled away all other mailings.

Mr. Brown and Mrs. Brown lived together throughout the time in question, and indeed still lived together on the date of the hearing. The couple received their mail via a post office box, and had been doing so for thirty-four years. Both parties had access to the post office box and both parties picked up the mail. Mrs. Brown, however, picked up the mail more often than did Mr. Brown. When she did so, she would place his mail on the kitchen table.

The only evidence Mr. Brown can produce of mail theft is his own testimony that he did not receive the mailings and one incident when Mrs. Brown hid a credit card bill from him. Mrs. Brown admits hiding this bill because she didn't want him to know about her purchases, and she ultimately paid the bill. She claims she never kept any other mail from him in the thirty-four years of their marriage, and Mr. Brown can point to no other such incident. He never filed a complaint with the post office, never obtained a separate post office box, and even at the time of the hearing still trusted Mrs.

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[2] Extrinsic fraud is an action by the prevailing party which has prevented a fair submission of the controversy. Justice v. Justice, 612 A.2d 1354, 1358 (Pa. Super. 1992).

Brown to pick up his mail. Mrs. Brown also testified that she specifically handed him the mail pertaining to the divorce, except for once or twice, when she didn't see him after he arrived home. She also testified that after receiving such mail, Mr. Brown would grow angry and have a heated discussion with Mrs. Brown. At some point, Mr. Brown specifically told her he wasn't going to open any more of the divorce-related mail and as far as she knew, he didn't. The envelopes remained on the table for a while and eventually disappeared. Mrs. Brown also testified that when she handed him the last packet, containing the Notice of Intention to Request Entry of Divorce Decree Under Section 3301(d), she told him that if he did not act within ten days, the divorce would be final.[3] And finally, Ms. Brown testified that some time in July 2002 the couple had a conversation in which she informed Mr. Brown he had lost his opportunity to get alimony, and Mr. Brown responded, "We'll see about that." It was a short time later that he filed the Petition to Vacate.

Our decision in this case largely boils down to an assessment of credibility, and we find Mrs. Brown to be the more credible. This assessment is based largely on Mr. Brown's demeanor on the stand, and the manner in which he responded to the questions asked by counsel. However, additional evidence also supports our conclusion.

Mr. Brown admitted he took the proposed settlement agreement to Ms. Yaw in the fall of 2001 for advice, and that she told him to contact her again if he received anything else. He also admits receiving the divorce complaint. And yet he never contacted his attorney again until after the decree was entered, despite the fact that the Notice accompanying the complaint included numerous warnings of the consequences of his failure to act. These warnings included the following statements:

> You have been sued in Court. If you wish to defend the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree

[3] Mrs. Brown knew the contents of the divorce mailings he received because her attorney also sent her copies at the same time.

> of divorce or annulment may be entered against you for any other claim or relief requested in these papers by the Plaintiff. You may lose money or property or other rights important to you, including custody or visitation of your children. . . . IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE OR ANNULMENT IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM. . . . YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.

Mr. Brown also admitted he did not pick up the certified letter sent to him on May 8, 2002, although he knew about the letter. This supports Mrs. Brown's testimony that Mr. Brown had vowed not to open any more letters from her attorney.

And finally, we note that even as of the hearing date, Mr. Brown still trusted Mrs. Brown to pick up his mail. The testimony shows that he is finished working at 2:30 p.m. unless he worked overtime. Even with the 25-mile trip home, he still had plenty of time to get to the post office. If he really believed Mrs. Brown hid his mail, surely he would have obtained his own post office box or taken other steps to prevent her from having access to his mail. The fact that he never took these precautions strengthens Mrs. Brown's testimony that she never hid the divorce-related mail from him and in fact placed all the letters from her attorney on the table for Mr. Brown to receive, as well as specifically alerting his attention to some of them.

In short, we find Mr. Brown has utterly failed to prove Mrs. Brown committed fraud. On the contrary, we find that Mr. Brown was duly notified of his rights, and failed to act.

Mr. Brown has also argued the court should vacate the decree because the Counter-affidavit was not included in the final mailing to Mr. Brown, sent on June 19, 2002, which included the Notice of Intention to Request Entry of Divorce under Section 3301(d). The court does not find this to be a fatal defect for the following reasons. First, the Notice of Intention sent to him on June 19, 2002 stated specifically that if he did not file a Counter-affidavit by July 10, 2002, the Court could enter a final Decree in Divorce. It also stated that a Counter-affidavit \was attached. If Mr. Brown had any

intention of doing anything to prevent the divorce from going through, he would have inquired about the missing Counter-affidavit, which clearly needed to be filed to prevent the decree from being entered. But more importantly, we find that Mr. Brown had already received a Counter-affidavit in the prior mailing, sent to him on May 29, 2002. And finally, we are convinced that even if the mailing of June 19, 2002 had included the Counter-affidavit it would not have made any difference. Mr. Brown would still have failed to act. We therefore conclude the missing Counter-affidavit is a minor technical error that does not entitle Mr. Brown to relief.

Conclusion

In America, we offer individuals a multitude of rights and freedoms. However, we never force anyone to accept all the rights available. Instead, we accord everyone the dignity and self-determination to relinquish or forego certain rights based upon their own actions and in some cases, inactions.

The civil law system is meticulously set up in such a manner that no one loses any rights without first being informed of those rights and what must be done in order to claim them. That is why we have so little tolerance for individuals like Mr. Brown, who show utter contempt for this system by sitting back and doing nothing, despite repeated warnings, and then try to avoid the consequences of their negligence after it is too late.[4]

Date: _____ BY THE COURT,

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Clinton W. Smith, P.J.

[4] Even now, all hope is not lost for Mr. Brown. As the Superior Court noted in Flowers, supra at fn. 2, the equitable arguments applicable to Mr. Brown's loss of ability to claim alimony may be advanced in the equitable distribution hearing as a basis for awarding him a larger share of the marital property.