PITTSBURGH LEGAL JOURNAL

OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

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Contractual assets and testamentary documents: non-testamentary contractual assets such as IRA cannot be modified by testamentary documents or pre-marital agreements.

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Motion for Stay of Proceedings–Petition for Relief from Default Judgment–Interaction between Civil and Criminal Cases

Defendant allegedly shot and killed Plaintiff's husband, Louis Vignone, while Vignone was on his route as a letter carrier for the US Postal Service. Defendant's criminal case for murder is pending in federal court. Vignone's widow brought civil claims for Wrongful Death and Survival. At issue here are motions to stay proceedings and open default judgment filed by Defendant.

In support of its denial of the motion to stay, the Court reviewed the balancing test adopted in Keesee v. Dougherty, 230 A.3d 1128 (Pa.Super. 2020) for deciding when to grant or deny a motion to stay a civil case where a criminal case is also pending. A stay is warranted if "(1) the petitioner makes a strong showing that he is likely to prevail on the merits; (2) the petitioner has shown that without the relief requested, he will suffer irreparable injury; (3) the issuance of a stay will not substantially harm other interested parties in the proceedings; (4) the issuance of a stay will not adversely affect the public interest." Pennsylvania Public Utility Company v. Process Gas Consumers, 502 Pa. 545 (1983).

In applying these factors, the court found that the Defendant did not make a showing that he is likely to prevail on the merits of either his civil or criminal case as he confessed to the killing, and strong physical and witness evidence exists to corroborate the confession; the criminal case is almost to trial and discovery is likely complete, defeating Defendant's argument that responsive pleading in the civil case would provide a "road map" for Federal prosecutors which tends against any argument of irreparable harm to the Defendant should the civil case proceed; staying the case may cause irreparable harm to the Plaintiff as delay gives the Defendant opportunity to transfer and dissipate assets; and the public has an interest in proceeding with the civil claim as time is of the essence to ensure that the Plaintiff can recover. The court found that all factors weighed in favor of denying the stay.

The Court held that denying the motion for relief from default judgment was appropriate because Defendant failed to attach either preliminary objections or an answer to the petition providing a meritorious defense and instead tried to impermissibly use the petition to stay to satisfy the requirements of Pa.R.C.P. 237.3.

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Opinions

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IN RE: ESTATE OF DONALD THOMAS SCHAEFER

Pre-Marital Agreement and IRA Language–Contractual Assets and Testamentary Documents

Pre-marital agreement and IRA language: where surviving spouse had no knowledge of existence of IRA, language of IRA directing the money to the surviving spouse controls over pre-marital agreement and IRA proceeds go to surviving spouse.

Contractual assets and testamentary documents: non-testamentary contractual assets such as IRA cannot be modified by testamentary documents or pre-marital agreements.

Case No.: 19-1431. In the Court of Common Pleas of Allegheny County, Pennsylvania. Orphans' Division. Williams, J.

Counsel for the Estate: Andrew Gross, Gross & Patterson
Counsel for Florence Schaefer: Thomas J. Dempsey, Jr. and Janine E. Smith, Jones Gregg Creehan & Gerace

MEMORANDUM OPINION

Before the Court is a Motion to Dissolve Injunction which is coupled by a request to then direct the distribution of an Individual Retirement Account (IRA) to the estate. For the reasons below, the injunction will be dissolved and the IRA proceeds shall be distributed. However, the money will not go to the moving party. Instead, the IRA proceeds will be distributed to Florence K. Schaefer, the surviving spouse.

The backstory is necessary to understand how the Court arrived at its decision. Donald T. Schaeffer enjoyed a long marriage with Julia, his wife of over 60 years. Julia died in August 2017. A year later, Donald married Florence. However, before they walked down the aisle, a pre-nuptial agreement was signed by Donald and Florence. The newlywed bliss had hardly worn off when, in January 2019, Donald died. Florence, a bride of 5 months, was now a widower and, for purposes of this litigation, a surviving spouse.

When Donald died, he was the owner of a Merrill Lynch IRA. Its value, before the Superior Court appeal, was around a quarter of a million dollars ($250,000). Florence, wife #2, feels she is entitled to the money in the IRA. Her position is rather simple. I am the surviving spouse. The language of the IRA says upon Donald's death the money goes to the surviving spouse. The estate says not so fast. In its view, the IRA money comes to it because Florence signed away any and all rights she had to that individually owned asset of Donald's in the prenuptial agreement.

