

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KATELYN L. POPHAL,	:	22-DR-00303
Plaintiff	:	
vs.	:	
	:	
COLBY T. POPHAL,	:	
Defendant	:	

**ORDER**

AND NOW, this 30<sup>th</sup> day of March 2023, the Court issues the following Order addressing Defendant's Preliminary Objections to Plaintiff's Complaint for Child Support and Spousal Support.

***BACKGROUND***

On September 22, 2016, Plaintiff filed a Complaint for Child Support and Spousal Support, averring that Plaintiff and Defendant married on February 11, 2016 and separated on September 13, 2022. The Complaint indicated that the parties have one child, BLP, who was six years old when Plaintiff filed the Complaint. The Court scheduled a conference on the Complaint for October 31, 2022 before Family Court Hearing Officer Dana Jacques, Esq.

On October 28, 2022, Defendant filed Preliminary Objections to the Complaint, discussed in detail below. On October 31, 2022, the parties appeared represented by counsel before Hearing Office Jacques and requested time to research the issue raised in Defendant's Preliminary Objections. On November 1,

2022, Hearing Officer Jacques entered an Order scheduling argument on Defendant's Preliminary Objections for December 6, 2022 before this Court. The November 1, 2022 Order<sup>1</sup> indicated that the parties agreed that if Defendant was not obligated to pay spousal support, his monthly child support would be \$749.52; the Order detailed the calculations resulting in this obligation. Hearing Master Jacques stated that "[i]n the event [Defendant's] Preliminary Objections are denied, the spousal support is calculated to be \$851.30 per month and the child support would be \$606.84 per month."<sup>2</sup>

### ***PRELIMINARY OBJECTIONS***

The single issue raised in Defendant's Preliminary Objections is that the parties' marriage license application expired prior to the date of their marriage. Therefore, Defendant contends, the parties were never married, and Defendant has no obligation to pay spousal support to Plaintiff.

Defendant first notes that Pennsylvania marriage licenses are valid for at most sixty days.<sup>3</sup> The Clerk of the Orphans' Court of Lycoming County, Defendant contends, issued the parties' marriage license on December 14, 2015, and therefore the license was valid through February 12, 2016. Defendant claims that the parties' date of marriage was February 13, 2016 – the day after the marriage license expired

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<sup>1</sup> This Court approved this Order on November 2, 2022, and it was filed of record on November 7, 2022.

<sup>2</sup> The Order did not detail the calculations resulting in these obligations.

<sup>3</sup> 23 Pa. C.S.A. § 1310. This opinion discusses the law relating to marriage licenses in detail below.

– rather than February 11, 2016 as pled in the Complaint.<sup>4</sup> Defendant further contends that the “alleged certification of the alleged marriage purportedly signed by James P. Calvert, ‘Minister of the Gospel,’” listing February 11, 2016 as the parties date of marriage, is incorrect, and avers that “[t]he ‘signature’ of Mr. Calvert” on the marriage certificate is “inauthentic.” Ultimately, Defendant suggests that Plaintiff back-dated the duplicate marriage certificate returned to the County<sup>5</sup> to falsely list a date of marriage within the sixty-day time limit. Defendant attached copies of the parties’ marriage license application – listing the “date license issued” as “12-14-2015” – and a certified duplicate marriage certificate as exhibits to his Preliminary Objections.

On November 21, 2022, Plaintiff filed an Answer to Defendant’s Preliminary Objections, agreeing that “the [parties’] marriage ceremony occurred on February 13, 2016” but contending that “Plaintiff had no part in the execution of the marriage certificate completed by James Calvert.” Plaintiff further avers that “Mr. Calvert signed the marriage certificate immediately following the ceremony and had no part in submitting same to the Register and Recorder’s Office of Lycoming County.” Ultimately, Plaintiff agrees with Defendant that the parties’ marriage license expired

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<sup>4</sup> Defendant notes that February 11, 2016 was a Thursday and February 13, 2016 was a Saturday.

