PITTSBURGH LEGAL JOURNAL

OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

Forgery—Derivative action—Fiduciary duty—Discovery rule—Prejudgment interest

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Stay of proceedings—Orphans' Court—Specific performance—Preliminary Objections—Judicial notice

In a dispute concerning title to real estate owned by a husband and wife, following the death of the wife, the plaintiffs – husband and wife's children – sought specific performance and other equitable remedies based on a deed that was only signed by the deceased wife. The husband did not sign the deed and he refused to convey the property. The plaintiffs claimed that his signature was unnecessary because the deceased wife had been the husband's attorney-in-fact at the time she signed the deed. Prior to the current suit filed in 2021, earlier suits in 2017 and 2019 were initiated for quiet title and specific performance related to other estate issues surrounding the deceased wife. Plaintiffs filed the 2017 and 2019 suits in the civil division and they were consolidated with one another. Upon consolidation, the 2017 and 2019 suits were transferred to the orphans' court because of a pending accounting action involving a trust of the deceased wife. The defendants in the 2021 action asked the Court to stay the 2021 action pending resolution of the actions pending in the orphans' court. The Court sustained the preliminary objections and stayed the 2021 action. The Court rejected all of the plaintiffs' arguments. First, the Court rejected the plaintiffs' argument that the Court could not rule on the preliminary objections because the defendants did not attach the pleadings from the pending actions. The Court rejected this argument because the pleadings from the prior actions were accessible to the court electronically. The Court also rejected the plaintiffs' arguments that the Court erred by taking judicial notice of the pleadings in the 2017 and 2019 actions. The Court held that binding case law permitted it to take judicial notice of pending lawsuits. Lastly, the Court rejected the plaintiffs' "race to judgment" argument and held that a stay was appropriate to avoid a race to judgment. As such, the Court stayed the 2021 action so as not to interfere with the actions pending in Orphans' Court.

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Opinions

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BRAD BAYLES, an individual for himself, and on behalf of JEFFERSON OF MONTICELLO, INC. a Pennsylvania Corporation v. ROBERT HAMROCK, an individual and JEFFERSON OF MONTICELLO, INC. a Pennsylvania Corporation

Forgery—Derivative action—Fiduciary duty—Discovery rule—Prejudgment interest

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No. GD18-2757. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.
Hertzberg, J.—July 5, 2022.

OPINION

I. Introduction

About ten to fifteen years ago many Pennsylvania landowners capitalized on the skyrocketing value of the natural gas below. Robert Hamrock was able to pocket over $500,000 from the natural gas rights he owned in southwestern Pennsylvania. But that money did not belong to him alone. It belonged to Jefferson of Monticello, Inc., a corporation owned both by Mr. Hamrock and Brad Bayles.

II. Background

Plaintiff Brad Bayles and defendant Robert Hamrock first met in the late 1970s after Mr. Hamrock purchased real estate in Jefferson Hills Borough across the street from Mr. Bayles' home. Mr. Hamrock and Mr. Bayles acquired, developed and sold real estate in the Jefferson Hills Borough area, first as partners, and in 1981 they formed B&B Rainbow Enterprises, Inc, a Pennsylvania Corporation. Then in 1986 they also acquired an existing Pennsylvania Corporation by the name of Jefferson of Monticello, Inc., which owned approximately sixty acres of land in Jefferson Hills Borough.

By 1993 neither Mr. Hamrock nor Mr. Bayles resided in Pennsylvania, but their two corporations continued to buy, develop and sell real property in the Jefferson Hills Borough area. In 2003, Mr. Bayles, as an individual and on behalf of Jefferson of Monticello, Inc., sued Mr. Hamrock, his wife Christine Hamrock and Jefferson of Monticello, Inc. at docket number GD03-12597. Mr. Bayles and Mr. Hamrock had agreed to purchase a parcel of real estate in Pleasant Hills Borough on behalf of Jefferson of Monticello, Inc. However, the parcel instead was purchased by Christine Hamrock, who thereafter deeded it to Mr. Hamrock for one dollar. There is an appearance of counsel entered on the docket for the Hamrock Defendants, but there is no response to the complaint or any other filing until a 2016 notice from the court and then termination of the case for inactivity.

In August or September of 2016 Mr. Bayles hired David Montgomery, his current attorney, to do a deed search because Mr. Bayles was concerned over losing the corporations' real estate in a municipal or school district delinquent tax sale. Attorney Montgomery found a deed conveying all of Jefferson of Monticello, Inc.'s gas, oil and mineral rights to Mr. Hamrock for one dollar. The deed is dated April 29, 1992, recorded June 24, 2011 and contains the signature of Mr. Bayles. However, Mr. Bayles is certain he did not sign the deed and believes his signature was forged and that the deed is fraudulent. The Jefferson Hills Borough area is in the "Marcellus Shale" region, where natural gas leases had become extremely valuable by the time of the deed's recording in 2011. Mr. Hamrock was able to use the deed to obtain $208,200 for himself from EQT Production Company for a natural gas lease in March of 2014 and $336,547 from Divot Energy Consultants and Cavallo Mineral Partners for the sale of the natural gas rights in 2018.