Superior Court Journey[1]

After Donald's death, his will was probated. Thereafter, Florence filed a declaratory judgment action, asserting the pre-nuptial agreement to be void because of the lawyer/scrivener's professional negligence that surrounded the construction of the agreement. Specifically, Florence claimed the lawyer did not properly explain the agreement to her, failed to draft the agreement correctly, and incorrectly executed the document. Moreover, Florence sought damages from the lawyer due to, in her words, the lawyer's malpractice. Simultaneously, Florence sought her elective share from Donald's estate.

Ultimately, after the denials of both Florence's motion for summary judgment and the estate's motion for judgment on the pleadings, the premarital agreement's validity, was litigated in orphans' court, with Florence advancing several bases as to why the agreement is legally insufficient under Pennsylvania law. Following a hearing, the court, inter alia, found the lawyer's recollection of events to be credible and determined the agreement to be valid.

Soon after the June, 2022 Superior Court decision, the case was remanded to this Court, the estate sought a dissolution of the injunction and an order directing Merrill Lynch, the IRA custodian, to disburse the money to it. After a conference with counsel, the Court welcomed written argument from both sides.

On October 11, 2022, the estate filed a brief which included a single page of legal argument. It discussed one case. It's not the first time the Estate has extolled the virtues of the Ohio Supreme Court's decision in Kinkle v. Kinkle, 83 Ohio St.3d 150, 699 N.E.2d 41 (Ohio 1998). In addressing Kinkle before, this Court made the following observation:

In Kinkle, the Ohio Supreme Court upheld an antenuptial agreement involving an IRA that was specifically listed as the decedent's property in an exhibit to the antenuptial agreement. The pre-nuptial agreement involved here has an Addendum, but that attachment affirms their Catholic beliefs and its teachings about marriage. It does not identify assets. For that reason, the magnetic force of Kinkle evaporates.

Opinion, pg.3 f.n. 2 (Sept.8,2020).[2] The passage of time and the Superior Court's affirmation of this Court"s decision does nothing to change this Court's view of the Kinkle case. It just does not apply here. There, the spouse was made aware of an IRA. Here, Florence had no knowledge about its existence.

While the Court has dispatched the sole legal theory from the Estate and could end on that note alone, the surviving spouse's legal team advances some reasons which are worthy of discussion because of the likelihood of the issue arising in future litigation. The overarching theme of the surviving spouse here is that while the pre-marital agreement was deemed valid and enforceable it does not preclude giving effect to the language in the IRA agreement. Brief in Opposition to Motion to Dissolve Injunction, pg. 3-4 (Sept. 29, 2022).[3] The language of the pre-marital agreement, the language in the IRA custodial agreement and the influence of Sections 6108(a) and 2203 of Title 20 allows the surviving spouse to prevail in this case. That result is supported by some analogous case law. See, The Estate of Kenneth Sipos, 4 7 Pa. D&C 5th 259 (C.P. Phil. March 4, 2015). The Sipos decision references a state Supreme Court decision. Alkhafaji v. Tiaa-Cref Individual & Institutional Servs., LLC, 69 A.3d 219, 223 (Pa. 2013). Despite that decision being an evenly decided per curiam result, the case stands for the proposition "that the beneficiaries of an insurance policy could not be changed by a will". [4] Justice Saylor explained, "[t]o allow modification of non-testamentary contractual assets by testamentary documents blurs the timeless and very practical distinction between the two, notably set forth in 20 Pa. C. S. § 6108." 69 A.3d at 223. He reasoned that "[p]arties to a contract must have the ability to rely on the terms of their contract, and should not have to speculate about testamentary clauses in documents of which they have no awareness." Id.

Subsequent cases have also referenced Alkhafaji for recognition of an exception to the general rule. "[O]ur case law has recognized an exception where an insured makes reasonable but unsuccessful efforts to send notice. This exception will recognize a change in beneficiary designation, even though notice is received after the death of the annuitant, if the annuitant made every reasonable effort to comply with the notice requirements of the policy." NY. Life Insurance Co. v. Legault, 15-CV-736 (E.D. Pa. Oct. 23, 2015), affd on appeal, NY. Life Ins. Co. v. Legault, 16-3259 (3rd Cir. March 2, 2017)(citing, Alkhafaji and explaining that, under Pennsylvania law, a beneficiary change canbe made either by strictly complying with policy terms or by making 'every

reasonable effort to comply with the notice requirements of the policy'); see also, Estate of Wilson by Killinger v. State Employees' Ret. Bd, 219 A.3d 1141 (Pa. 2019).

