

App.1a

**ORDER OF THE SUPREME COURT OF
PENNSYLVANIA DENYING PETITION
FOR ALLOWANCE OF APPEAL
(AUGUST 10, 2020)**

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

LAURA PANKOE,

Respondent,

v.

RYAN PANKOE,

Petitioner.

No. 54 MAL 2020

Petition for Allowance of Appeal
from the Order of the Superior Court

PER CURIAM

AND NOW, this 10th day of August, 2020, the
Petition for Allowance of Appeal is DENIED.

A True Copy, Elizabeth E. Zisk
As of 08/10/2020

Attest: /s/ Elizabeth E. Zisk
Chief Clerk
Supreme Court of Pennsylvania

App.2a

OPINION OF THE
SUPERIOR COURT OF PENNSYLVANIA
(OCTOBER 29, 2019)

IN THE SUPERIOR COURT OF PENNSYLVANIA

LAURA PANKOE,

Appellee,

v.

RYAN PANKOE,

Appellant.

No. 1041 EDA 2019

2019 PA Super 327

Appeal from the Decree Entered March 25, 2019
in the Court of Common Pleas of Lehigh County
Civil Division at No(s): 2017-FC-1286

Before: BOWES, J., SHOGAN, J.,
and STRASSBURGER, J.*

OPINION BY STRASSBURGER, J.:

Ryan Pankoe (Husband) *pro se* appeals from the March 25, 2019 divorce decree entered in the Lehigh County Court of Common Pleas. Upon review, we affirm.

* Retired Senior Judge assigned to the Superior Court.

Husband and Laura Pankoe (Wife) were married on October 18, 2009, in Lehigh County, Pennsylvania, and are the parents to two minor children. On September 27, 2017, Wife filed a complaint for divorce (the Complaint), which included a count for equitable distribution. Complaint, 9/27/2017. In the Complaint, Wife averred the parties separated on November 8, 2016, and had been living apart since that date. *Id.* at 2 (unnumbered). Additionally, Wife asserted that the marriage was irretrievably broken. *Id.* Thereafter, Husband was served a copy of the Complaint, and he subsequently filed an answer. Therein, Husband requested the trial court dismiss the Complaint, asserting the marriage was “not irretrievabl[y] broken nor ha[d] the parties lived separate and apart for one year since the filling of the [] Complaint.” Answer to Complaint, 3/1/2018, at 2 (unnumbered).

On November 27, 2018, a master’s hearing was held before John Roberts, III, Esquire (Master). Both parties testified at the hearing. As summarized by the trial court:

[Wife] testified that she believed her marriage to [Husband] is irretrievably broken because:

[Husband] is emotionally and verbally abusive and that’s not going to change. He is narcissistic. We tried marriage counseling. And it’s clear to me that I’m not going to get through to him.

And his personality is the way it is. And I’m not going to keep putting myself in the situation I’ve been in. I’m done.

[Wife] testified that she had “no doubt whatsoever” that she wanted a divorce. [Wife]

further testified that she felt [Husband] was emotionally, verbally, and sexually abusive during the marriage. [Wife] also testified that [Husband] did not acknowledge her opinions and feelings during the marriage. [Wife] further testified that based on her religious beliefs, she believed a divorce was warranted. Additionally, [Wife] testified that she is not pursuing any economic claims against [Husband]. [Wife] testified that she did not have an affair during the marriage.

[Husband] testified extensively about his religious beliefs and his belief that divorce is not appropriate for the parties. [Husband] testified that he did not believe the parties had "biblical grounds for divorce or infidelity or an unbelieving spouse walk away." [Husband] further argued that he and [Wife] entered into a Christian marriage contract, which Pennsylvania cannot invalidate. [Husband] argued that Pennsylvania recognizes that marriage is a religious contract and that Pennsylvania gives deference to the religious aspects of marriage contracts. [Husband] contends that the legislature does not have the authority to regulate marriage and divorce, especially no-fault divorce, because there is no compelling state interest.

[Husband] further testified that his "firmly held religious beliefs prevented [him] from starting a family under a marital contract that includes an exit plan option of unilateral no-fault divorce." [Husband] also argued that Pennsylvania courts do not have jurisdiction

App.5a

over the Christian marriage contract between him and [Wife] and that [23 Pa. C.S. § 3301 (d)][(section 3301(d))¹] fosters excessive governmental entanglement with the free exercise of religion. [Husband] further testified that he believed his church council needs to

¹ Section 3301(d) of the divorce code sets forth the requirements necessary to obtain a unilateral no-fault divorce. Specifically, section 3301(d) provides:

(1) The court may grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a period of at least one year and that the marriage is irretrievably broken and the defendant either:

- (i) Does not deny the allegations set forth in the affidavit.
- (ii) Denies one or more of the allegations set forth in the affidavit but, after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least one year^[1] and that the marriage is irretrievably broken.

(2) If a hearing has been held pursuant to paragraph (1)(ii) and the court determines that there is a reasonable prospect of reconciliation, then the court shall continue the matter for a period not less than 90 days nor more than 120 days unless the parties agree to a period in excess of 120 days. During this period, the court shall require counseling as provided in section 3302 (relating to counseling). If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. If the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.

Section 3301(d)(1-2).

App.6a

determine if there is sufficient estrangement between the parties, and issue some type of edict stating that the marriage is beyond repair.

At the conclusion of [Husband's] testimony, [Wife] stated that the statements made by [Husband] were "a huge example of abuse." [Wife] testified that [Husband's] promises to change did not sway her and that she still wants a divorce.

Trial Court's Memorandum Opinion, 3/25/2019, at 3-5 (citations omitted). On December 6, 2018, the Master filed a report, recommending the trial court "grant the divorce expeditiously." *Id.* at 2.

On December 24, 2018, [Husband] filed exceptions to the [Master's report]. On December 28, 2018, [Husband] filed a statement "challenging subject matter jurisdiction amended." On January 7, 2019, [Husband] filed a notice of challenging constitutionality to Attorney General. On January 18, 2019, [Husband] filed a motion for summary judgment and brief in support. On February 15, 2019, [Wife] filed a brief *contra* to [Husband's] motion for summary judgment.

On February 22, 2019, [Husband] filed a reply brief to [Wife's] brief opposing motion for summary judgment. On February 27, 2019, th[e trial c]ourt held argument on the exceptions to the [Master's report] and the motion for summary judgment[.]

Id. at 2-3 (unnecessary capitalization omitted).

On March 25, 2019, the trial court issued a memorandum opinion in which it, *inter alia*, found Wife established grounds for divorce under section 3301(d) and issued a divorce decree that same day.² *See* Trial Court's Memorandum Opinion, 3/25/2019. This timely-filed appeal followed.³

“Our standard of review in divorce actions is well settled. It is the responsibility of this court to make a *de novo* evaluation of the record of the proceedings and to decide independently of the . . . lower court whether a legal cause of action in divorce exists.” *Rich v. Acrivos*, 815 A.2d 1106, 1107 (Pa. Super. 2003) (citation, brackets and quotation marks omitted).

On appeal, Husband is not disputing that, under section 3301(d), Wife has met her burden in proving that a legal cause of action in divorce exists. *See* Husband's Brief at 27 (“[H]usband is not disputing the presence of the jurisdictional facts as defined by the statute[.]”). *See also* Husband's Reply Brief at 10 (“[H]usband does not dispute the fulfillment of the statutory elements[.]”). Instead, Husband is arguing

² Although not pertinent to the disposition of this appeal, in its memorandum opinion, the trial court also denied Husband's motion for summary judgment, and granted in part, and denied in part, Husband's exceptions to the Master's report. Specifically, the trial court granted two of Husband's exceptions, which corrected minor errors made in the Master's report's recitation of facts. *See* Trial Court's Memorandum Opinion, 3/25/2019.

