

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**LORI L. LARKA,**

**Plaintiff/Appellee**

v.

**BRUCE K. LARKA,**

**Defendant/Appellant**

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**No. 06-20,279**  
**CIVIL DIVISION**

**OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)**  
**OF THE RULES OF APPELLATE PROCEDURE**

The Defendant appeals this Court's May 8, 2006 Entry of Divorce Decree. In his May 19, 2006 Statement of Matters Complained of on Appeal, the Appellant challenges this Court's Entry of Divorce Decree on several grounds: first, he contends that the Appellee failed to file a Notice of Intention to Request Entry of Decree; next, he contends that, because there were outstanding economic issues, the Appellee should have filed a Petition for Bifurcation before seeking a valid entry of decree; and lastly, he claims he was prejudicially harmed by the Appellee's failure to follow the Rules of Civil Procedure regarding filing for divorce.

***Background***

The Appellee initiated the instant matter, by way of a Complaint in Divorce, on February 27, 2006. The Appellee's Complaint sought a divorce from the Appellant under §3301(d) of the Divorce Code (irretrievable breakdown and two or more years separation). That same day, the Appellee filed her Notice of Intent to Request Entry of Divorce Decree, and her Affidavit of Two Year Separation Under §3301(d) of the Divorce Code; however, these two documents, although officially received/filed by the Prothonotary's Office (as indicated by the Office's time stamp on each), neither document was entered into the computer docketing system. The Appellant's attorney signed her Acceptance of Service on March 3, 2006 and filed said Acceptance on March

6, 2006. The Appellant also filed a Petition/Counterclaim for Alimony Pendente Lite on March 6, 2006. On March 13, 2006, the Appellant filed his Counter-affidavit of Two Year Separation Under §3301(d) of the Divorce Code; the Counter-affidavit indicated that he did not consent to the entry of final divorce decree until all outstanding economic issues were resolved. On March 28, 2006, the Appellee petitioned the Court for entry of divorce decree; however, the attached Praecipe to Transmit Record incorrectly stated the grounds for the divorce as §3301(c) of the Divorce Code. The Appellant responded with a March 29, 2006 Motion to Strike Entry of Divorce Decree claiming that the Appellee's failure to indicate the proper grounds for the divorce in her Praecipe to Transmit Record, failure to effectuate service of her Notice of Intention to Request Entry of Decree, and Appellant's "claim" for economic relief indicated on his Counter-affidavit precluded the Court from entering the Decree. The Appellee addressed the error on her Praecipe to Transmit Record, and on March 30, 2006, filed an Amended Praecipe to transmit Record indicating the correct grounds for divorce, §3301(d) of the Divorce Code. On May 4, 2006, the Appellant filed an Answer to the Complaint in Divorce and Counterclaim for Equitable Distribution and Alimony Pendente Lite. After a May 5, 2006 conference, this Court entered the Divorce Decree on May 8, 2006; the Court then summarily denied the Appellant's May 11, 2006 Motion to Reconsider. The Appellant filed the instant appeal on May 15, 2006.

***Notice of Intention to Request Entry of Divorce Decree***

The Appellant correctly states that, the party petitioning the Court for entry of a divorce decree must provide the opposing party with, *inter alia*, a "Notice of Intent to Request Entry of Divorce Decree." Pa.R.C.P. No. 1920.42. Furthermore, the moving party must give the opposing party twenty days (20) notice of intent to seek entry of said decree unless a valid "Waiver of Intent" has been filed. Pa.R.C.P. No. 1920.42. Lastly, the petitioning party may

serve their Notice of Intent to Request Entry of Decree with their Complaint for Divorce if said complaint seeks a divorce pursuant to §3301(d) of the Divorce Code. Pa.R.C.P. No. 1920.42.

Instantly, the Appellee filed her Complaint, Affidavit of Two Year Separation, and Notice of Intent to Request Entry of Divorce Decree together on February 27, 2006. All three of these documents were accepted and time-stamped by the Prothonotary's Office; however, the Prothonotary's Office failed to electronically docket the Affidavit of Two Year Separation and the Notice of Intention to Request Entry of Divorce Decree. The Appellant now claims that, although his attorney signed and filed an Acceptance of Service regarding the documents filed on February 27, 2006, he only received the Complaint and Affidavit; the Appellant supports this contention with the fact that the Prothonotary did not electronically docket the Notice of Intention to Request Entry of Divorce Decree.

In granting the divorce in this matter, this Court refused to allow the Appellant to postpone the entry of said divorce decree based on his improbable claim that he only received two of the three joined documents that were simultaneously received and time-stamped, by the Prothonotary. This Court fails to understand how the Appellant can support his contention that he did not receive the Notice of Intention to Request Entry of Divorce Decree by highlighting the Prothonotary's failure to electronically docket that document while simultaneously admitting to receiving the Affidavit of Two Year Separation<sup>1</sup> that was also not electronically docketed and was attached to and time stamped along with the Complaint and Notice of Intention to Request Entry of Divorce Decree.

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<sup>1</sup> See, Appellant's March 29, 2006 Motion to Strike, paragraph 3 and Appellant's May 11, 2006 Petition for Reconsideration, paragraph 3.

### ***Outstanding Economic Issues***

In his Motion to Reconsider, the Appellant notes that, by virtue of the indications made on his Counter-affidavit, he wishes to claim economic relief and, consequently, this Court should not have entered the divorce decree until such economic issues were settled or a bifurcation was granted.

The Appellant's Counter-affidavit indicates three important facts: first, the Appellant does not consent to the entry of the divorce until all outstanding economic issues are resolved; second, he does not challenge the Appellee's asserted grounds for divorce (specifically, irretrievable breakdown and two year separation); and third, the Appellant wished to claim economic relief. The Appellant's Court affidavit goes on to state that, "[he] understands that to claim economic relief [he] must also file all of [his] economic claims with the Prothonotary . . . and [his] failure to do so, before the date set forth on the Notice of Intention to Request Divorce Decree, may lead to the divorce being entered without any further delay." Despite this clear directive, the Appellant did not file an answer to the Appellee's Complaint or a Counterclaim/Petition for Economic Relief until May 4, 2006; almost two months after the deadline set forth in the Appellee's Notice of Intent to Request Entry of Divorce Decree. Therefore, irrespective of any outstanding economic issues left to be resolved between the parties, the Appellant missed the deadline to assert these issues. Additionally, because the Appellant missed the deadline to assert economic issues, a bifurcation is not necessary as, technically, there are no outstanding economic issues.

### ***Pennsylvania Rules of Civil Procedure regarding filing for divorce***

The Appellant contends that the Appellee failed to follow the Rules of Civil Procedure regarding filing for divorce thereby prejudicially harming him; however, aside from the two

matters addressed above, the Appellant has not alleged any other rule violation; therefore, because the Court believes the Appellee's filings regarding this matter, including the two aforementioned matters, comport with the Rules, the Court finds the Appellant's last contention meritless.

***Conclusion***

As none of the Appellant's contentions appear to have merit, it is respectfully suggested that the Entry of Decree be affirmed.

By the Court,

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Nancy L. Butts, Judge

cc: William J. Miele, Esq.  
Janice R. Yaw, Esq.  
Judges  
Honorable Nancy L. Butts  
Gary L. Weber, Esq.  
Laura R. Burd, Law Clerk