VOL. 157 NO. 2 *Supplement to The Lawyers Journal* JANUARY 16, 2009

PITTSBURGH LEGAL JOURNAL

OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

John A. Danzilli, Jr. v. Mayor and Council of the Municipality of Monroeville, et al., O'Reilly, J. ....Page 31
Redevelopment Authority—Home Rule Charter

In re M.M., a minor, Hertzberg, J. ....Page 32
Dependency Adjudication—Risks to Child's Safety—Recommendation of Guardian Ad Litem

Julie Addlespurger v. Steven Addlespurger v. Donald Addlespurger and Auto Driveway Company, Wecht, J. ....Page 34
Mortgage Foreclosure—Equitable Distribution

Graciela Garcia v. Angel C. Garcia and Willis Shaw Express, Inc., Lutty, J. ....Page 37
Automobile Accident—Release—Exculpatory Clause

Commonwealth of Pennsylvania v. William McCray, Machen, J. ....Page 37
Pre-Sentence Withdrawal of Guilty Plea

Commonwealth of Pennsylvania v. Russell Wilner, Machen, J. ....Page 38
Summary Harrassment—Sentencing

Commonwealth of Pennsylvania v. George Baich, Machen, J. ....Page 39
Ineffective Assistance of Counsel—Reinstatement of Appellate Rights—Lack of Understanding of Appellate Rights

Commonwealth of Pennsylvania v. Kenneth Bradley Peters, Manning, J. ....Page 40
*Pa. R.A.P. 1925(b)—75 Pa.C.S. §3802—Suppression of Evidence—Transcript of Proceedings—
Service Upon Court Reporter—Pa. R.Crim.P. 114(B)*

CAPSULE SUMMARY

Lynn A. Janosik v. George J. Janosik, Jr., Wecht, J. ....Page 44
*Spousal and Child Support—Unemployment and Earning Capacity—Reasonable Efforts to Mitigate Income Loss—
Pa. R.C.P. 1910.16–2(d)(1)*

PLJ

The Pittsburgh Legal Journal is a supplement to the Lawyers Journal, which is published fortnightly by the Allegheny County Bar Association
400 Koppers Building
Pittsburgh, Pennsylvania 15219
(412)261-6255
www.acba.org

©Allegheny County Bar Association 2009

Circulation 6,576

PLJ Editorial Staff

Thomas A. Berret ....Editor-in-Chief and Chairman
Jennifer A. Pulice ....Editor
Joanna Taylor ....Assistant Editor
David A. Blaner ....Supervising Editor
Lynn E. MacBeth ....Opinion Editor
Theresa Berret ....Jury Verdict Editor
Sharon A. Antill ....Typesetter/Layout

OPINION EDITORIAL VOLUNTEERS

Mary Ann C. Acton
Kenneth M. Argentieri
William Barker
Shannon F. Barkley
Joseph H. Bucci
Meg L. Burkardt
Norma M. Caquatto
Margaret M. Cassidy
Lisa Colautti
Robert A. Crisanti
Elizabeth A. Farina
William R. Friedman
Margaret P. Joy
Sandra Lewis Kitman
Patricia Lindauer
Ingrid M. Lundberg
Mary Kay McDonald
Daniel McIntyre
Laura A. Meaden
Linda A. Michler
Ronald D. Morelli
C. Kurt Mulzet
Rhoda Shear Neft
Jana S. Pail
Peter C.N. Papadakos
Diane Barr Quinlin
Jeffrey Alan Ramaley
Angel L. Revelant
Carol L. Rosen
Amy R. Schrempf
Joan O'Connor Shoemaker
Carol Sikov-Gross

FAMILY LAW OPINIONS COMMITTEE

Reid B. Roberts, Chair
Mark Alberts
Christine Gale
Mark Greenblatt
Margaret P. Joy
Patricia G. Miller
Sally R. Miller
Sophia P. Paul
David S. Pollock
Hilary A. Spatz
Mike Steger
William L. Steiner

JURY VERDICTS VOLUNTEERS

Wendy L. Bartsch-Cieslak
Beth Fischman
Robert C. Fratto
Mark Greenblatt
Janet K. Meub
Barbara Atkin Ramsey

Opinion Selection Policy

Opinions selected for publication are based upon precedential value, clarification of the law, procedure in Allegheny County courtrooms and elucidation of points of law. Opinions are selected by the Opinion Editor and/or committees in a specific practice section. An opinion may also be published upon the specific request of a judge.

Opinions deemed appropriate for publication are not disqualified because of the identity, profession or community status of the litigant. The guide to publication is the helpfulness of the opinion to practitioners in the particular area of law. All opinions submitted to the PLJ are reviewed for publication and will only be disqualified or altered by Order of Court.

Opinions

The Pittsburgh Legal Journal provides the ACBA members with timely, precedent-setting, full text opinions, from various divisions of the Court of Common Pleas. Each opinion, which is published in this section, begins with a brief description or a "head-note" of the opinion that follows. These opinions can be viewed in a searchable format on the ACBA website, www.acba.org.

Allegheny Jury Verdict Reporter

The Pittsburgh Legal Journal provides the ACBA members with a quarterly report of jury verdicts from the Civil Division of the Court of Common Pleas of Allegheny County. The verdicts which appear in the Pittsburgh Legal Journal, a supplement of the Lawyers Journal, under the heading "Allegheny Jury Verdict Reporter" are provided by court staff from the assignment room.

Each jury verdict is then assigned for review of the pleadings and preparation of a brief summary of the case and identification of the parties, counsel, and witnesses.

No attempt is made to select, choose, emphasize, highlight, or categorize the results of lawsuits tried to verdict, either by plaintiff, defendant, result, or any other category. The purpose of this project is to report all results tried by jury to verdict.

Capsule Summaries

The Pittsburgh Legal Journal provides the ACBA members with precedent-setting, "Capsule Summaries" or a brief description of opinions from the Family Division of the Court of Common Pleas of Allegheny County.

Binders

The Allegheny County Bar Association is taking orders for 3-ring binders for easy storage of PLJ opinions and jury verdicts. Call Peggy for details, (412) 261-6255.

John A. Danzilli, Jr. v. Mayor and Council of the Municipality of Monroeville, et al.

Redevelopment Authority—Home Rule Charter

Municipality of Monroeville Council formed a Redevelopment Authority, and the Mayor appointed five members to the Authority. Plaintiff contested the appointments, arguing that they were governed by the Home Rule Charter, and a twenty-five day notice was required. The Court applied the reasoning of the Commonwealth Court in *Serapiglia v. City of Clairton* and held that the Mayor's power to make the appointments was governed by the Redevelopment Law, and the Municipality's status as a Home Rule community could not be used to encroach upon the untrammeled power of the Mayor as provided in an Act of the legislature.

(Lynn E. MacBeth)

Brenda B. Sebring and *William E. Otto* for Plaintiff.
Bruce E. Dice for Mayor and Council of Municipality of Monroeville.
George S. Gobel for Diane Allison, Marilyn Skolnick and Georgianna Woodhall.
Jay Wright, *pro se.*
Barbara Sonafelt, *pro se.*

No. GD 08-008104. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.

MEMORANDUM ORDER

O'Reilly, J., September 29, 2008—This case presents another Municipal Law dispute occasioned by a Home Rule Charter, and the divergent opinions as to what it means.

FACTS

Here, the Borough of Monroeville, ("Monroeville"), now a Home Rule Community, and known as the Municipality of Monroeville, by its Council determined that a Re-development Authority, ("the Authority") for Monroeville should be created pursuant to the provisions of the Pennsylvania Redevelopment Law, 35 P.S. §1701.

Monroeville took action to do so, and the Mayor of Monroeville appointed various individuals to its Board of Directors. The Plaintiff, John A. Danzilli, Jr., ("Danzilli") contests those appointments, and he has filed a Complaint in Declaratory Judgment, and Mandamus against the Mayor of Monroeville, the Council of Monroeville, and the individuals appointed to that Board. Some of those Defendants have filed Preliminary Objections to the Complaint, and able briefs have been filed in support of the contending positions. Indeed, multiple briefs have been filed, and I have considered all of them. Two of the Defendants, to-wit, Barbara Sonafelt, ("Sonafelt") and Jay Wright, ("Wright") have filed documents indicating that they do not contest this lawsuit, and that they agree with the "claim" filed by Danzilli. Counsel for Danzilli has filed Motions to Dismiss as Defendants both Sonafelt and Wright. Presumably they have resigned from the Board of the Authority. Thus, only 3 individual Defendants remain, Woodhall, Allison, and Skolnick.

Inasmuch as the matter is before me on Preliminary Objections, the Rule is that all factual averments are taken as true, as well as reasonable inferences therefrom. Substantial argument has been devoted to the observance of time limits imposed by the Rules as to when pleadings, briefs, and the like may be filed. Danzilli has sought to Strike the Preliminary Objections, and briefs of Defendants for failure to abide by those Rules. Those oversights have been adequately explained, and I am not inclined to dispose of substantial rights on the basis of minor rule infraction.