This shareholder derivative proceeding (see Pennsylvania's Business Corporation Law at 15 Pa. C.S. §§1781-1784) began with the filing of a complaint by Mr. Bayles at docket number GD18-2757 in February of 2018. The complaint contains counts for breach of fiduciary duty, appointment of a custodian, constructive trust, unjust enrichment, receivership and accounting. Mr. Hamrock filed a counterclaim for breach of fiduciary duty claiming damages from delinquent property taxes he paid when three of Jefferson of Monticello's parcels were sold in 2017 and 2019.

Just before the jury trial began, Mr. Hamrock argued a motion in limine for dismissal of the breach of fiduciary duty and unjust enrichment claims. Mr. Hamrock contended the statutes of limitations had expired on the claims. I denied the motion, but agreed that the statute of limitations issue would be decided by the jury. Among the witnesses who testified at the jury trial was Khody Detwiler, Plaintiffs' expert witness in the field of forensic document examination. Mr. Detwiler opined that the deed conveying Jefferson of Monticello's gas, oil and mineral rights to Mr. Hamrock is a fabrication with the signatures of Mr. Bayles and three other individuals being "cut-and-paste" forgeries.

The jury rendered its verdict on September 23, 2021. It determined that the statutes of limitations had not expired, Jefferson of Monticello, Inc. is owned sixty percent by Mr. Hamrock and forty percent by Mr. Bayles, Mr. Hamrock breached his fiduciary duty, Mr. Hamrock's conduct was outrageous but Mr. Bayles is entitled to $0 in punitive damages, Mr. Hamrock is liable for unjust enrichment, Mr. Bayles breached his fiduciary duty and Mr. Bayles is not liable for unjust enrichment. The parties agreed that it was not necessary for the jury to make an award of compensatory damages as the jury's determinations would permit me to mold the verdict to calculate them by using the agreed upon amounts Mr. Hamrock obtained for the natural gas rights and the property taxes he paid.

The parties filed motions to mold the verdict and responses in December of 2021. My ruling on the motions to mold the verdict permitted Mr. Bayles to file a petition for attorney fees and costs pursuant to 15 Pa. C.S. §1784(b) of Pennsylvania's Business Corporation Law. My final ruling, following the filing of post-trial motions by the parties, was that Mr. Hamrock is to pay $237,830.62 in compensatory damages and pre-judgment interest to the custodian of Jefferson of Monticello, Inc., who is to pay it to Mr. Bayles. I also ruled that Mr. Hamrock is to pay $84,406.62 of Mr. Bayles' counsel fees, costs and expenses to the custodian, who is to pay it to Mr. Bayles. Finally, I ruled that Mr. Bayles is to pay $14,661.97 in compensatory damages to the custodian of Jefferson of Monticello, Inc., who is to pay it to Mr. Hamrock. On April 20, 2022 Mr. Hamrock timely appealed to the Superior Court of Pennsylvania, and on May 4, 2022 Mr. Bayles timely cross appealed.

The parties filed concise statements of the errors complained of on appeal. The remainder of this opinion addresses the errors complained of, as required by Pennsylvania Rule of Appellate Procedure 1925(a). I will rely on the parties' motions for post-trial relief to describe the details of the errors complained of on appeal. First to be addressed are the errors complained of by Mr. Hamrock.

III. Mr. Hamrock's Issues on Appeal

A. Statutes of Limitations

Mr. Hamrock contends I made an error by ruling against him on the statutes of limitations. See concise statement of matters complained of on appeal, ¶s 1 and 2. However, all of Mr. Hamrock's statute of limitations arguments assume commencement of the limitations periods in 2011 when he recorded the deed that conveyed him all of Jefferson of Monticello's gas, oil and mineral rights. This assumption is improper. The statute of limitations does not begin to run until the right to institute and maintain a lawsuit arises. See Pocono International Raceway, Inc. v. Pocono Produce, Inc., 503 Pa. 80, 468 A.2d 468 at 471 (1983). However, the damages element of Mr. Bayles' breach of fiduciary duty claim and the appreciation of benefits element of his unjust enrichment claim did not arise until Mr. Hamrock received payments for the natural gas in 2014 and 2018. There is a four year statute of limitations for unjust enrichment (see 42 Pa. C.S. §5525(a)(4)). It began to run on March 26, 2014 when Mr. Hamrock received $208,200 from EQT Production Company, and therefore had not expired when Mr. Bayles' filed the lawsuit on February 27, 2018. Hence, my ruling against Mr. Hamrock on the statute of limitations was correct.

Even if the statutes of limitations commence to run in 2011 with the recording of the deed conveying the oil, gas and mineral rights, the "discovery rule" tolls them and they do not begin to run until Mr. Bayles discovers or reasonably should discover that he has been injured and that his injury was caused by Mr. Hamrock's conduct. See Fine v. Checcio, 582 Pa. 253, 870 A.2d 850 at 859 (2005). This is a factual determination ordinarily made by a jury. Id. At 858. If reasonable minds would not differ in finding Mr. Bayles knew or, in the exercise of reasonable diligence, would have known of his injury and the cause, the court determines the discovery rule does not apply as a matter of law. Id. at 858-859; Drelles v. Manufactures Life Ins. Co., 2005 PA Super 249, 881 A.2d 822 at 832.

