

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

CYNTHIA H. LIZZIO,	:	
Plaintiff/Appellee	:	
	:	No. 07-3022
vs.	:	
	:	
	:	
SALVATORE M. LIZZIO,	:	
Defendant/Appellant	:	

Melissa Pavlack, Esquire
James R. Nanovic, Esquire

Attorney for Plaintiff/Appellee
Attorney for Defendant/Appellants

MEMORANDUM OPINION¹

Matika, J. - April____, 2012

On August 29, 2007, Plaintiff filed a complaint in divorce which included claims for not only divorce, but also equitable distribution, alimony pendent lite, post-divorce alimony, counsel fees, costs and expenses. A counterclaim for alimony, alimony pendent lite, counsel fees, costs and expense was filed by the Defendant on May 22, 2009. On August 26, 2009, a Master was appointed to address and attempt to resolve the issues raised in the pleadings. Several pre-trial conferences were held, one which occurred on March 7, 2011, that purportedly resulted in a resolution of all the issues. In

¹ This Opinion is prepared and filed in accordance with Pa.R.A.P., Rule 1925(b).

understanding that the parties arrived at an agreement, the Divorce Master did not conduct a hearing and consequently no testimony was ever taken nor any record created evidencing that the parties had come to an agreement in resolving the issues before the Master.

Notwithstanding, no report was filed by the Master until February 8, 2012, said report incorporating the purported agreement of the parties on all issues. By simply filing the report, and having the proposed divorce decree immediately forwarded to the Court, the Master did not notice the parties of their right to file exceptions to the proposed report and decree. As noted in his 1925(b) statement, following the entry of the Divorce Decree, Defendant objected to the decree claiming that an agreement was never reached by the parties, and specifically that he never agreed as alleged therein. Defendant further claimed a Master's Report was never prepared from which he could file exceptions.² According to Defendant, had he been given this opportunity, he would have raised the procedural and substantive issues presented in the 1925(b) statement.

Under Pennsylvania Rules of Civil Procedure, when a

² Defendant is incorrect in this assertion. The docket entries in this case would suggest that the Report which was prepared was never sent to the parties. Thus, the basis for Defendant believing one was not prepared.

divorce case has been heard by a Master, a party to the case has the right to file exceptions to all or part of the Master's report. *Pa.R.C.P.* 1920.55-2. A party must raise exceptions within the certain prescribed time period or such objections are deemed waived.³

In the case before us, since no notice was ever given to the parties of their right to file exceptions to the Master's report, it was an error for the court to grant the divorce decree.⁴ Therefore, we ask the Superior Court to remand this case back to the Trial Court with instructions

³ Pennsylvania Rule of Civil Procedure 1920.55-2 states in pertinent part:

- (a) After conclusion of the hearing, the master shall:
 - (1) file the record and the report within;
 - (i) twenty days in uncontested actions or;
 - (ii) thirty days after the receipt of the transcript by the master in contested actions; and
 - (2) immediately serve upon counsel for each party, or, if unrepresented, upon the party, a copy of the report and recommendation and written notice of the right to file exceptions.
- (b) Within twenty days of the date of receipt or the date of mailing of the master's report and recommendation, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final decree, leave is granted to file exceptions raising those matters.
- (c) If exceptions are filed, any other party may file exceptions within twenty days of the date of service of the original exceptions. The court shall hear argument on the exceptions and enter a final decree.

Pa. R. Civ. P. 1920.55-2

⁴ Defendant also alleges that he would have challenge the existence of the purported agreement, but did not have the right to do so because of his inability to file exceptions due to the lack of compliance with the notice requirements as set forth in *Pa.R.C.P.* 1920.55-2.

to provide notice to the parties of the Master's report and their right to file exceptions to that report. In accordance with *Pa.R.C.P. 1920.55-2(b)*, if exceptions are then filed, the case would proceed accordingly.

BY THE COURT:

Joseph J. Matika, J.