The facts show that Monroeville formed the Authority on January 8, 2008, and advertised on January 16, 2008, for applicants to be appointed to its Board of Directors. On February 12, 2008 the Mayor of Monroeville, one James Lomeo appointed the 5 named Defendants. Danzilli contends that said appointments are (1) governed by the Monroeville Home Rule Charter, and (2) that the provisions of that Charter were not followed. The relevant Charter provision is Section 1804(a) and (b). Danzilli also contends that the term of the appointment of two defendants, Georgianna Woodhall, ("Woodhall") and Wright, are violations of 35 P.S. §1706 in that they are for more than 5 years. As to Wright, that issue is now moot, since he is no longer a Defendant. As to Woodhall, an overly long term of office does not invalidate the appointment *ab initio,* and can be addressed when, and if, the incumbent chooses to serve more than 5 years.

As noted, the governing law for Urban Redevelopment Authority appears at 35 P.S. §1701, *et. seq.* I questioned the formation of this Authority by a Home Rule Municipality. Counsel has favored me with copies of a 2004 Amendment to that law that empowers a borough with a population large enough to be a city of the third class to form a redevelopment authority. Thus, that law appears to apply to Monroeville, and I will not further inquire whether a Home Rule Municipality that was once a "borough" is still a "borough" for purposes of this Act. Section 1705 sets forth the method of appointing members to the Authority, and reads, in pertinent part, "…the Mayor…shall appoint, as members of the Authority, five citizens who shall be residents of the city or county in which the Authority is to operate."

ANALYSIS

Danzilli contends that this appointment power must be exercised under the provisions of the Home Rule Charter, which requires 25 days public notice of intended appointment; nomination of the appointee at a public meeting *after* the 25-day period; and confirmation of said nomination at the *next* regular business meeting. Presumably that confirmation is by the Council. Danzilli has also asserted a variety of State and Federal Constitutional issues over this manner of appointment.

Monroeville has referred me to the case of *Serapiglia v. City of Clairton*, 809 A.2d 1079 (Pa.Cmwlth. 2002) in support of their contention that the only limit on the Mayor's power of appointment is contained in the Redevelopment Law. In that case, Serapiglia, the Mayor of the City of Clairton, a third class city, was told by the city solicitor that he could *not* appoint the members of the Redevelopment Authority of the City of Clairton. He brought a declaratory judgment action contesting this point, and the Trial Court, affirmed by the Commonwealth Court, ruled that the Mayor possessed sole appointing power without the necessity of approval by City Council, 809 A.2d 1079 at 1080.

The Court went on to explain that even though the City of Clairton was a Home Rule Community, it still could not use that status to encroach upon the untrammeled power of the Mayor alone to make these appointments, and as provided in the Act of Legislature. I find *Serapiglia, supra,* to be on all fours, and is dispositive of this matter.

Danzilli has stressed that the Mayor may appoint persons to vacancies only when such vacancies actually occur and his cited numerous cases, all dealing with "midnight" appointments by outgoing administrations attempting to

place individuals on Boards on which “vacancies” will only occur in early January when the new administration will be in office. The genesis of litigation over “midnight appointments” is *Marbury v. Madison*, 5 U.S. 137 (1803). There the outgoing President, John Adams, nominated William Marbury to be a Justice of the Peace[1] for the District of Columbia near the expiration of Adams’ term of office. Adams was succeeded by Thomas Jefferson, whose Secretary of State was James Madison, the individual in charge of Justice of the Peace commissions. Madison refused to deliver the commission since Marbury was a Federalist, and antithetical to Jefferson’s party. The U.S. Supreme Court issued a Rule to Show Cause Why the Commission ought not be delivered. The case followed along that course, and was heard by the U.S. Supreme Court. After finding that Marbury’s commission was valid, because it had been signed and sealed by Adams’ Secretary of State, relief was denied because the Court, under the Constitution, did not have original jurisdiction in cases of this type and Congress, under the Judiciary Action of 1789, could not enlarge such jurisdiction. Hence, the finding of unconstitutionality of the Statute on which Marbury’s case depended.

Its application here is that Marbury’s Justice of the Peace position was *not* a vacancy, but rather a new judicial position created during the Adams administration, and the commission took life when it was signed and sealed. I analogize the passage of the Ordinance here, and of the Articles of Incorporation, and the signing thereof to the “signing and sealing” of Marbury’s commission.[2]

I believe Danzilli’s argument to be a flawed analogy since there are no “vacancies” when a new agency is first formed. Similarly, Counsel equates “formed” with “issuance” of a certificate of incorporation by the Secretary of the Commonwealth. In my view the Authority is “formed” when the Ordinance is passed after a “finding” is made that there is a need for such an Authority in Monroeville. It makes eminent good sense that the persons who are going to operate the Authority be identified in the submission made to the Secretary. Indeed, I believe this is the practice with all other corporations or authorities. It makes little sense to submit such documentation with no identification of the people responsible for the entity.

Danzilli has attached to his brief, exhibits, which show the history of the Authority. Exhibit A shows the Ordinance forming the Authority, and its Articles of Incorporation were developed in December 2007, and passed on December 11, 2007. That Ordinance, however, was vetoed by the then Mayor, James Lomeo, which veto was overridden by Council at the next regular Council Meeting on January 8, 2008. That Exhibit also shows that the individual Defendants named herein were named to the Authority as early as December 11, 2007. Further, a John A. Danzilli voted to pass that Ordinance, and form the Authority. Perusal of the Articles of Incorporation included in Exhibit A indicates that the correct date of passage of the Ordinance, January 8, 2008, was inserted in the Preamble even though the execution date remains as December 4, 2007.

That Exhibit A in the first page shows that the above Articles of Incorporation were filed on March 5, 2008, but the certificate is dated July 15, 2008.

After all of the above analysis and reading of the cases cited, I am not persuaded that the Authority is not “formed” until the issuance of the Certificate of Incorporation. Rather, I believe the “finding” of the need, and the passage of the Ordinance amounts to formation. The issuance of the Certificate is only notice to the world that such an Authority has been formed. It is much like the recording of a deed. There is nothing in Section 1704 that contemplates “approval” by the Secretary, and is merely an administrative duty. Further, the existence of the Certificate is necessary under Section 1704(d) so that there is a document or tangible “thing” that can be used to gain the evidentiary benefit of proof of “legal establishment.”

Accordingly, I am not persuaded by these arguments. I am also puzzled why such heat has been developed over three appointees whom Council approved on December 11, 2007.

I find the constitutional issues raised by Danzilli to be without merit, and are adequately covered by the *Serapiglia* opinion.

Danzilli also contends that the Mayor’s statement that he was appointing one man to the Authority, Jay Wright, because there was only one woman on Council is demonstrative of gender bias is similarly baseless. Initially, Wright has been dropped as a Defendant, and has resigned from the Authority. Hence, the “reason” for his appointment is moot. Second, the Redevelopment Law makes it clear that Authority members are unpaid (35 P.S. §1706), so they are hardly employees within the meaning of the Pennsylvania Human Relations Act, 43 P.S. §953.Third, the Pennsylvania Human Relations Act has its own procedures for vindication of rights thereunder.

Accordingly, and for all the reasons set out above, the Preliminary Objections are SUSTAINED, and the Complaint is DISMISSED with prejudice.

BY THE COURT:
/s/O’Reilly, J.

Date: September 29, 2008

---

[1] For those of us who were or are Justices of the Peace, District Justices of the Peace, District Magistrates or Magisterial District Judges, we can revel in the antiquity of our office, and bask in the glory of U.S. Supreme Court attention.

[2] See *What Kind of Nation*, by James F. Simon, Simon & Schuster, (2002) for further explication of *Marbury v. Madison*, as well as the conflict between Jefferson and Marshall.

In re M.M., a minor

Dependency Adjudication—Risks to Child’s Safety—Recommendation of Guardian Ad Litem

1. Child was adjudicated dependent and placed with her maternal grandparents because of mother’s drug addiction and father’s mental health problems. In addition, the child’s paternal grandmother, with whom father lived, had a substantial criminal history, including a recent conviction of child endangerment and possession of a controlled substance.

2. Father appealed the child’s removal from his custody and adjudication of dependency arguing that the Court lacked sufficient evidence of the risks to the child’s safety or that the child lacked “proper parental care and control” under the Juvenile Act, 42 Pa.C.S.A. §6302(1).

3. The Court held that sufficient evidence supported the child’s removal and adjudication of dependency. Citing the

Pennsylvania Supreme Court Dependency Rules promulgated in 2007, the Court gave due consideration to the recommendation of the child's guardian *ad litem* that the father's behavior and living situation posed substantial risks to the child's health, safety and welfare.

(Lisa Colautti)

Sharon M. Biasca for Father, J.E.
William Pelgar and *Mark Greenblatt* for Allegheny County Office of Children, Youth and Families.
Robert Lykos for Child, M.M.
David Breen for Maternal Grandparents, A.H. and G.H.
Lowell Burket for Mother, T.M.

No. JV-08-856. In the Court of Common Pleas of Allegheny County, Pennsylvania, Family Division, Juvenile Section.

OPINION

Hertzberg, J., August 25, 2008—This opinion explains our determination that four-month-old M.M. is a dependent child and our decision to place her with her maternal grandmother.

The initial involvement by the Office of Children, Youth and Families of Allegheny County (OCYF) occurred at the birth of M.M. in January of 2008 when her mother, T.M. ("Mother"), tested positive for marijuana, cocaine and opiates. A father is not named on M.M.'s birth certificate, although J.E. alleges he is M.M.'s biological father. After her birth, M.M. began residing with Mother, J.E. and J.E.'s Mother, L.R., in L.R.'s apartment.