Mr. Hamrock argues the discovery rule does not apply as a matter of law because he produced the deed to the oil, gas and mineral rights during discovery in the 2003 lawsuit, before the deed was recorded. Mr. Hamrock did testify that he responded to Mr. Bayles' discovery in the 2003 lawsuit by sending, among other things, the oil, gas and mineral rights deed to his attorney. See transcript of Jury Trial, September 17-22, 2021 ("T" hereafter), p. 457. However, Mr. Bayles testified that Mr. Hamrock never responded to the discovery request in the 2003 lawsuit. See T, pp. 311-323. Hence, whether the deed was produced in the 2003 lawsuit was a disputed factual issue requiring an assessment of the parties' credibility, and I was correct to allow the jury to determine if Mr. Bayles knew or reasonably should have known of the deed from the 2003 lawsuit.

Mr. Hamrock also argues the 2003 lawsuit alleges nearly the same claims as this 2018 lawsuit. This supposedly put Mr. Bayles on "inquiry notice" of the potential for future harm, which again, according to Mr. Hamrock, would make the discovery rule inapplicable as a matter of law. This argument is meritless. First, the 2003 lawsuit and this 2018 lawsuit do not allege nearly the same claims. The 2003 lawsuit alleges Mr. and Mrs. Hamrock usurped a corporate opportunity to acquire realty while this 2018 lawsuit alleges Mr. Hamrock forged a deed and used the forged deed to obtain over $500,000 that belonged to the corporation. As a matter of law, was Mr. Bayles not reasonably diligent because he did not anticipate Mr. Hamrock's misconduct would continue after he was caught and also would transform into forgery? Reasonable minds could find Mr. Bayles exercised reasonable diligence even though he did not anticipate Mr. Hamrock's forgery. The concept of a plaintiff being on "inquiry notice" described in Rice v. Diocese of Altoona-Johnstown (255 A.3d 237 (Pa. 2021)) involves a secondary cause of a known injury. No secondary cause is alleged by Mr. Bayles and his injury was not known since it involved the unobservable lease and sale of natural gas that is hidden below the surface of the land. See Lewey v. H.C. Frick Coke Co., 166 Pa. 536, 31 A.261 (1895) (plaintiff could not know that a trespasser had subterraneously extracted coal from his land). In any event, the injury alleged in the 2003 lawsuit is different from the injury in the 2018 lawsuit. Therefore, the 2003 lawsuit did not put Mr. Bayles on "inquiry notice" of the conduct of Mr. Hamrock set forth in the 2018 lawsuit.

Mr. Hamrock also argues Mr. Bayles did not exercise reasonable diligence because he abandoned his 2003 lawsuit and afterwards disappeared for nearly fifteen years. According to Mr. Hamrock, this is another reason the discovery rule does not apply as a matter of law. But, Mr. Bayles explained that litigating the 2003 lawsuit with Mr. Hamrock could have jeopardized a pending purchase of their property that would generate over a million dollars. See T., p. 319. Mr. Bayles further explained that he planned to wait until the sale closed, have the proceeds held in escrow and then "fight it out" relative to the 2003 lawsuit. Id. The decision on whether this was a lack of reasonable diligence or a sensible course of action is a question of fact for the jury. Similarly, Mr. Bayles denied that he disappeared for nearly fifteen years and testified to regular communications with Mr. Hamrock (including their fight for approval for a sale of property to UPMC that was contingent on approval of zoning for a hospital). See T. pp. 254-257. Hence, whether Mr. Bayles disappeared for nearly fifteen years also is a question of fact for the jury. Therefore, it would be incorrect to deem the discovery rule inapplicable as a matter of law.

The final statute of limitations argument being analyzed is Mr. Hamrock's claim that the written jury verdict form prepared during the charging conference is confusing and misleading, while Mr. Hamrock's proposed verdict form correctly addresses the topic. Here is the relevant portion of the verdict form that was used by the jury for the statutes of limitations issue:

> Question 1:
>
> Did the "discovery rule" toll the applicable statutes of limitation for the claims of breach of fiduciary duty and unjust enrichment brought by Plaintiffs until the date Mr. Bayles alleges he discovered them?
>
> Yes ____ No ____
>
> If you answer Question 1 "Yes," go to Question 2.
>
> If you answer Question 1 "No," Mr. Bayles cannot recover. Go to Question 2.
>
> Question 2:
>
> Does Mr. Bayles own 50% of the shares of stock of Jefferson of Monticello, Inc.?
>
> Yes _____ No _____
>
> If you answered Question 1 "No," go to Question 7.
>
> If you answered Question 1 "Yes," go to Question 3.

Mr. Hamrock, however, agreed to the exact language in Question 1 when it was provided to his counsel by me verbally, and later, in writing. See T, pp. 485-88, 502, 506, 522 and 574.