A corresponding order will be docketed reflecting the conclusions set forth herein.

BY THE COURT:
/s/Judge Joseph R. Willaims, III

[1] The Superior Court affirmed this Court's decision "that the premarital agreement between Florence and Donald is valid and enforceable". See, Estate of Donald Thomas Schaffer, Appeal of Florence K. Schaffer, 352 WDA 2021, Memorandum, pg. 18 (June 3, 2022). This summary of events is taken from the Superior Court's opinion.

[2] The Court is aware of two decisions which make reference to Kinkle in the past 24 years. See, Parrett v. Wright, 2017 Ohio 9057 (Ohio App. 2017) and BorgWarner Incorporated, v. Eleanor C Mariano, et al., Opinion, pg. 17, f.n. 4, CV-20-00321-PHX (D. Ariz. Feb. 1, 2021). Parrett is consistent with this Court's distinction of Kinkle. There the intermediate appellate court affirmed the trial court's refusal to "enforce the antenuptial agreement, as the decedent's assets were not fully disclosed when the agreement was signed." Parrett, pg. 2. In Borg-Warner, the Kinkle case was relegated to a footnote where the Court gave several reasons this Ohio state decision was not persuasive. One is highlighted here. "[T]he premarital agreement in the present case has multiple provisions that seem to contemplate at least some circumstances when the Decedent and Ms. Mariano could transfer property in life or upon death. As such, it is unlikely that their agreement can be equated to Kinkle's total bar on a wife's ability to claim or take property after the husband's death." Borg-Warner, pg.17, f.n.4.

[3] The brief's pages were not numbered.

[4] Collautt v. Lijie Li, 14-CV-632 (E.D. Pa. Dec. 11, 2014).

CHERNOMUSA N-JIE, PLAINTIFF VS. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, DEFENDANT

De Facto Condemnation of Property

Pa.R.A.P 1925(a) Opinion

Plaintiff initiated an action against PennDOT by filing a petition for the appointment of board of viewers alleging a de facto taking. PennDOT filed preliminary objections, which were overruled, and the petition for appointment of board of viewers was granted. PennDOT filed a timely appeal with the Commonwealth Court and filed a concise statement of errors complained of on appeal. This matter stems from PennDOT's removal and destruction of Plaintiff's pedestrian bridge following intense storms that necessitated the restoration of a retaining wall that supported the at-issue bridge. This pedestrian bridge was the sole means of access from the adjacent roadway to Plaintiff's landlocked land and dwelling. PennDOT sent a letter informing Plaintiff that "if the pedestrian bridge is not removed in 14 calendar days from receipt of this letter, the Department's contractor will remove it and place the materials on your Property." PennDOT's contractor then removed the bridge after the deadline by cutting it into pieces, and the contractor hauled the materials away to an unknown location. PennDOT also erected a guardrail that blocked the opening to the pathway for the former pedestrian bridge. PennDOT contended that the Court erred in granting the petition because PennDOT reasonably used its police powers to enforce a highway occupancy permit rather than its condemnation powers in the at-issue circumstance. The Court did not agree that PennDOT reasonably used its police powers because: 1) it was patently unreasonable for PennDOT to mandate only 14 days for Plaintiff to remove the bridge; and 2) it was unreasonable for PennDOT not to try to remove the bridge intact and to haul the materials away instead of placing them on Plaintiff's property. The Court relied upon McElwee v. Southeastern Pennsylvania Transp. Authority, 948 A.2d 762 (Pa 2008), in supporting its decision and order. The Court's order granting the petition also described the extent and nature of the property interest condemned, as well as identified the summer of 2020 as the date of condemnation. Thus, the Court believed the information provided was sufficient for the board of viewers to make an appropriate award.

Case No.: GD 21-8880. Commonwealth Court docket no. 719 CD 2022. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Alan Hertzberg, Judge. Date filed: September 2, 2022.

OPINION

The Commonwealth of Pennsylvania Department of Transportation ("Penndot") has appealed to the Commonwealth Court of Pennsylvania from my determination of a de facto condemnation of Plaintiff's property. In accordance with Pennsylvania Rule of Appellate Procedure 1925(a), this opinion addresses the errors Penndot claims I made in that determination.