³ Husband complied with the trial court's request to file a concise statement and in response, the court submitted an order stating it believes its March 25, 2019 memorandum opinion sufficiently addressed all the issues raised by Husband and thus, the court would rely on that opinion for the purposes of this appeal. *See* Order, 5/22/2019.

that section 3301(d) is unconstitutional because it violates the Establishment Clause⁴ and Husband's due process rights. *Id.* at 11-12.

When an appellant challenges the constitutionality of a statute, he or she presents this Court with a question of law. Our consideration of questions of law is plenary.

Properly enacted legislation is presumed constitutional. The burden of persuasion to show constitutional infirmity rests heavily on the appellant. Our Supreme Court instructs this Court to pronounce a statute unconstitutional only when we find that it clearly, palpably and plainly violates the constitution.

Commonwealth v. Atwell, 785 A.2d 123, 125 (Pa. Super. 2001) (citations and quotation marks omitted).

As an initial matter, we note that the argument section of Husband's brief is difficult to follow and incoherent at times. Nevertheless, we will attempt to discern Husband's specific grievances. Upon review of his brief, it appears to this Court that Husband is arguing that no-fault divorces are unconstitutional because they are "hostile toward religious views[.]" as they permit a party to seek a divorce based solely upon his/her viewpoint that the marriage is irretrievably broken, without "consideration of actionable fault." *Id.* at 17. Although not entirely clear, it appears Husband's

⁴ "Congress shall make no law respecting an establishment of religion[.]" U.S. Const. amend. I. The Establishment Clause was incorporated to the states in *Everson v. Bd. of Ed.*, 330 U.S. 1 (1947).

belief system allows for divorce only after a finding of wrongdoing. As such, because the trial court did not find Husband committed “a legal infraction[,]” and because Husband “fundamentally disagrees with the premise that a marriage can be irretrievably broken[,]” Husband contends that granting a divorce based solely on Wife’s “viewpoint” or “ideas” as opposed to conduct, is unconstitutional. *Id.* at 18. *See also id.* at 24 (“Subjecting [H]usband to [W]ife’s beliefs by forcing him to incur the social, economic, religious and legal consequences of divorce, against his will and in absence of any legal violation, is equivalent to subjecting him to live according to and in conformity with [W]ife’s religion, however theistic or atheistic it may be. More to the point, the Commonwealth of Pennsylvania has sponsored [W]ife’s beliefs which conversely discriminates against [H]usband’s beliefs and subjugates his to an official State orthodoxy.”). Additionally, Husband argues that the statutory requirements set forth in section 3301(d), and more specifically the requirement of filing an affidavit alleging the parties have lived separately for a certain period of time, has made the entry of a divorce decree a ministerial act,⁵ which Husband argues is likewise unconstitutional. *Id.* at 25-26. We find no merit to Husband’s claims.

This Court has extensively reviewed the evolution of divorce law, as well as our legislature’s addition of no-fault grounds for divorce in Pennsylvania.

When the legislature added the no-fault grounds for divorce, it intended that the

⁵ A ministerial act is defined as “[a]n act performed without the independent exercise of discretion or judgment.” Black’s Law Dictionary (11th ed. 2019).

Divorce Code retain the traditional fault grounds for divorce. The legislature expressly stated its findings and intent, recognizing that the family is the basic unit of society, and that the protection and preservation of the family is of paramount public concern. 23 Pa. C.S. § 3102(a). Acknowledging this, the legislature pronounced the following as the policy of the Commonwealth: to make the legal dissolution of marriage effective for dealing with the realities of matrimonial experience; to encourage reconciliation and settlement, especially where children are involved; to give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs; to mitigate harm to the parties and children; to seek the causes of family disintegration and utilize available resources; and to effectuate economic justice between parties.

The purpose of enacting no-fault divorce provisions was to provide for the legal dissolution of a marriage in a manner which would keep pace with contemporary social realities. Our lawmakers were reluctant to legislate divorce reform and, after twenty years of debate, the 1980 Divorce Code was enacted.

The sanctity of marriage and the dominant desire to preserve that union was embedded in the theory of the prior Divorce Law; that law remained virtually unchanged since first enacted in 1785 and recodified in 1815. The law acknowledged the strength of the family

unit and the necessity of ensuring its preservation. Too frequently, however, the application of the law preserved the family unit in form only, its consequential pain arguably greater than the loss it sought to prevent. Judge Spaeth's dissenting opinion in *Dukmen v. Dukmen*, [420 A.2d 667, 671 (Pa. Super. 1980)], is telling:

Perhaps the Divorce Law is flawed in not making the decisive factor in a divorce action the cessation of a loving relationship between the parties. It is our function, however, to apply the law. Thus, this court has consistently held that under the Divorce Law, the inability to live together does not constitute a ground for divorce. [] Further, we have equally consistently held "that where both parties are nearly equally at fault, so that neither can clearly be said to be the injured and innocent spouse, the law will grant a divorce to neither on the ground of indignities to the person, but will leave them where they put themselves.

The adoption of the 1980 Divorce Code, and in particular the no-fault provision of irretrievable breakdown, *see* [section] 3301(d), allowed a dependent spouse to take advantage of the economic protections of the law without having to resort to seeking a divorce on fault grounds. The legislature provided this section with the economic benefits for good reason: to avoid, where possible, a contested divorce, the raw searing battle that some

commentators have likened to guerrilla warfare.

Perlberger v. Perlberger, 626 A.2d 1186, 1193–94 (Pa. Super. 1993) (quotation marks and some citations omitted).

Contrary to Husband's beliefs, trial courts are not entitled to grant divorces based solely on an individual's "viewpoint." Nor is the act of granting a no-fault divorce purely ministerial. As set forth *supra*, section 3301(d) provides for a no-fault divorce only after a party files an affidavit alleging the parties have lived separate and apart for the requisite amount of time and affirms the marriage is irretrievably broken. If the non-filing party objects, the trial court is then required to determine whether: (1) the parties have been living separate and apart for the prescribed amount of time; and (2) the marriage is irretrievably broken.

Here, Husband had the opportunity to object to Wife's request for a divorce, and did so numerous times, including by filing an answer to the Complaint, disputing Wife's contention that the marriage was irretrievably broken. Similarly, at the Master's hearing, Husband was entitled to present evidence in support of his contention that the divorce should not be granted. However, despite Husband's efforts, the Master found, and the trial court agreed, that the marriage of Husband and Wife was indeed irretrievably broken. The trial court did not, as Husband suggests, simply accept Wife's "viewpoint." Instead, it reviewed Wife's testimony and the Master's recommendations, and determined that Wife met her burden of proving the marriage was irretrievably broken. Such a judicial determination, necessary prior to the entry of a divorce

decree, solidifies that section 3301(d), and the requirements set forth therein, are not strictly ministerial.

We are cognizant that the trial court did not attribute any “fault” or wrong-doing to either party. Nonetheless, the trial court found that Wife’s position that “there was no possibility that the marriage can be repaired” and Husband’s steadfast disagreement with her position was “precisely th[e] breakdown in communication that satisfies the definition of ‘irretrievable breakdown.’ Reconciliation cannot happen without the effort of two willing participants.” Trial Court’s Memorandum Opinion, 3/25/2019, at 9. Indeed, no-fault divorce was created in contemplation of situations just like this, *i.e.*, to provide a way to end a marriage for a party, or two consenting parties, that does not meet the requirements necessary for the entry of a “fault divorce.” Husband has failed to convince this Court that the addition of no-fault divorce nearly 40 years ago is an infringement on his constitutional rights. No relief is due.