OCYF monitored M.M.'s situation there. OCYF tried to get Mother into a residential drug treatment program and started providing in-home services. Early in April, Mother left L.R.'s home for several days without taking M.M. A.H., M.M.'s maternal grandmother, drove M.M. and J.E. to M.M.'s pediatrician appointment where an argument occurred between J.E. and A.H. J.E. is diagnosed with paranoid schizophrenia, and security guards ended up escorting A.H. to her car with M.M. Due to concerns about J.E.'s mental health and the question concerning his paternity of M.M., A.H. refused to return M.M.

OCYF then initiated court action by requesting an Emergency Custody Authorization. Because A.H.'s husband has a criminal conviction for driving under the influence, OCYF requested that M.M. be placed in foster care. We granted OCYF's request on an emergency basis, and a shelter hearing was held within 72 hours at which time we decided M.M. would remain in foster care pending a hearing on OCYF's dependency petition. We then appointed KidsVoice as M.M.'s Guardian *Ad Litem*.

On May 28, 2008, we held the hearing on the dependency petition. We determined that M.M. is a dependent child and removed her from foster care and placed her with A.H., her maternal grandmother. J.E. filed a timely appeal to the Superior Court from this order, and specifies as the basis for the appeal:

> 1. The trial court abused its discretion and erred as a matter of law in finding sufficient evidence that M.M. is a dependent child, contrary to the requirements of the Juvenile Act, 42 Pa.C.S. §6301 *et seq.*
>
> 2. The trial court abused its discretion and erred as a matter of law in finding sufficient evidence of a clear necessity to remove M.M. from the physical custody of her Natural Father, J.E., contrary to the requirements of the Juvenile Act, 42 Pa.C.S. §6301 *et seq.*

Statement of Matters Complained of on Appeal.

We determined M.M. to be a dependent child under 42 Pa.C.S.A. §6302(1), which defines a "dependent child" as a child who

> is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk;

Overwhelming evidence was presented relative to the lack of proper parental care of M.M. by Mother. In addition to testing positive for marijuana, cocaine and opiates when M.M. was born, Mother tested positive for cocaine the day of the shelter Hearing in April. Transcript of Dependency Hearing 5/28/2008 ("T." hereafter), p. 9. Mother entered an inpatient drug rehabilitation facility on May 2, 2008, and at the time of the May 28 hearing had just begun intensive outpatient therapy. T., p. 17. Mother also had occasionally "disappeared" for days at a time without taking M.M., including the three days that preceded M.M.'s pediatrician appointment. T., pp. 17-18. In fact, counsel for Mother presented no argument in support of Mother's ability to parent.

Notwithstanding concerns about paternity expressed by A.H., in early April and representations to OCYF by J.E. and Mother that they would get J.E.'s name on the birth certificate, no action had been taken on the paternity issue as of the time of the dependency hearing. Therefore, it would be fair to end the dependency analysis without mentioning J.E., since at the time of the hearing only Mother had the status of "parent, guardian or other legal custodian…." *In re M.L.*, 757 A.2d 849, 851, 562 Pa. 646, 650 (2000). We, however, ordered genetic testing and learned at a subsequent review hearing held on July 9, 2008 that the test results from samples taken on June 12, 2008 indicated the probability of paternity of J.E. at 99.99%. Because of this result, and because we in fact considered J.E.'s ability to care for M.M. in reaching our May 28 dependency determination, we will elaborate on the evidentiary basis.

J.E. is 29 years old and lives with his Mother, L.R., and her 17 year old son. There was no evidence that J.E. ever lived independently of his mother. J.E. received assistance from his Mother in caring for M.M. when M.M. resided with them. T., p. 41. This involvement by J.E.'s Mother, L.R., is of great concern to us, because the following criminal convictions of L.R. were admitted into evidence:

Arrest Date:	**Crime**
1. 8/9/06	Endangering the welfare of children; poss. of a controlled substance
2. 11/26/99	Summary retail theft
3. 12/10/87	Retail theft
4. 12/8/87	Theft by deception
5. 8/29/87	Retail theft
6. 4/3/87	Retail theft
7. 11/29/86	Retail theft

In addition, the individual managing J.E.'s mental health treatment for the past two years did not know if J.E. could live independently of his Mother. T., p. 50. This "intensive case manager" or "service coordinator" also testified that J.E. displays symptoms if not taking the medication prescribed for the treatment of his paranoid schizophrenia. T., p. 49. J.E. becomes angry and does not think clearly if he fails to take the prescribed medicine, and he displayed these symptoms during the April incident at the pediatrician appointment. T., pp. 22, 48. OCYF therefore has concerns with J.E.'s ability to care for M.M. if J.E. is not taking his medicine. T., pp. 21-22. Although OCYF initially designated J.E. as the "safety plan" while M.M., was left with Mother and J.E., this was not a wise decision by OCYF.

M.M.'s Guardian *Ad Litem* ("GAL") pointedly stated the risks to the health, safety or welfare of M.M., in J.E.'s care:

> [J.E.] is at this point sharing a residence with his mother who has a very recent guilty plea for endangering the welfare of a child for 2006. As the GAL we would not feel comfortable releasing the child back into that situation. If [J.E.] were...to find his own residence, at that point if he remains current with his mental health treatment, if he remains current with his medication regimen, we would not be opposed at that time to looking for possible placement with him. But at this time because of the housing and in order to establish a more significant time period of stability with mental health, we would just like to have the child adjudicated....

T., pp. 62-63. With the promulgation in 2007 by the Pennsylvania Supreme Court of Rule No. 1154 of the Pennsylvania Rules of Juvenile Court Procedure-Dependency, the position of Guardian *Ad Litem* has taken on a new importance in dependency litigation. The Rule requires the Guardian *Ad Litem* to make "any specific recommendations to the court relating to the appropriateness and safety of the child's placement...." Pa. R.J. C.P. No. 1154 (7). In any event, we consider the Guardian *Ad Litem* to be an advocate of M.M.'s best interest and find the Guardian *Ad Litem's* viewpoint worthy of significant consideration in our dependency finding.

There must be "clear and convincing" evidence for a finding that a child is dependent. *In re M.L.*, 757 A.2d 849, 851, 562 Pa. 646, 650 (2000). Evidence that M.M. is being cared for by a grandmother with a recent child endangerment conviction (and lengthy criminal record) and by a father who has yet to demonstrate an ability to independently care for the infant, and who is not fully stable on medication for a paranoid schizophrenia diagnosis, is clear and convincing evidence that the child's "health, safety or welfare" are "at risk." 42 Pa.C.S.A. §6302(1). Accordingly, contrary to J.E.'s insufficient evidence claim on his appeal, there is abundant evidence that M.M. is a dependent child.

The other claim in J.E.'s appeal is that there was insufficient evidence to remove M.M. from J.E.'s physical custody. A dependent child may be removed from the custody of a parent only where there is clear necessity for such removal. *In re Miller,* 380 Pa.Super. 423, 552 A.2d 261 (1988).

Although the criminal record of J.E.'s Mother, L.R., was admitted into evidence during the dependency phase of the May 28 hearing, L.R. did not testify until the dispositional phase of the hearing. OCYF appears to have a policy against recommending placement of a child into a residence with any individual convicted of a crime; OCYF simply defers such placement decisions to the discretion of the Court. We therefore carefully observed the testimony of L.R. We find L.R. to be dishonest, particularly the excuses and justifications she provided for her criminal convictions. She accepted no personal responsibility whatsoever for her abuse of marijuana and her other criminal activities. She disingenuously blamed each conviction on someone or something other than herself. She is a poor role model for J.E. and M.M., and we find it in the best interest of M.M. to avoid being in her presence for extensive time periods. We strenuously disagree with the view of the in-home services provider that it will benefit M.M. and J.E. to have her in their household. At the time of the hearing, L.R. was still serving a sentence of probation for her conviction on charges of Endangering the Welfare of Children and Possession of a Controlled Substance. Standing alone, the presence of L.R. in the household constitutes the clear necessity for the removal of M.M. that we ordered. Additional evidence supporting removal of M.M. includes questions over J.E.'s ability to care for M.M. independently[1] and his unstable mental health. Indeed, there is substantial evidence supporting our decision to remove M.M. from J.E.

BY THE COURT:
/s/Hertzberg, J.

[1] Although L.R. claimed she could quickly move out of her apartment to allow J.E. to have custody of M.M., she said her 17 year old son would probably stay with J.E. If we trust L.R.'s testimony, having J.E. responsible for both M.M. and L.R.'s 17 year old son compounds the problem. J.E. apparently considered obtaining separate housing for himself and M.M., but his delay in legally establishing paternity prevented consideration of his application for public housing. After the genetic testing, Father was able to sign a lease and we stated "CYF inspection is all that is needed for child to be returned to Father" and OCYF has "permission to place with Father once home inspection is completed." 7/9/2008 Permanency Review Order.

Julie Addlespurger v. Steven Addlespurger v. Donald Addlespurger and Auto Driveway Company

Mortgage Foreclosure—Equitable Distribution

1. The parties were married in August of 1987 and separated in July of 2004. A divorce was filed in September of 2004.

2. A foreclosure action was instituted as a result of the parties' failure to pay a home equity line secured by the marital residence. The Court stayed the mortgage foreclosure action pending equitable distribution and attempted to move equitable distribution along quickly. This effort was not realized as equitable distribution was heard by this court over nine days of trial in March, June, and July of 2008. An order was entered in July of 2008 lifting the stay of foreclosure.

