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

REBECCA A. URBAN DIETER, Plaintiff	:	
vs.	:	NO. 13-0436
GARY G. DIETER, Defendant	:	

CIVIL LAW - Domestic Relations - Divorce Complaint – Count for APL - Dismissal of APL Claim After Transfer to Domestic Relations Office - Dismissal Erroneously Based Upon Determination that the Parties Were Not Married – Effect on Divorce Action – Application of Collateral Estoppel

1. The failure to file a certificate of marriage after the parties were legally married in Texas under the authority of a valid marriage license did not void the marriage under Texas law or transform the ceremonial marriage which was held into an informal marriage.

2. Wife's claim for alimony pendente lite contained in her divorce complaint was erroneously dismissed after hearing before the domestic relations hearing officer on the basis that the parties were not married. The hearing officer incorrectly found that under Texas law the failure to file a certificate of marriage following a valid marriage ceremony required the marriage to be treated as an informal marriage, one whose occurrence is in question, and that because no legal proceeding to prove such a marriage was commenced within two years of the parties' separation, as is required under Texas law for an informal marriage, the parties were rebuttably presumed not to have married. In consequence of this determination, the wife's claim for alimony pendente lite was dismissed without prejudice.

3. The doctrine of collateral estoppel operates to prevent a question of law or issue of fact which has previously been litigated and fully determined in a court of competent jurisdiction from being relitigated in a subsequent suit.

4. For collateral estoppel to apply, five elements must be established: (1) the issue decided in the prior case was identical to the issue now presented; (2) a final judgment

on the merits was entered; (3) the party against whom the prior decision is raised as a binding determination in the current proceedings was a party or in privity with a party in the prior case; (4) the party against whom the issue was decided had a full and fair opportunity to litigate the issue in the prior case; and (5) the determination of the issue in the prior case was essential to the judgment reached.

5. A claim for interim relief under Section 3702 of the Divorce Code, which encompasses a claim for alimony pendente lite, is interlocutory and thus not reviewable until final disposition of the case.

6. Because the dismissal of wife's claim for alimony pendente lite was interlocutory and the order confirming this dismissal expressly stated it was without prejudice, the critical finding which underlaid this dismissal - that no valid marriage existed between the parties - was not part of a final judgment on the merits and could not form the basis for dismissing wife's complaint in divorce under the doctrine of collateral estoppel.

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GARY G. DIETER, Defendant	:	

Joseph G. Greco, Jr, Esquire — Counsel for Plaintiff
Arley L. Kemmerer, Esquire — Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – May 22, 2015

In these divorce proceedings, the Plaintiff, Rebecca A. Urban Dieter, seeks to end a marriage which the Defendant, Gary G. Dieter, contends never began. A hearing to address this fundamental question - whether the parties were married – was held on November 24, 2014. At this hearing two issues were raised which we address below: (1) did the parties celebrate a legally binding marriage in Texas on July 13, 2002, and (2) is the Plaintiff estopped from relitigating this first issue by a previous order dismissing Plaintiff's claim for alimony *pendente lite* on the basis that the parties were not married.

PROCEDURAL AND FACTUAL BACKGROUND

On July 13, 2002, the parties exchanged wedding vows at a marriage ceremony performed by a minister from Woodlands, Texas. (N.T. pp.5, 28-29, 36, 40, 51, 71-72). Although a marriage

license was obtained from the Harris County Clerk's office in Houston, Texas for this marriage, no marriage certificate was subsequently filed with the State to confirm that the marriage had been performed. Plaintiff testified that the minister who performed the ceremony was to file a marriage certificate but failed to do so, telling the Plaintiff shortly after the wedding that he had lost the paperwork. (N.T., pp.73-74).

Both before and after the marriage ceremony, the parties cohabited with one another in Texas. The parties began living together in 2000 and separated in 2008. (N.T., pp.4, 8, 27). During this time, Plaintiff gave birth to the parties' son on October 24, 2007.

Although the parties have at times held themselves out as husband and wife since the marriage ceremony, they have not been consistent in this regard. The parties filed joint state and federal income tax returns for the years 2002 through 2006, but as single persons since then. (N.T., pp.12, 35, 50, 52-54, 87-88). In addition, Defendant listed Plaintiff as his wife on employer provided health insurance for the years 2000 through 2008, and in 2013, the Plaintiff named herself as beneficiary on pension benefits Defendant was to receive from his union. (N.T., pp.32-34, 46, 75). However, in February 2011 Plaintiff applied for welfare benefits in Pennsylvania listing her marital status as single and also told a neighbor in 2002 that she was

not married to Defendant. Further, since 2002, Plaintiff has at various times used Urban, Dieter, and Urban-Dieter as her surname. (N.T., pp.5-6, 85-87, 96, 99).

