

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CA 2629

DANNY LEE CALDWELL, JR.

VERSUS

TRACY DURR CALDWELL

Judgment Rendered: SEP 27 2006.

* * * * *

On Appeal from the
21st Judicial District Court,
in and for the Parish of Livingston
State of Louisiana
Trial Court No. 107859

Honorable Brenda Bedsole Ricks, Judge Presiding

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**PATRICIA RIVET MURRAY
JUDGE, AD HOC**

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge Leon A. Cannizzaro, Jr., serving as judges ad hoc by special appointment of the Louisiana Supreme Court)

Danny Lee Caldwell, Jr.
Homer, LA

In Proper Person Plaintiff/Appellant,
Danny Lee Caldwell, Jr.

C. Michele McDaniel
Hammond, LA

Attorney for Defendant/Appellee,
Tracy D. Caldwell

AFFIRMED

MURRAY, J.

pm
Danny Lee Caldwell, Jr.¹, appeals the district court's judgment that granted him a divorce from his spouse, Tracy Durr Caldwell. For the reasons that follow, we affirm.

AK
ROC/n
On April 29, 2005, Danny Caldwell filed a petition for divorce on the grounds that he and Tracy Caldwell, who had married on June 29, 1994,² had been living separate and apart continuously for a period of more than two years. At the time he filed the petition, Danny Caldwell was living at the Claiborne Parish Detention Center in Houma, Louisiana. In his petition he stated that there was one child born of the marriage. He also averred there was no chance of reconciling the marriage because Tracy Caldwell was in an adulterous relationship.

The matter was heard on June 13, 2005. The minute entry in the record reflects that both parties were present (both appearing in proper person); both were sworn in; and both gave testimony in open court, as did one additional witness, Rita Boyd.³ The minute entry also reflects that the court granted the divorce in open court and ordered that the issue of child custody be set for pretrial conference on August 15, 2005.

The parties again appeared in court on August 15, 2005. The transcript of the hearing reflects that Danny Caldwell appeared in proper person and Tracy Caldwell was accompanied by her attorney. Tracy Caldwell's counsel presented for the court's signature a written judgment of divorce, signed by both parties, which judgment counsel had prepared after

¹ Mr. Caldwell is incarcerated and has filed the instant appeal in proper person.

² Tracy Caldwell's answer to the petition avers that the parties were married June 29, 1996.

³ The record does not contain a transcript of this hearing.

the court had granted the divorce in open court. The court signed the judgment that same day, August 15, 2005.⁴ Counsel then read into the record a written stipulation, signed by both parties, agreeing that Tracy Caldwell would have sole custody of the parties' minor son and would make the child available to receive prearranged telephone calls from his father, Danny Caldwell. Both parties were then sworn in and stated under oath that they understood and agreed to the terms of the stipulation. Tracy Caldwell's counsel then informed the court that she would prepare and submit a written judgment reflecting the stipulation, which the court stated it would sign.

Danny Caldwell now appeals the judgment of divorce. In his assignments of error, he admits that when questioned by the trial court judge at the June 13th divorce hearing, he answered under oath "yes, I want the Divorce." However, on appeal he argues that the divorce should not have been granted because during the divorce hearing, he also requested a continuance to afford him an opportunity to prove that his wife was guilty of adultery, but the trial court denied the continuance.

After reviewing the law and the evidence, we decline to reverse the judgment of divorce. The appellant's petition reflects that he sought a divorce pursuant to Louisiana Civil Code article 103. That article provides that a divorce shall be granted on the petition of a spouse upon proof that: (1) the spouses have been living separate and apart continuously for six months or more as of the date the petition is filed, *or* (2) the other spouse has committed adultery. In the instant case, appellant's petition alleged both that he and Tracy Caldwell had been living separate and apart for in excess of

⁴ The judgment is contained in the appellate record.

two years; and that Tracy Caldwell had committed adultery. In her answer, Tracy Caldwell admitted that she and her spouse had been living separately for two years, but denied having committed adultery. The appellant admits he agreed to the divorce at the initial hearing, but claims he did not know it was “final.” Nevertheless, the record reflects that the appellant was also present at the August 15th hearing when the written divorce judgment was presented for the trial court’s signature, and he did not object to the divorce at that time.

Under article 103, living apart for at least six months and adultery are *alternative* grounds for divorce. As there clearly is no dispute that the parties had been living separately for in excess of six months at the time of trial, the district court did not err by granting the divorce. The appellant’s argument, that he was not given the opportunity to present evidence of his spouse’s adultery, is misplaced. Under the circumstances presented herein, whether Tracy Caldwell committed adultery is irrelevant, as it has no bearing upon the parties’ entitlement to a divorce.⁵

Accordingly, we affirm the judgment of divorce rendered by the district court on August 15, 2005.

AFFIRMED

⁵ Should the issue of Tracy Caldwell’s adultery become relevant in the future, such as if she petitions for spousal support pursuant to Louisiana Civil Code article 111(which requires that the party seeking support be free from fault), the appellant would presumably be afforded an opportunity to prove his spouse’s adultery at that time.