

Supreme Judicial Court and Appeals Court of Massachusetts

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SUPREME JUDICIAL COURT for the Commonwealth Case Docket

TODD J. ELIA-WARNKEN vs. RICHARD A. ELIA
SJC-11023

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CASE HEADER

Case Status	Decided (Full Opinion)	Status Date	07/26/2012
Nature	Domestic Relation/Divorce	Entry Date	07/26/2011
Appellant	Plaintiff	Case Type	Civil
Brief Status		Brief Due	
Quorum	Ireland, C.J., Spina, Cordy, Botsford, Gants, Duffly, Lenk, JJ.		
Argued Date	04/05/2012	Decision Date	07/26/2012
AC/SJ Number	2011-P-0069	Citation	463 Mass. 29
DAR/FAR Number		Lower Ct Number	WO09D0940DR
Lower Court	Worcester Probate & Fam	Lower Ct Judge	Ronald W. King, J.
Route to SJC	Sua Sponte Transfer from Appeals Court		

INVOLVED PARTY

Todd J. Elia-Warnken
Plaintiff/Appellant
Blue br transferred w/case

Richard A. Elia
Defendant/Appellee
Red brief transferred w case

Vermont Family Law and Estate PI
Amicus

ATTORNEY APPEARANCE

[Nicholas J. Plante](#), Esquire

[Paige Dunmire Firment](#), Esquire
Withdrawn

[Karen L. Loewy](#), Esquire

[Hobart F. Popick](#), Esquire

BRIEFS

[Appellant Warnken Brief](#)

[Appellee Elia Brief](#)

[Amicus Vermont Family Brief](#)

DOCKET ENTRIES

Entry Date	Paper	Entry Text
07/26/2011	#1	Entered. Notice to counsel.
07/26/2011		Transferred from Appeals Court: Appellant's brief and record appendix (vol. 1) 4 copies each. Appellee's brief 4 copies. Amici Curiae's brief (4) copies.
07/28/2011	#2	INTERIM ORDER: We transferred this case to this court on our own motion. The report of the Probate and Family Court judge, however, is defective, as he failed to make an interlocutory ruling on the defendant's motion to dismiss. See G. L. c. 215, § 13; Mass. R. Dom. Rel. P. 64. See also Estate of Southwick, 88 Mass. App. Ct. 740, 745-746 (2006), and cases cited; Heck v. Commonwealth, 397 Mass. 336, 338-339 (1986). Accordingly, we direct the judge to decide the defendant's motion to dismiss within thirty days (and, if he allows the motion, to enter a final judgment of dismissal forthwith). We shall retain jurisdiction

		over the report in the meantime. The parties shall have fourteen days thereafter to file in this court supplemental memoranda, if they choose, addressing any additional issues that may be raised by the judge's ruling and any memorandum of decision he issues. The matter shall thereafter be placed on a list for oral argument and decision in the ordinary course. If the judge denies the motion to dismiss, we shall treat the matter as a report of the correctness of that interlocutory ruling; if he allows it, we shall treat the matter as an appeal from the final judgment of dismissal. By the Court.
07/29/2011	#3	Additional 14 copies of brief filed by Richard Elia.
08/03/2011	#4	Additional 14 copies of amicus brief filed by Vermont Family Law and Estate Planning Attorneys.
08/10/2011	#5	Received from Probate Court: Copy of "Defendant's Motion to Dismiss Complaint and Counterclaim for Divorce" filed in Probate court on March 26, 2010 and Copy of "Judgment of Dismissal" entered in Probate Court on August 1, 2011.
10/25/2011	#6	LETTER from Atty. Loewy that appellee does not plan to file a supplemental memorandum.
11/14/2011	#7	NOTICE of January argument sent.
12/08/2011	#8	NOTICE of February argument sent.
01/17/2012	#9	NOTICE of March argument sent.
01/27/2012	#10	ANNOUNCEMENT: The Justices are soliciting amicus briefs. Whether a couple can validly marry in Massachusetts when one of the parties is simultaneously a party to an undissolved out-of-state civil union with another. The case is tentatively scheduled for argument in March..
02/08/2012	#11	NOTICE of April argument sent.
03/08/2012	#12	ORDERED for argument on April 5. Notice sent.
04/05/2012		Oral argument held. (Ireland, C.J., Spina, J., Cordy, J., Botsford, J., Gants, J., Duffly, J., Lenk, J.).
07/26/2012	#13	RESCRIPT (Full Opinion): We answer the reported question in the affirmative: a Vermont civil union must be dissolved prior to either party entering into marriage with a third person in the Commonwealth. (By the Court)
08/24/2012		RESCRIPT ISSUED to trial court.

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As of 09/08/2012 02:00