Lastly, to the extent Husband is arguing that section 3301(d) is unconstitutional because it is incongruent with his religious beliefs, this Court has previously addressed a similar argument in *Wikoski v. Wikoski*, 513 A.3d 986 (Pa. Super. 1986). In *Wikoski*, the appellant set forth a constitutional challenge to the no-fault section of the divorce code, averring “that the grant of a divorce infringe[d] on his religious beliefs as a Roman Catholic, in that the faith opposes divorce.” *Id.* This Court disagreed, finding

[t]he state’s interests in regulating marriage and divorce are clearly paramount. That regulation is inconsistent with the recognition of a unilateral right of a party to remove

himself from its purview as a matter of conscience. The state has the power, properly exercised within constitutional limits guaranteeing freedom of religion, to grant divorces. Thus, whether granting appellee her divorce is viewed as not infringing upon appellant's freedom of religion [] or as interfering with the practice of his religion, [] the result reached here would be the same. To whatever extent the issuance of a divorce decree interferes with the practice of appellant's religion, it does not violate an individual's right to freedom of conscience.

Id. at 989. In concluding as such, this Court relied on case law from our sister state, which aptly addressed the separation between a civil contract of marriage and an ecclesiastic commitment.

Appellant's complaint that her constitutional right for the free exercise of religion is being violated is unfounded. The action of the trial court only dissolved the civil contract of marriage between the parties. No attempt was made to dissolve it ecclesiastically. Therefore, there is no infringement upon her constitutional right of freedom of religion. She still has her constitutional prerogative to believe that in the eyes of God, she and her estranged husband are ecclesiastically wedded as one, and may continue to exercise that freedom of religion according to her belief and conscience. Any transgression by her husband of their ecclesiastical vows, is, in this instance, outside the jurisdiction of the court.

App.15a

Id. at 987, quoting *Williams v. Williams*, 543 P.2d 1401, 1403 (Oklahoma 1975).

In light of the foregoing, not only do we disagree with Husband's interpretation of section 3301(d), we find Husband has failed to meet his hefty burden of proving it to be constitutionally infirm. Thus, Husband is not entitled to relief from this Court.

Decree Affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn, Esq
Prothonotary

Date: 10/29/19

App.16a

ORDER OF THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA
(MAY 23, 2019)

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

LAURA PANKOE,

Plaintiff,

v.

RYAN PANKOE,

Defendant.

No. 2017-FC-1286

DIVORCE

Before: The Hon. Michele A. VARRICCHIO, J.

AND NOW, this 22nd day of May, 2019, the undersigned enters the following opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a):

On March 25, 2019, this Court entered a Divorce Decree, Order, and Memorandum Opinion on the *Complaint in Divorce* filed by Plaintiff, Laura Pankoe, on September 27, 2017, the *Exceptions to the Report of the Master in Divorce* filed by Defendant, Ryan Pankoe, on December 24, 2018, the *Motion for Sum-*

mary Judgment and Brief in Support filed by Defendant on January 18, 2019, and the responses thereto. A hearing on the *Exceptions* and the *Motion for Summary Judgment* was held on February 27, 2019. By Divorce Decree, Order, and Memorandum Opinion filed March 25, 2019, Defendant's *Exceptions* were overruled in part and sustained in part, Defendant's *Motion for Summary Judgment* was denied, and the parties were divorced from the bonds of matrimony.

On April 2, 2019, Defendant tiled a Notice of Appeal to the Superior Court of Pennsylvania from this Court's Order entered March 25, 2019 at Docket Number 1041 FDA 2019. Also, on April 2, 2019, Defendant tiled a request for transcript for the proceedings held on February 27, 2019. By Order dated April 4, 2019, this Court dismissed Defendant's request for transcript because the requested transcript was previously filed on March 13, 2019.¹ By separate Order dated April 4, 2019, this Court directed Defendant to file his Concise Statement of Matters Complained of on Appeal within twenty-one days.

On April 19, 2019, Defendant filed a Motion to Ammend [sic] Notice of Appeal to ensure that the Order, Divorce Decree, and Memorandum Opinion all filed March 25, 2019 were included in his appeal. On April 24, 2019, Defendant timely filed his Concise Statement of Matters Complained of on Appeal. By

¹ On March 5, 2019, Defendant requested the transcript for the February 27, 2019 argument. By Order dated March 8, 2019, this Court directed Official Court Reporter, Wendy Crowley, to produce certify and file the transcript. On March 13, 2019, Wendy Crowley filed the transcript of the February 27, 2019 argument.

Order dated May 2, 2019, this Court granted Defendant's Motion to Ammend [sic] Notice of Appeal.

In his Concise Statement of Matters Complained of on Appeal, Defendant raises twelve allegations of error, which are reproduced here verbatim:

1. In accordance with Rule 1925 (4)(vi), I am hereby stating that I cannot readily discern the basis for the judge's decision of divorce but, tried to foresee errors by preserving the herein mentioned issues on record. The trial court's ruling is vague and not discernable from the record. The trial court's reasoning is neither decisive nor authoritatively conclusive. Additionally, none of the reasons presented by the trial court were included in the plaintiffs complaint for divorce (pleadings). As such, the defendant was never given fair notice or opportunity to prepare a defense.
2. The nature of appeal involves a facial constitutional/jurisdictional challenge against Pennsylvania statute 23 Pa. C.S.A. § 3301(d) of the Divorce Code, as this was cited by the plaintiff/appellee as the basis for the lawsuit. I, the defendant, appeal the divorce decree, and order to the extent that it relates to the decree (filed March 25, 2019). Commencing this action, the trial court assumed that the parties were legally married. However, there is no evidence that demonstrates this reality or even that this was a legal proceeding since the trial court did not relay on any legal authority for the granting of divorce.

3. To the extent the court's findings establish the statutory elements of 23 Pa. C.S.A. § 3301 (d) by implication, the statute is unconstitutional. The Plaintiff is required by law to (1) file a complaint "alleging that the marriage is irretrievably broken," and (2) to file an affidavit "alleging that the parties have lived separate and apart for a period of at least two years and that the marriage is irretrievably broken." Because these conditions are precisely prescribed and legally imposed, the trial court's finding of these conditions relies on legislative mandate rather than on the unique facts of an independent case. As such, the action for divorce is self-executing and cannot be contested. The statute itself eliminates the right of defense. Eliminating the right of defense does several things:
 - a. It violates due process of law as defined by the fourteenth amendment by eliminating the adversarial system and condemning the defendant to unavoidable deprivation of personal, individual and fundamental rights;
 - b. It violates Penn. Art. I, Sec. 17 by granting the plaintiff/appellee an exclusive privilege and immunity insofar as guaranteeing a particular legal outcome that is desirable only to those seeking marital dissolution and family breakdown;
 - c. It violates Penn Art. III, Sec. 32 by creating a closed-classification by which

App.20a

defendants are unable to obtain a favorable legal outcome except to alter their classifying trait. Conversely, plaintiffs as members of a privileged class are empowered to dictate the outcome of public deliberation;

- d. It violates the establishment clause by endorsing a state-sponsored orthodoxy based on a set of ideological and politically-motivated beliefs rather than on objective standards of action, conduct and behavior;
 - e. It is contrary to public policy because it relies on individual will and deliberation rather than on public will and deliberation;
 - f. It violates due process of law by converting judicial proceeding into ministerial proceedings, fundamentally altering the organization of the courts and divesting the judiciary's competency by precluding the exercise of discretion and the adherence to a rule of law;
4. To the extent that individual judges may determine for themselves whether a marriage is irretrievably broken based on personal views and prejudices, this runs contrary to Supreme Court precedent which establishes that the rights under marriage are to be determined by the will of the sovereign, based on principles of public policy, as evidenced by law. The trial judge was unable to identify the objectively defined legal rights

established by the marriage and the relevant breach that justifies the dissolution of the legal bonds of matrimony. This then is nothing less than judicial usurpation of the public will and of the sovereignty of the people of the Commonwealth of Pennsylvania.

