

PITTSBURGH LEGAL JOURNAL

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Preliminary Objections–Enforcement of Marriage Settlement Agreement–Local Rules

Plaintiff Landlords filed a complaint against Defendant Tenants seeking possession of a premises pursuant to a residential lease. Plaintiff and Defendant Leonard Lachina are former spouses. Throughout the marriage Plaintiff was employed by Defendant Lachina Drapery & Blind Factory. Part of the Marriage Settlement Agreement between Plaintiff and Defendant Leonard Lachina dealt with Plaintiff’s continued employment with the business. Plaintiff filed a Petition for Enforcement of Marriage Settlement Agreement in the Allegheny County Court of Common Pleas Family Division which was docketed at FD 21-7043. The Petition alleges that Defendant Leonard Lachina engaged in conduct which amounted to constructive discharge. Plaintiff subsequently filed a Complaint in the Civil Division alleging breach of contract. Defendants filed Preliminary Objections which were granted by the Court.

Allegheny County Local Rule 198(1) states “cases between spouses, former spouses, or persons living as spouses shall be filed in the Family Division.” The Lachina divorce complaint was filed in the Family Division and docketed at FD 21-7043. The marriage settlement agreement was incorporated into the divorce decree entered at the same docket number. Local Rule 1930(f)(1) requires that once a Family Division docket number is assigned, “all pleadings regardless of the caption or nature of the case ... shall be filed under the originally assigned number.” Litigants may not unilaterally decide to file a new action in a different division. The Court held that Plaintiff’s civil complaint was insufficient to constitute a separate action from the Petition for Enforcement of Marriage Settlement Agreement as all the averments in the civil complaint relate to Defendant Leonard Lachina’s personal actions. Plaintiff’s concerns regarding a jury trial were unfounded as the Family Division is equipped to provide a jury trial. Pa.R.C.P. 1920.34 permits joinder of parties, and no local rule exists which prevents Plaintiff from joining additional defendants in the Family Division case.

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PLJ

The Pittsburgh Legal Journal Opinions are published fortnightly by the Allegheny County Bar Association
400 Koppers Building
Pittsburgh, Pennsylvania 15219
412-261-6255
www.acba.org
© Allegheny County Bar Association 2023
Circulation 5,147

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OPINIONS

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COMMONWEALTH OF PENNSYLVANIA vs. MATTHEW DANIELEWICZ

Criminal Appeal–Notice of Appeal–Waiver

Defendant, through his attorney, filed timely Post-Sentence Motions following his sentence as a result of his revocation of probation. Twenty-three days later, prior to the sentencing court addressing the post-sentence motions, Defendant, through his attorney, filed a Notice of Appeal to the Superior Court. Defendant raised the same issues in his Concise Statement as he did in the Post-Sentence Motions. However, according to the sentencing court, since the issues were never addressed by the sentencing court following the Post-Sentence Motions, the Court found waiver.

Case No.: CP-02-CR-05556-2018. In the Court of Common Pleas of Allegheny County, Pennsylvania. Criminal Division. Mariani, J.

OPINION

This is a timely appeal from this Court's sentence of one-year probation as a result of the defendant's revocation of probation. For the following reasons, the judgment of this Court should be affirmed.

The defendant appeared before this Court on March 31, 2022 for a probation violation hearing. On November 6, 2018, after being convicted of driving under the influence of alcohol (DUI) and drug offenses, the defendant was sentenced to an aggregate sentence of not less than 90 days nor more than 180 days followed by two years of "County Regular Probation" as well as conditions that he pay a \$1,000 fine, undergo a drug and alcohol evaluation, attend safe driving school, submit to random drug testing and be subject to a zero tolerance policy on the use of illegal substances. On August 26, 2021, the defendant appeared before this Court as a technical violator of probation for failing to report to the probation office as directed, failure to complete the drug and alcohol evaluation and the other conditions relating to the DUI convictions. This Court imposed a new aggregate term of one-year of probation as a result of the probation violation. At the conclusion of that hearing, the defendant signed a document titled "General Rules of Probation and Parole" acknowledging the following terms, among others:

1. YOU MUST REPORT TO YOUR ASSIGNED PROBATION OFFICER as required and/or allow you probation officer to visit you at hour home or work site.

2. YOU MUST OBEY ALL LOCAL, STATE AND FEDERAL LAWS, and notify your probation officer at once if you are arrested or cited by the police.

* * *

5. YOU MUST NOTIFY THE PROBATION OFFICE IMMEDIATELY OF ANY CHANGE OF ADDRESS.

* * *

7. YOU MAY NOT USE OR POSSESS ANY CONTROLLED SUBSTANCES, unless legal prescribed for a medical or mental health need. You may be subject to random drug and alcohol testing.

* * *

10. YOU MUST PAY ANY RESTITUTION, FINES, COSTS AND SUPERVISION FEES during the term of your court supervision...

11. IF YOU VIOLATE THE TERMS OF YOUR SUPERVISION, ARE ARRESTED FOR A NEW OFFENSE OR ARE CONVICTED OF ANOTHER OFFENSE WHILE UNDER COURT SUPERVISION – your period of supervision may be revoked and you may be sentenced to a new period of supervision or a period of incarceration consistent with the recommended sentencing guidelines.

On December 10, 2021, a warrant request was submitted to the Court by the probation officer because the defendant was charged on December 7, 2021 with simple assault, strangulation and harassment against his live-in girlfriend and because he moved from his reported address without notifying the probation officer. On March 31, 2022, the defendant appeared before this Court to respond to the new violations. At the hearing, the alleged victim of the assault case testified that she and the defendant had an argument over a television remote control. The argument became physical and the victim received a scratch to her neck and a scratch on her arm. After charges were filed, the victim informed the Assistant District Attorney handling the prosecution at the preliminary hearing that she did not wish to proceed with criminal charges. She told this Court at the violation hearing that she did not oppose the defendant living with her and she was not afraid of the defendant. The defendant testified that he and the victim were drinking and were high during the altercation. He also testified that he told the probation officer that he moved residences and he reported his new address to the probation office. At this point, because the probation officer to whom the defendant allegedly related his change of address was not present at the violation hearing, this Court continued the violation hearing to permit the probation officer to testify. This Court ordered that the defendant be detained but lifted that detainer on May 27, 2022 and the defendant was released from custody.

On June 22, 2022, the parties returned to complete the violation hearing. At this hearing, defense counsel did not dispute whether the defendant violated his probationary term but instead asked this Court to impose a sentence of time-served. The probation officer noted that the defendant had not paid court costs on the original case as well but this Court noted that it could not impose a sentence of incarceration as a result of his failure to pay court costs. This Court rejected defense counsel's request, revoked the prior term of probation and imposed a new one-year term of probation. On June 30, 2022, the defendant filed a counseled post-sentence motion claiming that:

A. Revocation was improper because the court never imposed the specific conditions for that [sic] Mr. Danielewicz is alleged to have violated;

B. Revocation on the basis of nonpayment of court costs was unlawful as the payment of court costs is never a valid condition of probation;

C. The Court imposed an illegal sentence by requiring payment of court costs as a condition of Mr. Danielewicz's probation;

D. Mr. Danielewicz was not afforded adequate due process during the probation revocation process; and

E. The Court employed an unconstitutional irrebuttable presumption that because Mr. Danielewicz serves on this court's probation, any alleged violation of probation requires immediate detention;

None of these issues were raised before this Court prior to the filing of the post-sentence motion. Before the Court could rule on the post-sentence motion, on July 22, 2022, the defendant filed a counseled Notice of Appeal. This court then denied the post-sentence motion because it believed the filing of the counseled Notice of Appeal divested it of jurisdiction in this case. In this Court's view, the filing of a counseled notice of appeal 23 days after the filing of counseled post-sentence motions deprived this Court of jurisdiction to rule on the merits of the post-sentence motions and, as such, operated as defendant's abandonment of those issues. See P.A.R.A. P. 1701(a). Accordingly, this Court views the post-sentence motions as a nullity.

