

COURT OF APPEALS OF VIRGINIA

Present: Judges Elder, Felton and Senior Judge Willis

DEBRA (WALKER) SCOTT

v. Record No. 2830-02-2

TONY SCOTT

MEMORANDUM OPINION*
PER CURIAM
FEBRUARY 11, 2003

FROM THE CIRCUIT COURT OF POWHATAN COUNTY
Thomas V. Warren, Judge

(William Mills Krieger, on brief), for
appellant. Appellant submitting on brief.

No brief for appellee.

Debra (Walker) Scott (wife) appeals the decision of the circuit court dismissing her bill of complaint seeking a divorce from Tony Scott (husband). On appeal, wife contends the trial court erred by finding husband, a prisoner, could not waive the appointment of a guardian ad litem. Wife asks that we reverse the trial court's order dismissing the case and remand for consideration upon the merits. Upon reviewing the record and opening brief, we agree with wife and reverse.

Background

Wife filed a bill of complaint seeking a divorce from husband on January 20, 2002. She asserted they had been separated for over one year. Husband was incarcerated at the time and submitted

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

to the court a waiver of right to guardian ad litem on February 4, 2002, waiving his rights to be represented in the divorce and requesting the court not appoint a guardian ad litem. The trial court dismissed the action, holding that the appointment of a guardian ad litem cannot be waived.

Analysis

"Convicts are not civilly dead in Virginia, and . . . [are] not legally incompetent to transact business either before or after [a] conviction in the criminal case." Dunn v. Terry, 216 Va. 234, 239, 217 S.E.2d 849, 854 (1975). "[T]he appointment of a [guardian ad litem is] a procedural provision which [can] be waived by a prisoner." Cross v. Sundin, 222 Va. 37, 38, 278 S.E.2d 805, 806 (1981); see also Pigg v. Commonwealth, 17 Va. App. 756, 760, 441 S.E.2d 216, 219 (1994) (en banc).

Husband permissibly waived his right to the appointment of a guardian ad litem, and the trial court erred by dismissing the action. Accordingly, we reverse and remand.

Reversed and remanded.