5. The Trial Court's findings of fact are inconclusive and its conclusions of law are non-existent. The parties could not possibly be divorced from the bonds of matrimony unless the validity of the marriage was evidenced by law. To the extent that dissolution proceedings are statutory actions confined within the framework of special limited jurisdiction, the trial court failed to adhere strictly and exclusively to the powers as are expressly conferred upon it by the statute. Despite the application of equitable standards in a dissolution proceeding, the granting of divorce remains a statutory action at law.
6. The statutory cause of action does not regulate emotional, verbal or sexual abuse. Had the State Legislature wanted to regulate these abuses, it would have done so by enacting a statutory cause of action forbidding this type of conduct. Instead, "no-fault" precludes the trial court from consideration misconduct as the basis for granting a divorce. Citations from N.T., 11/27/18, at 70:10-21 were improperly interpreted by the trial court, but irrespective of that error, it was improper for the trial court to consider abuse as legal grounds for divorce. The "no-fault" system does not prescribe a moral standard for divorce. As

such, the trial judge erred by imposing her own moral dogma when this is completely absent in the law. Furthermore, the trial court never found these allegations to be true as it merely references what the plaintiff said, and likely what the plaintiff's counsel instructed her to say.

7. To the extent that the action of divorce was based on the parties' beliefs, the trial court favored the plaintiff's religious beliefs over the defendant's religious beliefs. Consequently, the trial court endorsed a particular form of religion and set of beliefs in violation of the Establishment Clause.
8. *Wikoski v. Wikoski* was correct in making the distinction between beliefs and actions; between the absolute prohibition on government's regulation of conscience/belief and the qualified prohibition on government's police powers to regulate religiously motivated conduct. While the State may regulate behavior, it may not regulate mere belief. *Wikoski v. Wikoski* ultimately erred in its conclusion because it failed to recognize that "no-fault" laws intend not to regulate behavior and to define conduct as proper or improper. Because conduct is not to be considered under "no-fault," the only consideration, if there is any consideration at all, is the subjective belief/opinion that the marriage is irretrievable. This is forbidden by the Establishment Clause.

9. To the extent that Judge Michele A. Varicchio relied solely on the master's recommendation, Esquire John Roberts admits that he was inflexibly compelled by law "to grant a divorce under the divorce code" and that he "[had] to recommend it." (Master's Hearing pg. 72-73). He further stated that he was unable and unqualified to answer constitutional questions of law and that the matter must be heard by a judge that will "listen to something that is pretty interesting and complicated" but the court never commenced a judicial hearing. Furthermore, John E. Roberts III, Esquire, Master in Divorce, is not a judicial officer, and cannot adjudicate a question of law on behalf of the Commonwealth of Pennsylvania.
10. 203 Pa. C.S.A. § 3301(d) cannot be presumed constitutional as the trial court failed to apply strict judicial scrutiny insofar as determining whether the statute serves a compelling state interest; whether the statute is narrowly tailored to effectuate the compelling state interest; and whether the statute is the least restrictive means for achieving the compelling state interest. Nor did *Wikowski v. Wikowski* apply strict judicial scrutiny, for if it had, it would have identified these elements. The Commonwealth of Pennsylvania has yet to meet its burden of proof and cannot presume the State statute to be constitutional as it directly and substantially interferes with fundamental rights.

11. The trial court was violative of Defendant's right to a fair trial by (1) scheduling the hearing of Exceptions to the Master's Report and the Motion for Summary Judgement concurrently; (2) precluding Pro-Se Defendant presentation of supporting arguments to exceptions one two, and four, whether by allotting insufficient time for both matters, or at the will of the trial judge to the extent she closed arguments to rely solely on the exceptions filed without supporting argument; and (3) whereby Defendant was discriminated against being precluded the right to counsel, corroborated by John Roberts III, Esquire, Master in Divorce and Stacy Morane, Esquire, opposing counsel.
12. The trial court erred issuing a decree that denies all raised claims for credit or reimbursement, indemnifying and holding harmless the other party from paying those debts, and ordering Defendant to waive his right to make claims against pre-marital assets allocated prior to the March 25, 2019 order/decree that were post-date-of-separation transfers utilized by, for the benefit of, or are in the possession of Plaintiff.

Def.'s Concise Stmt., ¶¶ 1-12.

The Court wrote a thorough Memorandum Opinion in support of the Order and Divorce Decree filed March 25, 2019. The reasons for this Court's decision were set forth in the Order, Divorce Decree, and Memorandum Opinion all filed March 25, 2019, and we incorporate them herein, as if fully set forth. This Court relies on those reasons and respectfully requests

App.25a

that its March 25, 2019 Order, Divorce Decree, and
Memorandum Opinion be affirmed.

BY THE COURT:

/s/ Michele A. Varricchio
Judge

App.26a

**ORDER OF THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY GRANTING MOTION TO
AMMEND NOTICE OF APPEAL
(MAY 2, 2019)**

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

LAURA PANKOE,

Plaintiff,

v.

RYAN PANKOE,

Defendant.

No. 2017-FC-1286

DIVORCE

Before: The Hon. Michele A. VARRICCHIO, J.

AND NOW, this 2nd day of May, 2019, upon consideration of the Motion to Ammend (sic) Notice of Appeal Filed April 22, 2019;

IT IS HEREBY ORDERED that said Motion is GRANTED.

App.27a

BY THE COURT:

/s/ Michele A. Varricchio

Judge

App.28a

**ORDER OF THE COURT OF COMMON PLEAS OF
LEHIGH COUNTY, PENNSYLVANIA
(APRIL 4, 2019)**

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

LAURA PANKOE,

Plaintiff,

v.

RYAN PANKOE,

Defendant.

No. 2017-FC-1286

DIVORCE

Before: The Hon. Michele A. VARRICCHIO, J.

AND NOW, this 4th day of April, 2019, it appearing that Defendant Ryan Pankoe has appealed to the Superior Court from our March 25, 2019 Order¹ entered in the above-captioned matter, pursuant to the provisions of Pa. R.A.P. No. 1925(b);

IT IS HEREBY ORDERED that Defendant, Ryan Pankoe, is directed to file of record and serve a copy

¹ In addition to the Order filed March 25 2019, this Court filed a Divorce Decree and Memorandum Opinion.

App.29a

on the trial judge pursuant to Pennsylvania Rule of Appellate Procedure 1925(b)(1) within 21 days from the entry of this Order, a Concise Statement of Matters Complained of on Appeal (Statement). A failure to comply with this direction may be considered by the Superior Court as a waiver of all objections to the Order, Rule, or other matters of which complained. Any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

IT IS FURTHER ORDERED that any response may be filed to the Defendant's Statement within 14 days of the filing of the Statement.

BY THE COURT:

/s/ Michele A. Varricchio
Judge

MEMORANDUM OPINION OF THE COURT
OF COMMON PLEAS OF LEHIGH COUNTY
(MARCH 25, 2019)

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

LAURA PANKOE,

Plaintiff,

v.

RYAN PANKOE,

Defendant.

No. 2017-FC-1286

IN DIVORCE

Before: The Hon. Michele A. VARRICCHIO, J.

MICHELE A. VARRICCHIO, J

Before the Court are the *Exceptions to the Report of the Master in Divorce* filed December 24, 2018 by Defendant, Ryan Pankoe; the statement *Challenging Subject Matter Jurisdiction Amended* filed December 28, 2018 by Defendant; the *Notice of Challenging Constitutionality to Attorney General* filed January 7, 2019 by Defendant; and the *Motion for Summary Judgment and Brief in Support* filed January 18, 2019 by Defendant, the response thereto filed February 15,

2019 by Plaintiff, Laura Pankoe, and the reply thereto filed February 22, 2019 by Defendant. Argument was held on February 27, 2019 attended by Shannon P. Smith, Esq., counsel for Plaintiff, Laura Pankoe, and Defendant, Ryan Pankoe, *pro se*. The Court enters this Memorandum Opinion in accordance with the Divorce Decree and Order entered this same date.