However, in his Concise Statement of Errors Complained of on Appeal, the defendant raised the same issues that were raised in his post-sentence motion. Because the post-sentence motions are a nullity, this Court believes that the issues are validly being raised for the first time on appeal and are, therefore, presumably waived and not preserved for appellate review. See Pa.R.A.P. 302(a) (stating that "issues not raised in the lower court are waived and cannot be raised for the first time on appeal."); *Commonwealth v. Lawson*, 789 A.2d 252, 253 (Pa. Super. 2001) (explaining that "even issues of constitutional dimension may not be raised for first time on appeal."); *Commonwealth v. Cain*, 906 A.2d 1242, 1244; (Pa. Super. 2006). On this basis alone, the judgment of sentence should be affirmed.

Notwithstanding waiver, the revocation proceedings and sentencing were also proper. Before a trial court may revoke probation, it must find, "based on the preponderance of the evidence, that the probationer violated a specific condition of probation or committed a new crime[.]" *Commonwealth v. Parson*, 259 A.3d 1012, 1019 (Pa. Super. 2021). "Unlike a criminal trial where the burden is upon the Commonwealth to establish all of the requisite elements of the offenses charged beyond a reasonable doubt, at a revocation hearing the Commonwealth need only prove a violation of probation by a preponderance of the evidence." *Commonwealth v. Moriarty*, 180 A.3d 1279, 1286 (Pa. Super. 2018). A "preponderance of the evidence is 'a more likely than not inquiry,' supported by the greater weight of the evidence; something a reasonable person would accept as sufficient to support a decision." *Commonwealth v. Batts*, 163 A.3d 410, 453 (Pa. 2017) (citations omitted).

It is clear, in this case, that the defendant was aware of his conditions of probation and the record reflects that he violated a number of them. The defendant was specifically informed of the nature of the violations prior to the sentence being imposed in this case. Defense counsel never argued that the defendant did not commit the violations. On the contrary, defense counsel requested a sentence of time-served for the violations. Defendant repeatedly failed to report to the probation office as required and he did not report his change of address to the probation office. This conduct violated conditions Number 1 and Number 5 of the General Rules of Probation and Parole that the defendant specifically acknowledged in writing on August 26, 2021. Additionally, the new criminal charges filed against the defendant on December 7, 2021 violated conditions Number 2 and Number 11. The alleged victim of those offenses admitted that the defendant was physically aggressive with her even though she agreed to dismiss the charges at a preliminary hearing. Moreover, defendant himself admitted to this Court that he was "high" at the time of the incident giving rise to the assault and strangulation charges. Use of controlled substances is specifically prohibited by condition Number 7. The failure to pay court costs violated condition Number 10. By this Court's count, the defendant violated six of the eleven conditions contained in the General Rules of Probation. The record reflects that the defendant was informed of the nature of the probation violations and that he committed the violations.

Moreover, the sentence was reasonable. The imposition of sentence following the revocation of probation is vested within the sound discretion of the trial court. An abuse of discretion is more than an error in judgment - a sentencing court has not abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. *Commonwealth v. Starr*, 234 A.3d 755, 760-61 (Pa. Super. 2020) (quoting *Commonwealth v. Simmons*, 56 A.3d 1280, 1283-84 (Pa. Super. 2012)). Section 9771(b) provides that, in fashioning a sentence based on a revocation of probation, "the sentencing alternatives available to the court shall be the same as were available at the time of initial sentencing, due consideration being given to the time spent serving the order of probation." 42 Pa.C.S.A. § 9771(b). Further,

in all cases where the court resents an offender following revocation of probation ... the court shall make as a part of the record, and disclose in open court at the time of sentencing a statement of the reason or reasons for the sentence imposed [and] [f]ailure to comply with these provisions shall be grounds for vacating the sentence or resentence and resentencing the defendant. 42 Pa.C.S.A. § 9721(b). A trial court need not undertake a lengthy discourse for its reasons for imposing a sentence or specifically reference the statute in question, but the record as a whole must reflect the sentencing court's consideration of the facts of the crime and character of the offender.