3. The wife then obtained an additional stay in the Civil Division and appealed the Family Division's lifting of the

stay. It should be noted that this is the twelfth appeal to the Superior Court filed by these parties. One appeal is still pending; one was affirmed; one was denied; and nine were quashed.

4. The Court determined that the original stay was appropriate as the court was endeavoring to proceed steadily with equitable distribution. The stay was not of definite duration, because the court was concerned that the husband would delay equitable distribution in order to have the wife evicted.

5. Following equitable distribution, the stay was lifted. There was very little estate and no pool of money to cure the foreclosure. There was very little equity in the marital residence. It was, therefore, determined to be inequitable to award the marital residence to either party as neither was going to be able to cure the foreclosure and retain the residence. The wife's complaint of having little time to move fell on deaf ears as she had known about the foreclosure action since October of 2005 and knew that the stay was granted pending appeal only.

(Christine Gale)

Julie Addlespurger, *pro se.*
Arthur Bloom for Steven Addlespurger.
Ronald H. Heck for Donald Addlespurger and Auto Driveway Company.

No. FD 04-4718-003. In the Court of Common Pleas of Allegheny County, Pennsylvania, Family Division.

OPINION

Wecht, J., October 14, 2008—Plaintiff Julie Addlespurger ["Wife"] appeals from this Court's Order dated July 25, 2008. That Order vacated this Court's previous Orders that had stayed the Sheriff's sale of the marital residence. In accordance with Pa.R.A.P. 1925, this Opinion sets forth the Court's reasons for the July 25, 2008 Order.[1]

Background and Procedural History

Wife and Defendant Steven Addlespurger ["Husband"] married on August 7, 1987. They separated in July 2004. Wife filed her divorce complaint on September 2, 2004. Over its multiyear course, this action has been rife with frequent, extensive, and contentious litigation of many issues, both in this Court and in the Superior Court.[2]

On July 6, 2007, Wife, then represented by counsel, presented a motion requesting a stay of a scheduled Sheriff's sale of the marital residence pending equitable distribution. Parkvale Savings Bank ["Bank"] had foreclosed on its line of credit collateralizing the marital residence, and appeared through counsel to oppose Wife's motion. Husband appeared without counsel, and did not oppose the sale. On July 11, 2007, this Court granted Wife's request and stayed the sale pending the outcome of equitable distribution. On July 17, 2008, this Court issued a clarifying order, at the Bank's request, ruling that the sale was postponed.

This Court then attempted once again to move this case forward to dispose of the parties' economic claims. An equitable distribution conciliation was scheduled for August 13, 2007 and then rescheduled for August 23 at the request of counsel for Additional Defendants. It was later rescheduled for August 27. Following conciliation, a pretrial conference was scheduled for December 20, 2007. In December 2007, the Bank presented a motion for reconsideration. A January 23, 2008 Order disposed of the motion for reconsideration and scheduled trial for March 17, 18 and 24. Trial proceeded on March 17, March 18, March 24, June 16, June 18, June 24, July 1, July 7, and concluded on July 15. One hundred forty-five exhibits were entered into evidence. An Order disposing of the parties' economic claims issued on July 25, 2008.

On July 14, 2008, the Bank again presented a motion requesting that the stay of the Sheriff's sale be lifted. This Court took the motion under advisement, and issued an Order on July 25, 2008 that vacated its July 11 and July 17, 2007 Orders, thereby lifting the stay.

On August 1, 2008, Wife presented a motion in the Civil Division, docketed at GD 05-28310, requesting an additional stay. The motion was granted by the Civil Division motions judge, and the sale was stayed until November 3, 2008.

Nonetheless, on August 22, 2008, Wife, proceeding *pro se*, filed a Notice of Appeal of this Court's July 25 Order lifting the stay. On August 25, 2008, in accordance with Pa.R.A.P. 1925 (b), this Court ordered Wife to file a concise statement of errors complained of in the appeal. On September 16, 2008, the twenty-second day after the date of the Order, Wife filed a statement.

Issues Raised on Appeal

> In her Pa.R.A.P. 1925 (b) Statement, Wife averred as follows:
>
> 1. Did the lower court error [*sic*] and/or abuse its discretion when it vacated all previous orders of court staying the sheriff sale on the marital residence (thereby permitting Parkvale to continue with the sale) knowing a final distribution of this marital asset was not issued in its equitable distribution ruling of July 25, 2008? YES
>
> 2. Did the lower court error [*sic*] and/or abuse its discretion when it vacated all previous orders of court staying the sheriff sale on the marital residence (on July 25) knowing the occupant/custodial parent would then only have ten days/five business days notice to address the situation before the sheriff sale occurred on August 4, 2008? YES

Discussion and Analysis

In deciding to grant Wife's original stay motion, this Court gave close consideration to the case of *Kronz v. Kronz*, 574 A.2d 91 (Pa.Super. 1990). In *Kronz*, our Superior Court indicated that a family court had neither the power to alter or delay the rights of creditors in order to facilitate equitable distribution, nor jurisdiction over a secured creditor who was not a third party involved in or concerned with the disposition of the divorce. *Id.* at 93-94. Instead, the court "in which the execution proceedings are pending has an inherent power to stay the proceedings." *Id.* at 94. However, the *Kronz* Court's principal concern appeared to be that the family court had stayed execution indefinitely. *Id.* at 94-95. The Superior Court found that, in so doing, the lower court had impaired the creditor's contractual rights. *Id.* at 95. The Superior Court suggested that the lower court had failed properly to balance the interests of the creditor and debtor because the court had not made any provisions to ensure a prompt sale of the property nor any provisions to manage and maintain the property, all of which impaired the substantive rights of the creditor. *Id.*

This Court determined that Wife would be damaged if the Sheriff's sale occurred before equitable distribution. Wife represented to this Court at argument that she was current on the first mortgage encumbering the home, a loan

from Dollar Bank. Additionally, Wife contended that Husband was responsible for the majority of the line of credit obligation (unpaid since 2005) upon which the Bank had foreclosed, and that the Additional Defendants also were responsible for payment. Prior to development of an evidentiary record at trial on economic claims, this Court could not properly evaluate Wife's contentions. Because the Bank had obtained its foreclosure, it appeared to be protected, at least for that time. As Wife was living in the marital residence with the parties' two minor children, this Court was confident that the residence would be maintained. The challenge, then, was to craft an order that protected the Bank under *Kronz*, while recognizing and minimizing the risk to Wife.[3]

In *Kronz*, the Superior Court was concerned that undue delay would affect the creditor's rights. There was a similar concern here. Clearly, the stay could not be of indefinite duration. The parties had failed to move this case forward to equitable distribution. Without such forward motion, to allow a stay until equitable distribution might have been tantamount to a *de facto* stay of indefinite duration. Yet, to put a specific expiration date on the stay would only have encouraged Husband to continue to delay equitable distribution, given his apparent wish that Wife be evicted from the property.

This Court's July 11, 2007 Order attempted to balance the interests of all involved. It moved equitable distribution along by setting a date for conciliation, thereby ensuring that the stay was not indefinite. It imposed enough of a potential penalty to encourage Husband to comply, and it allowed Wife some protection pending the outcome of equitable distribution.

In its argument for reconsideration in January 2008, the Bank asserted that the stay was essentially indefinite because there was no deadline for equitable distribution to occur and because the parties, particularly Husband, had a history of dragging out the proceedings. The Bank further argued that, as long as the stay remained in place, fees and costs were accruing steadily, making it less likely that the parties ultimately would retain any equity in the home, and less likely that foreclosure ultimately could satisfy the parties' obligation to the Bank.

In an attempt to protect all the parties' interests, and to keep the stay from becoming a *de facto* indefinite delay, this Court issued its January 23, 2008 Order setting the dates for the equitable distribution trial in March 2008. Unfortunately, the parties' expectations for length of trial proved unrealistic, and the proceeding dragged out over nine days until July 2008.

At the time this Court issued its July 25, 2008 Order, the equitable distribution trial had concluded, and an Order disposing of economic claims was issued. At that point, there was no longer a need to protect Wife's interest pending equitable distribution, because distribution was now occurring. At that time, following development of a full evidentiary record and issuance of fact-findings and legal conclusions, it finally was clear that there was very little to the marital estate. There was no pool of money that Husband was withholding that could suffice to cure the foreclosure. The Additional Defendants were found not to be part of the marital estate, and were found not to be responsible for the payments to the Bank. Wife was in the best financial position to attempt to cure the foreclosure. But it was not clear that Wife would be able to do so. The Bank argued that there essentially was no equity in the property once all the fees and costs were considered. No payments had been made on the line of credit since 2005. The elder child had reached eighteen and graduated from high school. As the Bank no longer had any protection, and with the property now well underwater, and with the interests of Wife and Husband having been adjudicated through equitable distribution, there no longer was any need (or good cause) for this Court to continue to stay the Sheriff's sale.