<sup>5</sup> The certification from the Lycoming County Register & Recorders’ Office states: “The certified (**DUPLICATE**) copy attached is what was found as the Lycoming County record corresponding with a Marriage License issued (#106428). The (**DUPLICATE**) is what is returned by the Officiant after the marriage has been performed so that the marriage is able to be recorded ‘for the record.’” (Emphasis in original.)

on February 12, 2016, the day before their marriage ceremony, but contends that “the marriage is still valid as no action for annulment as a voidable marriage was commenced within 60 days of the ceremony.”

The Court heard argument from the parties on December 6, 2022. The parties continued to dispute who or what caused their marriage certificate to reflect the incorrect date. They agreed, however, that their marriage ceremony took place on February 13, 2016, one day after their marriage license expired, and that the officiant was not at fault for the incorrect date on the marriage certificate. Ultimately, the parties agreed that the question before the Court is whether a marriage that takes place after the expiration of the marriage license is void ab initio or merely voidable through timely action of the parties.

Defendant argued that the absence of a valid marriage license rendered the parties’ marriage void. Defendant cited *DeMedio v. DeMedio*,<sup>6</sup> a Superior Court of Pennsylvania case from 1969, in support of this proposition. Defendant contended that there was no need for any party to take any action to cancel the marriage because, legally, the parties were never married.

Plaintiff responded that the parties were indeed married; though the marriage was voidable, Plaintiff argues, neither party took any such action to invalidate the marriage within sixty days. Thus, Plaintiff contends, Defendant has lost his

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<sup>6</sup> *DeMedio v. DeMedio*, 257 A.2d 290 (Pa. Super. 1969).

opportunity to challenge the marriage's validity based on the expiration of the parties' marriage license. Plaintiff argued that *DeMedio*, which does not deal with this precise issue, is not particularly relevant, and suggested that cases from other states have addressed more analogous issues.

## **ANALYSIS**

### **A. Applicable Law**

Marriage in Pennsylvania is governed by Title 23, Part II of the Domestic Relations Code, known as the Marriage Law. Under the Marriage Law, persons who wish to be married must obtain a marriage license, which “authorize[s] a marriage ceremony to be performed” in the Commonwealth of Pennsylvania.<sup>7</sup> To obtain a marriage license, parties must provide a marriage license application containing certain information about the parties' identities and family histories.<sup>8</sup> Marriage licenses are unavailable to minors, incompetent persons, or couples sharing certain degrees of consanguinity.<sup>9</sup> An application for a marriage license is “immediately filed and docketed as [a] public record[.]”<sup>10</sup>

Section 1310 of the Marriage Law states that “[t]he marriage license shall not be valid for a longer period than 60 days from the date of issue....”<sup>11</sup> A marriage license is issued with two marriage certificates – “one marked original and one

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<sup>7</sup> 23 Pa. C.S.A. § 1301.

<sup>8</sup> 23 Pa. C.S.A. § 1302.

<sup>9</sup> 23 Pa. C.S.A. § 1304.

<sup>10</sup> 23 Pa. C.S.A. § 1309.

<sup>11</sup> 23 Pa. C.S.A. § 1310.

marked duplicate” – upon which the officiant certifies the date and location of the marriage and the identity of the parties.<sup>12</sup> The Marriage Law permits members of various classes to “solemnize marriages between persons that produce a marriage license,” and provides that “[n]o person or religious organization qualified to perform marriages shall officiate at a marriage ceremony without the parties having obtained a marriage license issued under this part.”<sup>13</sup> The officiant must provide the original marriage certificate to the parties and return the duplicate to the court that issued the marriage license within ten days of the marriage.<sup>14</sup>

Although Chapter 33 of the Domestic Relations Code is known as the Divorce Code, it governs not just divorces but all dissolutions of marriage. Section 3304(a) of the Divorce Code enumerates four circumstances in which marriages are void “[w]here there has been no confirmation by cohabitation following the removal of an impediment”:

- (1) “Where either party at the time of such marriage had an existing spouse” and the prior marriage had not been terminated or the spouse declared presumed deceased;

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<sup>12</sup> 23 Pa. C.S.A. § 1501.

<sup>13</sup> 23 Pa. C.S.A. § 1503(b), (c). Various states have statutes explicitly addressing – and often criminalizing – the performance of a marriage ceremony pursuant to an expired marriage license. *See, e.g.*, Tex. Fam. Code § 2.207 (“A person who is to conduct a marriage ceremony shall determine whether the license has expired... A person who conducts a marriage ceremony after the marriage license has expired commits... a misdemeanor punishable by a fine of not less than \$200 and not more than \$500.”) The Court has not located, and neither party has provided, a Pennsylvania statute criminalizing or otherwise addressing this situation.