I. Procedural History

On September 27, 2017, Plaintiff, Laura Pankoe, filed a Complaint in Divorce. Plaintiff contended that the parties separated on November 8, 2016 and have lived separate and apart since that date. *See* Pl.'s Compl., ¶ 12. Plaintiff further contended that the marriage was irretrievably broken. *Id.*, *ad damnum clause*. Plaintiff's Complaint also included a count for equitable distribution of the marital assets. *Id.*, Ct. I. On October 28, 2017, Defendant was served with a copy of the Complaint. On March 1, 2018, Defendant, through then counsel Melissa P. Rudas, Esq., filed an Answer to Plaintiff's Complaint. On March 13, 2018, Plaintiff filed an Inventory of the marital property.

By Order dated May 30, 2018, the Master in Divorce, John Roberts, III, Esq., issued an order, which was approved by the Honorable Douglas G. Reichley, directing Defendant to provide Plaintiff with verified Answers to Interrogatories and Responses to Requests for Production of Documents. By Order dated October 18, 2018, Melissa P. Rudas, Esq. was granted permission to withdraw as Defendant's counsel. Since that time, Defendant has proceeded *pro se* in this matter.

On November 27, 2018, a hearing was held before the Master in Divorce, John Roberts, III, Esq. On December 6, 2018, the Master in Divorce filed his Report and

recommended that this Court grant the divorce expeditiously. On December 24, 2018, Defendant filed Exceptions to the Report of the Master in Divorce. On December 28, 2018, Defendant filed a statement “Challenging Subject Matter Jurisdiction—Amended.” On January 7, 2019, Defendant filed a Notice of Challenging Constitutionality to Attorney General. On January 18, 2019, Defendant filed a Motion for Summary Judgment and Brief in Support. On February 15, 2019, Plaintiff filed a Brief Contra to Defendant’s Motion for Summary Judgment. On February 22, 2019, Defendant filed a Reply Brief to Plaintiff’s Brief Opposing Motion for Summary Judgment. On February 27, 2019, this Court held argument on the Exceptions to the Report of the Master in Divorce and the Motion for Summary Judgment, attended by Shannon P. Smith, Esq., counsel for Plaintiff, Laura Pankoe, and Defendant, Ryan Pankoe, *pro se*. The matter is now ripe for disposition.

II. Facts

Plaintiff and Defendant married on October 18, 2009 in Lehigh County, Pennsylvania. At the time Plaintiff filed her Complaint, both Plaintiff and Defendant had lived in Lehigh County, Pennsylvania for more than six continuous months. *See* Notes of Testimony (N.T.), 11/27/18, at 17:13-17. Together the parties are the parents of two children. The parties separated on November 8, 2016 and have lived separate and apart since that date. *See* N.T., 11/27/18, at 14:5-8, 19:9-11.

Plaintiff is an Office Manager. *See* N.T., 11/27/18, at 14:16-18. Plaintiff was previously married; her first marriage ended in divorce in 2008. N.T., 11/27/18, at

15:2-10. At the November 27, 2018 Hearing before the Master in Divorce, Plaintiff testified that she believed her marriage to Defendant is irretrievably broken because:

[Defendant] is emotionally and verbally abusive and that's not going to change. He is narcissistic. We tried marriage counseling. And it's clear to me that I'm not going to get through to him.

And his personality is the way it is. And I'm not going to keep putting myself in the situation I've been in. I'm done.

N.T., 11/27/18, at 18:19-19:2. Plaintiff testified that she had "no doubt whatsoever" that she wanted a divorce. N.T., 11/27/18, at 19:5-8. Plaintiff further testified that she felt Defendant was emotionally, verbally, and sexually abusive during the marriage. *See* N.T., 11/27/18, at 23:2-24:22. Plaintiff also testified that Defendant did not acknowledge her opinions and feelings during the marriage. *See* N.T., 11/27/18, at 25:7-26:15. Plaintiff further testified that based on her religious beliefs, she believed a divorce was warranted. N.T., 11/27/18, at 29:11-31:16. Additionally, Plaintiff testified that she is not pursuing any economic claims against Defendant. N.T., 11/27/18, at 19:12-14. Plaintiff also testified that she did not have an affair during the marriage. N.T., 11/27/18, at 55:24-25.

Defendant is an Executive Director and Paramedic. N.T., 11/27/18, at 14:19-15:1. Defendant testified extensively about his religious beliefs and his belief that divorce is not appropriate for the parties. *See* N.T., 11/27/18, at 33:18-35:15, 35:23-36:20, 36:22-37:13, 38:5-39:13, 39:21-41:20, 42:23-47:13, 47:15-50:13.

Defendant testified that he did not believe the parties had “biblical grounds for divorce or infidelity or an unbelieving spouse walk away.” Sec N.T., 11/27/18, at 36:3-5. Defendant further argued that he and Plaintiff entered into a Christian marriage contract, which Pennsylvania cannot invalidate. N.T., 11/27/18, at 58:7-14. Defendant argued that Pennsylvania recognizes that marriage is a religious contract and that Pennsylvania gives deference to the religious aspects of marriage contracts. N.T., 11/27/18, at 59:17-60:7, 60:14-61:20. Defendant contends that the legislature does not have the authority to regulate marriage and divorce, especially no-fault divorce, because there is no compelling state interest. N.T., 11/27/18, at 61:18-20, 61:23-64:15.

Defendant further testified that his “firmly held religious beliefs prevented [him] from starting a family under a marital contract that includes an exit plan option of unilateral no-fault divorce.” N.T., 11/27/18, at 64:5-8. Defendant also argued that Pennsylvania courts do not have jurisdiction over the Christian marriage contract between him and Plaintiff and that Section 3301(d) fosters excessive governmental entanglement with the free exercise of religion. N.T., 11/27/18, at 64:23-65:21, 65:23-67:3. Defendant further testified that he believed his church council needs to determine if there is sufficient estrangement between the parties, and issue some type of edict stating that the marriage is beyond repair. N.T., 11/27/18, at 68:10-22.

At the conclusion of Defendant’s testimony, Plaintiff stated that the statements made by Defendant were “a huge example of abuse.” N.T., 11/27/18, at 70:10-21.

Plaintiff testified that Defendant's promises to change did not sway her and that she still wants a divorce. *Id.*

Thereafter, the parties briefly discussed the economic issues related to the marriage. Plaintiff again confirmed that she is willing to give up compensation for jointly held marital assets in order to get the divorce. N.T., 11/27/18, at 75:7-12. Plaintiff testified that she is willing to sign over her interest in the vacant lot at 1200 Nemeth Road, Coopersburg. N.T., 11/27/18, at 79:11-16. Plaintiff further testified that the value of Defendant's vehicle and boat are approximately \$ 17,000 and the value of her vehicle is approximately \$ 2,500, but that she is not seeking any contribution for the difference between the values of the vehicles. N.T., 11/27/18, at 81:17-25. Plaintiff also stated she is not seeking any contribution for the difference between the parties' bank accounts. N.T., 11/27/18, at 82:17-22. All of Plaintiff's testimony was contingent on the assurance that Defendant was not seeking any contribution from her.

Defendant indicated that after the date of separation, he paid off Plaintiff's student loans and some of Plaintiff's attorney fees. N.T., 11/27/18, at 76:19-77:3. Defendant testified that he is "not asking for money from her." N.T., 11/27/18, at 86:3-8. Defendant elaborated and said that he does not have an economic claim in his favor, but that Plaintiff might. N.T., 11/27/18, at 97:10-24.