In any event, Mr. Hamrock's "Proposed Verdict Sheet," which consists of fifteen pages with thirty-four questions, improperly addresses the statutes of limitations. In Mr. Hamrock's proposal, the statutes of limitations are the subject of questions one, two, three and four, but one and two ask questions that are answered by three and four. One and two inform the jury the statutes of limitations are two years for breach of fiduciary duty and four years for unjust enrichment and ask if the lawsuit was filed within two or four years of Mr. Hamrock's filing of the deed in 2011. With questions three and four informing the jury the case was filed on February 27 2018, questions one and two are unnecessary because they must be answered No. In addition, three and four are confusing and equate the filing of the deed in 2011 with Plaintiffs' injuries when the jury could properly find the injuries did not occur until Mr. Hamrock received payment for the natural gas in 2014 and 2018. Therefore, Mr. Hamrock's proposal improperly addresses the statutes of limitations.

My approach to the written verdict, as explained during the charging conference (see T, p. 487), is to keep it concise by not having it repeat the charge on the law given verbally to the jury. Mr. Hamrock's requested point for charge on the statutes of limitations was, in fact, verbally given to the jury. See Defendant's Point for Charge No. 2 and T, pp. 566-567. Therefore, Mr. Hamrock is critical only because he claims the verdict form confused the jury over whether "toll" means the statute of limitations is paused or it means it has begun to run. But, the verdict form clarifies that "toll" means pause as the instruction after Question 1 informs the jury that a No answer means Mr. Bayles cannot recover. Then, the instruction on the verdict form after Question 2 instructs the jury to go directly to Mr. Hamrock's counterclaim (without answering any more questions on Mr. Bayles' claims) if Question 1 was answered No. Clearly, had the jury determined Mr. Bayles had not used reasonable diligence to discover his injuries and their cause, it would have answered Question 1 No. Instead, it answered Yes to Question 1 and then went on to answer Questions 3 to 6 concerning Mr. Bayles' breach of fiduciary duty, punitive damages and unjust enrichment claims against Mr. Hamrock. Therefore, the written verdict form is not confusing and misleading.

B. Pre-Verdict Interest

Mr. Hamrock also contends I made an error by awarding pre-verdict interest to the Plaintiffs. See concise statement of matters complained of on appeal, ¶ 3. Although the Plaintiffs are not entitled to pre-verdict interest as a matter of right, an award of pre-verdict interest is appropriate when necessary to make the plaintiff whole again and prevent unjust enrichment. See Sack v. Feinman, 489 Pa. 152, 413 A.2d 1059 (1980). Since 2014 and 2018 until the verdict in 2021, Mr. Hamrock wrongfully deprived Mr. Bayles of his portion of the $544,747 from the natural gas lease and sale. It is indisputable that the earlier in time money is received the greater its value will be to the recipient. Mr. Bayles will not be made whole unless he is awarded pre-verdict interest to compensate him for this "time value of money." Hence, interest on the funds from the time they were wrongfully withheld is necessary to make Mr. Bayles whole again. Mr. Hamrock tries to argue that the case of Independent Oil and Gas Ass'n of Pennsylvania v. Pennsylvania Public Utility Commission (804 A.2d 693 (Pa. Cmwlth. 2002)) mandates there be proof Mr. Hamrock invested the money before I could award pre-verdict interest. But, Mr. Hamrock's analysis of that case is patently wrong. The Commonwealth Court in Independent Oil and Gas denied pre-verdict interest to the Plaintiffs because the Defendants in that case were not unjustly enriched and are Commonwealth agencies that cannot be assessed with interest unless there is express statutory authority. See 804 A.2d 693 at 703-704. Since the jury found Mr. Hamrock was unjustly enriched and pre-verdict interest is needed to make the Plaintiffs whole, my award of pre-verdict interest to the Plaintiffs is correct.

Mr. Hamrock also argues that I erroneously awarded pre-verdict interest between March 24, 2020 and the date of the verdict since all trials were suspended then due to the COVID-19 pandemic. The Superior Court of Pennsylvania recently addressed a similar argument in Getting v. Mark Sales & Leasing, Inc., 2022 PA Super 58 (April 7, 2022). While the pre-verdict interest in that case was authorized under Pennsylvania Rule of Civil Procedure 238 ("Damages for Delay in Actions for Bodily Injury, Death or Property Damage"), Rule 238 also is premised on the concept of making a plaintiff whole. Id. The Superior Court's observation that COVID-19 and the judicial emergency do not diminish the right to be made whole or allow tortfeasors to reap unjust windfalls (Id.) is therefore also applicable to Mr. Hamrock's wrongful deprivation of funds from the Plaintiffs in this case. Thus, my award of interest between March 24, 2020 and the date of the verdict was not an error.

C. Attorneys Fees

Mr. Hamrock next contends I made an error interpreting and applying 15 Pa. C.S. §1784(b). See concise statement of matters complained of on appeal, ¶ 4. This provision of Pennsylvania's Business Corporation Law on the subject of shareholder derivative lawsuits states:

> If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the business corporation, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the corporation.