In 2012 Plaintiff Chernomusa N-Jie purchased land in the Municipality of Penn Hills with a dwelling on it known as 320 Lime Hollow Road. The purchase price was $8,000. The deed provides Plaintiff with a right of access over adjoining land to use a well, which right dates to 1925. Plaintiff's land does not extend to Lime Hollow Road, and there is a streambed, approximately seven feet deep, between his land and the right-of-way. The sole means of access from Lime Hollow Road to Plaintiff's land and dwelling was a pedestrian bridge with a concrete surface that began on the Lime Hollow Road right-of-way, crossed the streambed, and ended near Plaintiff's land. There was a break in the guard rail on Lime Hollow Road to permit pedestrian access from the right-of-way to the bridge.

In July of 2019, due to intense storms, there was damage to the stream embankments and landslides along Lime Hollow Road. The Commonwealth of Pennsylvania, which owns the road, decided via Penndot to do an emergency repair project. The initial design plans, which were provided to Plaintiff, did not have any repair work being done adjacent to Plaintiff's land. In late March or early April of 2020, when the work began, Penndot discovered there had been additional deterioration and the retaining wall supporting the pedestrian bridge to 320 Lime Hollow Road needed to be replaced.

On May 21, 2020 Penndot sent a letter to the owner of record of 320 Lime Hollow Road (Plaintiff did not record his deed until July 24, 2020, but stayed in continuous communication with the owner of record before then). The letter informed Plaintiff, "if the pedestrian bridge is not removed in 14 calendar days from the receipt of this letter, the Department's contractor will remove it and place the materials on your Property." Joint Stipulation of the Record Submitted by Depositions, document 15 in the electronic docket filed 3/29/2022 ("R" hereafter) pp. 80a and 333a. It was impossible for Plaintiff to remove the bridge in 14 days, but he thought if Penndot's contractor removed it and placed it on his property he would deal with reinstalling it afterwards. R, pp. 15a-16a. Penndot's contractor removed the bridge sometime shortly after expiration of the 14 day deadline. Removing the bridge in one piece could have been difficult. R, pp. 238a-239a. However, the contractor made no effort to remove the bridge intact. Instead, the contractor removed the bridge by cutting it into pieces. Rather than placing the materials on Plaintiff's property, the contractor hauled the materials away to an unknown location. The guardrail on Lime Hollow Road was replaced by a new one that now blocks what had been an opening that allowed pedestrian passage to the bridge. See R, pp. 84a and 252a-253a.

Plaintiff is an auto mechanic who also does shipping and sells auto parts. Without a bridge he cannot access a large toolbox or the car parts he keeps in 320 Lime Hollow Road. He is only able to get to his land and dwelling by using a ladder to climb in and out of the streambed at times when the water level is low. Penndot was aware the bridge was Plaintiff's only access to the dwelling when it decided to have the contractor remove the bridge and haul the material away. See R, pp. 248a-249a. Plaintiff initiated this proceeding against Penndot by filing a petition for the appointment of board of viewers alleging a de facto taking. Penndot filed preliminary objections, and I ordered the parties to engage in depositions and discovery that thereafter would be used for disposition of the preliminary objections. After hearing oral argument, I overruled Penndot's preliminary objections and granted the petition for appointment of board of viewers. Penndot timely appealed and filed a concise statement of errors complained of on appeal.

Penndot contends I made an error because rather than using its condemnation powers, Penndot reasonably used its "police powers" to remove Plaintiff's bridge. I agree that Penndot may use its police powers to enforce highway occupancy permit requirements for structures (such as the pedestrian bridge) within its right-of-ways. However, I do not agree that Penndot reasonably used its police powers in this case.

First, it was patently unreasonable for Penndot to mandate only 14 days for Plaintiff to remove the bridge. Very few homeowners would be able to comply with this deadline, and even though Plaintiff has experience with repairing and building bridges (see R, p. 38a), it would have been impossible for him to remove this bridge. See R, p. 16. It also is not reasonable to establish

a two week deadline to remove this bridge when ten months had already passed since the intense storms that required the emergency repair. Finally, it is an unreasonable deadline in light of Penndot previously informing Plaintiff that no repair work was being done adjacent to his land.

