HB

146

OFFICIAL BUSINESS

Alaska State Legislature

House of Representatives

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RAMONA L. BARNES
DISTRICT 14

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SPONSOR STATEMENT

HB 146

HB 146 would prohibit a court from allowing a divorce decree while reserving property division issues for a later time. Although there may be some advantages to separating the issues, I believe that the disadvantages far outweigh the advantages.

Disadvantages include the following:

Incentive to finalize financial matters is reduced, particularly for the party with the majority of the assets.

Delay prolongs and exacerbates litigation.

Lack of settlement and/or remarriage can complicate new lives for both parties.

Involved parents can seem to put their own needs ahead of those of their children.

Gaps in medical insurance can occur.

Real property title can be in question if one party dies.

The party with fewer assets has no control over the property in question.

If either party dies, the ex-spouse has lost status in life insurance and inheritance rights.

The one advantage that can be cited is that it accellerates the actual disolving of the relationship as the time needed for a divorce is less than the time needed for the settlement and disposition of the marital estate.

I have attached information supplied by the Legislative Research Agency. After reading this material I believe you will agree that the disadvantages far outweigh the advantages and I urge your serious consideration on this matter.

SPONSOR STATEMENT

Alaska State Legislature

Legislative Research Agency

P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 465-3991
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February 25, 1991

MEMORANDUM

TO: Representative Ramona Barnes

FROM: Patricia Young PY
Legislative Analyst

RE: **Bifurcated Divorce Proceedings**
Research Request 91.171

You requested information on the number of states which allow bifurcated divorces, i.e., divorces in which the actual divorce and economic and child custody issues are handled separately. You asked for any statistics readily available on the number of divorces handled in this manner and for information on problems and benefits associated with the practice.

Bifurcation is a standard court practice, applicable to a variety of case types. Divorce is one type of case which may be bifurcated. According to Sidney Siller, president of the Institute for the Study of Matrimonial Laws, most states allow for bifurcated divorce actions either by rule or by practice, rather than by statute. Determination of the exact number of states which do bifurcate divorce proceedings is, therefore, difficult to determine. Neither Mr. Siller nor researchers at the American Bar Foundation, which is the research arm of the American Bar Association, were aware of any compilations of data on this subject.

The primary justification generally cited for the practice of bifurcating divorce proceedings is that the separation of divorce from custody or property settlement issues expedites matters, encourages settlements (rather than continued litigation) and allows individuals with irretrievably broken marriages to begin to disentangle their affairs and to restructure their separate lives. Not uncommonly, one or both individuals wish to remarry, and requests for bifurcation issue from a desire to move toward that goal. Sometimes matters are compounded by a sense of urgency to legitimize the birth of an expected child. Bifurcation also allows for certain tax advantages: rather than filing in the less advantageous married-but-separate category, ex-spouses may file as single adults or jointly if they have remarried. Additionally, the practice may allow individuals with irreparably eroded relationships to discontinue financial responsibility for family members for whom they no longer wish to be responsible. The theory behind the practice of bifurcation, as it relates to divorce proceedings, is that people who wish to be divorced ought to be allowed to do so, and should not have their personal lives held hostage to economic demands.

Legis. Research Report

Opponents of bifurcated divorce proceedings contend that allowing individuals to delay such basic human responsibilities as the care of one's children and the resolution of one's financial affairs inevitably complicates and aggravates the original problems. According to Lynn Gold-Bikin, a representative of the American Bar Association on this issue, problems usually outweigh benefits. The following represent the major problems associated with bifurcated divorces.

- The granting of a final decree of divorce separate from resolution of custody and/or financial matters may reduce the incentive to finalize those issues expeditiously, particularly for the party with more money. The party who stands to lose assets in an economic distribution may delay settlement in the hope that the dependent party will eventually agree to accept less in order to have the issue finally resolved.

- In cases without the possibility of a mutually agreeable settlement, bifurcation prolongs and exacerbates litigation.

- Unresolved and unreconciled old business hinders the parties' efforts to restructure their lives. Remarriage, although it may satisfy the emotional needs of one or both parties, further complicates matters and almost inevitably further reduces the wealthier party's incentive to resolve financial and/or custody issues.

- Bifurcated divorces, especially when followed by remarriages, may prove very disruptive for children, particularly if they come to believe that their parents consider their own needs and wishes as more important than those of their children.

- Eligibility for medical insurance coverage provided through one party's employment and extending to the spouse and children is no longer available for the ex-spouse. Although alternate insurance may be available, gaps in coverage can occur at a time when individuals are particularly vulnerable due to increased stress.

- The real property ownership status of tenancy by the entirety--which carries a right of survivorship--is available only to married couples. Once a dissolution is final, ownership status converts, by operation of law, to tenancy in common. More like a partnership, tenancy in common does not afford the same protections--such as right of survivorship--as does tenancy by the entirety.

- In a bifurcated divorce proceeding, the party with fewer assets has lost the protection afforded by statute to a spouse and yet has not gained the protection of a valid property settlement agreement. Property owned at the time of divorce may have diminished, increased, or disappeared by the time of economic distribution.

Any of these events may cause thorny problems, particularly if the court has deferred valuation of assets until distribution. Little protection exists for the rightful assets of an ex-spouse if the wealthier party diminishes or hides assets, retires, or declares bankruptcy after the divorce but prior to the property settlement.

In the event of the death of either party, as an ex-spouse without the protection of a valid property settlement agreement, the surviving party or heirs would have difficulty claiming beneficiary status under any life insurance policy the other might have held. Likewise, complex inheritance questions would ensue. Establishing a clear right to inherit would be particularly complex if one or both parties had remarried.

Attached is a copy of *Wolk v. Wolk* 464 A.2d 1359 (PA Super.1983), which is considered the lead case in Pennsylvania. Judges in this case held that although unusual situations could occur in which a single order would not suffice, divorces actions should not be bifurcated as a matter of course. *Wolk v. Wolk* clearly summarizes benefits and potential problems of the practice, and delineates under what conditions and circumstances it should be considered.