At the conclusion of the hearing, the Master in Divorce indicated his intention to enter a report and recommendation in favor of granting the divorce. N.T., 11/27/18, at 72:9-17, 88:17-89:13. The Master in Divorce issued his report on December 6, 2018.

III. Discussion

A. Exceptions to the Report of the Master in Divorce

On December 24, 2018, Defendant filed Exceptions to the Report of the Master in Divorce, from which the following is taken verbatim:

1. The Master committed an Error in Fact, when finding that Defendant made a claim for Equitable Distribution in his Answer to the Complaint in Divorce, filed on March 1, 2018.

“5. On March 1, 2018, Husband filed an Answer to the Divorce Complaint, along with his own claim for equitable distribution.”

2. The Master committed Error of Fact regarding Husband’s “failure” to pursue discovery and the filing of an inventory, as such was actually irrelevant, Husband having transferred to Wife premarital assets and the available assets of the marital estate. Husband paid off Wife’s credit card debt (\$22,646.00), all of Wife’s student loan (\$36,002.80), put Wife’s name on Husband’s pre-marital residence, and satisfied the loan on a 2010 Dodge Grand Caravan (\$12,491) before transferring the vehicle title. The only marital asset was a tract of ground entirely encumbered.

“16. . . . Husband at no time filed an Inventory or engaged in substantial discovery.” Husband provided an inventory to his former attorney and did not in fact engage require

information from Wife regarding the marital assets)

3. The Master committed Error of Fact regarding statistical information, as this was the Wife's second marriage.

("23. Neither party had been married prior to the Instant marriage." In fact, Wife was married prior to the current marriage)

4. The Master committed Error of Fact by finding Wife's "wishes" not to reconcile constitute a finding that the marriage was irreconcilable broken.

("The problem with Husband's testimony is that Wife credibly and extremely forcefully testified that she did not wish to reconcile ...")

Def's Exceptions, ¶¶ 1-4 Defendant also indicated that he "challenges the statute based on subject-matter jurisdiction[,] and articulated the following reasons as to why the statute is unconstitutional:

1. Pennsylvania constitution requires divorce to be a judicial action, hut the statute does not invoke judicial power. The statutes reduce divorce to non-judicial administrative actions (23 Pa. C. S. § 3103).
2. Allegation in complaint makes no claim of any legally protected right being violated, no complaint of legal fault.
3. Service of process is insufficient because the statute eliminates the defendant's right to

contest the action, except to challenge the statute itself.

4. Wife lacks standing because no injury-in fact has been pleaded.
5. The divorce statute violates Pennsylvania Constitution, Article 1, Section 17. on its face, because it is a special/private law under guise of general public law because it grants to a private individual an exclusive privilege and immunity to procure a divorce without legal challenge.

Def's Exceptions, p.2, ¶¶ 1-5. Defendant's Exceptions were filed without the benefit of the transcript. The Notes of Testimony were not tiled until January 11, 2019.

In his first exception, Defendant contends that the Master in Divorce committed an error in fact by stating that Defendant made a claim for equitable distribution. A review of the record reveals that Defendant is correct. In her Complaint, Plaintiff made a claim for equitable distribution in Count I. On March 1, 2018, when Defendant filed his Answer, he merely admitted or denied the allegations contained in Plaintiffs claim for equitable distribution. *See* Def's Ans. Defendant did not assert any counterclaims and did not separately request equitable distribution of the marital assets. Although the Master in Divorce's factual recitation is inaccurate, the defect is *de minimis*. As such, Defendant's first exception is sustained to the extent that the findings of fact in the December 6, 2018 Report of the Master in Divorce shall be corrected to state "5. On March 1, 2018, Husband tiled an Answer to the Divorce Complaint."

In his second exception, Defendant contends that the Master in Divorce committed an error in fact regarding his failure to file an inventory. Defendant contends that whether or not he filed an inventory is “irrelevant” because he transferred various assets to Plaintiff and paid off some of her debt. A review of the docket reveals that Defendant has not filed an inventory of property owned by the parties. At the time of the November 27, 2018 Hearing, the nature and value of assets in the marital estate was relevant to the resolution of this case because Plaintiff included a claim for equitable distribution in her Complaint. Without evidence of what items comprise the marital estate, the Master in Divorce and this Court would be unable to divide the assets. The Master in Divorce accurately noted that Defendant failed to file an inventory and engage in discovery with Plaintiff. Therefore, Defendant’s second exception is meritless and thus, overruled.

In his third exception, Defendant contends that the Master in Divorce committed an error in fact by stating that neither Plaintiff nor Defendant had previously been married. A review of the record reveals that Defendant is correct. Plaintiff was previously married. Her first marriage ended in divorce in 2008, prior to the marriage of the parties in 2009. *See* N.T., 1/27/18, at 15:2-10, 17:13-17. Although the Master in Divorce’s factual recitation is inaccurate, the defect is *de minimis*. As such, Defendant’s third exception is sustained to the extent that the findings of fact in the December 6, 2018 Report of the Master in Divorce shall be corrected to state “23. Wife had been married prior to the instant marriage. Wife’s first marriage ended in divorce in 2008.”

Finally, in his fourth exception, Defendant contends that the Master in Divorce committed an error of fact by determining that the marriage was irreconcilably broken because Plaintiff “did not wish to reconcile.” “[A] master’s report and recommendation, although only advisory, is to be given the fullest consideration, particularly on the question of credibility of witnesses, because the master has the opportunity to observe and assess the behavior and demeanor of the parties.” *Cook v. Cook*, 186 A.3d 1015, 1026 (Pa. Super. 2018) (quoting *Moran v. Moran*, 839 A.2d 1091, 1095 (Pa. Super. 2003)). After a thorough review of the record, this Court discerns no error with the Master in Divorce’s determination that the parties’ marriage was irretrievably broken. In relevant part, the Master in Divorce considered and assessed the testimony of Plaintiff and Defendant as follows:

The contested part of the case revolves around [Plaintiff’s] testimony that she desires to have a divorce as soon as possible and that she strongly believes that the marriage is irretrievably broken. However, [Defendant] forcefully testified that he remains in love with [Plaintiff] and believes the marriage is salvageable. [Defendant] bases his belief on the fact that the parties entered into what he characterized as a “Christian marriage contract” through their church and that the marriage was “officiated” in a larger sense by their joint belief in Jesus Christ and the sanctity of any marriage established in such a manner. Thus, [Defendant] argued that the Commonwealth is intruding on a religious contract made between the two of them and

that the definition employed by the Divorce Code as to 'irretrievable breakdown' is not applicable to the parties' situation in this matter. On that basis [Defendant] strongly objected to any recommendation for the entry of a divorce decree.

The undersigned heard compelling testimony from [Plaintiff] as to the issues which arose in the parties' marriage, including controlling behavior by [Defendant], sexual coercion and general state of unhappiness by [Plaintiff] as the marriage progressed prior to separation. [Defendant] seemed to indicate that he was not aware that [Plaintiff] was unhappy and offered a genuine response of compassion and an attempt to change his behavior so that the parties could perhaps reconcile. The problem with [Defendant's] testimony is that [Plaintiff] credibly and extremely forcefully testified that she did not wish to reconcile with [Defendant] ever and that there is zero prospect of this marriage being saved. Thus, the parties have diametrically opposed viewpoints as to the possibility of salvaging the marriage itself

See Report of Master, p. 4.

