

the entry of a decree of divorce. An order of alimony pendente lite was entered on June 24, 2009, setting Plaintiff's obligation at two thousand ninety seven dollars (\$2,097.00) per month.

On August 26, 2009, upon Plaintiff's motion, an Order was entered appointing Steven Goudsouzian, Esq., as Master to hear testimony and submit a report and recommendations concerning the claim for divorce as well as the economic claims of equitable distribution, alimony pendente lite, spousal support, alimony, counsel fees, and costs and expenses.

On October 15, 2009, Defendant filed a Petition to Vacate Appointment of Master, alleging that the appointment of a Master was procedurally inappropriate because Defendant has not consented to the divorce and two years have not passed during which the parties have lived separate and apart.

Plaintiff filed a Reply and New Matter in response to Defendant's Petition, wherein he denies that the appointment of a Master was procedurally inappropriate, and wherein he requests that this Court direct Defendant to consent to a decree of divorce. Plaintiff further requests that this Court vacate the existing alimony pendente lite Order in the event that Defendant fails to consent to the divorce.

This matter was assigned the Honorable Paula A. Roscioli for decision from the November 6, 2009 Miscellaneous Hearing List. Following brief argument before the Court, the parties were given seven (7) days to file letter

briefs, upon the request of Defendant's counsel. Both parties have submitted briefs, and the matter is now ready for disposition.

II. Discussion

A. Defendant's Petition to Vacate Appointment of Master

Defendant requests that this Court vacate its prior Order appointing a Master to hear the parties' divorce and related economic claims. She argues that the appointment of a Master is procedurally inappropriate at this time, as no fault grounds have been alleged for the divorce, Defendant has not consented to a no-fault divorce upon the grounds of irretrievable breakdown, and neither party has filed an affidavit pursuant to 23 Pa.C.S.A. § 3301(d) alleging irretrievable breakdown of the marriage and a separation of two years. In fact, according to the allegations in Plaintiff's own Complaint, the parties have been separated for less than one year.

A plain reading of Pennsylvania Rule of Civil Procedure 1920.51 shows that this Court may appoint a Master where the grounds alleged for divorce are (1) any of the various fault grounds enumerated in 23 Pa.C.S.A. § 3301(a), (2) the institutionalization of a spouse, or (3) the irretrievable breakdown of a marriage where an affidavit has been filed by the plaintiff

alleging that the parties have lived separate and apart for a period of at least two years and that the marriage is irretrievably broken[,] the defendant...denies one or more of the allegations set forth in the affidavit [and,] after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least two years and that the marriage is irretrievably broken. 23 Pa.C.S.A. § 3301(d)(1)(ii).

It follows, therefore, that a Master may not be appointed if neither of the foregoing circumstances is present. In this case, while the Plaintiff has alleged and the Defendant denied that their marriage is irretrievably broken, the parties have not lived separate and apart for a period of at least two years, and the Court has not made a determination pursuant to 23 Pa.C.S.A. § 3301(d)(1)(ii). For this reason, we find that a Master should not have been appointed to hear the divorce claim at this time.

However, Rule 1920.51 also permits the appointment of a Master to hear the claims of "alimony, alimony pendente lite, equitable distribution of marital property, child support, partial custody or visitation, or counsel fees, costs, expenses, or any aspect thereof." Plaintiff herein requested the appointment of a Master on the economic claims of equitable distribution, alimony pendente lite, spousal support, alimony, counsel fees, and costs and expenses. The 1994 Explanatory Comment to the Rule cited above suggests that the appointment of a Master to hear those claims, which are joined with the divorce action, is appropriate despite the fact that the Master cannot hear the divorce claim itself at this time. Therefore, we must deny Defendant's Petition.

B. Plaintiff's New Matter

In his New Matter, Plaintiff requests that this Court direct Defendant to consent to the entry of a decree of divorce, and that if Defendant fails to do so that this Court vacate the existing alimony pendente lite Order. This Court will

not order Defendant to consent to the entry of a decree of divorce. To do so would be entirely inappropriate. Were we to direct Defendant to consent, this Court would remove any meaning from the word "consent," as Defendant would not in fact be consenting to the divorce, but rather the Court would be forcing her to divorce. We will not take such action. Defendant is fully entitled, as is any defendant in a divorce, to defend against the action, and she is not obligated to agree to it.

With regard to alimony pendente lite, Plaintiff relies on the case of *Rueckert v. Rueckert*, 20 Pa. D. & C. 3d 191 (Allegheny Cty. 1981), for his argument that Defendant is not entitled to withhold her consent to the within divorce action and still receive alimony pendente lite. We reject Plaintiff's contention that the reasoning in the above case should be applied to the present case. In *Rueckert*, it was the Plaintiff who was withholding her consent to the divorce while continuing to receive alimony pendente lite, choosing to wait until two years of separation had transpired rather than consent to the divorce after the defendant husband had himself consented to the entry of a decree of divorce.

It is plain from the facts of that case that the plaintiff wife was attempting to prolong the divorce action purely so that she might continue to receive alimony pendente lite, as it was she who had initiated the action, and her husband had consented to it. There, the purpose of the alimony pendente lite, i.e. to keep both spouses on an equal financial footing so that each might

maintain or defend the action, had been fulfilled. Accordingly, the Allegheny County Court of Common Pleas found that the plaintiff wife's alimony pendente lite must be terminated.

Again, the purpose of alimony pendente lite is to provide income to a financially dependant spouse during the pendency of a divorce action. *Wiegand v. Wiegand*, 363 A.2d 1215 (Pa. Super. 1976). While a spouse cannot indefinitely delay the proceedings in order to continue receiving alimony pendente lite, we cannot agree that a spouse must agree to a divorce in order to receive said payments.

Contrary to the facts of *Rueckert*, Defendant herein is attempting to defend against a divorce action with which she does not agree. There is no indication that she is simply delaying the divorce process in order to continue to receive alimony pendente lite. Rather, all indications are that the Defendant simply disagrees that the parties' marriage is irretrievably broken, and that she wishes to undergo marriage counseling in the hopes of reconciling. For this she cannot be penalized, and we therefore deny Plaintiff's requests contained in his New Matter.

WHEREFORE, we enter the following:

