

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

JOHN H. NOBLE,	:	
Plaintiff	:	
	:	
v.	:	No. 02-20,494
	:	
RUTH E. NOBLE,	:	
Defendant	:	

OPINION and ORDER

This matter involves Exceptions filed to the Master’s order of June 2, 2003, in which the Master ordered the parties to attend at least three sessions of counseling, at Wife’s expense. Husband opposes the counseling, and Wife opposes having to pay for the counseling and Husband’s lodging while he is in the area for the counseling.

Section 3302(a) of the Divorce code provides that whenever indignities is the ground for divorce, “the court shall require up to a maximum of three counseling sessions within the 90 days following the commencement of the action where either of the parties requests it.” However, the Superior Court has made it clear, as recently as January 2003, that the court need not require counseling if no reasonable prospect of reconciliation exists. Rich v. Acrivos, 815 A.2d 1106 (Pa. Super. 2003).

Normally, the court is in full favor of counseling, to attempt to avoid the devastating effects—both financial and emotional—that often accompany divorce. However, where there is little prospect of reconciliation, the court should not delay the proceedings by ordering counseling which will in all likelihood be futile. As stated in Liberto v. Liberto, 520 A.2d 458, 461(Pa. Super. 1987), the provision requiring counseling must be construed in a common sense manner. “It was not intended to compel a court to engage in futile and useless exercises, nor was it intended to provide a spouse with the means to delay the entry of a decree in divorce for no good reason.”

The Master made no finding of whether a reasonable prospect of reconciliation exists. He merely stated he was ordering counseling because he believed it was mandatory and because of “the length of the marriage.” Master’s report. p. 4. A review of the transcript, however, reveals that Mr. Noble is adamant in his desire for a divorce, and there is little chance counseling would succeed. He stated very clearly he has lost his love for his wife, and that counseling would be futile.

Moreover, this is not the typical case, in which counseling would be merely a minor inconvenience for the non-willing party. Mr. Noble, who is eighty years old and resides in Germany, would have to fly to Pennsylvania to attend the counseling sessions. Even if the sessions could be scheduled shortly before divorce proceedings, in order to save him from making two separate trips, it would still be a major inconvenience for him, as he would have to remain here long enough to complete the counseling sessions.

Nor is this the case of a typical break-up, where the parties resided together not so very long ago. Although there was a fair amount of cross-Atlantic visiting, the fact is that Mr. and Mrs. Noble have maintained separate residences, in separate countries, for twelve years.¹ And finally, all of the parties’ children are emancipated. Therefore, the parties do not have the strong incentive to reconcile in order to raise their children in an intact family.

Mr. Noble has decided he wishes to obtain a divorce and go his separate way. After 47 years of marriage, it is a shame this couple will not spend their remaining golden years together. However, after reading the transcript, the court finds divorce is virtually inevitable, and will therefore not require counseling.

¹ Whether or not their relationship constitutes living separate and apart for purposes of obtaining a 3301(d) divorce is an issue for another day.

ORDER

AND NOW, this _____ day of July, 2003, for the reasons stated in the foregoing opinion, (1) The plaintiff's exceptions are granted, (2) The defendant's exceptions are dismissed, and (3) The parties are not required to attend counseling, and the matter shall proceed accordingly.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq.
Hon. Clinton W. Smith
Bradley Hillman, Esq.
Randi Dincher, Esq.
Family Court
Gary Weber, Esq.