

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

MARY MICHELLE LAURENSEN, Plaintiff	:	CIVIL ACTION
	:	
vs.	:	NO. 02-21413
	:	
BENJAMIN H. LAURENSEN, III, Defendant	:	

OPINION AND ORDER

Plaintiff and Defendant were married on February 28, 1997. On June 17, 2008 the Plaintiff filed a Petition for Declaratory Judgment. The Declaratory Judgment Action seeks an Order establishing the date of separation of the parties to assist in equitable distribution proceedings.

Plaintiff asserts that a complaint in divorce was filed on October 2, 2002. Following filing, the parties reconciled. In October of 2007 the parties separated again. Defendant subsequently filed an Answer to the Complaint on October 10, 2007.¹ Accordingly, Plaintiff's are seeking an Order which establishes the date of separation in October 2007.

The Defendant asserts that the parties have been continuously separated since August 28, 2002. Defendant alternatively seeks an order finding the date of separation to be August 28, 2002.

Following a hearing on this matter, and review of the cases submitted by the parties, this Court finds that the parties were, in fact, separated as of August 28, 2002.

The Divorce Code defines "separate and apart" as "cessation of cohabitation, whether living in the same residence or not. In the event a complaint in divorce is filed

and served, it shall be presumed that the parties commenced to live separate and apart not later than the date that the complaint was served.” 23 Pa.C.S.A. § 3103. A party attempting to rebut this presumption has the burden of proving “an independent intent on the part of one of the parties to dissolve the marital union” and “the intent must be clearly manifested and communicated to the other spouse.” McCoy v. McCoy, 888 A.2d 906, 910 (Pa.Super. 2005), *citing* Sinha v. Sinha, 526 A.2d 765, 767 (Pa. 1987).

This Court finds credible the testimony of Husband, Mr. Laurenson. Mr. Laurenson testified that after learning in 2002 that his wife had an affair, he moved out of the marital residence and moved into his cousin’s home. In 2003, Husband’s reserve unit was called into active duty and he was deployed to Iraq. Notably, upon Husband return in 2004, Husband moved into the parties’ then empty rental property at 652 Wildwood Boulevard, Williamsport. After a subsequent deployment in 2006, he again resumed residence at Wildwood Boulevard. Husband and Wife never resumed living together since their separation on August 28, 2002, and have consistently maintained separate households since that time. During his deployment to Iraq, Husband had his Mother act as Power of Attorney on his behalf, managing Husband’s finances and paying his bills.

Although it appears that Husband and Wife engaged in sexual relations one or two times at the parties’ Prospect Avenue marital residence following 2002, Wife would occasionally stay at Husband’s Wildwood Boulevard address, and the parties spent one or two overnights together between 2002 and 2007, Pennsylvania courts have clearly held that “instances of sexual relations during a separation period do not,

¹ The Defendant correctly asserts that the Defendant’s Answer was filed on October 11, 2007.

without more, defeat a claim that the parties have lived separate and apart...” Thomas v. Thomas, 483 A.2d 945, 948 (Pa.Super. 1984).

In Teodorski v. Teodorski, 857 A.2d 194 (Pa.Super. 2004) husband asserted the parties separated January 12, 1995. Wife argued that the parties had not separated until February 2, 1998 because husband visited the house frequently, helped wife and their children with expenses, including buying them a trailer, the parties had sporadic sexual relations – which resulted in the birth of another child, and the parties filed joint tax returns. In affirming the lower court’s finding in favor of husband, the court held, “mere sexual relations [are] insufficient to support reconciliation.” Id. at 198.

Further, the fact that Husband provided for the needs of the Wife and the children between 2002 and 2007 does not dictate a finding of reconciliation. Husband testified that Wife’s former attorney prepared a comprehensive Separation Agreement. Although Wife subsequently refused to sign the agreement, the agreement required payment by Husband of \$1,875.00 per month. Husband testified that from 2002 through 2007 Husband paid the mortgage, taxes and insurance on the Prospect Avenue home, paid Wife’s vehicle payment and insurance and other expenses, and the balance of the \$1,875.00 monthly obligation was then given to Wife. Husband testified that payment was made on the mortgage, etc. due to Husband’s concern that such items would not be paid if he did not pay them directly. Moreover, when Husband’s Mother handled his finances during deployment periods, Mother continued to make the mortgage payment, etc. providing the remainder of the \$1,875.00 to Wife. This Court does not believe that Husband’s method of paying this support, particularly in light of his concerns, dictates a finding of reconciliation.

ORDER

AND NOW, this 8th day of August, 2008, Mrs. Laurenson's Petition for Declaratory Judgment seeking a separation date of October 2007 is hereby DENIED as this Court finds the separation date of the parties to be August 28, 2002.

BY THE COURT,

Richard A. Gray, J.

cc: Andrea Pulizzi, Esq.
Patricia Bowman, Esq.