Ms. Gold-Bikin notes that in 1979, a judicial inquiry held in New Jersey--generally considered a rather forward-thinking state--produced the Pashman Report which recommended against the practice of bifurcated divorces for many of the reasons noted above, despite the length of time needed to resolve most cases through the overloaded trial courts in that state. Subsequent to the Pashman Report, New Jersey's chief justice sent out a judicial directive against the practice. Since that time, bifurcation of divorce cases in New Jersey is generally discouraged and extremely rare: one must show exceptional circumstances for the court to exercise its discretion to grant bifurcation. The attached copy of *Leventhal v. Leventhal* 571 A.2d 348 (NJ Super.Ch.1989) provides a summary of arguments for and against bifurcation, as discussed in the Pashman Report, as well as a review of case law on the subject.

In its discussion, the New Jersey court noted that New York case law concludes that when complex financial issues are involved, settlements or easy answers may be less likely once dissolutions are granted. (Because of this, according to Mr. Siller, final judgments in New York frequently are not entered until all issues are finalized.) The Florida court was also cited as holding that the split procedure should be used only if *clearly* in the best interests of the parties and children. Florida holds that the "convenience of one of the parties for early remarriage' does not justify" a bifurcation.

Interestingly, the New Jersey court concludes that "realistically, . . . the actual divorce appears to be ancillary to the financial issues." The ideal of the insular family unit--two adults and their biological children--is no longer the reality in this society. Thus, problems which might at first reading seem unlikely may, in fact, be commonplace. Ann Moss, deputy director

of the Pension Rights Center--an independent, nonprofit organization funded in part by the American Association of Retired Persons--cautions that the practice necessitates very carefully worded temporary orders, and that, in general, a more highly sophisticated than normal approach by divorce attorneys is required to adequately protect all parties.

Sources agree that any state which permits bifurcation should think seriously about the potential problems. No divorce is identical to another, however, and no rule is applicable to every situation. A middle ground, in which petitioners have specifically addressed all substantive issues is, therefore, frequently recommended. Public policy that allows courts to evaluate cases on their individual merits and to use discretion in allowing bifurcations when parties have considered the potential problems and no just reasons exist to deny the requests, is generally favored by the courts and by the citizenry as well.

I hope that this information is useful to you. If you have questions or need further information, please don't hesitate to call.

Attachments

BIFURCATE DIVORCE? WELL, . . .

Critics say 2-step process often leads to delay

The bifurcated divorce—granting the divorce first and deciding economic issues later—can give couples a quick break so they can get on with their lives.

But the practice is coming under increasing criticism from lawyers who say it leads to long delays and favors the party with more money.

Divorce attorney Harry Fain of Beverly Hills favors bifurcation for the traditional reason: "When you get into a case and the parties are mortal enemies . . . our public policy in California encourages the two people to get divorced first. That cleanses the air a little bit."

Section 302(a)(4) of the Uniform Marriage and Divorce Act allows the judge to bifurcate the divorce, and many states have adopted the practice even if they have not adopted the uniform act.

Chicago divorce attorney Donald Schiller says the biggest problem with bifurcating economic issues is delay. After the divorce is granted, the party who stands to lose some of his property and paycheck in an economic distribution has no incentive to press for a quick resolution.

Schiller, immediate past chairperson of the ABA Section of Family Law, says some bifurcated cases have dragged on for as long as four years. As a result, Schiller thinks Illinois judges use bifurcation less often.

"When judges started realizing that the cases weren't getting finished, they stopped bifurcating, unless the parties agreed or unless there was a real good reason, because these cases were just lying around and not getting disposed of," Schiller said.

Beverly Anne Groner of Bethesda, Md., chairperson of the ABA Section of Family Law, has even gone so far as to get injunctions to prevent bifurcation.

Groner is one of several lawyers who say that big problems can arise between the dissolution and economic division. For example, what happens when the divorce is granted, and then one spouse dies, or the wealthier spouse spends or hides his assets?

"It opens in some cases a veritable Pandora's Box of problems that weren't contemplated," said Groner.

▲ Donald Schiller: Bifurcated cases have dragged on for as long as four years.

If the wealthier spouse should die after the dissolution, the other party would not have a clear right to inherit, and would not yet have any rights under the divorce decree, Groner says.

Or, if the economically dependent spouse should die, the heirs may have problems getting property not yet distributed by the divorce decree.

Another problem arises when the property owned at the time of the divorce isn't there at the time of economic distribution. "Assets can diminish, increase, or disappear," Groner said. "There are some who will deliberately hide assets."

State statutes vary as to whether assets should be valued at the time of divorce, or at distribution, according to Groner.

The wealthier spouse could even lose assets in a bankruptcy proceeding, according to Norristown, Pa., attorney Lynne Z. Gold-Bikin. In *In Re Murray*, 31 B.R. 499 (Bkrtcy. E.D. Pa. 1983), the bankruptcy court forced the sale of the divorced husband's home, giving only 50 percent of the proceeds to the divorced wife. If the economic distribution had occurred first, the wife could have been entitled to more.

Before the advent of no-fault divorce, property issues were decided more quickly because they were part of the bargaining process. One party would agree to the grounds for a divorce in exchange for property.

For example, in New York, where some degree of fault is still required for a divorce, attorney Sanford S. Dranoff says the bargaining chip is frequently used by the economically dependent party: "I represent the man, and the woman says, 'You don't have any grounds, unless you give me the title to the house.' "

Ironically, with the advent of bifurcation and no-fault, the bargaining chip is now in the hands of the economically superior party.

"The person with the most property wants to give up as little as possible, and he will sometimes prolong the case in the hope that the other party will accept less to get it over with," said DePaul College of Law Associate Dean Vincent Vitullo.

Many who criticize bifurcated divorce as favoring the economically advantaged party—often the husband—say it is part of a larger problem in which women are treated unfairly in divorce proceedings.

But there are some cases when bifurcation actually prevents delay, according to Fain. He has used bifurcation to resolve thorny issues like valuation of a business or the validity of a premarital agreement first. Once those issues are resolved, a quick settlement is likely, he said.

—Debra Cassens Moss

▲ Beverly Anne Groner

Jacob WOLK

v.

Thelma Dym WOLK, Appellant.

Jacob WOLK

v.

Thelma Dym WOLK, Appellant.

Superior Court of Pennsylvania.

Argued May 25, 1983.

Filed Aug. 26, 1983.

Appeal was taken from decree of the Court of Common Pleas of Allegheny County, Civil Division, No. 930 Oct. Term 1980, Kaplan, J., which stated that court would not adjudicate wife's new matter alleging that divorce code was constitutionally defective and that economic claims would be severed from divorce claims. The Superior Court, Nos. 333 and 538 Pittsburgh 1981, Cirillo, J., held that: (1) economic claims may be severed from divorce claims, and (2) trial court failed to exercise its discretionary power in deciding whether to bifurcate the issues; thus, case would be reversed and remanded for new hearing.

Reversed and remanded.

1. Trial ⇐3(5)

Economic claims may be severed from divorce claims under the new divorce code. 23 P.S. § 401(b); Rules Civ.Proc., Rule 1920.52(c), 42 Pa.C.S.A.

2. Trial ⇐3(5)

The decision to bifurcate economic claims from divorce claims, although permissible, should not be made pro forma; rather, such determination should be made only after disadvantages and advantages have been carefully explored and analyzed; each case must be reviewed on its own facts and only following court's determination that consequences of bifurcating case would be of greater benefit than not bifurcating, should permission be granted. 23 P.S. § 401(b); Rules Civ.Proc., Rule 1920.52(c), 42 Pa.C.S.A.

3. Divorce ⇐184(5)

So long as trial judge, in deciding whether to sever economic claims from divorce claims, assembles adequate information, possibly studies information, and then explains his decision regarding bifurca. .n, the Superior Court will defer to trial court's discretion.

4. Trial ⇐3(5)

Trial court failed to exercise its discretionary powers when it ordered bifurca-

tion of economic claims and divorce claims since its decision to bifurcate was based upon accepted practice in county and not upon particular facts of case; thus, case would be reversed and remanded for new hearing. 23 P.S. § 401(b); Rules Civ.Proc., Rule 1920.52(c), 42 Pa.C.S.A.

John J. Dean, Pittsburgh, for appellant.

Frederick N. Frank, Pittsburgh, for appellee.

Before CAVANAUGH, ROWLEY and CIRILLO, JJ.

CIRILLO, Judge:

The parties were married on October 25, 1959 and lived together until a domestic dispute arose in June, 1975. The husband filed a divorce action on September 3, 1980, alleging that the marriage was irretrievably broken,[1] and requesting equitable distribution of marital property as well as counsel fees. The wife filed an Answer and New Matter averring, *inter alia*, that the Divorce Code was constitutionally defective. She also entered a counterclaim for alimony, alimony pendente lite, counsel fees and maintenance of insurance policies.

A hearing was held on March 2, 1981, at which time the court found the marriage to be irretrievably broken. The court did not adjudicate the New Matter or property rights at that time. On March 3, 1981 the wife appealed at No. 333 Pittsburgh, 1981.

Subsequently, the lower court signed a series of Orders, dated March 2, 1981, which stated that the court would not adjudicate the New Matter, would enter a bifurcated divorce and a decree of divorce dissolving the marriage. These orders were then docketed with the prothonotary and on May 15, 1981 the wife appealed at No. 538 Pittsburgh, 1981.

[1] Initially, we are compelled to address the issue of the propriety of severing economic claims from divorce claims in this matter. The New Divorce Code provides in pertinent part:

> . . . In the event that the court is unable for any reason to determine and dispose of the matters provided for in this subsection within 30 days after the master's report has been filed, it may enter a decree of divorce or annulment . . .

Act of April 2, 1980, P.L. 63, No. 26, § 401, 23 P.S. § 401(b). Similarly, the Pennsylvania Rule of Civil Procedure concerning court hearings in divorce or annulment actions states:

> (c) The court need not determine all claims at one time but may enter a decree adjudicating a specific claim or claims.

Pa.R.C.P. 1920.52(c), Adopted June 27, 1980, effective July 1, 1980.

The preceding language demonstrates a legislative awareness that situations could arise in which a single order would not suffice. It is clear, therefore, that the intent of the legislature is to permit bifurcation. However, there is no requirement which mandates bifurcation nor obligates the court to find clear and compelling necessity before it bifurcates a proceeding.

There are several advantages which appertain to the concept of bifurcation. First, it accelerates the actual dissolution of a marriage found to be irretrievably broken since the time needed to obtain a divorce is substantially shorter than the time needed for the disposition of marital property. This allows the parties to quickly begin the task of restructuring their lives. We note that the objectives of the Assembly in enacting the Divorce Code are set forth in Section 102(a) which provides in pertinent part:

> (a) The family is the basic unit in society and the protection and preservation of the family is of paramount public con-

1. The Act of April 2, 1980, P.L. 63, No. 26, § 201, 23 P.S. § 201(d).

cern. Therefore, it is hereby declared to be the policy of the Commonwealth of Pennsylvania to:

(1) Make the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.

. . . . . .

(3) Give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs.

(4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

Act of April 2, 1980, P.L. 63, No. 26, § 102, 23 P.S. § 102(a)(1), (3) and (4).

