

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

CF,	Plaintiff	:	NO. 04-20,264
		:	
	vs.	:	DIVORCE
		:	
EF,	Appellant/Defendant,	:	RULE 1925(a) OPINION
		:	

DATE: AUGUST 30, 2011

**OPINION IN SUPPORT OF THE ORDER OF JUNE 3, 2011 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

EF (hereinafter “Wife”) has appealed this Court’s June 3, 2011 Opinion and Order. Wife’s appeal should be denied and the Order of June 3, 2011 affirmed. The Court relies on the reasoning explained in Court on the record on June 3, 2011 but will additionally address its reasoning in the foregoing opinion.

Facts & Procedural History

On February 25, 2004 a Divorce Complaint was filed by Husband; on May 1, 2006 a Divorce Decree was entered in the matter of *F v. F*. Wife filed a Petition for Special Relief to enforce a property settlement in the amount of \$3,500 and for attorney fees on November 30, 2007. Following a hearing the Honorable Senior Judge Clinton W. Smith dismissed Wife’s petition on January 8, 2008. On April 3, 2008 Husband filed a Petition for Special Relief in which he requested an order to release his retirement/pension funds directly to him. Husband, through his counsel, claimed that Wife’s counsel was opposed to the distribution and because of that the monies were being

held. At that time Husband was also seeking attorney fees. In response to Husband's petition, on April 25, 2008 Wife filed an Answer and New Matter in which she requested that Husband's petition be denied. In addition, Wife requested an order granting her permission to proceed with economic claims via a Master's hearing. On May 2, 2008 the Honorable Judge William S. Keiser entered an order which stated that an order on the Petition filed by husband and the New Matter filed by Wife was still to come. In that order Judge Keiser gave Husband permission to file a memorandum if he so wanted to. It is noted that Husband did not file a memorandum. Additionally, there was never an order entered by Judge Keiser regarding Husband's petition. Nothing further happened on the record until April 29, 2011 when Wife filed a Motion to Vacate Divorce Decree; a hearing on the Motion was heard before this Court on May 31, 2011.

At the time of the hearing Husband argued that Wife had never raised any economic issues or claim for economic issues in her counter affidavit. N.T. May 31, 2011, p. 7. Husband argued that the counter affidavit specifically states that claims for economic relief must be written and filed with the court and wife failed to act. *Id.* Husband argued that the filing of the counter affidavit alone does not protect economic claims. N.T. May 31, 2011, p. 7-8. Additionally Husband argued that Wife also failed to raise economic claims in counter claim and because of Wife's inaction the motion is stale; she waived relief and cannot raise it five years later. N.T. May 31, 2011, p. 8-9.

Wife argued that the Motion to Open or Vacate Divorce Decree was pursuant to 23 Pa. C.S. § 3332 and was proper due to a fatal defect on the face of the record. N.T. May 31, 2011, p. 3. Wife argued that despite the fact that she made valid economic

claims by way of her answer to the divorce complaint and also indicated on her consent that she did not wish to abandon her economic claims, the decree came through without deciding the economic claims. N.T. May 31, 2011, p. 3-4. Wife argued that when the decree was entered without deciding the economic claims this resulted in apparent error on the face of the record. N.T. May 31, 2011, p. 4. Wife pointed to the Divorce Complaint filed by husband and stated that by admitting to paragraph twenty-one which requests that “this honorable court equitably divide, distribute, and/or assign the marital property of the parties, as well as the liabilities” that Wife had validly raised economic claims. N.T. May 31, 2011, p. 10. Wife further argued that the marriage resulted in the couple having children, buying a house and a car and that Wife deserves to get something. N.T. May 31, 2011, p. 6.