The marital residence was part of the final distribution in the July 25, 2008 equitable distribution Order. Due to the special circumstances of this encumbered property, the Court deemed it inequitable to award either party the equity in the home, inasmuch as it appeared unlikely that either party would be able to keep the home or realize any equity from it. Therefore, this Court provided for the various specific eventualities that might occur, to wit, either the home would be sold at Sheriff's sale, or one of the parties would cure the foreclosure. While there was some uncertainty as to whether either party would be able to retain the home, there was no uncertainty as to how any proceeds or interests would be divided among the parties regardless of the home's disposition.

Wife also complained that the July 25, 2008 Order did not provide her with enough time to "address the situation" prior to the scheduled Sheriff's sale. Wife has had ample time since the October 2005 Complaint in Mortgage Foreclosure and the February 2007 Order entering judgment in mortgage foreclosure to "address the situation." Wife has continued to make no payments since before the complaint was filed, despite having full possession and enjoyment of the marital residence. Further, this Court's Orders have made clear that the sale was stayed only pending equitable distribution. Wife was on notice that, once equitable distribution was concluded, the sale would no longer be stayed. Finally, it is disingenuous for Wife to complain that there was not enough time when Wife was able to come into Civil Division motions court and get a new stay after this Court's July 25 Order.

Given the need to protect the rights of all those involved, including not only the defaulting parties but also the lender forced involuntarily to finance delay, and given that equitable distribution had concluded, this Court's July 25 Order was appropriate.

BY THE COURT:
/s/Wecht, J.

David N. Wecht Common Pleas Judge
Fifth Judicial District of Pennsylvania
cc: James McNally, Esquire, Metz Lewis LLC, Counsel for Parkvale Savings Bank

---

[1] At 1401 WDA 2008, Wife also has appealed a separate July 25, 2008 Order. That other Order disposed of the parties' economic claims. On August 26, 2008, this Court granted Wife's and Husband's requests for reconsideration of that Order. As such, Wife's appeal at 1401 WDA 2008 is inoperative. Pa.R.A.P. 1701(b)(3).

[2] Previous appeals in this action are docketed at 2241 WDA 2007 (appeal pending); 2032 WDA 2006 (appeal quashed); 2012 WDA 2006 (appeal quashed); 1952 WDA 2006 (appeal quashed); 1852 WDA 2006 (appeal quashed); 936 WDA 2006 (appeal quashed); 91 WDA 2006 (appeal quashed); 90 WDA 2006 (appeal quashed); 89 WDA 2006 (trial court affirmed); 2231 WDA 2005 (appeal quashed); 1935 WDA 2005 (appeal quashed); and 90 WDM 2005 (application for relief denied).

[3] *See* this Court's Memorandum and Order, dated July 11, 2007, and Memorandum and Order, dated January 23, 2008, both of which are appended to this Opinion.

Graciela Garcia v. Angel C. Garcia and Willis Shaw Express, Inc.

Automobile Accident—Release—Exculpatory Clause

Plaintiff was a passenger in a truck driven by her husband, an employee of corporate defendant. Summary Judgment was granted in favor of Defendant because Plaintiff had executed a release containing an exculpatory clause stating that she released the company from all liability for any injury she may sustain as a passenger in the truck. Such an exculpatory clause is enforceable so long as it does not contravene public policy, is between persons relating entirely to their private affairs, and is not a contract of adhesion.

(Lynn E. MacBeth)

William P. Bercik for Plaintiff.
Stephen Geduldig for Defendants.

No. GD 07-010818. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.

OPINION

Lutty, J., October 31, 2008—Plaintiff has appealed from the Order of Court granting Defendants' Motion For Summary Judgment in the above matter. The issue presented before the Court at the August 21, 2008 presentation of Defendants' Motion For Summary Judgment is rather simple. Plaintiff was a passenger in a truck driven by her husband, who was an employee of Willis Shaw Express, Inc. Plaintiff/Wife was injured as a result of an accident that occurred while she was a passenger in the truck driven by her husband, while acting as an employee of Willis Shaw. Plaintiff had signed an exculpatory clause that read as follows: "I understand and accept the status of unauthorized passengers for Willis Shaw Express. I agree to release, acquit, and forever discharge Willis Shaw Express, Comcar Industries, Inc. or any affiliated company of any liability for any injury or loss I may sustain as a passenger during the transportation described above."

Defendant filed a Request For Admissions, to which Plaintiff never responded. Defendant also filed a Motion to have the Request For Admissions deemed admitted. By Order dated February 8, 2008, the Honorable Stanton Wettick, Jr. signed an Order granting Defendants' request to have the admissions deemed admitted. Among those requests for admissions was the existence of the above application which was signed by Plaintiff and her husband.

While exculpatory clauses are generally not favored by the law, they are valid if three conditions are met: First, the clause must not contravene public policy. Secondly, the contract must be between persons relating entirely to their, own private affairs and thirdly, each party must be a free bargaining agent to the agreement so that the contract is not one of adhesion. *Topp Copy Prods. v. Singletary*, 626 A.2d 98, 99 (Pa. 1993), citing *Princeton Sportswear Corp v. H. & M. Associates*, 507 A.2d 339 (Pa. 1986).

It is evident that the exculpatory clause here does not contravene public policy, as this matter does not involve an interest of the public or the State. Plaintiff did not have an employee/employer relationship with Defendant, nor did she satisfy any of the other areas where public policy violations have been recognized. Secondly, the exculpatory clause in this matter related entirely to the private affairs of Plaintiff, her husband and her husband's employer. Finally, the agreement here is not one of adhesion, as Plaintiff obviously had no compulsion or obligation to enter into this agreement.

It further appears that the exculpatory clause in this matter is enforceable. See *Topp Copy Prods., supra.* The provisions here are free from any ambiguity. There is nothing confusing about the language in this clause. Accordingly, Defendants' Motion For Summary Judgment was properly granted.

BY THE COURT:
/s/Lutty, J.

Dated: October 31, 2008

Commonwealth of Pennsylvania v. William McCray

Pre-Sentence Withdrawal of Guilty Plea

The court distinguished a pre-sentence guilty plea withdrawal from a post-sentence guilty plea withdrawal. Post-sentence withdrawal requires a finding of manifest injustice and is viewed unfavorably because, if allowed, could be abused as a sentence-testing device. Here, the court believed that Defendant's representation may have been insufficient and that there was no prejudice to the Commonwealth in allowing withdrawal of the plea.

(Lynn E. MacBeth)

Christopher T. Avetta, Sr. for the Commonwealth.
J. Richard Narvin for Defendant.

No. CC2007703492. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.

OPINION

Machen, J., October 29, 2008—The defendant, William McCray, was charged at CC: 200703492 with Criminal Attempt Homicide, 18 Pa.C.S. §901(a) at Count One; Aggravated Assault, 18 Pa.C.S. §2702(a) at Count Two; and, Carrying A Firearm Without a License, 18 Pa.C.S. §6101 at Count Three. The offense date was January 5, 2007. The case was scheduled for trial on May 5, 2008, at which time defendant was represented by the Public Defender's Office and entered a plea of guilty to Criminal Attempt Homicide as part of a negotiated plea agreement and was sentenced to six (6) to twelve (12) years at count one and no further penalty at counts two and three. Additionally, he was ordered to pay $261.50 in restitution. Immediately thereafter defendant sent a letter to the Clerk of Courts requesting that he be permitted to withdraw his guilty plea. The letter was forwarded to the Office of the Public Defender who filed a Motion to Withdraw Guilty Plea and Appoint New Counsel on May 14, 2008. On May 28, 2008, this court granted Defendant's Motion to Withdraw Guilty Plea and appointed the Office of Conflict Counsel to represent defendant. Subsequent to the entry of that Order of Court dated May 28, 2008, the Commonwealth filed a Motion to Reconsider which was denied on June 26, 2008. The Commonwealth filed a timely appeal to the Order of Court permitting defendant to withdraw guilty plea dated May 28, 2008.

In its Concise Statement of Matters Complained of on Appeal, the Commonwealth raises one issue questioning

"[W]hether the trial court abused its discretion in granting appellee's motion to withdraw the negotiated guilty plea after imposition of the negotiated sentence?"

The Pennsylvania Supreme Court has discussed this matter fully and clearly defined the differences in consideration pre-sentence and post-sentence. As stated in *Com. v. Starr* 450 Pa. 485, 301 A.2d 592 (Pa. 1973):

> It is well recognized that a pre-sentencing plea withdrawal motion and a post-sentencing plea withdrawal motion present entirely different problems. As a general rule, the guilty plea itself is 'the defendant's consent that judgment of conviction may be entered without a trial.' *Brady v. United States,* 397 U.S. 742, 748, 90 S.Ct. 1463, 1469, 25 L.Ed.2d 747 (1970)....
>
> It is otherwise with a post-sentencing petition to withdraw a guilty plea. Such a procedure obviously would be useful as a sentence-testing device, and, if permitted with any degree of liberality, would invite abuse....
>
> Where, as here, the withdrawal of the plea is sought only after sentence has been imposed, a showing of prejudice on the order of manifest injustice is required before withdrawal is properly justified. The determination of the existence or nonexistence of manifest injustice lies, we believe, with the trial court in the first instance.
>
> *Com. v. Starr,* 450 Pa. 485, 488-491, 301 A.2d 592, 594-595 (Pa. 1973)

In this matter, the defendant raised his question and claim of ineffectiveness within hours of appearing in court. Additionally, the attorney who represented him left the Public Defender's office almost immediately after this representation. This court reviewed the transcript, which was short due to the fact that it was a negotiated plea and the defendant's claims, and believed in retrospect that there was question as to the sufficiency of the representation, thus finding prejudice to the defendant on the order of manifest injustice. Finding that there was no prejudice to the Commonwealth in permitting the defendant to withdraw his guilty plea,[1] this court granted the Defendant's Motion to Withdraw Guilty Plea and Appoint New Counsel. If the matter had proceeded without the withdrawal of the guilty plea, defendant would have appealed and/or filed a PCRA alleging counsel's ineffectiveness. The matter would eventually have resulted in this court granting the defendant's withdrawal of the guilty plea and then months or years later proceeded to trial, raising the possibility that witnesses might not be available and a fair trial might never occur for the defendant or the Commonwealth. Based upon the limited record and this court's belief that the defendant had unquestionable claims of ineffectiveness, this court felt it best to grant the Motion and put the matter back to where it had been less than one month before.