It is apparent that a speedy resolution of the divorce issue is within the purview of the Code. Moreover, as the Honorable Eugene B. Strassburger III of the Court of Common Pleas of Allegheny County commented in the case of *Casey v. Casey*, 129 P.L.J. 42, 44 (1981):

... [T]hese goals [of the divorce code] can be accomplished only by the prompt dissolution of a marriage that is demonstrably over (as defined by the code), and allowing the parties to restructure their lives. The goals cannot be accomplished by tying the parties to a dead marriage while all of the conflicts and time-consuming financial details are litigated....

Bifurcation separates the termination of the marriage from the distribution of property so that the marriage and each party's personal life are not held hostage to economic demands. At the same time, the dependent spouse is not economically disadvantaged by the fact of the divorce being issued because support and/or alimony pendente lite are required to continue at their pre-divorce levels pending resolution of the economic matters. *Klein v. Klein*, 16 D & C 3d 651 (1980).[2]

There are also several tax advantages that come into play when considering bifurcation, such as; a spouse may remarry and file a joint federal income tax return with the new spouse; a spouse may avoid filing status as married filing separately; stock redemption attribution rules may be avoided [I.R.C. § 318]; losses on transfers and sales between ex-spouses may be recognized [I.R.C. § 267]; an individual spouse may elect the capital gain exclusion on sale of family residence [I.R.C. § 121]; and gain on the sale of depreciable realty may be taxed as capital gain rather than as ordinary income. [I.R.C. § 1239]. *Rounick, Pennsylvania Matrimonial Practice*, Section 18.3, page 148.

Finally, as revealed by the experience in Allegheny County, bifurcation encourages case settlements between the time the divorce decree is issued and the property distribution issues reach trial. These settlements are an obvious benefit to our inundated courts.

On the other side of the coin, there are many disadvantages related to bifurcation. If the cases are not settled by the parties, then oftentimes two hearings are necessary, thus burdening an already overcrowded court calendar. Also, despite the fact that divorce is achieved rapidly, there is still a

2. In *Klein v. Klein*, *supra*, at 657-58 Judge Wettick reasoned:

> Alimony pendent lite, if literally construed, means alimony while the litigation is pending. (citation omitted). Under prior law, the duty to pay alimony pendente lite ended with the divorce because this was the only subject of the litigation. In *Ponthus v. Ponthus*, 70 Pa.Superior Ct. 39 (1918), the court held that alimony pendente lite continued while an appeal from the issuance of a divorce decree is pending. According to this court, the purpose of alimony pendente lite is to permit a dependent spouse to meet the expenses of carrying on or defending an action (including reasonable living expenses), so payments should continue as long as the action is pending. *Also see: Commonwealth ex rel. Entler v. Entler*, 33 Lehigh 23 (1968). Thus so long as any claims raised in the divorce litigation are still pending, the principles enunciated in *Ponthus* bar automatic termination of alimony pendente lite.

significant delay in the resolution of economic issues, thus having a dilatory effect on the parties' efforts to reshape their lives. From a tax standpoint, bifurcation prevents the parties from filing a joint federal income tax return and therefore a favorable tax rate is unavailable.

Another problem which arises where a case has been bifurcated involves the impact that the death of one of the parties, subsequent to the issuance of the divorce decree but prior to a determination of the economic issues, has on the surviving spouse's right to equitable distribution. This issue was painstakingly analyzed in an article authored by the Honorable Lawrence W. Kaplan.[3] Judge Kaplan noted that where a case has been bifurcated and one party dies before there has been a resolution of the ancillary issues, the other spouse is precluded from enjoying the benefits provided under the Probate, Estates and Fiduciaries Code.[4] Furthermore, the death of one of the parties would have an adverse effect on the surviving party's equitable distribution claim. Though this spouse would still have a claim against the decedent's estate under the Divorce Code's equitable distribution process, that claim would be seriously hampered by the surviving spouse being rendered incompetent as a witness by the Dead Man's Rule.[5]

Still another issue which could arise relates to the effect that a bifurcated divorce has on a divorced spouse's right to receive the proceeds of a life insurance policy in which that spouse was named a beneficiary. In *Simpkins v. Dodolak*, 1 Pa.Fiduc.2d 120 (1980), a Clearfield County case, the court held that since the husband had retained the right to change his beneficiary at any time, then under the Act of April 18, 1978, P.L. 42, No. 23, Sec. 8, 20 Pa.C.S.A. § 6111.-1, the rights of the wife were revoked regarding the proceeds of the policy in question. Undoubtedly, to this list of detriments associated with bifurcation, numerous other possibilities can be added.

[2] In light of the antecedent discussion, it is obvious that the decision to bifurcate, though permissible, should not be made *pro forma*, as in the case of *Klein v. Klein*, *supra*. Rather, such a determination should be made only after the disadvantages and the advantages have been carefully explored and analyzed. Each case must be reviewed on its own facts and only following the court's determination that the consequences of bifurcating the case will be of greater benefit than not bifurcating, should it grant the petition. In so holding, we reject the rationale of *Smolinsky v. Smolinsky*, 5 Phila. 364 (1981), whereby the trial court required compelling reasons to be shown before granting a petition to bifurcate. Such a strict test is not demanded by the legislature. The eventual decision should be the approach which is fair to both parties.

[3] Since the decision to bifurcate is discretionary, we will review lower court decisions pertaining to bifurcation by using an abuse of discretion standard. So long as the trial judge assembles adequate information, thoughtfully studies this information, and then explains his decision regarding bifurcation, we defer to his discretion. In other words, this determination should be the result of a reflective examination of the individual facts of each case.

This scope of review is consistent with other Superior Court decisions which deal with the Divorce Code. *See: Ruth v. Ruth*, —— Pa.Super. ——, 462 A.2d 1351 (1983); *Gee v. Gee*, —— Pa.Super. ——, 460 A.2d 358

3. Kaplan, "The impact of death on a pending divorce," *Pennsylvania Law Journal—Reporter*, January 18, 1982, at 3 and 24.