Second, it was unreasonable for Penndot not to try to remove the bridge intact and to haul the materials away instead of placing them on Plaintiff's property. Penndot made the decision to do this because the land under the bridge outside of Penndot's right-of-way was not owned by Plaintiff. Penndot found it was owned by Susan Lynn Kelley, who owns a home on the other side of Lime Hollow Road. Ms. Kelley informed Penndot that, after it removed the bridge, she would not want the bridge. See R, p. 238a. Since Penndot believed the bridge was owned by her and she did not want it, Penndot decided not to try to remove the bridge intact and to haul the materials away. See R, pp. 237a-238a. Penndot's decision that Plaintiff did not own the bridge was patently unreasonable and incorrect. The deeds in the chain-of-title, which were in Penndot's possession, show the right-of-access over adjoining land to the well, and the bridge could have been part of Plaintiff's right-of-access to the well. If not, Plaintiff then clearly owned the bridge as part of a prescriptive easement that prevented a landlocking of his pedestrian access to Lime Hollow Road by Ms. Kelley. Penndot knew the bridge was the only access to Plaintiff's property (R, pp. 248a-249a), and given the age of the bridge (see, e.g., R, p. 39), it clearly had been used more than long enough to constitute part of the prescriptive easement. By removing the pedestrian bridge in the way that it did, Penndot landlocked the Plaintiff. Penndot should have attempted to remove the bridge intact to possibly allow for it to be replaced after Plaintiff obtains a highway occupancy permit. If the bridge could not be removed intact and replaced, Penndot should have paid for the cost of a new bridge after Plaintiff obtains a highway occupancy permit.

While I located no case with a determination of a de facto condemnation under identical facts, the Pennsylvania Supreme Court in McElwee v. Southeastern Pennsylvania Transp. Authority (596 Pa. 654, 948 A.2d 762 (2008)) determined there was a de facto condemnation arising from similar unreasonable behavior. The Southeastern Pennsylvania Transportation Authority (SEPTA) had to reconstruct an elevated commuter track along Market Street in Philadelphia, and excavations, utility pipes, construction vehicles and SEPTA workers' vehicles routinely blocked the access to Mr. McElwee's printing business for a period of three years. In finding SEPTA's behavior unreasonable, the Pennsylvania Supreme Court pointed out:

…it was often difficult and time consuming, and sometimes impossible, to find a worker to move an automobile or a construction vehicle so as to restore access to the property during critical times of the work day; [the business'] employees, moreover, made numerous efforts to contact the designated SEPTA official in charge of handling complaints, but they were generally unable to reach this individual and often did not receive a return phone call….

Id., 596 Pa. 654, 682; 948 A.2d 762, 779. By leaving Plaintiff only 14 days to remove the bridge, making no effort to remove it intact and hauling the materials away, the behavior of Penndot is comparable if not worse than was the behavior of SEPTA. Hence, I was correct in determining that Penndot did not reasonably use its police powers.

Penndot also contends I made an error by not determining the date of condemnation and the extent and nature of the property interest condemned, which are required by 26 Pa.C.S. §502(c). In the June 27, 2022 order, the date of the condemnation is specified as "the summer of 2020." Unfortunately the parties provided no more precise date to me (see R, pp. 34a and 246a-247a), but they likely can cure their error for the board of viewers proceedings. The June 27, 2022 order describes the extent and nature of the property interest condemned as Plaintiff's interest in the pedestrian bridge and supporting pillars with the bridge having provided access to Lime Hollow Road. Since I believe this is sufficient for the board of viewers to make an appropriate award of just compensation, I made no error.

BY THE COURT:
Alan Hertzberg, Judge

JOHNNA L. VIGNONE, ADMINISTRATRIX OF THE ESTATE OF LOUIS VIGNONE, DECEASED, PLAINTIFF VS. ERIC KORTZ, DEFENDANT

Motion for Stay of Proceedings–Petition for Relief from Default Judgment–Interaction between Civil and Criminal Cases

Defendant allegedly shot and killed Plaintiff's husband, Louis Vignone, while Vignone was on his route as a letter carrier for the US Postal Service. Defendant's criminal case for murder is pending in federal court. Vignone's widow brought civil claims for Wrongful Death and Survival. At issue here are motions to stay proceedings and open default judgment filed by Defendant.

