

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

<b>KB,</b>		:	
	<b>Plaintiff</b>	:	
		:	<b>NO. 14-21,316</b>
<b>vs.</b>		:	
		:	
<b>KB,</b>		:	
	<b>Defendant</b>	:	

**OPINION AND ORDER**

AND NOW, this **22<sup>nd</sup>** day of **April, 2016**, before this Court are Wife's Exceptions filed on March 10, 2016, to the Family Court Order issued on February 23, 2016. Argument on the Exceptions was heard on April 15, 2016.

At issue is the date of the parties' separation. Husband asserts that the date of the separation occurred in August of 2013, following an argument after which, at the direction of Husband, Wife vacated the marital residence. Wife argues that their date of separation did not occur until at least September of 2014, when Husband actually filed for divorce, and possibly much later because the parties continued to have sex with each other until July of 2015. After a hearing held on February 9, 2016, the Family Court Hearing Officer, in a well-reasoned opinion, determined the date of separation to be August of 2013.

Counsel for Wife filed the following Exceptions:

1. Defendant believes that the Hearing Officer erred in making the finding of fact that "Wife claims that the final separation did not occur until July 18, 2015." On the contrary, Wife believes that the separation

occurred on September 25, 2014, the date Plaintiff filed the divorce complaint in the above referenced matter.

2. Defendant believes that the Hearing Officer erred in making the finding that the parties have not shared a residence since November, 2013. On the contrary, the testimony revealed that Plaintiff and Defendant attempted to share a residence in the spring of 2015.
3. Defendant believes the Hearing Officer erred in finding that Husband's filing of the divorce complaint in September 2014, a few days after he discovered that Wife had accepted an engagement ring from another man, does not show Husband's intent to maintain a marital relationship with her until September 2014.
4. Defendant believes the Hearing Officer erred in finding that she intentionally had sexual intercourse with her husband for the purpose of extending the length of their marriage and make it impossible for Husband to obtain a divorce from her before the 5 year period was over in May 2016. On the contrary, Defendant's behavior was consistent with that of a married woman. She wanted to have sex with her husband.
5. Defendant believes the Hearing Officer erred in making a finding that "the parties' sexual activity with one another has no bearing on whether the parties considered themselves reconciled."

6. Defendant believes that the Hearing Officer erred in making the finding that “Wife continued to engage in sexual activity with Husband because she wanted to do what she felt necessary to ensure her \$20,000, not because she intended to be married to Husband.”
7. Defendant believes that the Hearing Officer erred in making a finding that both parties did not reconcile.
8. Defendant believes the Hearing Officer erred in making a finding that the date of separation of the parties is August 23, 2013.

All of Wife’s Exceptions relate to the ultimate issue, which is the date of separation; therefore, the Court will address them as a whole, rather than individually. After careful review of the Transcript of the Master’s Hearing, the Order dated February 11, 2016, and the argument presented by counsel for the parties, the Court finds that the date of separation is October 10, 2013.

Husband testified that in August of 2013, the parties had an argument over the telephone and he ordered Wife to vacate the marital residence (N.T. pg. 4-5). Wife confirmed that the date of the argument was August 23, 2013 (N.T. pg. 23). In October of 2013, Husband sent Wife a letter via certified mail stating:

“Please accept this letter as formal notice that the Prenuptial Agreement signed by you . . . is hereby put into full force effect on this date of October 10, 2013. This letter shall serve as formal notice that divorce proceedings have begun on this date of October 10, 2013.”

Wife moved into her own apartment in November of 2013 (N.T. pg. 24). Since then, the parties have not cohabitated or comingled their finances (N.T. pg. 7, 35).

Wife contends that, because the parties continued to have sex with one another from the time Wife left the marital residence, they were reconciled and that this is indicative of Husband's intent to maintain a marital relationship with her until September 2014, when he filed the divorce complaint. This Court notes, as did the Hearing Officer, that Husband and Wife had sex before the marriage, during the marriage, after Wife no longer resided in the marital home, and even after Husband filed the divorce complaint. Both parties testified to having relationships with other individuals prior to Husband filing the divorce complaint, including an engagement by Wife to another man in which her new fiancé traded in the wedding band given to Wife by Husband in order to purchase the new engagement ring. (N.T. pg. 10, 25). Both Husband and Wife testified that Husband consistently told Wife he intended to follow through with the divorce, and if in the future they attempted to reconcile, they would have to "start over." (N.T. pg. 13, 28). The fact that the parties continued to have sexual relations with one another is not indicative that they intended to be married to each other. In fact, the behavior of both spouses is quite contrary to two people who intend to be married to each other.

The Hearing Officer's Order of February 11, 2016, was well-reasoned, and this Court finds no errors or abuse of discretion in the factual findings that are the subject of Wife's first seven Exceptions. The Hearing Officer found that the date of separation was August 23, 2013. This Court finds that the testimony does not support that Husband evidenced the intent to live separate and apart at that time.

The Court is satisfied that the date Husband sent notice, in writing, of his intention to initiate divorce proceedings is the commencement of the two-year period of living separate and apart necessary for the entry of a divorce under 23 Pa. C.S. § 3301(d).

Therefore, Wife's Exceptions #1 - #7 are DENIED. Wife's Exception #8 is GRANTED to the extent that this Court finds that the Hearing Officer erred in finding that the date of separation is August 23, 2013. The separation date of the parties is October 10, 2013.

By the Court,

Joy Reynolds McCoy, Judge