4. Act of June 30, 1972, P.L. 508, No. 164, § 2, 20 Pa.C.S.A. § 101 *et seq.*

5. Act of July 9, 1976, P.L. 586, No. 142, § 2, *as amended by* the Act of April 28, 1978, P.L. 202, No. 53 § 10(75), 42 Pa.C.S.A. § 5930.

(1983) (in determining the propriety of property distribution, the Superior Court uses an abuse of discretion standard of review); *See also: Geyer v. Geyer*, —— Pa. Super. ——, 456 A.2d 1025 (1983) (abuse of discretion standard is appropriate when reviewing awards of alimony); *See also: Remick v. Remick*, —— Pa.Super. ——, 456 A.2d 163 (1983) (orders for alimony pendente lite, counsel fees and permanent alimony should be reviewed for an abuse of discretion by the lower court). Likewise, our position in this matter, of requiring the trial judge to articulate reasons for his decision and then reviewing this determination for an abuse of discretion, is analogous to the procedure used under the Sentencing Code.[6] *See: Commonwealth v. Wilson*, —— Pa.Super. ——, 452 A.2d 772 (1982); *Commonwealth v. Rooney*, 296 Pa.Super. 288, 442 A.2d 773 (1982).

The wife in this instance has the burden of proving that the trial judge abused his discretion. In defining this standard, the courts of this Commonwealth have articulated the following:

> . . . When the court has come to a conclusion by the exercise of its discretion, the party complaining of it on appeal has a heavy burden; it is not sufficient to persuade the appellate court that it might have reached a different conclusion if, in the first place, charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power. "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused." (Citation omitted).

Garrett's Estate, 335 Pa. 287, 292–93, 6 A.2d 858, 860 (1939); *See also: Mackarus Estate*, 431 Pa. 585, 246 A.2d 661 (1968); *Campbell v. Heilman Homes, Inc.*, 233 Pa.Super 366, 371, 335 A.2d 371, 373 (1975) (HOFFMAN, J., dissenting).

[4] In the case at bar, the lower court failed to exercise its discretionary powers. Its decision to bifurcate was based upon an accepted practice in Allegheny County, not upon the particular facts of this case. Therefore, we must reverse the Orders and Decree of Divorce entered by the trial court on March 2, 1981 and remand for a hearing in accordance with this opinion. Because of this decision, we need not address the other contentions in appellant's brief. Jurisdiction is relinquished.

Reverse and Remand.

6. Act of December 30, 1974, P.L. 1052, No. 345, § 1, *as amended by* the Act of October 5, 1980,

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(N.J. SUPER. CH. 1989)

to the jury were materially deficient and because they did not apprise the jury of the essential elements of the legal malpractice cause of action applied with equal force and effect to the judgment against Conte. The judgment against Conte, therefore, should be reversed. However, because the judgment against Conte is vacated solely for the reason of trial error the matter must be remanded for a new trial. Plaintiffs should be afforded an opportunity to retry their claims against Conte based on conventional proofs, evaluating the value of the medical malpractice suit that was lost against Dr. Brown and the other defendants in accordance with the principles discussed broadly in *Gautam v. De Luca*, *supra*, 215 *N.J.Super.* at 397–400, 521 *A.*2d 1343 and the cases cited therein.

[370]The other issues raised by plaintiffs on this appeal do not pertain to the trial court's post-judgment order under review. Rather, they all appear to address our prior decision in *Gautam v. De Luca*, *supra*, and, therefore, are not properly raised on this appeal and we do not address them.

Accordingly, we affirm the order vacating the judgment against Conte and remand the matter to the trial court for a new trial as to Conte only, consistent with the views expressed in this opinion. We leave to the trial court the management of the trial of Conte's cross-claim against De Luca.

239 N.J.Super. 370

[370]Richard B. LEVENTHAL, Plaintiff

v.

Rosalyn LEVENTHAL, Defendant.

Superior Court of New Jersey,
Chancery Division,
Family Part, Bergen County.

Decided Oct. 11, 1989.

Party to divorce moved for bifurcation of action. The Superior Court, Chancery Division, Family Part, Bergen County, Krafte, J.S.C., held that party was not entitled to bifurcation of issues of dissolution and custody from those of support and equitable distribution, notwithstanding lengthy delay in trial due to court congestion, in that trial on dissolution, no matter how short, would do nothing to simplify or reduce prospect of further proceedings in case.

Motion denied.

[371]1. Trial ⇐3(1)

Decision to bifurcate proceeding should be made only after balancing advantages and disadvantages and determining if there would be greater benefit to court with bifurcation than without; purpose is not to ensure absolute necessity of second proceeding, but rather reduce probability of multiple litigation.

2. Divorce ⇐146

Party to divorce proceeding was not entitled to bifurcation of issues of dissolution and custody from those of support and equitable distribution, notwithstanding lengthy delay in trial due to court congestion, in that trial on dissolution, no matter how short, would do nothing to simplify or reduce prospect of further proceedings in case.

Gary N. Skoloff, Skoloff & Wolfe, Livingston, for plaintiff.

Barry I. Croland, Stern, Steiger, Croland, Tanenbaum & Schielke, Morristown, for defendant.

KRAFTE, J.S.C.

This matter is before the court on a motion requesting the bifurcation of the matrimonial dissolution and custody dispute from the issues of support and equitable distribution. This court finds that there has been no showing of "unusual and extenuating circumstances" which would require affording a preferential treatment to this particular case by granting the husband a divorce prior to a resolution, by trial

or otherwise, of alimony and the equitable distribution issues in this considerable marital estate.

The complaint for divorce was filed on February 16, 1987 by the husband, Richard Leventhal. While the parties each sought custody of the two minor children, both teenage girls, ages 16 and 13, have in fact, been living with their father for most of the time since the separation. Mrs. Leventhal is residing in the [372] marital home and was awarded $2500 a week *pendente lite* support. All discovery is complete, per court order of March 20, 1989. The parties express no hope of settlement of the economic issues without proceeding to trial.