Commonwealth v. Colon, 102 A.3d 1033, 1044 (Pa. Super. 2014).

Furthermore, the "[s]entencing court has broad discretion in choosing the range of permissible confinements which best suits a particular defendant and the circumstances surrounding his crime." *Boyer*, supra, quoting *Commonwealth v. Moore*, 617 A.2d 8, 12 (1992). Discretion is limited, however, by 42 Pa.C.S.A. §9721(b), which provides that a sentencing court must formulate a sentence individualized to that particular case and that particular defendant. Section 9721(b) provides: "[t]he court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense, as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant" *Boyer*, supra at 153, citing 42 Pa.C.S.A. §9721(b). Furthermore,

In imposing sentence, the trial court is required to consider the particular circumstances of the offense and the character of the defendant. The trial court should refer to the defendant's prior criminal record, age, personal characteristics, and potential for rehabilitation. However, where the sentencing judge had the benefit of a presentence investigative report, it will be presumed that he or she was aware of the relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors.

Boyer, supra at 154, citing *Commonwealth v. Burns*, 765 A.2d 1144, 1150-1151 (Pa. Super. 2000) (citations omitted). Moreover, "the sentencing court must state its reasons for the sentence on the record." *Boyer*, supra at 154, citing 42 Pa.C.S.A. § 9721(b).

The record in this case supports the sentence imposed by this Court. This Court imposed a one-year term of probation. The main reason for this sentence was to provide the defendant with an opportunity to better comply with the conditions of probation. The defendant violated a myriad of probation conditions. He had not been reporting to the probation office and keeping them informed as to his whereabouts. He was using illegal drugs and he was arrested for a serious domestic violence offense. The defendant had been provided with a prior opportunity to conform his conduct to the dictates of the law but chose not to do so. The defendant had previously had his probation revoked by this Court due to his non-compliance with the terms of probation. The additional term of probation provides the defendant with an opportunity to demonstrate that he can comply with probation conditions and start making payments toward court costs. The sentence in this case was proper.

For the foregoing reasons, the judgment of sentence should be affirmed.

FRANK GLEUE AND AMY GLEUE vs. JESSE WARNER AND LAURA YUTZY

Non-Jury Verdict–Possession–Non-Renewal Notice–Award of Attorneys’ Fees

Plaintiff Landlords filed a complaint against Defendant Tenants seeking possession of a premises pursuant to a residential lease. Defendants sought to consolidate this action with another action involving the same premises and an option to purchase property in favor of Defendants. That consolidation was denied, and this matter proceeded to a non-jury trial. Plaintiffs sought possession based upon the end of the lease-term. The original term of the lease had expired, and it was proceeding on a month-to-month basis. The lease provided that it would continue until, “Tenant or Landlord provides written notice to the other party at least 90 days before the end of the term...” Plaintiffs emailed a non-renewal notice to Defendants on April 29, 2021, which stated that Defendants would “need to vacate the leased premises by the end of your current lease term 7/31/21.” The notice was thus timely and was provided in a manner authorized by the terms of the lease. Defendants argued that the notice was legally insufficient because in the email containing the Notice there was language stating that the notice was “in case the deal to purchase doesn’t work out.” The Court relied on Herzog v. Leon, 280 Pa. 560 (1924), which found that “notice is good if upon the whole it is intelligible and so certain that the tenant cannot reasonably misunderstand it.” The Court then held the Notice was clear and unequivocal and complied with the terms of the lease, and that it was parallel to the negotiations regarding the sale of the property. Thus, the Notice was in effect unless the parties could finalize the sale, which did not occur, and accordingly, Plaintiffs were awarded possession. Plaintiffs were also awarded reasonable attorneys’ fees pursuant to the lease agreement.