<sup>14</sup> 23 Pa. C.S.A. § 1504.

(2) "Where the parties to such marriage are related within the degrees of consanguinity prohibited by" the Divorce Code;

(3) "Where either party to such marriage... lacked capacity to consent or did not intend to consent to the marriage" for reasons other than intoxication; and

(4) "Where either party to a purported common-law marriage was under 18 years of age."

A void marriage may be annulled in an action brought by either party for that purpose<sup>15</sup> or have "its invalidity... declared in any collateral proceeding."<sup>16</sup>

Section 3305(a) of the Divorce Code enumerates five circumstances in which a marriage is *voidable* rather than void:

(1) "Where either party to the marriage was under 16 years of age unless the marriage was expressly authorized by the court";

(2) "Where either party was 16 or 17 years of age," lacked parental consent, "has not subsequently ratified the marriage upon reaching 18 years of age," and "an action for annulment is commenced within 60 days after the marriage ceremony";

(3) "Where either party to the marriage was under the influence of alcohol or drugs and an action for annulment is commenced within 60 days after the marriage ceremony";

(4) "Where either party to the marriage was at the time [and remains] naturally and incurably impotent" and the other party did not know this prior to the marriage; and

(5) "Where one party was induced to enter the marriage due to fraud, duress, coercion or force attributable to the other party and there has been no subsequent voluntary cohabitation after knowledge of the fraud or release from the effects of fraud, duress, coercion or force."

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<sup>15</sup> 23 Pa. C.S.A. § 3303(b).

<sup>16</sup> 23 Pa. C.S.A. § 3304(b).

Unlike a void marriage, a voidable marriage is valid until either party to the marriage obtains a decree of annulment from the court; furthermore, “[t]he validity of a voidable marriage shall not be subject to attack or question by any person if it is subsequently confirmed by the parties to the marriage or if either party has died.”<sup>17</sup> Notably, no provision of the Marriage Law or Divorce Code explicitly addresses attempts to marry after a marriage license has expired.

As noted above, Defendant cited *DeMedio* for its discussion of the treatment of void and voidable marriage.<sup>18</sup> In *DeMedio*, the Superior Court reviewed a decree of annulment, which husband sought and to which wife objected, on the grounds that wife had been mentally incompetent to enter into the marriage.<sup>19</sup> The Court first broadly noted that the predecessors to the Marriage Law and Divorce Code,<sup>20</sup> unlike most states’ marriage schemes, contained no mechanism by which to render a void marriage valid; whereas parties to a void marriage in many states could ratify that marriage by a subsequent period of voluntary cohabitation, the Superior Court held that under Pennsylvania’s prior marriage scheme “neither estoppel, unclean hands, laches, or ratification [could] make valid a defective marriage ceremony.”<sup>21</sup>

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<sup>17</sup> 23 Pa. C.S.A. 3305(b).

<sup>18</sup> *DeMedio*, 257 A.2d 290.

<sup>19</sup> *Id.* at 292.

<sup>20</sup> *DeMedio* was decided over two decades before the current Marriage Law came into effect in 1991. The provisions of the prior law relevant to the issue in *DeMedio* are not materially different from those contained in the current Marriage Law.

<sup>21</sup> *DeMedio*, 257 A.2d at 293.



The *DeMedio* Court ultimately overturned the decree of annulment, concluding that wife's psychiatric treatment in July of 1947 was insufficient to demonstrate that she was incompetent to marry in September of 1947.<sup>22</sup> The Court rejected husband's alternative argument that even if wife was not so mentally ill as to be incompetent, she falsely swore on the marriage license application that she was of sound mind, rendering the marriage license fraudulent and the marriage void.<sup>23</sup> The Supreme Court stated:

"Plaintiff further claimed that the marriage was void by reason of defendant's fraudulent swearing that she was of sound mind when obtaining the marriage license. Even if such false swearing had been proved, it would be immaterial to the validity of an otherwise valid marriage contract. The validity of a marriage is not affected by the fact that the marriage license may have been so fraudulently obtained. In *Johnson v. Johnson*, the [Minnesota] court, in applying Iowa law, held that the marriage was not affected by the bridegroom's false swearing that he was not under guardianship as an incompetent. In [*Reeve's Estate*], the [Texas] court, in applying Kansas law, held that the marriage was not affected by the applicant's false representation that he had never been afflicted with insanity. Pennsylvania law also follows the rule that the marriage licensure act is directory only and not mandatory and therefore a valid marriage can be contracted without such license or pursuant to a defective or improperly obtained license."<sup>24</sup>

In 1983, the Supreme Court of Pennsylvania decided *Diamond v. Diamond* which revisited the issues raised in *DeMedio*.<sup>25</sup> In *Diamond*, husband obtained a document titled "Final Decree of Divorce" from an Alabama attorney in 1969,

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<sup>22</sup> *Id.* at 297-98.

<sup>23</sup> *Id.* at 301-02.

<sup>24</sup> *Id.* (internal citations omitted).

<sup>25</sup> *Diamond v. Diamond*, 461 A.2d 1227 (Pa. 1983).

ostensibly terminating his first marriage.<sup>26</sup> Husband remarried in 1970, believing – as did both his first and second wife – that the Alabama document was a valid divorce decree.<sup>27</sup> Husband filed for divorce from his second marriage in 1973; in 1979, with the divorce action still pending, husband raised for the first time a claim that the Alabama document was invalid.<sup>28</sup> Husband argued that because the Alabama document was invalid he was still married to his first wife when he and his second wife purported to marry, and therefore the second marriage was void.<sup>29</sup>

The court of common pleas, citing *DeMedio*, held that neither the parties' belief that the Alabama document was valid, voluntary cohabitation, nor husband's ten-year delay in contesting the validity of the document gave the Court discretion to refuse an annulment on equitable grounds.<sup>30</sup> Reversing, the Supreme Court of Pennsylvania explained:

“[T]he Divorce Law does not bar the presentation of equitable defenses in an annulment proceeding. [Although] ‘either party’ to a marriage [may] apply for an annulment, whereas prior law permitted application only by an ‘innocent or injured party’... it is clear that the Legislature did not intend the right to apply for an annulment to be synonymous with a right to obtain one... *DeMedio*'s interpretation of [the Divorce Law] is contradicted by a long line of Pennsylvania cases which recognize the principle... that a ‘person may be precluded from attacking the validity of a foreign divorce decree if, under the circumstances, it would be inequitable for him to do so.’”<sup>31</sup>

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<sup>26</sup> *Id.* at 1227.

<sup>27</sup> *Id.* at 1228.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 1228-29.

Thus, the Court held, Husband's delay of over a decade in challenging the Alabama document, when he, his first wife, and his second wife had each relied on it, precluded him on equitable grounds from contesting the Alabama document's validity or obtaining an annulment on those grounds.

### **ANALYSIS**

The plain text of the Marriage Law and Divorce Act is indeterminate as to the dispute between the parties. Section 1301 of the Marriage Law describes as the "general rule" the directive that "[n]o person shall be joined in marriage in this Commonwealth until a marriage license has been obtained." Neither the Marriage Law nor Divorce Act, however, specify the consequences – as to the parties, officiant, or the marriage itself – of purporting to marry without a valid marriage license.<sup>32</sup> The Divorce Code lists nine scenarios that render a marriage either void or voidable; none include a marriage ceremony performed without any license, let alone a recently expired one.<sup>33</sup> The question before the Court is therefore whether any marriage entered into between parties possessing an expired marriage license is categorically invalid. The Court concludes that it is not.

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<sup>32</sup> See note 13, *supra*,

<sup>33</sup> It is possible that the legislature saw no need to specify this scenario in Sections 3304 or 3305 of the Divorce Code because they viewed the "general rule" in Section 1301 as sufficient to invalidate such marriages. The fact that this directive is labeled the *general* rule, however, can also be reasonably understood to imply the existence of exceptions to the marriage license requirement.

At the outset, the omission of an expired marriage license from the factual scenarios rendering a marriage either void or voidable would be curious if the legislature intended such a scenario to render such marriages legal nullities. There are few legal situations that threaten such severe consequences as a shared false belief that parties are married. Accordingly, it seems unlikely that the Divorce Code would list some, but not all, scenarios that render a marriage void ab initio while remaining silent regarding a scenario as foreseeable as the inadvertent expiration of the marriage license.

The plain text of various other sections of the Marriage Law and Divorce Code support that reasoning. Even assuming the “general rule” in Section 1301(a) does not permit exceptions, it merely requires that “a marriage license [must] be obtained” prior to any marriage. Read literally, this “general rule” does not condition the ability of persons to marry on the present existence of a *valid* marriage license; rather, it conditions the ability of persons to marry on the past issuance of a marriage license.

It is not difficult to imagine why the legislature might make the *issuance* of a marriage license mandatory but the timeliness of the marriage directory. Just two subsections after the general rule requiring the issuance of a marriage license, Section 1301(c) states that no license may issue until the “the person issuing the license [is] satisfied as to the identity of both of the applicants.” Section 1304 requires a person issuing a marriage license to ascertain whether the parties are

minors, incompetent, or of a certain degree of consanguinity. Each of these characteristics – identity, minority, incompetency, and consanguinity – is determined at the time the marriage license is issued. Thus, the marriage license requirement seems to serve important public policy goals of preventing certain parties from marrying, in ways that the 60-day period of validity for marriage licenses does not affect.

This interpretation of Pennsylvania’s marriage and divorce scheme is in harmony with the Superior Court’s acknowledgment in *DeMedio* that “the marriage licensure act is directory only and not mandatory and therefore a valid marriage can be contracted without such license or pursuant to a defective or improperly obtained license.”<sup>34</sup>

*DeMedio*’s explanation that defects in marriage licenses are not fatal to a marriage is augmented by *Diamond*, which approves of a policy of allowing equitable exceptions to issues concerning the validity of marriages unless clearly specified. A party to a marriage that is *void* – that is, a marriage that never existed due to some fatal defect – could sit for years upon his discovery that the marriage never existed, raising the issue not at his earliest opportunity but only when it

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<sup>34</sup> As acknowledged above, the Superior Court decided *DeMedio* in 1969, twenty-two years before the enactment of the current Marriage Law and Divorce Code. However, at least with regard to those issues raised in *DeMedio* and at present, the current version of the statutory law does not materially differ from that applicable in 1969. There is a presumption that when the legislature replaces a statute with one that is materially similar, it imports the body of common law applicable to the prior statute to inform the proper interpretation of the new statute. Here, the pronouncement in *DeMedio* carries forward in this manner.

becomes expedient to do so. This sort of gamesmanship is frowned upon in the law, and discouraged unless necessary to vindicate some powerful countervailing interest. It is clear from both the statutory text and case law governing marriage in Pennsylvania that the desire to prevent incompetent persons and close relatives from marrying is such a countervailing interest, whereas the desire to ensure the parties marry within sixty days after the issuance of their marriage license is not.

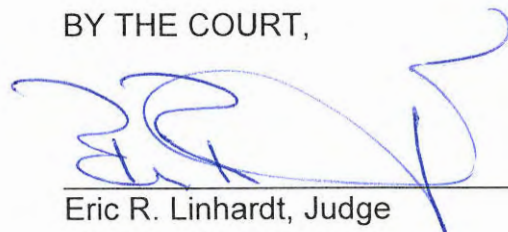
**ORDER**

For the reasons stated above, the Court concludes that the marriage of the parties on the sixty-first day after the issuance of their marriage license – one day after the license expired – does not render their marriage void. Thus, Defendant's Preliminary Objections to Plaintiff's Complaint are OVERRULED.

Pursuant to the November 1, 2022 Order, because the Court has overruled Defendant's Preliminary Objections, his spousal support obligation is \$851.30 and his child support obligation is \$606.84. The Court directs Hearing Master Dana Jacques, Esq. to issue an Amended Order for this Court's review detailing the calculation of those obligations.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Jason Lepley, Esq.  
Bradley Hillman, Esq.  
Hearing Master Dana Jacques, Esq.  
Gary Weber, Esq. (Lycoming Reporter)  
Lycoming County Domestic Relations Office