On June 3, 2011, after finding that there was no defect of on the face of the record or fraud, this Court determined that Wife was time-barred by the statute of limitations, and entered an order denying the Motion to Vacate the Divorce Decree. On July 5, 2011 Wife sent her Notice of Appeal, subsequently on July 28, 2011 Wife submitted her Concise State of Matters Complained of on Appeal. Wife is claiming the following issues¹:

1. It was error to hold that appellant defendant EF’s answer of “Admitted” to appellee husband’s request “... that this Honorable Court equitably divide, distribute and/or assign the marital property of the parties, as well as the liabilities of the parties.” Did not constitute a claim for equitable distribution on appellant defendant EF’s part.
2. It was error to deny appellant defendant EF’s motion to vacate the parties divorce decree because there was a fatal defect on the face of the record in the instant case

¹ The issues are numbered for ease; they are not numbered in Wife’s statement however the sequence is the same.

- as there were economic and equitable distribution issues which were raised by appellant defendant EF but not considered and disposed of in the divorce decree.
3. Appellant Defendant EF's due process rights were violated by the Court of Common Pleas holding dismissing her motion to vacate the parties divorce decree where there was a failure to consider and properly dispose of her equitable distribution of economic claims.
 4. It was error to hold that the totality of the circumstances in the record support the conclusion that appellant defendant EF waived her economic and equitable distribution claims.
 5. It was error to hold that a divorce litigant can waive his or her economic claims without a clear statement of intention to do so.
 6. It was error to conclude that the instant case was governed by the holding in the case of *Flowers v. Flowers*, 417 Pa. Super 528.

Discussion

The Court will discuss the issues complained of on appeal filed by Wife and will also rely on the well researched and reasoned opinion of June 3, 2011 which stated the basis of the June 3rd, 2011 decision.

First, *Pennsylvania Rules of Civil Procedure* provide the rules for pleadings and counterclaims.

PA R.C. P. 1920.11 Pleadings Allowed

The pleadings in an action shall be limited to those authorized by Rule 1017, a bill of particulars, a petition authorized by the Divorce Code and an answer thereto.

PA R.C. P. 1017 Pleadings Allowed

(a) Except as provided by Rule 1041.1, the pleadings in an action are limited to

(1) a complaint and an answer thereto,

Note: The term "complaint" includes a complaint to join an additional defendant.

(2) a reply if the answer contains new matter, a counterclaim or a cross-claim,

(3) a counter-reply if the reply to a counterclaim or cross-claim contains new matter,

(4) a preliminary objection and a response thereto.

Rule 1920.15. Counterclaim. Subsequent Petition

(a) The defendant may set forth in an answer under the heading "Counterclaim" a cause of action of divorce or for annulment and, whether the defendant does so or not, may set forth any other matter which under the Divorce Code may be joined with an action of divorce.

(b) The defendant may file to the same term and number a subsequent petition raising any claims which under the Divorce Code may be joined with an action of divorce or for annulment. The averments shall be deemed denied unless admitted by an answer.

In the present case Husband filed a divorce complaint, Wife filed an answer and Counterclaim. It is the Court's position that to be in compliance with the *Pennsylvania Rules of Civil Procedure* Wife should have raised any economic claims in her counterclaim. Instead, in her counterclaim Wife raised the issues of counsel fees, spousal support, alimony pendente lite, and alimony. N.T. May 31, 2011, p. 8 (see also Answer to divorce complaint filed March 25, 2004.). Wife argued that by admitting to Husband's paragraph number twenty of the Divorce Complaint, "Plaintiff and Defendant have acquired property, both real and personal, during their marriage as well as liabilities" and paragraph twenty-one, "Plaintiff requests that this Honorable Court equitably divide, distribute and/or assign the marital property of the parties, as well as the liabilities of the parties, that she raised a valid economic claim. N.T. May 31, 2011, p. 10. All Wife effectively accomplished was admitting that there were in fact assets and liabilities and that Husband was requesting equitable distribution. Counsel for Wife knew the procedure; that is evidenced by the fact that a counterclaim was filed, if Wife had an economic claim it should have been raised in the counterclaim. There is no error in the part of the Court.

This Court thoroughly addressed fatal defect and the lack of a fatal defect on the face of the record in this case in the June 3, 2011 order and refers the Appellate Court to that regarding Wife's second issue complained of.