"Irretrievable breakdown" is defined as "[e]strangement due to marital difficulties with no reasonable prospect of reconciliation." *See* 23 Pa. C.S. § 3103. Here, Plaintiff stated multiple times that there is no possibility that the marriage can be repaired and that she does not want to be married to Defendant. Although Defendant strongly disagreed with Plaintiff's

position, it is precisely this breakdown in communication that satisfies the definition of “irretrievable breakdown.” Reconciliation cannot happen without the efforts of two willing participants. For the reasons testified to by Plaintiff, she is absolutely unwilling to reconcile and sees no way for the marriage to be salvaged. This Court’s review of the record reveals that there is no reasonable prospect of reconciliation between Plaintiff and Defendant. The Master in Divorce did not err in determining, based on Plaintiff’s “wishes”, that the marriage is irretrievably broken. Therefore, Defendant’s fourth exception is overruled.

B. Motion for Summary Judgment

In his Motion for Summary Judgment, Defendant contends that the Court of Common Pleas of Lehigh County does not have subject-matter jurisdiction to grant a divorce and that 23 Pa. C.S. § 3301 is unconstitutional for various reasons. *See* Def.’s Mot. The reasoning articulated in Defendant’s Motion for Summary Judgment closely aligns with the five statements challenging subject-matter jurisdiction that Defendant articulated in his Exceptions to the Master’s Report. As such, this Court will consider the arguments together.

As an initial matter, Defendant purports to bring his Motion for Summary Judgment pursuant to 25 Pa. Code § 1021.94(a). Procedurally, this is deficient in several respects. Section 1021.94 is entitled “Dispositive motions other than summary judgment motions.” *See* 25 Pa. Code § 1024.94 (emphasis added). On its face, Section 1021.94 does not authorize Defendant’s Motion for Summary Judgment. Beyond this, Section 1021.94 is contained in that portion of the Pennsylvania Code

which governs the practices and procedures applicable in proceedings held before the Environmental Hearing Board. *See* 25 Pa. Code § 1021.1-1021.201. The Environmental Hearing Board has nothing to do with the granting or denying of divorces. As such, Defendant's reliance on 25 Pa. Code § 1021.94(a) is grossly misplaced.

The Court also notes that, under the Pennsylvania Rules of Civil Procedure, Defendant's Motion for Summary Judgment is poorly timed. Pennsylvania Rule of Civil Procedure 1035.2 provides:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

- (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
- (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R.C.P. 1035.2. Here, the pleadings were closed on March 1, 2018, when Defendant filed his Answer. Ten months later, and almost two months after the fact finder, the Master in Divorce, held the evidentiary

hearing on Plaintiff's Complaint, Defendant filed his Motion for Summary Judgment on January 18, 2019. Procedurally, a Motion for Summary Judgment is proper prior to the November 27, 2018 Hearing with the Master in Divorce. Moreover, a motion for summary judgment is only fitting where there is no genuine issue of material fact. As explained in more detail below, Plaintiff and Defendant vehemently disagree over whether or not their marriage is irretrievably broken, a fact which is material in a divorce action.

Turning now to the substance of Defendant's Motion for Summary Judgment, Defendant contends that 23 Pa. C.S. § 3301 (c) and (d) are unconstitutional and that this Court does not have jurisdiction to enter a divorce decree. Defendant argues that Section 3301 is unconstitutional because it does not give rise to a legal controversy, because it allows courts to act in an arbitrary and capricious manner, and because it compels the judge to act in a ministerial capacity. *See* Def.'s Br., p. 9-24.

In relevant part, 23 Pa. C.S. § 3104, provides that "[t]he courts shall have original jurisdiction in cases of divorce. . . ." Moreover, Pennsylvania Rule of Civil Procedure 1920.2 provides that:

- (a) [an action for divorce] may be brought only in the county
 - (1) in which the plaintiff or the defendant resides, or
 - (2) upon which the parties have agreed
 - (i) in a writing which shall be attached to the complaint, or by
 - (ii) participating in the proceeding.

Pa. R.C.P. 1920.2(a). Here, Plaintiff brought the action for divorce in the Lehigh County Court of Common Pleas. Pursuant to Section 3104, this Court has original jurisdiction over actions for divorce. At the time Plaintiff filed her Complaint, both parties resided in Macungie, Lehigh County, Pennsylvania. As such, the requirements of Pa. R.C.P. 1920.2(a)(1) were satisfied. Beyond that, however, the requirements of Pa. R.C.P. 1920.2(a)(2)(ii) are satisfied because both parties have participated in the proceedings in Lehigh County and thereby, have consented to the propriety of venue and jurisdiction in this Court.

Defendant also argues that only courts within the City of Philadelphia and Allegheny County may adjudicate divorces. *See* Def.'s Br., p. 14. In support of his contention, Defendant relies on the Sections 16 and 17 to the Schedule of the Judiciary Article of the Pennsylvania Constitution. *See* Pa. Const., Art. V, Sch., §§ 16 and 17. While Defendant is right to the extent that Sections 16 and 17 of the Schedule pertain only to the City of Philadelphia and Allegheny County, he misapprehends the purpose of those sections. Section 4 of the Schedule sets out the general rule and vests jurisdiction equally in the "several courts of common pleas," which include the Lehigh County Court of Common Pleas. *See* Pa. Const., art. V, Sch., § 4. Sections 16 and 17 of the Schedule serve as additions to the general rule and set forth with more specificity the manner in which the courts in the City of Philadelphia and Allegheny County divide their authority. Nothing in Sections 16 and 17 of the Schedule indicate that the City of Philadelphia or Allegheny County have exclusive jurisdiction over

divorces. For all of these reasons, Defendant's argument that this Court lacks jurisdiction to grant a divorce lacks merit.

At the root of Defendant's Motion for Summary Judgment is his contention that the term "irretrievably broken" as used in the Divorce Code lacks meaning and that a judge cannot make such a determination because it is a "philosophical and theological question." *See* Def.'s Br., p.17. Defendant's argument is intermingled with his strongly held religious beliefs.

In his report, the Master in Divorce summarized and resolved this conflict as follows:

It is the conclusion of the undersigned that in fact [Plaintiff] has met her burden to prove that the marriage is irretrievably broken within the meaning of the Divorce Code. [Defendant] seems to be arguing that the definition of that term within the Divorce Code is perhaps unconstitutional or otherwise violates rights he may have. The undersigned will rely upon the transcript from the Notes of Testimony as to [Defendant's] precise arguments in that he made cogent and compelling arguments regarding the possible interplay between his religious beliefs and the Divorce Code. However, it is the conclusion of the undersigned that the process in place to divorce parties within the jurisdiction of the Commonwealth and this County is that the Divorce Code represents a secular codification of laws governing such individuals and that the undersigned is bound to follow the statute rather than a particular litigant's set of beliefs. It was explained to [Defendant] that

in fact the undersigned divorces homosexual[] couples, atheists, agnostics, Muslims, Jewish litigants and parties covering a broad spectrum of other belief systems. As such, one party's religious beliefs and beliefs regarding jurisdiction of a Court to address divorce involving such a person cannot trump the Divorce Code itself, which applies to all parties under its jurisdiction. Therefore, while a sad case, the undersigned is constrained to recommend entry of a divorce decree based upon the establishment of grounds for divorce under Section 3301(d) of the Pennsylvania Divorce Code permitting a divorce once the parties have established a two (2) year separation and irretrievable breakdown of their marriage. That has occurred in this matter and the parties should be divorced as soon as administratively possible without any further economic relief to be granted.

Rpt. of Master, p. 5–6. This Court concludes that the Master in Divorce did not err, hut rather was correct in his reasoning.

As noted above, the Divorce Code defines “irretrievable breakdown” as [e]strangement due to marital difficulties with no reasonable prospect of reconciliation.” *See* 23 Pa. C.S. § 3103. Estrangement means “[t]o destroy or divert affection, trust, and loyalty.” *See* Black’s Law Dictionary, *estrangle*, def’n no. 2 (10th ed. 2014). Reasonable means “[flair, proper, or moderate under the circumstances; sensible.” *Id.*, *reasonable*, def’n no. 1. In the familial context, reconciliation means a “[v]oluntary resumption, after a separation, of full marital relations between spouses.”