Based on the above, the Commonwealth's claim is without merit.

Date: October 27, 2008

[1] Witnesses were still available and nothing had changed except for the passage of several weeks, no more than if one of the parties had requested a continuance on the day of the trial.

Commonwealth of Pennsylvania v. Russell Wilner

Summary Harrassment—Sentencing

Defendant was convicted after a non-jury trial of 87 counts of summary harassment for sending e-mails to the victim after their relationship ended. Victim changed her residence, vehicle and telephone number and filed a Petition for Protection from Abuse to avoid having contact with the Defendant. Defendant was sentenced to 90 days of probation at each of the first ten counts to be served consecutively (900 day total) and no further penalty at the remaining counts.

(Lynn E. MacBeth)

Francis Wymard for the Commonwealth.
Scott Coffey for Defendant.

No. CC200603379. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.

OPINION

Machen, J., November 5, 2008—Defendant was charged at CC: 200603379 with 99 counts of misdemeanor harassment, which arose from conduct between September 28, 2005, and January 4, 2006. Prior to the commencement of a Non-Jury Trial on October 11, 2007, the Commonwealth amended and reduced the charges to 87 counts of summary harassment. On October 16, 2007, this court rendered a guilty verdict of all 87 summary harassment. The defendant was sentenced to 90 days of probation at each of the first ten (10) counts to be served consecutively (900 day total) and no further penalty at the remaining counts.

The defendant filed a timely appeal and raises two (2) issues in the Concise Statement of Errors Complained of on Appeal. The defendant claims: "The evidence was insufficient to convict defendant of 87 counts of summary harassment."

In reviewing an issue of sufficiency of the evidence, this Appellate Court must consider "whether, viewing the evidence in the light most favorable to the Commonwealth as verdict winner and drawing all proper inferences favorable to the Commonwealth, the trier of fact could have determined all the elements of the crime have been established beyond a reasonable doubt." *Commonwealth v. Hagan,* 539 Pa. 609, 654 A.2d 541 (1995). Furthermore, it is axiomatic that appellate courts must defer to the credibility determinations of the trial court as fact finder, as the trial judge observes the witnesses' demeanor first-hand. *Commonwealth v. McCracken,* 540 Pa. 541, 659 A.2d 541 (1995).

> In pertinent part, 18 Pa.C.S.A. 2709(a)(3) states:
>
> §2709. Harassment
>
> (a) Offense defined.—A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:
>
> (3) engages in a course of conduct or repeatedly commits acts, which serve no legitimate purpose;
>
> 18 Pa.C.S.A. §2709 (a)(3)

At the Non-Jury Trial held on October 11, 2007, the Commonwealth presented Nicole Rogers Grimes, the alleged victim in this matter. She credibly testified that the defendant sent her emails, beginning in September 2005, after their relationship ended although he had not sent her emails during their relationship. (Non-Jury Transcript hereinafter "NJT," p. 11-13). The Commonwealth introduced 87 exhibits from various email addresses, all of which were aliases of the defendant. Additionally, the emails contained

specific statements made that identified the sender as the defendant. (NJT, p. 14-19). Ms. Grimes further credibly testified that she moved her residence several times, changed vehicles, had her telephone number changed and filed a PFA Petition against defendant, all in an effort to avoid contact with defendant. (NJT, p. 40-41).

In addition to the testimony of Ms. Grimes, the defendant testified (against the advice of his attorney, Mr. Narvin). This court found defendant's testimony to be without credibility, especially with regard to his claim that he thought he had an ongoing relationship with Ms. Grimes, that he did not intend to harass her and that he did not attempt to scare her or frighten her in any way. (NJT, p. 36). The evidence presented did not support his claims and this court did not find him to be truthful.

Based upon the credibility assessments made by this court and the exhibits introduced by the Commonwealth and admitted into evidence, this court found the defendant did intend to harass, annoy or alarm Ms. Grimes. The defendant did engage in a course of conduct or repeatedly commit acts, which served no legitimate purpose; and as such, found the defendant to be guilty of all 87 counts of summary harassment.

Defendant's second claim is "Defendant's convictions of 87 counts of summary harassment were against the weight of the evidence."

This court, as the finder of fact in a non-jury trial, weighed all the testimony and credibility of the witnesses and evidence presented at trial and found the defendant guilty of summary harassment. "The finder of fact can believe all, part, or none of the testimony presented." *Commonwealth v. Jensch*, 322 Pa.Super. 304 (1983). It is within the discretion of this court to weigh all the testimony and credibility of the witnesses and evidence presented at trial as it deems just. "The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." *Commonwealth v. Small*, 741 A.2d 666, 672 (Pa. 1999). When reviewing a claim that a verdict is against the weight of the evidence, an appellate court is not permitted to substitute its judgment for that of the fact finder. *Id.* Thus, the appellate court will not reverse the judgment of sentence unless the verdict is so contrary to the evidence as to shock the court's conscience. *Id.*

The trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence." *Commonwealth v. Griscavage*, 517 A.2d 1256, 512 Pa. 540 (1986) (Citations omitted).

Based upon the credibility assessments and evidence presented in this case (as specifically discussed above in the sufficiency of the evidence claim), this claim lacks merit.

Based upon the foregoing, defendant's conviction should be affirmed.

Date: November 5, 2008

Commonwealth of Pennsylvania v. George Baich

Ineffective Assistance of Counsel—Reinstatement of Appellate Rights—Lack of Understanding of Appellate Rights

Defendant's appellate rights were reinstated because he did not understand his rights or the time limits involved in exercising his rights, due to mental illness and/or borderline mental retardation. Simply based upon the fact that no appeal was ever filed, Defendant can properly allege and support a claim for ineffectiveness.

(Lynn E. MacBeth)

Anthony Krastek, Jr. for the Commonwealth.
Scott Coffey for Defendant.

No. CC 199200328. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.

OPINION

Machen, J., November 7, 2008—On June 24, 1992, defendant was convicted of third-degree murder after a jury trial before The Honorable Joseph James. Robert Foreman, Esquire, represented defendant. On February 18, 1993, Judge James sentenced defendant to 8-20 years for the third-degree murder, effective December 25, 1991. Trial Counsel Foreman filed timely post-trial motions on July 6, 1992, raising weight of the evidence and sufficiency of the evidence claims. Judge James denied the motions. After defendant was sentenced, additional post-trial motions were filed (and denied) but did not include any claim regarding defendant's sentence or a motion to reconsider sentence. There was no direct appeal filed to the Superior Court. Defendant filed a *pro se* Motion for Reconsideration of Sentence on July 21, 1995, which does not appear to have been disposed of by the trial court. On November 30, 1995, defendant filed a *pro se* PCRA Petition. Richard Narvin, Esquire, was appointed by Judge James on January 17, 1996 to represent defendant. On September 25, 1996, Mr. Narvin filed an Amended PCRA Petition requesting reinstatement of defendant's post-sentence/appellate rights since Trial Counsel Foreman had never filed any motion to modify sentence or Superior Court Appeal after defendant's conviction of third-degree murder and 8-20 year sentence. On November 18, 1996, Judge James dismissed the PCRA Petition. No appeal was filed with the Superior Court regarding the trial court's denial of the PCRA.

On December 11, 2007, defendant filed a *pro se* PCRA petition requesting reinstatement of his appellate rights and the petition was assigned to this court for review, as Judge James is no longer in the Criminal Division. By Order of Court dated January 4, 2008, this court appointed Scott Coffey, Esq. to represent defendant. On July 28, 2008, Mr. Coffey filed an Amended Petition which requested reinstatement of appellate rights *nunc pro tunc*. After review of the record and the Petition, this court entered an Order dated July 29, 2008, which granted the defendant's request to have his appellate rights reinstated and appointed Mr. Coffey to continue his representation of defendant. On August 4, 2008, the Commonwealth filed a Motion for Reconsideration of the July 29, 2008 Order and defendant's counsel filed its Answer to the Motion for Reconsideration on August 8, 2008. Due to the timing of the filing of the Motion and Answer and this court's scheduled vacation in mid-August, Commonwealth filed a Notice of Appeal on August 20, 2008, to preserve its rights while waiting for the decision on the Motion for Reconsideration.

In light of the appeal filed by the Commonwealth, this court did not rule on the Motion for Reconsideration and files this Opinion in support of the July 29, 2008 Order of Court.

