

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Annunziata and Overton

SUSAN L. KLEIN

v. Record No. 0739-95-2

JAMES L. KLEIN

MEMORANDUM OPINION\*  
PER CURIAM  
NOVEMBER 14, 1995

FROM THE CIRCUIT COURT OF CHESTERFIELD COUNTY  
William R. Shelton, Judge

(Dana L. Gay; Duty, Duty & Gay, on brief), for  
appellant.

No brief for appellee.

Susan L. Klein (wife) appeals the decision of the circuit court awarding her a divorce from James L. Klein (husband) on no-fault grounds. Wife contends that the trial court erred in not granting the divorce on the grounds of husband's adultery and/or desertion. Upon reviewing the record and opening brief, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. Rule 5A:27.

The trial court received evidence through depositions. A divorce decree based upon depositions is "'presumed correct and will not be overturned if supported by substantial, competent and credible evidence.'" Collier v. Collier, 2 Va. App. 125, 127, 341 S.E.2d 827, 828 (1986) (citation omitted). Based upon that evidence, the court ruled that there was insufficient evidence to

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\*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

grant a divorce on the grounds of adultery. Husband and wife both admitted that the parties had marital problems and had discussed getting a divorce prior to the final separation. Husband testified that he and wife had agreed to separate in June 1993. While wife alleged that husband had an adulterous relationship prior to the final separation, husband denied any pre-separation adultery.

Moreover, even where dual grounds for divorce exist, the trial judge "can use his sound discretion to select the appropriate grounds upon which he will grant the divorce." Zinkhan v. Zinkhan, 2 Va. App. 200, 210, 342 S.E.2d 658, 663 (1986). The trial judge is not "compelled 'to give precedence to one proven ground of divorce over another.'" Williams v. Williams, 14 Va. App. 217, 220, 415 S.E.2d 252, 253 (1992) (citation omitted). The evidence established that the parties lived separate and apart for more than one year. Therefore, the trial court's decision was supported by substantial, credible and competent evidence. We cannot say the trial court abused its discretion in granting a divorce on no-fault grounds rather than on the basis of husband's alleged adultery or desertion.

Accordingly, the decision of the circuit court is summarily affirmed.

Affirmed.