

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

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ANDRE STRIDIRON,

Plaintiff

vs.

EDITH STRIDIRON,

Defendant

CIVIL NO. 504/1983

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(Attorney for Plaintiff)

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MEMORANDUM OPINION AND ORDER
(January 10, 1984)

FEUERZEIG, J.

Plaintiff's motion to dismiss defendant's counterclaim requires this court to determine whether a wife may maintain an action for fraud and deceit against her former husband, and to determine the effect and applicability of the Virgin Islands law that abolished the doctrine of interspousal immunity, 16 V.I.C. 863 (1982 Supp.).

Plaintiff requests the imposition of a constructive trust and a declaration of his interest in real property located in St. Thomas, Virgin Islands. Defendant has counterclaimed, alleging that the defendant fraudulently induced her to "marry" him "knowing that the marriage was a nullity since he was already married, not divorced, and that his prior wife was not dead." It is not contested that as a result of the relationship between the plaintiff and the defendant, five children were born, all of whom the defendant says were born

under the assumption that the children were the product of a lawful marriage. As a result the defendant seeks \$250,000 compensatory and punitive damages. The parties concede that the amount prayed for in the counterclaim is beyond the jurisdiction of this court. Consequently, if the counterclaim states a claim, the action must be transferred to the District Court of the Virgin Islands pursuant to 4 V.I.C. §32(c) (1967).

In support of his motion to dismiss the counterclaim, the defendant relies on two theories. First, he argues that the counterclaim is res judicata because the same claim was raised by the defendant as an affirmative defense and counterclaim in the divorce action between the parties in Fam. No. D93/80. That action was recently remanded to this court by the United States Court of Appeals for the Third Circuit, which reversed this court's denial of the wife's motion to set aside the divorce decree on the basis of newly discovered evidence of fraud. Stridiron v. Stridiron, 698 F.2d 204 (3d Cir. 1983) rev'g. Civ. No. 81-294 (D.V.I., Div. St.T. & St.J., March 24, 1982). Res judicata, however, could not act as a bar because it is clear that the jurisdiction of the court in any action for divorce or annulment is limited by statute and Virgin Islands divorce laws do not permit a cause of action for tort. Thus, the court in the divorce action did not have jurisdiction to grant the relief requested.

The second ground for dismissal of the counterclaim is that the only judicial remedy for a marriage that is void ab initio due to a previous marriage by one spouse, which marriage has not been terminated, is a decree of annulment. Defendant in support of this theory relies on Paiewonsky v. Paiewonsky, 8 V.I. 421 (3d Cir. 1971). Defendant, however, correctly points out that the

persuasiveness of Paiewonsky was eliminated in 1973 when the Legislature passed Act No. 3397, which amended Virgin Islands law, 16 V.I.C. 863, and abolished the common law doctrine of interspousal immunity.

Consequently, the court is confronted with two basis questions: (1) whether a cause of action may be asserted under 16 V.I.C. 863 for fraud and deceit, and (2) if so, whether a cause of action is stated where the alleged fraud occurred before enactment of the statute abolishing the common law bar against interspousal suits.^{1/}

There is authority in many jurisdictions that the elimination of interspousal immunity subjects a spouse to suit not only for personal injury, but for intentional torts. See, e.g., 43 A.L.R.2d 632 (1955), and 92 A.L.R.3d 901 (1979). Counsel, however, unfortunately have not briefed any of the issues postulated above. While the court has found one case for the proposition that a cause of action has been stated, Spindle v. Spindle, 283 F.Supp. 797 (E.D. N.Y. 1968) (holding that under New York law inducing a person to enter into a marriage is actionable), the court is not satisfied that counsel have been given sufficient time or opportunity to research and brief these issues. Accordingly, it is

ORDERED that counsel for plaintiff and defendant submit supplemental memoranda with appropriate citations to authority within 30 days of the date of this order with respect to the following issues:

1. Whether under Virgin Islands law, 16 V.I.C. 863, a cause of action for fraud and deceit will lie where the allegation is fraud in the inducement of a marriage, and

^{1/} A third issue also is possible. If a marriage is void ab initio because it was fraudulently induced, can the doctrine of interspousal immunity apply, i.e., if void ab initio can the parties be considered to have been spouses so as to bring the interspousal immunity doctrine into play.

2. Assuming a cause of action, when such cause of action may be said to accrue, and

3. Assuming a cause of action and that the alleged fraud occurred prior to the repeal of the interspousal immunity doctrine, whether the cause of action is barred, and

4. Whether the interspousal immunity doctrine applies to parties to a "marriage" which is void ab initio.

ATTEST:


HENRY L. FEUERZEIG
Judge of the Territorial Court


VIOLA E. SMITH
Administrator/Clerk of the Court