15 Pa. C.S. §1784(b). My January 4 and April 4, 2022 orders entered a verdict in favor of Jefferson of Monticello, Inc. and against Mr. Hamrock for compensatory damages and interest in the total amount of $594,576.56, with forty percent of the total, or $237,830.62 due to the Corporation's Custodian from Mr. Hamrock immediately. My January 4, 2022 order also specified that an amount in addition to the $237,830.62 would be due from Mr. Hamrock in the future after calculation of expenses under 15 Pa. C.S. §1784(b). My March 2, 2022 order awarded Mr. Bayles $84,406.62 under 15 Pa. C.S. §1784(b) ($76,607.33 for attorney fees and the balance for expert witness fees, lodging and travel), with it to immediately be paid to the Corporation's Custodian by Mr. Hamrock.

Mr. Hamrock first makes the argument that the $84,406.62 award is punitive when the jury awarded zero in punitive damages against him. However, 15 Pa.C.S.§1784(b) punishes no one. Instead, this legislation allows a shareholder who has been successful in a derivative lawsuit to be reimbursed for litigation expenses. These expenses are paid to the successful shareholder out of the funds recovered by the corporation. Since the amount of the expenses is not added on to the corporation's recovery, there cannot possibly be any merit to Mr. Hamrock's argument that the $84,406.62 award of expenses is punitive.

Mr. Hamrock next makes the argument that Mr. Bayles should collect the $84,406.62 from the damages obtained by the Corporation from Mr. Hamrock. Clearly Mr. Hamrock is confused as I ordered exactly what Mr. Hamrock seems to argue I did not order. The Corporation's total recovery is $594,576.56. Mr. Hamrock was never ordered to pay in excess of that amount. Mr. Hamrock instead was ordered to pay the corporation $237,830.62 for Mr. Bayles' forty percent ownership plus $84,406.62 for his litigation expenses for a total of $322,237.24. The difference between the corporation's $594,576.56 total recovery and the $322,237.24 Mr. Hamrock must pay the Corporation may be retained by Mr. Hamrock as the sixty percent shareholder.

D. Wrongful Behavior of Mr. Hamrock

Mr. Hamrock next contends I made an error in determining he acted illegally, oppressively and fraudulently pursuant to 15 Pa. C.S. §1767. See concise statement of matters complained of on appeal, ¶ 5. The provision of Pennsylvania's Business Corporation Law sited by Mr. Hamrock allows the court to appoint a custodian of any business corporation when the acts of those in control of the corporation are illegal, oppressive or fraudulent. See 15 Pa. C.S. §§1767(a)(3) and 1981(a)(1). On January 4, 2022 I determined that Mr. Hamrock was in control of Jefferson of Monticello, Inc. and his acts were illegal, oppressive and fraudulent and appointed a custodian of the corporation.

Mr. Hamrock first argues that my determination that his actions were illegal, oppressive and fraudulent was made sua sponte. However, the provisions in the Business Corporation Law require this determination before a custodian can be appointed and Mr. Bayles first requested the court appoint a custodian in the complaint (see Count III, pp. 11-13), again on the record just before the trial began (see T; pp. 27-28) and finally in Plaintiffs' response to Defendants' motion to mold verdict (see document 96 on the electronic docket filed 12/22/2021, p. 7). Hence, the determination that Mr. Hamrock acted illegally, oppressively and fraudulently was not initiated by me, but instead was at the request of Mr. Bayles.

Mr. Hamrock also argues the jury never made a determination that he forged any document or engaged in any fraudulent activity. While it is true the jury was not specifically asked if Mr. Hamrock forged the gas, oil and mineral rights deed, there was overwhelming circumstantial evidence that he was the forger[1] and his testimony concerning the signatures on the deed was inconsistent (see T, pp. 391-393, 418-419 and 464-471) and incredible. I was the one to decide that Mr. Hamrock acted illegally, oppressively and fraudulently because Mr. Hamrock had no right to a jury trial on the issue of appointing a custodian. See Fazio v. Guardian Life Ins. Co. of America, 2012 PA Super 273, 62 A.3d 396 (2013), appeal denied 621 Pa. 658 (2013). In any event, Mr. Hamrock waived any claim he could have to a jury trial on the issue because he did not raise it until he filed a motion for post-trial relief. Therefore, my determination that Mr. Hamrock acted illegally, oppressively and fraudulently was correct.

E. Procedure for Attorneys Fee Award

Mr. Hamrock's final contention is that I made an error by awarding attorney fees, expert witness fees, travel reimbursement and costs to Mr. Bayles. Mr. Hamrock argues the topic of attorney fees and costs was not discussed with counsel at the time the decision was made to have me determine the compensatory damages by molding the verdict. If Mr. Hamrock is saying he was unfairly surprised because Mr. Bayles requested these expenses after the trial, the inclusion of requests for "an award of legal fees as may be permitted under the law" in each of the seven counts of the complaint should have prepared him. Mr. Hamrock also argues attorneys fees and costs should have been presented to the jury. However, Mr. Bayles brought the attorney fees and expenses claim under 15 Pa. C.S. §1784, which provides no right to a jury trial. See Fazio v. Guardian Life Ins. Co. of America, supra. Therefore, I did not make any error by awarding attorney fees, expenses and costs to Mr. Bayles.