Case No.: LT-21-000491. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. McGinley, J. July 12, 2022.

MEMORANDUM OPINION IN SUPPORT OF NON-JURY VERDICT

This matter is before the Court on appeal from a decision of the Magisterial District Judge relating to the residential lease of the property located at 400 Beverly Road, Pittsburgh, PA 15216 (sometimes referred to herein as the “Property” or the “Premises”). On September 28, 2021, Plaintiffs Frank Gleue and Amy Gleue (the “Landlords”) filed a Landlords Complaint against Jesse Warner and Laura Yutzy (the “Tenants”) seeking possession of the Premises and other monetary relief relating to the residential lease executed by the parties on or about July 11, 2017 (the “Lease”). In response to the Complaint, on or about November 16, 2021, Tenants filed an Answer, New Matter and Counterclaim, in which they incorporated the claims asserted in their Complaint against Landlords in the Court of Common Pleas of Allegheny County, Civil Division Case No. GD 21-10936.¹ Those claims arise out of an alleged option to purchase the Property in favor of the Tenants.

By Order dated January 24, 2022, the case was scheduled for a non-jury trial on February 9, 2022. On or about January 26, 2022, Tenants filed an “Emergency Omnibus Motion to Consolidate and Relist Trial and Relist/Postpone” through which they requested consolidation with Civil Division Case No. GD 21-10936 and a continuance of trial. By Order dated February 11, 2022, the Honorable Patrick M. Connelly denied consolidation and granted a postponement. The Court subsequently scheduled and heard the matter on April 7, 2022. The parties submitted post-hearing briefs following trial.

THE ISSUE OF NOTICE

Plaintiffs/Landlords seek possession based on the end of the lease-term.² The Lease provided for an initial term beginning on July 1, 2017 and ending on June 30, 2018. See, Exhibit 1, ¶ 4. Paragraph 21A. of the Lease provided, “At the end of this Lease Agreement, this lease will continue in full force and effect on a month to month basis unless Tenant or Landlord provides written notice to the other party at least 90 days before the end of the term (Term of Lease Agreement) to terminate the Lease (including any exercised renewal or extension thereof).” Paragraph 22 of the Lease required any notice required by the Lease to be in writing and expressly provided that notice may be given by email.

By email dated April 29, 2021, Landlords sent to Tenants a letter attachment conspicuously entitled “NON-RENEWAL NOTICE” (the “Notice”). See, Exhibit 2. The Notice begins by stating, “Unfortunately, we will not be able to renew your current lease agreement. Please consider this letter to be formal written notice that your month to month lease will not be renewed, and that you will need to vacate the leased premises by the end of your current lease term 7/31/2021.” The Notice was provided ninety-two (92) days before the date of the expiration of the lease term on July 31, 2021. The notice was timely and was provided to Tenants in a manner authorized by the terms of the Lease.

A landlord’s notice to tenant must “state clearly, positively, and unequivocally the intention of the landlord to repossess the premises, or of the tenant to vacate or surrender the premises at a fixed time. . . . The notice must be positive, decisive, and without ambiguity.” *Fotterall v. Armour*, 66 A. 1001, 1003 (Pa. 1907). Looking at the four corners of the Notice itself, the Notice meets these requirements. The letter clearly states the Landlords’ intention to repossess the Premises, requiring the Tenants to vacate by July 31, 2021. The timetable and reason for termination were positive, decisive and unambiguous.

The question is whether the transmittal email to which the Notice was attached rendered the Notice equivocal or ambiguous. In the transmittal email dated April 29, 2021, plaintiff Amy Gleue stated:

Here is the updated termination letter as required by the process.[3]...We obviously and honestly have no interest in court action after years of cooperation so we aren’t proceeding with the 30 day notice. We’re asking that you offer a compromise to this 90 day notice, changing it to an additional 30 days. As before, this is in case the deal to purchase doesn’t work out. Until we hear back from you we’ll consider the following to be in effect.

