

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

RW,		:	NO. 09-21, 400
	Plaintiff	:	
		:	
vs.		:	
		:	
PW,		:	
	Defendant	:	IN DIVORCE

OPINION AND ORDER

AND NOW, this 6th day of May, 2011, this Opinion and Order is entered after hearing argument on May 4, 2011 regarding Husband’s Petition to Enforce Agreement. Argument on the motion was held in the undersigned’s Chambers with Husband represented by Christina Dinges, Esquire, and Wife represented by Todd Leta, Esquire.

Husband’s petition requests Wife to comply with a settlement agreement that the parties reached before a Family Court Hearing Officer at a time the matter was scheduled for an equitable distribution hearing. The parties agreed that the agreement would be further memorialized in a comprehensive property settlement agreement that would be drafted by Husband’s attorney and signed by both parties. Although a draft comprehensive property settlement agreement was submitted by Husband’s attorney to Wife’s attorney, the parties have not signed the agreement.

Wife argues that because the parties have not memorialized their agreement into a signed marital settlement agreement, there is no true agreement and that the terms reached before the Family Court Hearing Officer are unenforceable. Husband points out that the law in this Commonwealth directs that the agreement reached before the Family

Court Hearing Officer and placed on the record is a legally enforceable contract.

Pursuant to the law, this Court finds that it is generally constrained to uphold the dictates of the agreement placed on the record before the Family Court Hearing Officer even though the parties have not been able to further memorialize the agreement in a signed Marital Settlement Agreement. *Luber v. Luber*, 614 A.2d 771 (Pa. Super. 1991).

Specifically, Husband's petition requests Wife to comply with the agreement reached before the Family Court Hearing Officer and specifically complains that Wife had, to date, failed to comply with provision 7 of the transcript setting forth the parties' agreement which required Wife to pay Husband \$500.00 a month for 72 months with the first payment being due on October 15, 2010. The parties stipulated to the fact that Wife has not made any payments nor has Wife placed payments in an escrow account pending determination on her contention that there is no agreement without a signed comprehensive property settlement agreement. The parties stipulate, and the record reflects, that the purpose of the payments was for Wife to effectively buy Husband out of the marital residence, located at 61 North Main Street, Montgomery, PA.

The Court hereby finds that Wife is in breach of the agreement for her failure to make said payments to husband. Therefore, Wife shall pay Husband \$4,500.00 by June 15, 2011, the amount that Husband should have received by that date. If Wife fails to pay Husband \$4,500.00 by June 15, 2011 then, pursuant to the parties' agreement, the real estate located at 61 North Main Street, Montgomery, PA shall be immediately listed for sale. Wife is further directed that, pursuant to the parties' agreement, she must make good on her \$500.00 per month payments to Husband by the 15th of each month

thereafter, and in the event that she is thirty days late in her payment, the real estate shall be immediately listed for sale.

Husband also requests that, pursuant to their agreement to finalize the divorce, this Court direct Wife to file an Affidavit of Consent. This Court need not look to the provision of the agreement reached before the Family Court Hearing Officer regarding this issue because, regardless, the Court will not direct the signing and filing of an Affidavit of Consent to the Entry of a Divorce Decree. To do so would require the filing of what would in effect be a false affidavit. *Norris v. Norris*, 10 Pa. D. & C.4th 207 (1991). “The purpose of the affidavit of consent is to evidence a present intention by the party to finalize the divorce. The court cannot order a party to acquire that intention, and, therefore, cannot order a party to sign the affidavit. *Armstrong v. Armstrong*, 34 D.&C. 3d 571, 572-3 (1985), quoting, *Norris v. Norris*, 10 Pa. D. & C.4th 207 at 213 (1991). See also *Brems v. Brems*, 21 D.&C. 3d 646 (1982); *Rueckert v. Rueckert*, 20 D.&C. 3d 191 (1981); *Way v. Way*, 35 D.&C. 3d 653 (1985); *Burk v. Burk*, 38 D.&C. 3d 558 (1986); and *Mellott v. Mellott*, 1 D.&C. 4th 618 (1988). In prior decisions, this Court has noted this and further explained its reasoning in denying a request to require a party to file an Affidavit of Consent:

The Court cannot and will not compel Wife, the defendant in this divorce action, to sign and file an affidavit of consent... The legislature has included a provision in the Divorce Code, 23 § 3301(d) formally 201(c), whereby a party may unilaterally obtain a divorce without the consent of, and, indeed, even over the objection of, the other party, even where the other party is in no way at fault. The condition precedent to such unilateral action is that the parties shall have lived separate and apart for a period of at least two years. Until that condition is met, or some other provision of the Divorce Code somehow becomes applicable, there would not appear to

be any basis upon which this court may grant a divorce unless and until defendant voluntarily files her affidavit of consent.

Clark v. Clark, Opinion and Order of February 1, 2010, Lycoming County Court of Common Pleas, 09-21, 536.

Therefore, Husband's Petition is hereby GRANTED in part in that Wife shall pay \$4,500.00 by June 15, 2011 and shall pay \$500.00 per month thereafter, and, upon Wife's non-payment, the residence shall immediately be listed for sale pursuant to the parties' agreement reached before the Family Court Hearing Officer. Husband's request that Wife be ordered to sign an Affidavit of Consent to the Entry of a Divorce Decree is hereby DENIED.

By the Court,

Joy Reynolds McCoy, Judge