IV. Mr. Bayles' Issues on Appeal

A. Breach of Fiduciary Duty Causation and Damages

The first contention of an error by Mr. Bayles relates to the counterclaim. Mr. Bayles contends there was no basis for concluding that he caused $14,661.97 in damages to Jefferson of Monticello, Inc. See Plaintiff's statement of matters complained of on appeal, ¶ 1. Mr. Bayles is mistaken since there was more than sufficient evidence for the jury's verdict that Mr. Bayles breached "his fiduciary duty causing damages to…Jefferson of Monticello, Inc." Jury Verdict, Question 7. Mr. Hamrock alleged Mr. Bayles breached his fiduciary duty to the Corporation because he did not provide funding needed to pay delinquent property taxes when three parcels sold in 2017 and 2019. Since Mr. Bayles acknowledged the "practice" of Jefferson of Monticello, Inc. was not to pay property taxes on pieces of property until they were sold (T, pp. 259 and 362), this practice was one basis for the jury finding his lack of any contribution towards the delinquent taxes upon the sale of the three parcels was a breach of fiduciary duty that caused damage to the Corporation.

Mr. Bayles also argues he cannot be liable for breach of fiduciary duty and cannot have caused damages to the Corporation because Mr. Hamrock did not involve Mr. Bayles in the transactions. However, the jury may have attributed Mr. Bayles' non-involvement in the transactions to him breaching his fiduciary duty by not keeping in close enough contact with Mr. Hamrock. See T, p. 541. It would be inappropriate for Mr. Bayles to accept the benefit of his part ownership of the Corporation to receive a portion of the natural gas revenues but then avoid any responsibility for part of the Corporation's expenses. Accordingly, there was a basis for concluding that Mr. Bayles breached his fiduciary duty causing $14,661.97 in damages to the Corporation.

B. $0 Punitive Damages Verdict

Mr. Bayles next contends I made an error by not setting aside the jury verdict of $0 for punitive damages. See Plaintiff's statement of matters complained of on appeal, ¶ 2. This argument is premised on the jury being required to award some amount of punitive damages since it found Mr. Hamrock's conduct outrageous. Mr. Bayles cannot cite any legal authority that mandates an award of some amount of punitive damages when there is a finding of outrageous conduct. Indeed, in accordance with Pennsylvania Standard Suggested Jury Instruction (Civil) 8.00, I instead instructed the jury it may award punitive damages if it finds outrageous conduct. The jury could have decided the award of compensatory damages would sufficiently punish Mr. Hamrock. The jury also could have been unable to determine what amount would punish him due to the lack of evidence of his wealth. See T, pp. 496-497. Therefore, my decision not to set aside the award of $0 for punitive damages is correct

C. Percentage Ownership of Corporation

Mr. Bayles next contends I made an error by utilizing the jury's verdict on his percentage of stock ownership to calculate compensatory damages because the verdict form is ambiguous. See Plaintiff's statement of matters complained of on appeal, ¶ 3. Question 2 in the verdict form simply asks does Mr. Bayles own 50% of the shares of the Corporation's stock. Since Mr. Bayles took the position he owned 50% and Mr. Hamrock took the position Mr. Bayles owned 40% of the stock, the jury's no answer was its finding that he owned 40%. See T, pp. 492 and 494-495. There is no ambiguity. In any event, after the jury verdict was read in open court Mr. Bayles' counsel agreed with the jury's 40% stock ownership verdict. See T, pp. 578-579. Therefore, I was correct in utilizing 40% in calculating Mr. Bayles' compensatory damages.

Mr. Bayles' final contention is that I erroneously used 40% to calculate his compensatory damages because the jury was not instructed on which party had the burden of proof on the issue of percentage of stock ownership. See Plaintiff's statement of matters complained of on appeal, ¶ 3. Mr. Bayles submitted no proposed jury instruction on the party that had the burden to prove stock ownership and failed to raise the issue in any other way until filing his statement of matters complained of on appeal. Pursuant to Pennsylvania Rule of Civil Procedure 227.1, Mr. Bayles has therefore waived this issue. In any event, I properly instructed the jury that Mr. Bayles had the burden of proving his claims while Mr. Hamrock had the burden of proving his claims. See T, pp. 562-563. Therefore, the jury was instructed on which party had the burden of proof on the issue of percentage of stock ownership and I correctly used its determination that Mr. Bayles owned 40%.

BY THE COURT:
/s/Hertzberg, J.

Date: July 5, 2022

[1] The circumstantial evidence includes Mr. Hamrock admitting he had the deed in his possession from the date he alleges he first signed it until he recorded it nineteen years later. See T, p. 389. Mr. Hamrock was also in possession of the source documents that were cut and pasted into the deed. Mr. Hamrock admitted the signatures on the deed are identical to the signatures on the source documents. See T, pp. 391-393. Mr. Hamrock also had an obvious motive to forge the deed as he was able to use it to obtain $545,000. This is highlighted by the recording of the deed occurring shortly after he received solicitations from MDS Energy and entered into an agreement with MDS Energy. See T, pp. 389-390.