Id., *reconciliation*, def'n no. 2. While "irretrievable breakdown" is a term of art which is not vague; the use of the phrase does not lead to arbitrary outcomes.

Here, Plaintiff stated multiple times that there is no possibility that the marriage can be repaired and that she does not want to be married to Defendant. Although Defendant strongly disagreed with Plaintiff's position, it is precisely this breakdown in communication that satisfies the definition of "irretrievable breakdown." By definition, a reconciliation cannot happen without the voluntary efforts of two willing participants. For the reasons testified to by Plaintiff, she is absolutely unwilling to reconcile and sees no way for the marriage to be salvaged. Plaintiff testified that she believes Defendant is emotionally abusive. Plaintiff clearly lacks trust in Defendant and their marriage. This Court's review of the record reveals that there is no reasonable prospect of reconciliation between Plaintiff and Defendant. Plaintiff's position has not wavered in the more than two years that have elapsed since the parties began living separately in November 2016. Plaintiff has established that there is a significant break in the marital relationship and that her marriage to Defendant is beyond repair.

As a final point, the Superior Court of Pennsylvania has previously determined that the sections of the Divorce Code relating to no-fault divorce and irretrievable breakdown of the marriage do not violate a person's freedom of religion. *See Wilkoski v. Wilkoski*, 513 A.2d 986 (Pa. Super. 1986). In *Wilkoski*, the Superior Court distinguished between the civil and religious components of a marriage and determined that the Commonwealth of Pennsylvania had a paramount interest in regulating marriage and divorce.

Wilkoski, 513 A.2d at 986-89. In reaching its' decision, the Superior Court, quoted an Oklahoma Court which explained that "the action of the trial court only dissolved the civil contract of marriage between the parties. No attempt was made to dissolve it ecclesiastically. Therefore, there is no infringement upon [wife's] constitutional right of freedom of religion. She still has her constitutional prerogative to believe that in the eyes of God, she and her estranged husband are ecclesiastically wedded as one. . . ." *Wilkoski*, 513 A.2d at 987 (quoting *Williams v. Williams*, 543 P.2d 1401 (Okla. 1975)). So too, in this case—Defendant is free to believe that he and Plaintiff remain ecclesiastically married. Nevertheless, based upon the record before this Court, Plaintiff has established grounds for divorce under the Divorce Code.

IV. Conclusion

For the foregoing reasons, the *Exceptions to the Report of the Master in Divorce* are denied in part and overruled in part, the *Motion for Summary Judgment and Brief in Support* is denied, and Plaintiff, Laura Pankoe, and Defendant, Ryan Pankoe, are divorced from the bonds of matrimony. A Divorce Decree and an appropriate Order of this same date accompany.

BY THE COURT:

/s/ Michele A. Varricchio
Judge

Date: March 25th, 2019

**ORDER OF THE DIVORCE DECREE OF
THE COURT OF COMMON PLEAS
OF LEHIGH COUNTY
(MARCH 25, 2019)**

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

LAURA PANKOE,

Plaintiff,

v.

RYAN PANKOE,

Defendant.

No. 2017-FC-1286

DIVORCE

Before: The Hon. Michele A. VARRICCHIO, J.

AND NOW, this 25th day of March, 2019 upon consideration of the Report of the Master in Divorce, and in accordance with the Memorandum Opinion and Order entered this same date, it is HEREBY ORDERED AND DECREED that Laura Pankoe, Plaintiff, and Ryan Pankoe, Defendant, are divorced from the bonds of matrimony.

IT IS FURTHER ORDERED that, to the extent either party raised a claim for equitable division of

App.51a

marital assets and liabilities, said claims are resolved by each party waiving any and all claims he or she may have against the other pertaining to property in the possession of the other party and/or titled in the other party's name. Each party shall indemnify and hold harmless the other from payment or all debts titled in his or her name. All claims for credit or reimbursement raised by either party are DENIED.

The Court retains jurisdiction of any claims raised by the parties to this action for which a Final order has not yet been entered.

BY THE COURT:

/s/ Michele A. Varricchio

Judge

**ORDER OF THE COURT OF
COMMON PLEAS OF LEHIGH COUNTY
(MARCH 25, 2019)**

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

LAURA PANKOE,

Plaintiff,

v.

RYAN PANKOE,

Defendant.

No. 2017-FC-1286

DIVORCE

Before: The Hon. Michele A. VARRICCHIO, J.

AND NOW, this 25th day of March, 2019, in accordance with the Memorandum Opinion and Divorce Decree entered this same date,

IT IS HEREBY ORDERED that the Exceptions to the Report of the Master in Divorce filed December 24, 2018, by Defendant, Ryan Pankoe, are SUSTAINED in part and OVERRULED in part as follows:

1. Defendant's first and third exceptions are SUSTAINED to the extent that the findings of fact in the December 6, 2018 Report of the

Master in Divorce shall be corrected to state:
“5. On March 1, 2018, Husband filed an Answer to the Divorce Complaint.” and “23. Wife had been married prior to the instant marriage. Wife’s first marriage ended in divorce in 2008.”

2. Defendant’s second and fourth exceptions are OVERRULED.

IT IS FURTHER ORDERED that the *Motion for Summary Judgment and Brief in Support* filed January 18, 2019 by Defendant, Ryan Pankoe, is DENIED.

BY THE COURT:

/s/ Michele A. Varricchio

Judge

App.54a

**ORDER OF THE
SUPERIOR COURT OF PENNSYLVANIA
DENYING REQUEST FOR REARGUMENT
(JANUARY 7, 2020)**

IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

LAURA PANKOE,

v.

RYAN PANKOE,

Appellant.

No. 1041 EDA 2019

IT IS HEREBY ORDERED:

THAT the application filed November 12, 2019, requesting reargument of the decision dated October 29, 2019, is DENIED.

PER CURIAM

**RELEVANT CONSTITUTIONAL AND
STATUTORY PROVISIONS**

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Penn. Constitution Article III, § 32¹

The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the

¹ Penn. Const. Art. III, Sec. 7 (1874) specifically enumerated "Granting Divorces."

App.56a

General Assembly shall not pass any local or special law:

1. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts.
2. Vacating roads, town plats, streets or alleys.
3. Locating or changing county seats, erecting new counties or changing county lines.
4. Erecting new townships or boroughs, changing township lines, borough limits or school districts.
5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury.
6. Exempting property from taxation.
7. Regulating labor, trade, mining or manufacturing.
8. Creating corporations, or amending, renewing or extending the charters thereof.

Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

STATUTORY PROVISION

Pennsylvania Divorce Code, 23 Pa. C.S. § 3301(d)

(d) Irretrievable breakdown

- (1) The court may grant a divorce where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been

filed alleging that the parties have lived separate and apart for a period of at least two years² and that the marriage is irretrievably broken and the defendant either:

- (i) Does not deny the allegations set forth in the affidavit.
 - (ii) Denies one or more of the allegations set forth in the affidavit but, after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least one year and that the marriage is irretrievably broken.
- (2) If a hearing has been held pursuant to paragraph (1)(ii) and the court determines that there is a reasonable prospect of reconciliation, then the court shall continue the matter for a period not less than 90 days nor more than 120 days unless the parties agree to a period in excess of 120 days. During this period, the court shall require counseling as provided in section 3302 (relating to counseling). If the parties have not reconciled at the expiration of the time period and one party states under oath that the marriage is irretrievably broken, the court shall determine whether the marriage is irretrievably broken. If the court determines that the marriage is irretrievably broken, the court shall grant the divorce. Otherwise, the court shall deny the divorce.

² At the time the petition for divorce was filed, a two-year separation was required. The legislation has since been changed to one-year.

BLANK PAGE



SUPREME COURT
PRESS