In Commonwealth's Concise Statement of Matters Complained of on Appeal, the Commonwealth raises nine (9) issues. While each claim is worded with specific differences, in essence, the Commonwealth claims that this PCRA

Petition does not fall within the exceptions as enumerated in 42 Pa.C.S.A. §9545 (b)(1); and, if it does fall within the exceptions enumerated in 42 Pa.C.S.A. §9545 (b)(1), it was not filed within the 60 day limitation contained in 42 Pa.C.S.A. §9545 (b)(2).

Upon review of the Petition and the medical records supplied by the defendant's counsel, it is this court's opinion that the Petition falls within the exception stated in 42 Pa.C.S.A. §9545 (b)(1)(ii) as stated:

> (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence;

This court determined that due to the defendant's mental illness and/or borderline mental retardation, he was not capable of understanding his right to file a PCRA Petition until his cellmate assisted him with the filing. This court reviewed the exhibits attached to the PCRA Petition and made special note of the following information contained therein.

> • The medical records and psychological evaluation date back to December 17, 1993, which was ten months after sentencing and prior to the one year limitation as required in 42 Pa.C.S.A. §9545 (a).
>
> • Since that time, the record reflects that he has been on several medications which are psychotherapeutic drugs and is often described as having adjustment disorder, anxiety disorder and personality disorder.
>
> • His IQ is listed as 78 and "testing indicates borderline intelligence with limited social skills" and his "abstract thinking abilities are questionable" (SCI–Cresson–Psychological Evaluation for Parole 6/14/2006).
>
> • Records indicated that he resided in the Special Needs Unit and is described as "shy, reserved and isolated" (Discharge Summary, December, 1993).

These are all indications to this court that defendant suffers from mental illness and low intelligence. As such, he did not understand his rights or the time limits involved in the exercise of his rights. He could not rely upon his counsel to have preserved his rights as no previous appeal was filed. Without the guidance of effective and engaged counsel and not possessing the ability to understand and exercise his rights on his own behalf, he was denied appellate review of the sentence.

Simply based upon the fact that no appeal was ever filed, he can properly allege and support a claim of ineffectiveness. Applying the "Pierce" test, as set forth in *Commonwealth v. Pierce,* 567 Pa. 186, 786 A.2d 203 (2001), this court opines that all three prongs of the test are met. The defendant's underlying claim is of arguable merit, there was no strategic basis for either counsel to not file an appeal and this ineffectiveness caused defendant prejudice, i.e., the outcome may have been different as the Superior Court may have reviewed the sentence and ordered a modification. The defendant is entitled to have the review at least once in this matter.

It is for these reasons that this court granted defendant's petition and reinstated his appellate rights.

Date: November 7, 2008

Commonwealth of Pennsylvania v. Kenneth Bradley Peters

Pa. R.A.P. 1925(b)—75 Pa.C.S. §3802—Suppression of Evidence—Transcript of Proceedings—Service Upon Court Reporter—Pa. R.Crim.P. 114(B)

1. The Court fashioned an order directing the Commonwealth/Appellant's counsel to deliver a copy of the Court's 1925(b) order to the court reporter's office. The purpose of the order is to alleviate some of the delays in the transmittal of the record to the Superior Court when the delay is due to counsel's not having received the transcript. The order is designed to make the court reporter aware of the need for the transcript and the deadlines under which counsel is operating.

2. The Commonwealth claimed that this order constituted error. The Court explained that its order did not violate Pa.R.Crim.P. 113(B) providing for service of orders and court notices because the rule relates to parties, and a court reporter is not a party, and because the rule does not prohibit the court from entering such an order.

3. Substantively, the Commonwealth claimed that the Court erred in granting Defendant's Motion to Suppress. An off-duty officer who observed Defendant fall prior to entering his vehicle called an officer on duty and explained what he observed. The on-duty officer followed Defendant, but did not observe any suspicious behavior prior to making a traffic stop. Evidence obtained as a result of the stop was suppressed because, although the initial observation of the Defendant may have implied he was intoxicated, the subsequent observations of the second officer not only failed to corroborate that belief but actually allayed some of the suspicion because of the lack of any erratic driving by Defendant.

(Lynn E. MacBeth)

Jacob Reinhart for the Commonwealth.
Kenneth A. Snarey for Defendant.

No. CC200610180. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.

OPINION OF THE COURT

Manning, J., November 20, 2008—The defendant, Kenneth Bradley Peters, was charged by criminal information with a violation of 75 Pa.C.S. §3802. The defendant filed a Motion seeking to suppress the evidence obtained as the result of the stop of his vehicle. A hearing on that Motion was held on June 25, 2008. At the conclusion of that hearing, the Court granted the Motion to Suppress Evidence. The Commonwealth filed a timely Appeal and, in a Concise Statement of Errors Complained of on Appeal, raised two claims:

> 1. That the court erred in granting the Motion to Suppress; and
>
> 2. That the Court erred when it directed the Commonwealth to serve a copy of the Court's Order directing the Commonwealth to file a Concise Statement of Errors Complained of on Appeal upon the Court Reporter.

The Court will first address the Commonwealth's claim that the Court erred when it directed the Commonwealth to serve a copy of the Order this Court issued pursuant to Pa. R. Crim. P. 1925 (B) upon the Office of the Court Reporter. The Commonwealth complains that this violates Pa. R. Crim.

P. 114 (B). This claim is specious.

A reoccurring problem in this Court has been delays in the transmittal of the original record in matters appealed to the Superior Court. These delays are usually attributable either to a delay in the preparation and filing of transcripts of necessary proceedings or to a delay in the filing of a Concise Statement by the appellant's attorney.[1] Often, these two are directly related to one another in that the 1925(b) Statements are delayed because counsel has not received the necessary transcript. In an attempt to alleviate some of the delays, this Court fashioned an order which places the onus on appellant's counsel to make sure that the transcripts of the proceedings are not delayed. Requiring that appellant's counsel deliver a copy of this Court's 1925(b) Order to the Court Reporter's Office is designed to make sure that that office is aware of the need for the production of the transcripts and the deadlines under which counsel is operating.

The Commonwealth's claim that including this paragraph in this Court's 1925 (B) Order somehow violates Pennsylvania Rule of Criminal Procedure 114 (B) is belied by the very language of this rule. Rule 114 (B) states the following:

> (B) Service
>
> (1) A copy of any Order or Court Notice promptly shall be served on each party's attorney, or the party if unrepresented.
>
> (2) The Clerk of Courts shall serve the Order or Court Notice, unless the president Judge has promulgated a local rule designating service by the Court or Court Administrator.

Nothing in this Rule prohibits this Court from directing the appellant's counsel to make sure that the Court Reporter is provided with a copy of this order so that the Court Reporter is aware both of the need to prepare the transcripts and the deadline under which appellant's counsel is operating. Rule 114(B) deals with service on "parties" to the proceedings. A Court Reporter is not a "party." This Court is not directing the service of the Order on any "party" but, rather, as a convenience to the Court, directing that the appellant make sure that the Court Reporter's office is aware of the appeal and the need for the transcript. Service upon parties is the responsibility of the successor to the Clerk of Courts in this County, the Office of Court Records. Also directing that the appellant serve the Court Reporter does not violate this requirement.

Turning now to the substantive claim raised by the Commonwealth, the evidence presented at the suppression hearing established that on November 17, 2005, at approximately 2:30 a.m., Ingram Borough Police Officer Steve Psomas left the Ingram Borough Police Department located at 40 West Prospect Avenue, in the Borough of Ingram and proceeded southeast on West Prospect Avenue. His shift was over and he was driving his personal vehicle. Approximately 300 yards from the Borough Police Department, on the left side of West Prospect Avenue, is a 7/11 gas station and convenience store. As Officer Psomas was passing the 7/11 he observed an individual walk approximately 20 feet from near the store entrance to a truck. He made this observation at night from a distance of at least twenty feet and while he was operating his motor vehicle. (N.T., p. 6-7). The officer described what he observed:

> "He was staggering through the parking lot, at which time he fell in the parking lot. He needed to use his truck for assistance to get off the ground."

Based upon this observation, Officer Psomas called the Ingram Borough Police Department and spoke with the officer on duty at that time, Scott Weyler, and explained what he observed. Officer Psomas did not enter the 7/11 to determine if anyone else had observed the defendant and his condition. He acknowledged that he could not see whether the defendant had blood shot eyes, the odor of an alcoholic beverage on his person, or whether his speech was slurred. He did not see the defendant operate his vehicle in any manner contrary to the Motor Vehicle Code.

Ingram Borough Police Officer Scott Weyler testified that upon receiving the call from Officer Psomas, he traveled the half block from the police station to the 7/11. He arrived in time to observe the vehicle described by Officer Psomas and driven by the defendant exit the 7/11 parking lot. He followed the vehicle for approximately 1/3 of a mile and then initiated a traffic stop. (N.T., pp. 14-15). Officer Weyler acknowledged that during the 1/3 of a mile that he followed the defendant's vehicle, he did not observe any motor vehicle code violations. He said the vehicle did not cross the center line or weave within his lane of travel. The vehicle's headlights were on and, when the vehicle, turned onto Mainsgate Street, the defendant used his turn signal. (N.T., p. 18). Officer Weyler stated that nothing he observed during the defendants observation of the vehicle contributed to his decision to initiate the traffic stop. He chose to stop the vehicle solely on the basis of the report he received from Officer Psomas. (N.T., p. 18).