Charlene M. Campbell and Thomas D. Campbell v. VUONO & GRAY, LLC, a Pennsylvania limited liability company; MARK T. VUONO, an adult individual and Pennsylvania licensed attorney; DENNIS J. KUSTURISS, an individual and Pennsylvania licensed attorney; JOSEPH S. SCHERLE, an adult individual, certified public accountant and co-trustee of the Scherle Family Protector Trust; LOVE, SCHERLE & BAUER, P.C., a Pennsylvania professional corporation; THOMAS J. DEMPSEY, JR., an adult individual and Pennsylvania licensed attorney; JONES GREGG CREEHAN & GERACE, LLP, a Pennsylvania limited partnership; THE SCHERLE FAMILY PROTECTOR TRUST, a Pennsylvania-domiciled trust; KATHLEEN M. SCHERLE, an adult individual and Co-Trustee of the Scherle Family Protector Trust; THE HUNTINGTON NATIONAL BANK, a national banking association; MELANIE L. BLACKER, an adult individual; and CHARLES T. CAMPBELL, II, an adult individual

Stay of proceedings—Orphans' Court—Specific performance—Preliminary Objections—Judicial notice

In a dispute concerning title to real estate owned by a husband and wife, following the death of the wife, the plaintiffs – husband and wife's children – sought specific performance and other equitable remedies based on a deed that was only signed by the deceased wife. The husband did not sign the deed and he refused to convey the property. The plaintiffs claimed that his signature was unnecessary because the deceased wife had been the husband's attorney-in-fact at the time she signed the deed.

Prior to the current suit filed in 2021, earlier suits in 2017 and 2019 were initiated for quiet title and specific performance related to other estate issues surrounding the deceased wife. Plaintiffs filed the 2017 and 2019 suits in the civil division and they were consolidated with one another. Upon consolidation, the 2017 and 2019 suits were transferred to the orphans' court because of a pending accounting action involving a trust of the deceased wife. The defendants in the 2021 action asked the Court to stay the 2021 action pending resolution of the actions pending in the orphans' court. The Court sustained the preliminary objections and stayed the 2021 action. The Court rejected all of the plaintiffs' arguments. First, the Court rejected the plaintiffs' argument that the Court could not rule on the preliminary objections because the defendants did not attach the pleadings from the pending actions. The Court rejected this argument because the pleadings from the prior actions were accessible to the court electronically. The Court also rejected the plaintiffs' arguments that the Court erred by taking judicial notice of the pleadings in the 2017 and 2019 actions. The Court held that binding case law permitted it to take judicial notice of pending lawsuits. Lastly, the Court rejected the plaintiffs' "race to judgment" argument and held that a stay was appropriate to avoid a race to judgment. As such, the Court stayed the 2021 action so as not to interfere with the actions pending in Orphans' Court.

No. GD21-11596. In the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division.
Hertzberg, J.—July 25, 2022.

OPINION

Plaintiffs Charlene Campbell and Thomas Campbell have appealed to the Superior Court of Pennsylvania from my April 28, 2022 order staying this proceeding pending conclusion of a lawsuit in the orphans' court division. Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a), this opinion explains the reasons I stayed this proceeding pending conclusion of the orphans' court division case.

Plaintiffs and their parents, defendant Charles T. Campbell, II and Eileen Campbell, entered into a written agreement in 2014 that required Charles and Eileen to list their Fox Chapel home for sale and place $727,517 of the proceeds from the sale into a trust. The agreement gave the Plaintiffs the right to seek specific performance to force the listing of the home if their parents failed to do so within one hundred and twenty days. Eileen Campbell died in January of 2017, but three days before her death she alone signed a deed conveying the Fox Chapel home to plaintiff Charlene Campbell and defendant Charles Campbell.

In 2018 Charles Campbell filed suit in the civil division of this court against Charlene Campbell to invalidate the January 2017 deed from Eileen Campbell and quiet the title to the Fox Chapel home. See no. GD18-7173. Charlene contends that her mother's single signature on the deed conveys title both from her mother and her father, because her mother was his attorney-in-fact under a 2001 power of attorney. In 2019, with the Fox Chapel home not having been listed for sale, Plaintiffs Charlene and Thomas Campbell sued their father in the civil division of this court for specific performance of the 2014 agreement to list the Fox Chapel home for sale and place $727,517 of the proceeds from the sale into a trust. See no. GD19-2486. These two civil lawsuits were transferred and consolidated into a proceeding in the orphans' court division Plaintiffs initiated for an accounting of a trust established by their grandmother. See no. 02-19-02074.

In the subject proceeding, docket number GD21-11596, I already filed an opinion on February 9, 2022 due to an earlier appeal by Plaintiffs from my decision not to disqualify Charles Campbell's attorneys. See Superior Court docket no. 1525 WDA 2021. On April 20, 2022, I presided over argument by counsel for approximately 3.5 hours primarily over preliminary objections to the amended complaint filed by many of the defendants. On April 28, 2022 I signed an order sustaining the preliminary objections based on the pendency of a prior action by staying this proceeding pending conclusion of the orphans' court division proceeding. Plaintiffs filed a motion for reconsideration of my April 28, 2022 order on May 26, 2022, which was too close to the thirty day deadline (see 42 Pa. C.S. §5505) for responses to be provided and/or argument. On May 27, 2022 the Plaintiffs filed a notice of appeal to the Superior Court from my April 28, 2022 order. On June 6, 2022 I denied the motion for reconsideration. I did not order the Plaintiffs to file a statement of errors complained of on appeal (see P.a. R.A.P. 1925(b)) as the motion for reconsideration contains sufficient information as to the alleged errors claimed by the Plaintiffs.