See, Exhibit A. At the time that the Notice was transmitted on April 29, 2021, the parties had also been discussing the terms of a sale of the Property. Defendants presented multiple offers to plaintiffs, but it is undisputed that the parties never proceeded to closing.⁴

Defendants characterize the Notice as legally insufficient. In *Fotterall*, supra, the Court concluded that the tenant did not provide a positive and unequivocal notice of an intention of the date when the tenancy would end because the notice lacked a fixed date. Judgment entered on a jury verdict rendered in favor of the landlord and against the tenant was therefore affirmed. The primary case cited by defendants is *Brown v. Brown*, 64 A.2d 506 (Pa. Super. 1949). In that case, June Brown (the record owner of the property) filed an action in ejectment against Alice Brown (tenant). Alice Brown had initially been a joint lessee along with June Brown’s father, Joseph Brown. Alice Brown subsequently became the sole lessee. The day after June Brown took title to the property, she provided a notice to quit to Alice Brown which was in proper form except for an added postscript, which stated, “P.S. Alice: Don’t be alarmed at this notice as my Dad will explain all to you, this is simply a requirement of the law in sale of any house. Resp, Ellen June Brown.” The Court held that this postscript effectively wholly nullified the notice.

In *Spiess v. Simon*, 65 Pa. Super. 311 (1916), the tenant notified the landlord that the property was in poor condition and that if certain repairs were not done, he would move out on the first day of May, at the end of the lease. The Court held that the tenant failed to meet the standard of conveying his intention of vacating the premises positively and unequivocally at the time specified in the notice.

In *Herzog v. Leon*, 280 Pa. 560 (1924), cited by plaintiffs, the landlord's notice stated, "Dear Sir: In reference to your lease on property at 625 Penn St., in reading it over you will find that the term expires April 1st, 1921. You are hereby notified to that effect. If you expect to remain and not to vacate, it will be necessary for you to have a new lease. Will call on you shortly and talk this matter over." The Court reviewed the *Fotterall* precedent and other precedent stating that "notice is good if upon the whole it is intelligible and so certain that the tenant cannot reasonably misunderstand it." The Court held that as the notice described the premises, gave the exact date when the term expired, and informed the lessee he must vacate or have a new lease, it was sufficient. The notice's "effect was not destroyed by the suggestion of a new lease mentioned therein." *Id.* at 565.

Plaintiffs argue that the instant case is more like *Herzog* than the cases cited by defendants. The Court agrees. In *Fotterall*, the notice lacked a fixed termination date. In *Brown*, the post-script was written on the notice and provided a message directly contrary to enforcement of the notice, informing the tenant that the notice could be ignored. In *Spiess*, the tenant unilaterally demanded certain repairs to be done by the landlord or else he would vacate on a future date.

In the instant case, the Notice was clear and unequivocal and complied with the terms of the Lease. The Notice under the Lease was parallel to negotiations regarding a sale of the Property. The notice was not destroyed by the transmittal email which reaffirmed that Landlords considered the Notice to be in effect unless the parties could finalize a purchase in the interim. Landlords did not take additional action, the issuance of a Notice to Quit, until the expiration of the 90-day period. See, Exhibit 3. Unlike *Brown*, the recipients of the Notice were not invited to ignore it. Like *Hertzog*, the rescission of the notice, not the notice itself, was contingent on an event occurring, in this case a sale.

Accordingly, the Court awards possession in favor of plaintiffs.

AWARD OF ATTORNEYS FEES

This Commonwealth follows the American Rule which provides that a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties or some other established exception. *Lavelle v. Koch*, 532 Pa. 631, 617 A.2d 319, 323 (1992). Paragraph 24 of the Lease states in pertinent part:

If Tenant violates any part of this Lease Agreement including non-payment of rent, the Tenant is in default of this Lease Agreement. In the event of a default, the Landlord may initiate legal proceedings in accordance with local and state regulations to evict or have tenant removed from the Leased Premises as well as seek judgment against Tenant for any monies owed to Landlord as a result of Tenant's default.