Soon after the parties' separation in 2008, Defendant moved to Pennsylvania with the parties' son, and Plaintiff remained in Texas. (N.T., p.10). In December 2010, Plaintiff also moved to Pennsylvania where she at first lived with Defendant, but moved into separate housing after approximately two months. (N.T., pp.9-10, 47-48, 80).

On March 8, 2013, Plaintiff filed a complaint for divorce against Defendant wherein she included a claim, *inter alia*, for alimony *pendente lite*. This claim for alimony was referred to a hearing officer, who, following a hearing, filed a report on December 16, 2013, in the Domestic Relations Office. In this report, the Hearing Officer determined that because there existed no record of the parties' marriage in Texas, a determination first had to be made whether the parties were legally married. In making this determination, the Hearing Officer relied upon Section 2.401 (a)(2) of the Texas Family Code which concerns proof of informal marriages.[1] As relevant

[1] As affects these proceedings, Section 2.401 of the Texas Family Code entitled "Proof of Informal Marriage" provides, in relevant part, as follows:

> (a) In a judicial, administrative, or other proceeding, the marriage of a man and woman may be proved by evidence that:

to these proceedings, this Section requires that an informal marriage be proven in a judicial, administrative, or other proceeding, by evidence that "the man and woman agreed to be married and after the agreement they lived together in [Texas] as husband and wife and there represented to others that they were married."

Finding that there was ample evidence that the requirements of Section 2.401 (a)(2) were met but that because a proceeding to prove the existence of this marriage had not been commenced within two years of the date on which the parties separated, the Hearing Officer concluded he was constrained by the statutory presumption set forth in Section 2.401 (b) of the Texas Family Code to find that the parties were not married. Section 2.401 (b) states:

> If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that

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> (1) a declaration of their marriage has been signed as provided by this subchapter; or
>
> (2) the man and woman agreed to be married and after the agreement they lived together in this state as husband and wife and there represented to others that they were married.
>
> (b) If a proceeding in which a marriage is to be proved as provided by Subsection (a)(2) is not commenced before the second anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married.

TEX. FAM. CODE ANN. § 2.401 (a), (b).

> the parties did not enter into an agreement to be married.

Under this reasoning, the Hearing Officer found that no valid marriage existed between the parties and recommended that because the Defendant had no marital duty to support the Plaintiff, the claim for alimony *pendente lite* should be dismissed.

By Interim Order dated December 16, 2013, the Honorable Judge Joseph J. Matika of this court ordered, *inter alia*, that

> Since it is found that there was no valid marriage between the parties, and the Defendant has no duty to support another individual who is not the Defendant's spouse, the matter is dismissed.

(Defendant's Exhibit No. 3, Order dated 12/16/13). By Order dated January 8, 2014, and filed of record in the divorce proceedings, Judge Matika ordered that

> the complaint for support filed [ ] in the above-captioned matter is dismissed without prejudice due to: Since it is found that there was no valid marriage between the parties, and the Defendant has no duty to support another individual who is not the Defendant's spouse, the marriage is dismissed.
>
> This case is to close.

(Order dated 1/8/14).

DISCUSSION

Existence and Enforceability Of Marriage

Contrary to the Hearing Officer's findings and recommendation, we find the parties were married on July 13, 2002.[2] Not only was this ceremony performed by a religious minister and vows exchanged with family and friends of both parties in attendance, the marriage was performed under the authority of a valid license issued on June 26, 2002, by the State of Texas. (Defendant's Exhibit No. 1; N.T., p.73).[3] Pictures of the married couple on their wedding day and while on their honeymoon in Cancun, Mexico were also admitted into evidence. (Plaintiff's Exhibit Nos. 2, 4, 5; N.T., pp.43-46, 77-80). Under these circumstances, we find it inappropriate to characterize the parties' marriage as an informal one, and conclude Section 2.401 of the Texas Family Code is inapplicable.[4]

Although the minister, who presided over the parties' wedding was required under Texas law to record the relevant information on the marriage license and file it with the county clerk within thirty days of the ceremony - the failure to do so is a misdemeanor punishable by fine (TEX. FAM. CODE ANN. § 2.206

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[2] Defendant does not dispute that a marriage ceremony occurred, but challenges the validity of the marriage on the basis that no record of the marriage taking place was filed with the State of Texas. (Defendant's Answer and New Matter, paragraph 4).

[3] Under Texas law, a marriage license expires if a marriage ceremony has not been conducted within ninety days of its issuance. TEX. FAM. CODE ANN. § §2.201 (1997, amended 2013).

[4] Section 2.401 addresses the question of whether a legally cognizable marriage occurred. It does not address the question presented here, the effect of failing to file a certificate of marriage after a ceremonial marriage has taken place. Because we do not know what evidence was presented to the Hearing Officer, this is not intended in any way to be critical of the Hearing Officer's application of Section 2.401 to the evidence heard by him.

(1997)) - that this did not occur does not void the marriage. To the contrary, any marriage performed in Texas is presumed "to be valid unless expressly made void . . . or unless expressly made voidable by [statute] and annulled. . . ." TEX. FAM. CODE ANN. § 1.101 (1997). Thus, the "failure to comply with [marriage license] formalities does not render the marriage invalid unless a statute declares it so." In re Estate of Loveless, 64 S.W.3d 564, 576 (Tex.App. 2011). No such statute has been brought to our attention. *See also* Jenkins-Dyer v. Drayton, No. 2:13-CV-02489, 2014 WL 5307851, at *10 (D. Kan. Oct. 16, 2014) (holding that under Texas law a late filing of a marriage license (*i.e.*, more than thirty days after the marriage ceremony) was not grounds to declare the marriage void).

Having been formally married, notwithstanding any subsequent inconsistent conduct or statements to the contrary, absent a divorce decree or a judicial declaration negating the validity of this marriage, the marriage continues to the present time. There is no such thing as a common-law divorce under Texas law or under the law of this Commonwealth. Phillips v. The Dow Chemical Co., 186 S.W.3d 121, 127 (Tex.App. 2005) (citing Villegas v. Griffin Indus., 975 S.W.2d 745, 750 (Tex.

1998) and Claveria's Estate v. Claveria, 615 S.W.2d 164, 167 (Tex.App. 1981)); Starr v. Starr, 78 Pa.Super. 579, 584 (1921).[5]

COLLATERAL ESTOPPEL

Whether the Plaintiff is barred from now litigating the question of the parties' marriage because her claim for alimony *pendente lite* was dismissed on the basis that no marriage occurred is a more difficult question. Collateral estoppel, or issue preclusion, "operates to prevent a question of law or issue of fact which has once been litigated and fully determined in a court of competent jurisdiction from being relitigated in a subsequent suit." Catroppa v. Carlton, 998 A.2d 643, 646 (Pa.Super. 2010), *appeal denied*, 26 A.3d 1100 (Pa. 2011). For collateral estoppel to apply, the following five elements must be established:

1) The issue decided in the prior case is identical to the one presented in the later case;
2) There was a final judgment on the merits;
3) The party against whom the plea is asserted was a party or in privity with a party in the prior case;
4) The party or person privy to the party against whom the doctrine is asserted had a full and fair

[5] Defendant acknowledges in his Answer and New Matter to the divorce complaint that no prior actions for divorce or annulment of the parties' marriage have taken place. (Answer and New Matter, paragraph 5).

opportunity to litigate the issue in the prior proceeding; and

5) The determination in the prior proceeding was essential to the judgment.

Catroppa, 998 A.2d at 646.

In comparing the reasoning behind the dismissal of Plaintiff's claim for alimony *pendente lite* with the issue now being litigated - the existence of the parties' marriage – it is clear the issues are identical, the parties are identical, Plaintiff was provided a full and fair opportunity to litigate the issue,[6] and the determination that no marriage occurred was essential to dismissal of the claim for alimony *pendente lite*. Therefore, the decisive factor to applying collateral estoppel to Plaintiff's divorce action hinges on whether Judge Matika's Order of January 8, 2014, which accepted the Hearing Officer's recommendation to dismiss the claim for alimony *pendente lite*, was a final judgment on the merits.

In approaching this question, we first note that the claim for alimony *pendente lite* was a constituent part of Plaintiff's divorce complaint filed on March 8, 2013. In Fried v. Fried, 501 A.2d 211 (Pa. 1985), the Pennsylvania Supreme Court held that a claim for interim relief under Section 502 of the Divorce

[6] However, this statement is subject to the caveat noted in Footnote 8 below questioning whether Plaintiff was advised of her right to challenge the Interim Order of December 16, 2013.

Code, now 23 Pa.C.S.A. § 3702, "is interlocutory and thus not reviewable until final disposition of the case." *Id.* at 215. Section 3702 encompasses a claim for alimony *pendente lite*.

In support of his position that the ruling on Plaintiff's claim for alimony *pendente lite* was a final order, Defendant cites the Superior Court's decision in Vignola v. Vignola, 39 A.3d 390 (Pa.Super 2012), *appeal denied*, 50 A.3d 126 (Pa. 2012). In that case wife filed a complaint for child and spousal support against her husband. At the time, no complaint for divorce was pending, however, before her claim for spousal support was decided, wife filed a divorce complaint in a proceeding separate from her claim for spousal support.

Wife's claim for spousal support was premised on her assertion that the parties were married at common law. The existence of this marriage was disputed by husband and the hearing officer, to whom the support complaint was referred, determined that because the parties never had a ceremony where vows were exchanged, no common-law marriage existed, therefore, no legal basis existed to support wife's claim for spousal support. Accordingly, the hearing officer recommended that this claim be dismissed.

This recommendation was implicitly adopted by the trial court which issued an interim order requiring husband to pay child support only. Because wife failed to request a hearing *de*

novo or file exceptions to this interim order, the Superior Court, relying on Pa.R.C.P. No. 1910.12 (g), reasoned that the interim order disposing of wife's spousal support claim became final twenty days after its entry. Consequently, the Superior Court held that when she failed to appeal from this final order, the doctrine of collateral estoppel barred her claim in the divorce proceedings that the parties were married under common law.[7]

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[7] To be procedurally precise, the divorce action which wife first commenced after filing for support in Vignola was administratively purged for failure to proceed. Approximately six months after this divorce complaint was dismissed, wife filed a second divorce complaint. This second divorce action was commenced after the interim order on wife's claim for spousal support became final. In response to this second complaint, husband filed a petition for declaratory judgment which was granted on the basis that wife was collaterally estopped from asserting that the parties were married.

Husband's petition for declaratory judgment in Vignola was filed pursuant to 23 Pa.C.S.A. § 3306 (Proceedings to determine marital status). In the case *sub judice*, the issue was raised in Defendant's Answer and New Matter to the divorce complaint and subsequently discussed with the parties at a management conference held on August 18, 2014, whereupon the question was scheduled for hearing.

As to the procedure followed with respect to wife's claim for spousal support the Superior Court stated:

> With respect to actions for support, Pennsylvania Rule of Civil Procedure 1910.12 states that a hearing officer "shall receive evidence, hear argument and file with the court a report containing a recommendation with respect to the entry of an order of support." Pa.R.C.P. No. 1910.12(d). "The court, without hearing the parties, shall enter an interim order consistent with the proposed order of the hearing officer." Pa.R.C.P. No. 1910.12(e). Following the entry of an interim order, Rule 1910.12 provides:
>
> > (f) Within twenty days after the date of receipt or the date of mailing of the report by the hearing officer, 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 facts, 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 order, leave is granted to file exceptions raising those matters. If

Vignola is distinguishable in at least two material respects from the instant proceedings. First, in Vignola wife's claim for spousal support was filed as a separate action, whereas Plaintiff's claim for alimony *pendente lite* was joined in her divorce complaint but heard by the Hearing Officer in accordance with the procedure set forth in Pa.R.C.P. No. 1920.31 (a)(3). At no time was this claim severed from the divorce proceedings. Under Fried, the piecemeal appeal of interim orders in divorce proceedings and consequent protraction of litigation is not to be countenanced. Second, and perhaps more importantly, Judge Matika's Order of January 8, 2014, expressly stated it was without prejudice, thus signaling that no final decision on the merits was being made. *See* Robinson v. Trenton Dressed Poultry Company, 496 A.2d 1240, 1243 (Pa.Super. 1985) ("[A] dismissal without prejudice is not intended to be *res judicata* of the merits of the controversy."). When these two differences from Vignola are taken into account, we do not find the January 8, 2014 Order to be a final, appealable order, nor do we find the issue to have been waived.[8]

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exceptions are filed, any other party may file exceptions within twenty days of the date of service of the original exceptions.

(g) *If no exceptions are filed within the twenty-day period, the interim order shall constitute a final order.*

Vignola v. Vignola, 39 A.3d 390, 394 (Pa.Super. 2012) (emphasis in original).

[8] We believe it also worth noting that in Vignola, the interim order which adopted the hearing officer's recommendations contained a notice of the

CONCLUSION

In accordance with the foregoing, because we have found that the parties were married in a formal marriage ceremony held on July 13, 2002, and also found that the Plaintiff is not estopped from maintaining her action in divorce by reason of the Order dated January 8, 2014, dismissing her claim for alimony *pendente lite*, Defendant's request that we dismiss the divorce proceedings will be denied.

BY THE COURT:

_____
P.J.

parties' right to request a hearing *de novo*. 39 A.3d at 394. Likewise, Pa.R.C.P. No. 1910.12 (e) requires that the interim order provided to the parties in a claim for spousal support be accompanied by written notice of the parties' right, "within twenty days after the date of receipt or the date of mailing of the order, whichever occurs first, to file with the domestic relations section written exceptions to the report of the hearing officer and interim order." There is no indication in the record before us that Plaintiff was advised of her right to challenge the December 16, 2013, Interim Order, and Plaintiff contends in her brief opposing dismissal that she never received this notice.