Plaintiffs contend I made an error by allowing the Defendants to argue their pendency of a prior action preliminary objection without first filing and serving the pleadings from the pending prior action. They argue the filing and service of the pleadings from the pending prior action are required by the Note after Pa. R.C.P. 1028(c) that indicates such preliminary objections "cannot be determined from the facts of record" and by Allegheny County Local Rule 1028(c)(ii) which states "all evidence that the parties wish the court to consider shall be filed with the Department of Court Records at least twenty (20) days prior to the argument." This argument is meritless.

First, Allegheny County's electronic docket, including filed pleadings, is readily accessible to attorneys, judges and the public via the internet. If the pending prior action were in another jurisdiction without such access, Local Rule 1028(c)(ii) could be applicable. But in this situation, pleadings that are public records and easily accessed via the electronic docket do not constitute "evidence" within the meaning of Local Rule 1028(c)(ii).

In addition, Pa. R.C.P. 126 mandates that Pennsylvania's Rules of Procedure be given a construction that secures a "just, speedy and inexpensive" resolution and allows the court to "disregard any error or defect of procedure which does not affect the substantial rights of the parties." Requiring a party to copy, file and serve pleadings that are available electronically is not a speedy or inexpensive way of resolving the Defendants' pending prior action preliminary objections. Plaintiffs substantial rights were not affected as they were familiar with the pleadings since they either authored them or were served with them in the prior action. I certainly had no need for them after having reviewed them in the course of writing my February 9, 2022 opinion. Therefore, I was correct in allowing the Defendants not to file and serve the pleadings from the pending prior action.

Plaintiffs also contend I made an error by taking judicial notice of the pleadings in the prior action. However, both the Superior Court and the Commonwealth Court have ruled that judicial notice may be taken of pleadings in other cases. See Spanier v. Freeh, 2014 PA Super 133, 95 A.3d 342, footnote 3 and Lycoming County v. Pennsylvania Labor Relations Bd, 943 A.2d 333 (Pa. Cmwlth 2007), footnote 8. Therefore, it was not an error for me to take judicial notice of the pleadings in the orphans court division proceeding.

Plaintiffs additionally contend I made an error staying this proceeding because there will be no "race to judgment" between this civil division proceeding and the orphans' court division proceeding. See Crutchfield v Eaton Corp., 2002 PA Super 286, 806 A.2d 1259 and Klein v. City of Philadelphia, 465 A.2d 730 (Pa. Cmwlth. 1983). This argument also is meritless. Plaintiffs make it abundantly clear that they want all of the claims, including the quiet title and specific performance claims, to be decided in the civil division. With the Defendants preferring a decision by the orphans' court division, the race to judgment obviously has already begun. Hence, staying this proceeding to avoid a race to judgment was a correct basis for the decision.

Plaintiffs also contend that staying this proceeding closes Pennsylvania's courts to them in violation of the Pennsylvania Constitution and Code of Judicial Conduct. I have not, however, put Plaintiffs "out of court" as they contend. The claims that have spawned the addition of more parties and more claims by Plaintiffs are the original quiet title and specific performance claims. Those two claims are at the heart of this dispute and resolution of them could bring a resolution of all of the peripheral claims. The only obstacle to Plaintiffs being "in court" for those claims to be decided by the orphans' court was created by the Plaintiffs. They have chosen to appeal the orphans' court order approving a $5,412 payment to defendant Dempsey, first to the Superior Court of Pennsylvania, and on June 10, 2022, to the Supreme Court of Pennsylvania. See In re: Trust Under Will f/b/o Charles T. Campbell, II, 33 WDA 2021 and 154 WAL 2022. Thus, Pennsylvania's courts are not closed to the Plaintiffs.

The last of Plaintiffs' contentions that I will address is that staying this proceeding is wrong because it enables certain of the Defendants to abuse Charles T. Campbell, II and to steal from him. With the Plaintiffs repeatedly accusing these Defendants of similar crimes during the orphans' court litigation, a judge there asked the Plaintiffs to see if the District Attorney would investigate. After reviewing documents provided by the Plaintiffs and interviewing the Plaintiffs as well as their father, Charles T. Campbell, II, the District Attorney found an insufficient basis for bringing criminal charges. See no. 02-19-2074, 3/4/2020 motion for recusal of the honorable Michael E. McCarthy, ¶ 158, Exhibit 14 and Exhibit 15. The District Attorney would consider re-opening the criminal investigation if additional information becomes available. Id. But, I am unaware of any additional information being provided to the District Attorney and I have received no additional information supporting Plaintiffs' accusations. I would take this argument seriously if the Plaintiffs came forward with information to make it more than biased, conclusory, criminal allegations. Hence, I was correct to not consider this argument in my decision to stay this proceeding.

BY THE COURT:
/s/Hertzberg, J.

Date: July 25, 2022