Because of extreme calendar congestion, this case has not been reached for trial, there being a considerable number of older cases awaiting trial. Plaintiff is now requesting a bifurcation so that he may be granted an uncontested divorce, reserving the trial of the economic issues to a date to be set by the court, or alternatively, to list the case peremptorily.

As of the date oral argument was heard on the motion for bifurcation, this court had 626 dissolution cases on its individual calendar. Without even considering financial plenary hearings, "*Holder* hearings," true custody and visitation trials, reversals and remands from the Appellate Division, the burden created by the over-crowded calendar is evident. Plaintiff is number 51 of 109 on a special list of cases which have been reached for trial after they were two years or older. Needless to say, all parties placed on that list are also anxious to go to trial, to have their matters resolved, and to bring their lives back to normalcy.

[1, 2] Generally, the rationale behind the use of the procedural device of bifurcation is *judicial* economy. The decision to bifurcate should be made only after balancing the advantages and disadvantages and determining that there would be a greater benefit *to the court* with bifurcation than without. 27A *C.J.S.*, *Divorce*, § 209(b). The purpose is not to ensure the absolute necessity of a second proceeding, as would be the case here, but rather reduce the probability of multiple litigation. Thus, in a tort action, bifurcation would be proper. Once the issue of liability is resolved, a trial on damages may not be necessary. The decision whether liability should be bifurcated from the issue of damages is within the sound discretion of the court. *R.* 4:38–2(b) provides that liability and damage claims may be, in effect, bifurcated, "whenever the court finds that a [373] substantial savings of time would result from trial on the issue of liability in the first instance...." If this language were somehow deemed to apply to a divorce case, the court would be compelled to find that initially trying the dissolution (liability) aspect would probably afford the referred to time-savings by eliminating or substantially reducing time needed for the financial (damages) issues. *Pressler*, *Current N.J. Court Rules*, Comment *R.* 4:38–2(b) (1989); *Ventura v. Ford Motor Corp.*, 180 *N.J.Super.* 45, 433 *A.*2d 801 (App.Div. 1981); *Cotton v. Travaline*, 179 *N.J.Super.* 362, 432 *A.*2d 122 (App.Div.1981); *Radigan v. Innisbrook Resort and Golf Club*, 150 *N.J.Super.* 427, 375 *A.*2d 1229 (App.Div. 1977). However, in a matrimonial action, as the one presently before the court, where the economic issues are vast and complicated, a trial on the dissolution, no matter how short, will do absolutely nothing to simplify or reduce the prospect of further proceedings. Plaintiff alleges that there is no possibility of a settlement, so the effect of trying the issues separately would only serve to prolong and exacerbate this litigation. The bifurcation would have no benefit to the already over-burdened court calendar. Its sole effect would be to personally benefit plaintiff in his desire to remarry without addressing his responsibility to reach a final disposition of all other issues involved.

The State of New Jersey has no specific provision, either by statute or court rule, for bifurcation, where a judge may grant a divorce and defer consideration of the other issues in a matrimonial case. The Supreme Court Committee on Matrimonial Litigation, Interim Report (July 20, 1979) set forth its policy on bifurcation. The report noted the existing controversy regarding

the procedure and the delays inherent in its use. The committee's recommendations encouraged a court rule or directive on bifurcation, but in its absence stated that bifurcation be granted "only in unusual and extenuating circumstances," and then only with the approval of the assignment judge. *Id.* at 24. The actual decision as to the merits of bifurcation of this case has been deferred to this trial court by the assignment judge.

Other jurisdictions have faced similar questions. The New York courts have held that the use of bifurcation in a matrimonial action will not eliminate a further trial on economic issues and that the chance of resolution is best met in one trial of all the interrelated factors. *Finkel v. Finkel*, 120 *Misc.*2d 936, 466 *N.Y.S.*2d 906 (Sup.Ct. 1983). Some of the factors the *Finkel* court considered, in deciding the practicality of bifurcation, were the reduction of hardship, the speed of a just determination and help in clarifying various issues. Without the furtherance of those factors, a court should not grant bifurcation.

Here, the actual divorce itself will be uncontested, so the trial of the dissolution issue would be perfunctory and not protracted. However, it is readily apparent that the second trial on the economic issues would be long and controversial including testimony of a multitude of expert witnesses. Therefore, bifurcation would do nothing to hasten the resolution of the overall matter and would put defendant-wife in a position whereby plaintiff has his divorce but continues to control the pursestrings through the exclusive operation of the single largest marital asset, his business venture. New York agrees that, when there are complex financial issues, a settlement or easy answer may be less likely once the dissolution is granted. *Fiorella v. Fiorella*, 132 *A.D.*2d 643, 518 *N.Y.S.*2d 17 (App. Div.1987), app. den. 70 *N.Y.*2d 796, 522 *N.Y.S.*2d 118, 516 *N.E.*2d 1226 (1987).

In *Glazer v. Glazer*, 394 *So.*2d 140 (Fla. Ct.App.1981) a Florida court held that a split procedure may be used only if it is *clearly* necessary in the best interests of the parties and the children, following the prior state court ruling in *Claughton v. Claughton*, 393 *So.*2d 1061 (Fla.Sup.Ct. 1980). The *Glazer* court emphasized that only in exceptional circumstances should a trial court exercise its discretion to grant bifurcation. Specifically, Florida holds that the "convenience of one of the parties for [1376] early remarriage" does not justify the issue of bifurcation. *Claughton*, supra at 1062. The major reason noted by plaintiff to justify the bifurcation of the present action is that he desires to marry the woman with whom he is living. However, deciding the divorce without addressing the extensive financial matters would yield a benefit to absolutely no one but plaintiff.