Wife's third issue is that denying the Motion to Vacate the Divorce Decree was a violation of her due process rights. "Due process requires that the litigants receive notice of the issues before the court and an opportunity to present their case in relation to those issues." *Fallaro v. Yeager*, 364 Pa. Super 408, 412 (1987). While due process it is right there are still rules in place that need to be followed.

§ 3503. Effect of divorce on property rights generally. Whenever a decree or judgment is granted which nullifies or absolutely terminates the bonds of matrimony, all property rights which are dependent upon the marital relation, except those which are vested rights, are terminated unless the court expressly provides otherwise in its decree. All duties, rights and claims accruing to either of the parties at any time theretofore in pursuance of the marriage shall cease, and the parties shall severally be at liberty to marry again as if they had never been married.

Due process is further tempered by time restraints in the form of statutes of limitations; a motion to vacate a divorce decree must be filed within 30 days of the decree being entered if no fraud or defects are being claimed. 23 Pa. C.S. 3332, 42 Pa.C.S. § 5505, *Egan v. Egan*, 2000 Pa. Super 261, *Hassick v. Hassick*, 695 A.2d 851 (1997 Pa. Super). The Court is not denying Wife her due process; the Court is following the procedures and laws of the state. Wife effectively waived her rights by not raising a valid claim for economic relief within the proper time frame.

Next, Wife argues that it was error on the part of the Court to determine that the totality of the circumstances support the conclusion that Wife waived her economic and

equitable distribution claims. The totality of the circumstance more than supports the fact that Wife waived all economic claims. Wife was served with a Divorce Complaint in which she answered and filed a counterclaim to; the counterclaim was without economic claims. Furthermore, Wife then received a counter affidavit that specifically states “Unless you have already filed with the Court a written claim for economic relief, you must do so by the above date or the Court may grant the divorce and you will lose forever the right to ask for economic relief. The filing of the form, counter affidavit, alone does not protect your economic claims.” N.T. May 31, 2011, p. 7 -8. Wife did check the box that says I wish to claim economic relief, however that box also states: “I understand that to claim economic relief, I must also file all of my economic claims with the Prothonotary in writing and serve them on the other party. If I fail to do so before the date set forth on the Notice of Intention to Request Divorce Decree, the Divorce Decree may be entered without further delay.” June 3, 2011 Order pg 2. The totality of the circumstance highlights the fact that Wife failed to preserve her right to raise economic claims and to seek relief.

Wife next argues that it was error of the Court to hold that a divorce litigant can waive his or her economic claims without a clear statement of intention to do so.

Pennsylvania Rules of Civil Procedure articulate the steps Wife was to take in order to make a clear statement of intention to raise economic claims. Wife failed to take those steps. Additionally, the counter affidavit warned Wife of the need to file a written claim for economic relief with the Prothonotary; Wife failed to heed the warning. This Court views Wife’s inaction as a clear statement of intention.

Finally, Wife argues that it was error on the part of the Court to conclude that this case was governed by *Flowers v. Flowers*, 417 Pa. Super 528. It was not error of the Court to look to *Flowers* for guidance. *Flowers* is good law in Pennsylvania, it is precedential and it fits the case at hand. As stated in the June 3, 2011 Order, the facts in this case and *Flowers* are not identical; however, cases are rarely identical in facts and circumstance. There are similarities in the two cases, primarily the inaction of the Wife to properly waive economic claims even though an adequate opportunity to file was present. While Wife argues that *Flowers* was not a proper case for this Court to rely on yet Wife fails to provide the case or cases that the Court should have based the decision on both during the hearing and in the concise statement of issues complained of.

CONCLUSION

In order to reach the final decision this Court looked at the record, the circumstances regarding the case, listened to the argument and researched and applied applicable law. This Court did not abuse its discretion or err in its decision. The Court's order of June 3, 2011 should be affirmed and Wife's appeal dismissed.

BY THE COURT,

Joy Reynolds McCoy, Judge