75 Pa.C.S.A. §6308 provides the following:

> **(b) The Following Authority of Police Officer–** Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicles registration, proof of financial responsibility, vehicle identification number, or engine number, or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provision of this title.

When a Court is asked to determine whether a police officer had reasonable suspicion to justify a traffic stop, it must look to the totality of the circumstances and determine whether the officer has set forth specific and articulable facts which, together with rational inferences arising from those facts, reasonably warrant a belief that criminal activity is afoot. *Commonwealth v. Wiley,* 858 A.2d 1191, 1194 (Pa.Super. 2004).

Reasonable suspicion is dependent upon both the content of the information possessed by police and its degree of reliability. Where, as here, the information being provided is from a known source, in this case a fellow police officer who was off-duty, its reliability is established. The question, however, is whether by the officer who effectuated the stop possessed sufficient information to warrant the reasonable belief that criminal activity was afoot. *Commonwealth v. Barber,* 889 A.2d 587 (Pa.Super. 2005). As both officers testified that the defendant committed no traffic violations as he operated his vehicle, the suppression claim turned on whether Officer Weyler had enough information to cause him to reasonably suspect that the defendant was operating his vehicle in violation of 75 Pa.C.S.A. 3802.

In order for a person to be guilty of violating 75 Pa.C.S.A. §3802, the evidence must establish that the defen-

dant drove, operated or was in actual physical control of the movement of a motor vehicle while intoxicated to the point where he was incapable of safe driving or that the defendant had a blood alcohol content in excess of .08 within three hours of driving, operating or having physical control of the movement of a motor vehicle. 75 Pa.C.S.A. §7802. In this matter, Officer Weyler had information from Officer Psomas as well as his own observations. The information from Officer Psomas was that while he was driving past a parking lot, from a distance of approximately 50 feet in a moving vehicle, he observed the defendant walk approximately 20 feet in what he described as a "staggering" gait. He observed the individual fall and then get up, while holding onto the vehicle. Officer Weyler also, however, had his own observations. He observed the defendant's vehicle leave the parking lot, and proceed down the street. He followed him for a 1/3 of a mile and observed him driving his vehicle in complete compliance with the relevant provisions to Motor Vehicle Code. He did not observe the defendant weave or exhibit any other signs or erratic driving. He also noted that the defendant properly signaled when he made a turn. In addition, the information from Officer Psomas did not indicate that he observed any failure on the part of the defendant to operate his vehicle in a completely lawful manner.

The totality of the facts submitted to Officer Weyler was not, in this Court's view, sufficient to warrant a reasonable belief that the defendant was under the influence of alcohol to the extent that he was not capable of safely driving or had a blood alcohol content in excess of the legal limit. While the brief observations of Officer Psomas would certainly warrant an officer following this vehicle to see if the driver exhibited any signs that he was impaired and unable to drive, they did not justify the intrusiveness of a traffic stop absent some corroborating information, such as erratic driving. Officer Weyler's observations of the defendant's operation of his motor vehicle over nearly 1/3 of a mile failed to corroborate Officer Psoma's suspicions that the defendant may have been intoxicated to a degree that he was incapable of safe driving. In fact, Officer Weyler's observations of the defendant's driving undermined any reasonable belief that the defendant was not capable of safely driving. Officer Weyler acknowledged that the defendant did not exhibit any signs of erratic driving such as weaving on the road, crossing over marked lines, or failing to signal a turn. Officer Psomas also did not observe any improper driving when he saw the defendant's vehicle leave the parking lot.

While there are several reported decisions where the Superior Court upheld the validity of a traffic stop based upon observations made of individuals before the entered their motor vehicles and began driving, they all involve additional facts or circumstances that corroborated the suspicion that the individual was intoxicated.

For example, in *Commonwealth v. Laohr,* 715 A.2d 459 (Pa.Super. 1998) the information that justified the stop was provided by a person who identified themselves and told police dispatcher that he had observed an individual driving erratically before pulling into the parking lot of a store. He followed the individual into the store and observed other signs of intoxication, including the odor of alcoholic beverage coming from his person. Accordingly, the facts known to law enforcement in that case included erratic driving and the observations made by the individual who was close enough to that defendant to smell the odor of an alcoholic beverage. Here, there was no erratic driving and no personal interaction with the defendant that would have confirmed that his apparent difficulty walking was caused by his consumption of alcohol.

Similarly, in *Commonwealth v. Spencer,* 888 A.2d 827 (Pa.Super. 2005), the information provided by another known witness was that an individual was seen leaving a bar, and staggering down the sidewalk to his vehicle. An officer responding to this call followed the vehicle and observed the vehicle commit the traffic offense of failing to signal when changing lanes. The Superior Court affirmed the trial Court's denial of that Motion to Suppress. Again, the additional facts of erratic driving and the driver's presence in an establishment that served alcohol were present in *Spencer*. Those corroborating facts were not present in this case.

Finally, in *Commonwealth v. Korenkiewicz,* 743 A.2d 958 (Pa.Super. 1999), a service station attendant telephoned the police and initially reported that there was a suspicious person in a car outside his door. The attendant called back a few minutes later and explained that the police should respond because the person appeared to be ill or intoxicated. The Court denied a Motion to Suppress and the Superior Court affirmed. In doing so, the Superior Court noted that the report was based upon the personal observations of the service station attendant who concluded that the individual appeared to be intoxicated. He told this to the dispatcher. Here, no where in the testimony of either Officer Psomas or Officer Weyler is there any indication that Officer Psomas relayed to Officer Weyler that he believed that the individual was intoxicated. Officer Psomas testified that he observed the defendant "…staggering through the parking lot, at which time he fell in the parking lot. He needed to use his truck for assistance to get off the ground." (N.T., p. 7). Officer Weyler testified that when he received the call from Officer Psomas he told him "…that he observed the male stagger and fall in the parking lot of the 7-11 enter a purple colored Dodge pick-up truck." (N.T., p. 14). No where in the information conveyed to Officer Weyler is any indication that Officer Psomas explicitly stated that he believed that the individual was intoxicated.

This Court concludes that the facts in this case are more similar to those in *Commonwealth v. Hamilton,* 673 A.2d 915 (Pa. 1996). In *Hamilton* a police officer on routine patrol observed several women standing around a car parked in a parking lot. He approached the vehicle and was approached by one of the women. The woman said to him "everything's ok, I have his keys." The officer left the parking lot but remained in the area. A few minutes later he observed the vehicle leave the parking lot with the two women as passengers and the defendant apparently driving. He was able to observe the defendant's driving and stated that he did observe violations of the Motor Vehicle Code. Despite that, he approached the vehicle and when he confirmed that the defendant was driving, he placed him under arrest for driving under the influence of alcohol. The Superior Court reversed the trial court's granting of the Suppression Motion. First, the Superior Court reversed the trial court's finding that the statement the woman made to the police officer that "everything is ok, I have his keys," was hearsay and therefore not admissible. The Superior Court held that that statement was admissible for the purpose of determining it provided the officer with reasonable suspicion to justify a traffic stop. The Superior Court concluded that based on that statement, the officer did have reasonable suspicion.

The Supreme Court reversed the finding that although the comment implied that the defendant was intoxicated, the officer did nothing to verify the information nor did he observe anything on his own to substantiate the claim.

Similarly, in this matter, while the brief observation of the defendant walking implied that he may have been intoxicated, the subsequent observations Officer Weyler not only failed to corroborate that belief but actually allayed some of the suspicion because of the lack of any erratic driving by the defendant. Accordingly, for the reasons set forth above, this Courts Order granting the Suppression Motion should be affirmed.

BY THE COURT:
/s/Manning, J.

Date: November 20, 2008

---

[1] The Court would note that this problem occurs far less frequently when the Commonwealth is the appellant. The Appeals Unit of the District Attorney's office have proven to be diligent in securing transcripts of the proceedings and filing the required 1925 (B) statement.

CAPSULE SUMMARY

Lynn A. Janosik v. George J. Janosik, Jr.

Spousal and Child Support—Unemployment and Earning Capacity—Reasonable Efforts to Mitigate Income Loss—Pa. R.C.P. 1910.16–2(d)(1)

1. During the parties' marriage Husband was arrested on a charge of DUI. Some months later the parties separated and Wife filed for support. Husband entered a plea to the charges and was terminated from his employment. At the initial support hearing Husband was receiving only unemployment compensation benefits but had filed a claim with the EEOC asserting that his termination from work was improper.

2. At the hearing Husband presented evidence of a substantial job search including alternative types of employment and expanding to areas outside of Pittsburgh. The hearing officer's determination that Husband made reasonable efforts to mitigate his job loss is supported by the record.

3. Court held that although Husband's termination appeared to be for cause, his unemployment was not an attempt to avoid his support obligation. The hearing officer was correct in the decision to base Husband's current support obligation only on unemployment compensation benefits rather than income from his prior position.

4. The general rule set forth at Pa. R.C.P. 1910.16–2(d)(1), providing that when an obligor is terminated for cause there will generally be no effect on the support obligation, is overcome on a showing of attempts to mitigate the lost income.

(Hilary A. Spatz)

Carl M. Hanchak for Plaintiff.
Kristen M. Humphrey for Defendant.

No. FD 07-003633-003. In the Court of Common Pleas of Allegheny County, Pennsylvania, Family Division.

Wecht, J., July 14, 2008.