In support of its denial of the motion to stay, the Court reviewed the balancing test adopted in Keesee v. Dougherty, 230 A.3d 1128 (Pa.Super. 2020) for deciding when to grant or deny a motion to stay a civil case where a criminal case is also pending. A stay is warranted if "(1) the petitioner makes a strong showing that he is likely to prevail on the merits; (2) the petitioner has shown that without the relief requested, he will suffer irreparable injury; (3) the issuance of a stay will not substantially harm other interested parties in the proceedings; (4) the issuance of a stay will not adversely affect the public interest." Pennsylvania Public Utility Company v. Process Gas Consumers, 502 Pa. 545 (1983).

In applying these factors, the court found that the Defendant did not make a showing that he is likely to prevail on the merits of either his civil or criminal case as he confessed to the killing, and strong physical and witness evidence exists to corroborate the confession; the criminal case is almost to trial and discovery is likely complete, defeating Defendant's argument that responsive pleading in the civil case would provide a "road map" for Federal prosecutors which tends against any argument of irreparable harm to the Defendant should the civil case proceed; staying the case may cause irreparable harm to the Plaintiff as delay gives the Defendant opportunity to transfer and dissipate assets; and the public has an interest in proceeding with the civil claim as time is of the essence to ensure that the Plaintiff can recover. The court found that all factors weighed in favor of denying the stay.

The Court held that denying the motion for relief from default judgment was appropriate because Defendant failed to attach either preliminary objections or an answer to the petition providing a meritorious defense and instead tried to impermissibly use the petition to stay to satisfy the requirements of Pa.R.C.P. 237.3.

Case No.: GD 22-2730. 772 WDA 2022. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Alan Hertzberg, Judge. Date filed: September 6, 2022.

OPINION

This Opinion supports my June 7, 2022 Order of Court, which denied Defendant's motion for stay of proceedings, and denied Defendant's petition for relief from judgment by default. On October 7, 2021 Defendant allegedly shot and killed Decedent Louis Vignone, who was working on his route as a letter carrier for the United States Postal Service. The criminal case related to Mr. Vignone's murder is pending in federal court. On March 11, 2022 Plaintiff initiated this action by filing a complaint raising claims in Survival and Wrongful Death. On May 12, 2022 a motion for leave to enter special appearance and a motion to stay proceedings were filed on Defendant's behalf by Aaron Sontz, Esq., who serves as Defendant's Federal Public Defender in the pending federal criminal case. On May 17, 2022 default judgment was entered against Defendant as to liability only. On May 27, 2022 Defendant filed a petition for relief from default judgment. On June 1, 2022, the Honorable Daniel Regan denied Mr. Sontz's motion for special appearance. Judge Regan also denied Defendant's motion to stay proceedings, without prejudice. On June 2, 2022 Mr. Sontz entered his appearance for Defendant without limitation. On June 7, 2022 I denied Defendant's Motion to open default judgment and his Motion to stay the proceedings. On July 5, 2022 Defendant appealed this order to the Superior Court of Pennsylvania. On July 5, 2022 I ordered Defendant to file a concise statement of errors complained of on appeal, which he timely filed on July 26, 2022. Defendant raises two allegations of error which I will address in this Opinion.

Defendant first argues that I erred by denying the motion for stay of proceedings. However, under the law of the case/coordinate jurisdiction rule, Judge Regan's earlier denial of the same motion could not be reversed by me. See Commonwealth of Pennsylvania v. Starr, 541 Pa. 564, 664 A.2d 1326 (1995).[1]

Defendant also argues I denied the motion for stay "without applying the balancing test" adopted in Keesee v. Dougherty, 230 A.3d 1128 (Pa.Super. 2020). The Keesee case deals with a motion to stay a civil proceeding pending the resolution of a criminal case. The Superior Court held that "the factors identified in Process Gas, as augmented by the district court in Adelphia, are the appropriate factors for a court to consider, at a minimum, when deciding to grant or deny such a motion to stay." Kessee at 1134. Pennsylvania Public Utility Commission v. Process Gas Consumers, 502 Pa. 545 (1983) provides that a motion to stay is warranted if: (1) the petitioner makes a strong showing that he is likely to prevail on the merits; (2) the petitioner has shown that without the requested relief, he will suffer irreparable injury; (3) the issuance of a stay will not substantially harm other interested parties in the proceedings; (4) the issuance of a stay will not adversely affect the public interest. In re Adelphia Communications Securities Litigation, (E.D. Pa. 2003, unreported) provides that when deciding whether to stay a civil case pending the resolution of a related criminal case, the court considers (1) the extent to which the issues in the civil and criminal case overlap; (2) the status of the criminal proceedings, including whether any defendants have been indicted; (3) the plaintiff's interests in expeditious civil proceedings weighed against the prejudice to the plaintiff caused by the delay; (4) the burden on the defendants; (5) the interests of the court; and (6) the public interest.