It must be remembered that the bifurcation procedure is condoned not only when the parties benefit by the clarification of the issues, but the court, too, profits through the easing of its calendar. It is evident that by giving plaintiff preferential treatment afforded no other litigant in a similar bind, neither the court nor its calendar will be served in any way. To grant this relief to plaintiff because of his superior financial status would do tremendous damage to the image of justice in this State.

Pennsylvania permits bifurcation pursuant to its Divorce Code and Rules of Civil Procedure. 23 Pa.Stat.Ann. § 401(b) (Purdon 1955); Pa.R.C.P.1920.52(c) (West 1989). The separation of the divorce from the other issues is at the discretion of the court *as long as it is by agreement of the parties. Jawork v. Jawork*, 378 *Pa.Super.* 89, 548 *A.*2d 290, 292 (Super.Ct.1988). Here, defendant has not agreed to a separate trial on the divorce, so that plaintiff's unilateral request should not be given particular weight.

In spite of a speedy divorce, the delay of the resolution of economic issues may have a negative effect on the parties' lives, since the entire matter is not reconciled. The Pennsylvania Legislature gives no mandate to a trial court to bifurcate but permits the relief only after carefully reviewing the facts and determining that there would be more to gain through bifurcation than not. *See Mackey v. Mackey*, 376 *Pa.Super.* 146,

545 *A.*2d 362 (Super.Ct.1988); *Leese v. Leese*, 369 *Pa.Super.* 104, 534 *A.*2d 1101 (Super.Ct.1987); *Mosier v. Mosier*, 359 *Pa. Super.* 187, 518 *A.*2d 843 (Super.Ct.1986); *Wolk v. Wolk*, 318 *Pa.Super.* 311, 464 *A.*2d 1359 (1983). Overall, in spite of [376] the explicit authority gleaned from the legislature, the courts in Pennsylvania are cautioned not to grant the use of this procedural device without a finding that the consequences of bifurcation would be highly beneficial. The exclusive benefits of a bifurcation in this case would clearly inure to plaintiff while the court would still have the burden of the second trial and defendant, the uncertainity of her economic future. Neither the court nor defendant would receive any actual or perceived gain.

California, through its Family Law Act, as interpreted by the judicial council rules, has also authorized a trial court to bifurcate dissolution from other issues to be litigated, but the decision still remains squarely within the court's discretion. Bifurcation is granted only when there is no hope of reconciliation and it is found to be in the best interests of all parties. Cal.Civ. Code § 4000 *et seq.* (West 1983); *In re Marriage of Lusk*, 150 *Cal.Rptr.* 63, 86 *Cal.App.*3d 228 (Ct.App.1979); *Gionis v. Superior Court*, 202 *Cal.App.*3d 786, 248 *Ca.Rptr.* 741 (Ct.App.1988).

There is no doubt that even without the express authorization of the Legislature, New Jersey courts may decide whether it is in the best interests of the parties to permit a separate trial of ancillary matters after a divorce has been granted. Realistically, under New Jersey divorce practice as it exists today, the actual divorce appears to be ancillary to the financial issues. The court should decide whether the facts present circumstances which meet the criteria of the Pashman report's "unusual and extenuating circumstances" test. Here, the motion for bifurcation reaches the court after numerous, but unsuccessful, attempts to settle the financial issues. The *pendente lite* questions of support and maintenance have been a constant source of this court's time. Although discovery is closed by court order, the cooperation of plaintiff is still necessary to assure that the marital assets are fairly valued and the interests of defendant are protected as to equitable distribution.

[377] There remains the real danger that once divorce is granted, there will be much less incentive for plaintiff to finalize any other issues. This court cannot find any factor other than plaintiff's personal desire to remarry which, with due respect for plaintiff's sincerity in wishing to move forward with his life, does not reach the standards necessary to employ any special or preferential procedures on his behalf. Every argument propounded by plaintiff to buttress his claim for bifurcation applies with equal force to hundreds of cases pending before this court. If plaintiff is entitled to bifurcation, so are the others. To permit this would be to wreak havoc upon the efficient administration of the divorce calendar. Everyone would be divorced without any basic financial issues finalized, leaving all with hopelessly confused life factors.

Plaintiff contends that the custodial dispute between the parties should trigger bifurcation. While New Jersey generally discourages bifurcation, the State's concern with the best interests of the children provides that a custody hearing be permitted prior to the final hearing of the whole action where the court finds that custody is a genuine and substantial issue. *R.* 5:8-6. Here, the Leventhal children have been residing with their father since the separation almost three years ago, although the ultimate resolution is yet to be reached. While not stipulated, it appears that, because of the ages of the children, their expressed preferences and their residence with plaintiff, there will be no real, genuine or substantial issue of custody. Since the physical custodial arrangement is not of an emergent nature, there is no reason to separate the adjudiciation of this issue from the balance of the case. Additionally, settling the custody issue will do nothing to further plaintiff's main impetus for this motion—the ability to remarry. Thus, granting a separate custody trial would not serve to give the relief desired.

This court finds that it would not be in the best interests of the parties or the

children to bifurcate the divorce from the other issues because the effect would be to complicate, prolong, or otherwise aggravate an already difficult case. It would be 1378inequitable to give this litigant preferential treatment by trying his divorce before other parties who also wish to be free to get on with their lives.

The granting of bifurcation would not serve the purpose of eliminating any trial time whatsoever, but would merely permit plaintiff to continue to be in control of the marital assets without the incentive to resolve all other issues. A pending remarriage would inevitably create further barriers. There are absolutely no facts presented which are unusual or extenuating. For the reasons stated herein, the motion for bifurcation is denied.

239 N.J.Super. 378

1378**Lori ROTH, Donald Litt, Barbara Eidelsberg, Diane Bauer, Daniel M. Litt, Sherry Lackritz, Frederick Litt, Dr. Lawrence Eden, and Joseph E. Gassib, Plaintiffs,**

v.

RUTHERFORD RENT BOARD, Eleanor Bocker, Agnes Morris, Anna Hunter, Martha Kelierman, Frances Kasperski, Samuel Bloomfield, Elizabeth Cronin, Catherine Rogers, Albert Van der Veen, Mrs. John Kilroy, Regina Cunningham, Eleanor Noonan, Thomas Griffen, Julia Buhtanic, Angelo De Marco, Emily Hanson, Pearl Fecanin, Alfred Barbera, Edward Noff, Olive MacIntyre, Robert MacFadden, Catherine Brown, Grenville Lloyd, Loretta Dommeleers, Grace Broder, Laura Ferucci, David Minor, Lillian Heinrich, Joan Sink, Lillian Bruder, Mrs. John Soltis, Mrs. Matthew Albonese, a/k/a Jane Albonese, Patricia Murphy, William Barrett, Christine Sudol, Margaret Xigues, William Bidwell, Eleanor Cinquegrama, Laurina1379 Day, Dorothy Raabe, Lottie Miller, Betty Balogh, Gertrude Kohn, Minerva Blom, Ruth Clancy, Mrs. David Greenstein, Maria Shine, Mr. nd Mrs. Patrick J. O'Byrne, Dorothy Hahn, Kap Yi Pak, Martha Doyle, Ludmilla Szayna, Mr. and Mrs. Arthur Hauck, Defendants.

Superior Court of New Jersey, Law Division, Bergen County.

Decided May 31, 1989.

Landlords brought action against rent board and protected tenants to challenge 17% limitation on increase in property tax surcharge imposed on tenants. The Superior Court, Law Division, Bergen County, Harris, J.S.C., held that 17% limitation on property tax surcharge was invalid.

Decision of rent board reversed.

1. Landlord and Tenant ⇐200.68

Rent board must do more than merely set forth its conclusions; it must articulate basis for arriving at conclusions and make factual findings upon which conclusions rely.

2. Landlord and Tenant ⇐356

Rent board's failure to articulate rationale for 17% limitation on increase in tax surcharge by landlords for condominiums and cooperative apartments did not require remand, where board exceeded its powers, and where decision was purely legal.

3. Landlord and Tenant ⇐356

Rent board had no authority to impose 17% limitation on increase in landlords' tax surcharges on tenants, had no power under rent control ordinance to initiate investigation, and improperly imposed burden of proof upon landlords for condominiums1380 and cooperative apartments; no contested case was initiated by aggrieved tenant.

4. Landlord and Tenant ⇐200.52

Municipality has power to decide whether to permit landlords to impose tax surcharge on tenants, and failure to permit surcharge is not fatal so long as entire

WALTER J. HICKEL
GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR

ALASKA WOMEN'S COMMISSION
3601 C STREET · SUITE 742
ANCHORAGE, ALASKA 99503

April, 1991

TO: Representative Pat Carney
HESS Committee

FROM Glenne Ralls
Alaska Womens Commission

Re: House Bill 146

The Women's Commision has had the opportunity to review House Bill 146,"An Act prohibiting a court reserving property division issues for a later decision when granting certain judgements unless agreed by the parties; and providing for an effective date." We believe granting a final decree of divorce separate from financial matters reduces the incentive to finalize a divorce, particularly for the party with more money. The party who stands to lose assets (usually men) in an economic distribution may delay settlement in the hope that the dependent party will eventually agree to accept less in order to have the issue finally resolved.

In a bifurcated divorce proceedings, the party with fewer assets has lost the protection afforded by statute to a spouse and yet has not gained the protection of a valid property settlement agreement. Property owned at the time of divorce may have diminished, increased or disappeared by the time of economic distribution.

In the event of the death of either party, as an ex-spouse without the protection of a valid property settlement agreement; the surviving party or heirs would have difficulty claiming beneficiary status under any life insurance policy.

We believe it is unfair to reserve the issue of property division for a later time unless agreed to by each party.

BACK UP

7-LS0645\G
Lauterbach
3/28/91

CS FOR HOUSE BILL NO. 146 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES BARNES, Brown, Ulmer, Koponen, M.A.Miller

A BILL

FOR AN ACT ENTITLED

"An Act prohibiting a court from reserving property division and child custody issues for a later decision when granting certain judgments unless agreed to by the parties; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 25.24.150 is amended by adding a new subsection to read:

(f) If the issue of child custody is before the court at the time it issues a judgment under AS 25.24.160, the court shall concurrently issue a judgment for custody under this section unless each party expressly agrees on the record to let the court delay the custody decision for a later time.

*** Sec. 2.** AS 25.24.160 is amended by adding a new subsection to read:

(c) Notwithstanding (a) of this section, if one of the parties to an action for divorce or action declaring a marriage void expressly submits to the court the issue of property division and has not withdrawn that issue from the court before judgment, the court shall provide in the judgment for the division of property and may not reserve the issue of property division for a

New Text Underlined [DELETED TEXT BRACKETED]

CS HB 146 ( )

later time unless expressly agreed to by each party after notice of the court's intent to reserve the issue.

*** Sec. 3.** AS 25.24.150(f) and 25.24.160(c), added by secs. 1 - 2 of this Act, apply to actions for divorce and actions declaring a marriage void for which judgment has not been entered before the effective date of this Act.

*** Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill No. HB 148

Revision Date:
Department Affected: Alaska Court System
Title: An Act prohibiting a court from reserving property division issues for a later decision...
BRU: Trial Courts
Components:
Sponsor: Barnes
Requestor: HESS
COMPONENT SERIAL NO. 000 | 000 | 000 | 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 02	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 03/28/91

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System
Date: 03/28/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

FN 0 AK Court System

Alaska State Legislature

House of Representatives

COMMITTEE ON HEALTH, EDUCATION AND SOCIAL SERVICES

DATE: 4/3/91

PLACE: Capitol Room 106

SUBJECT OF MEETING:

HB 146 PROPERTY DIV. IN DIVORCES/ ANNULMENTS

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	