In this case, Defendant does not make a showing that he is likely to prevail on the merits of either his civil or criminal case (factor 1, Process Gas). Defendant confessed to killing Mr. Vignone, and there also is strong physical evidence and witness evidence to corroborate the confession. This does not support a showing that he is likely to prevail on either claim and weighs in favor of denying the stay. The civil case and criminal case overlap to some degree (factor 1, Adelphia). The civil case includes a negligence claim for failing to follow the directives of his mental health providers and the financial damages resulting from the loss of a healthy federal employee, while the criminal case focuses on Defendant's criminal culpability for the death. This degree of overlap weighs in favor of denying the stay. The status of the criminal case is that it is almost to trial, in fact Defendant avers that pre-trial statements are due on September 26, 2022 (factor 2, Adelphia). Therefore, discovery in the criminal case is likely complete and the prosecution has likely developed its theory and plan for trial, thus defeating Defendant's argument that it would use a responsive pleading in this civil case as a "road map" to prosecute Defendant and this weighs in favor of denying the stay. When considering how the stay will affect Plaintiffs (factor 3, Adelphia and factor 3, Process Gas), the primary concern for

Plaintiffs is the dissipation of assets that could be used to satisfy the judgment in this case. Staying the case will prolong the opportunity for Defendant to transfer assets or for assets to depreciate to a degree that will render them inadequate to satisfy a money judgment. This weighs in favor of denying the stay. Defendant has failed to show that without the stay he will suffer irreparable injury (factor 2, Process Gas) or that the burden on him supports the stay (factor 4, Adelphia). As discussed earlier, the criminal case is so far along, that responsive pleadings are unlikely to have a significant effect on the criminal case, and the trial will likely be completed before any civil discovery is completed and thus cannot be used by the prosecution in the criminal case. This weighs in favor of denying the stay. Finally, the public has an interest in proceeding with a civil claim that overlaps with a criminal claim that is almost to trial and unlikely to be affected by the civil claim, particularly when time is of the essence to ensure that Plaintiffs would be able to recover on the civil claim. This weighs in favor of denying the stay. At each stage of the analysis put forth in Process Gas, as enhanced by the analysis in Adelphia, the factors weigh in favor of denying the stay and I committed no error.

Defendant next argues that I erred by denying his petition for relief from default judgment. Pa.R.C.P. 237.3 governs Relief from Default Judgment, providing that a petitioner must attach a copy of the preliminary objections and/or answer which the petitioner seeks leave to file and that when a petition is filed within ten days of entry of default judgment the court shall open judgment if "one or more of the proposed preliminary objections has merit or the proposed answer states a meritorious defense." In this case, Defendant failed to attach preliminary objections or an answer to the petition and instead attempted to shoehorn a petition to stay as a satisfactory pleading to be attached to the petition. Defendant failed to present any attempt at a meritorious defense. Pa.R.C.P. 237.3 is intended to ease the burden of a party who moves promptly after the entry of a default judgment (see Explanatory Comment -1994); it is not intended to ease a party's defense of his related criminal case. Defendant failed to meet the procedural requirements of Pa.R.C.P. 237.3 and I committed no error by denying his petition for relief from default judgment [2]

BY THE COURT:
Alan Hertzberg, Judge

[1] While Defendant's concise statement complains of an error denying the motion for stay filed on May 12, 2022 without prejudice, which was the denial by Judge Regan, Defendant's notice of appeal is from only one order dated June 6, 2022, which I believe is actually my order dated June 7, 2022 since the Request for Transcript form in the notice of appeal has June 7, 2022 as the proceeding date. My June 7, 2022 order also denied Defendant's renewed request to stay the proceeding.

[2] In his concise statement of errors complained of on appeal, Defendant notes that he filed a motion for reconsideration of my order that remains pending. That is inaccurate. Defendant failed to serve the motion for reconsideration on me and I was unaware of it before the 30 day deadline to modify or rescind the order had expired. See 42 Pa.C.S. §5505.