A. The Tenant agrees that any expense and/or damages incurred as a result of a breach of the Lease Agreement including reasonable attorney's fees will be paid to the prevailing party.

B. The Tenant agrees that any court costs and/or fees incurred as a result of a breach of the Lease Agreement will be paid to the Landlord or the prevailing party.

In sum, the Lease provides that in the event of default, the Landlord may initiate legal proceedings to evict Tenant. Fees and court costs may be awarded to the prevailing party. The primary argument advanced by Tenants with respect to an award of attorneys' fees is essentially a "but for" argument. "But for" Landlords' failure to sell the Property to Tenants, fees and costs would not have been incurred in this landlord-tenant action. The Court is not compelled by this argument. Plaintiffs seek enforcement of the Lease pursuant to the terms of the Lease. Plaintiffs have prevailed on the issue of possession. The fact that parallel negotiations regarding the sale of the Property may have been on-going did not discharge the parties of their obligations, rights and remedies under the lease.

Turning to the reasonableness of the fees sought, plaintiffs seek an award of \$15,447.52 in fees and costs as follows:

- 1) \$11,052.52 in fees for the period July 1, 2021 through April 1, 2022;
- 2) \$3,195.00 in fees for the period April 2, 2022 to April 6, 2022 (which encompasses trial preparation); and
- 3) \$1,200 for trial preparation matters and to conduct trial.

In *Richards v. Ameriprise Fin., Inc.*, 217 A.3d 854, 872 (Pa. Super. 2019), the Superior Court explained, "It is our expectation that a trial court assessing the reasonableness of attorney fees will thoroughly scrutinize the specific line items that are challenged, generally evaluate the reasonableness of the expenditure of time for the services listed in the fee petition, make adjustments when they are warranted, and explain its reasons for the award." In assessing reasonableness of fees, a trial court is to consider: the time and labor required, novelty and difficulty of the questions involved and the skill requisite to properly conduct the case; customary charges of the members of the bar for similar services; the amount involved in the controversy and the benefits resulting to the clients from the services, including ensuring that there is a sense of proportionality between any award of damages and the award of attorneys' fees; and the contingency or certainty of compensation. *Id.* at 868.

In this case, Tenants appealed adverse decisions from both the Magisterial District Judge and a Civil Division Board of Arbitrators [Docket Entry Nos. 1, 8].⁵ Tenants requested continuances of the arbitration hearing and the non-jury trial before this Court. [Docket Entry Nos. 5, 26]. Counsel seeking fees provided services in advance of the hearing before the Magisterial District Judge through the proceedings before the trial court. At trial, no contest was taken to rates charged ranging between \$275-\$300 per hour, nor does the court find this hourly rate to be unreasonable for the locale and subject matter of the litigation. Counsel represented that those fees associated with the matter of *Jesse Warner and Laura Yutzy v. Frank W. Gleue and Amy Gleue*, GD 21-010936 were not sought in this case and the time entries are consistent with this representation. The instant case presented some complexity in the context of a landlord-tenant case, both attorneys having advanced creative and thoughtful legal arguments. Prosecuting the case through various levels of the Court system was required, and ultimately, with counsel's assistance, Landlords prevailed at each level on the issue of possession. The Property commanded rent of \$2,600 per month as of July 2017 so that there was a considerable amount at stake when reviewing the matter strictly from a financial perspective. At trial, however, it was apparent that possession was most important to all parties, and counsel seeking fees secured possession in this case.

At trial, Tenants' counsel did not challenge specific line items of fees sought. However, in post-trial briefing counsel challenged fees incurred prior to July 31, 2021, citing Section 24 of the Lease, which provides that fees may be awarded to the prevailing party "incurred as a result of breach." The Court concurs with this position and does not include fees/costs sought for July, 2021 in the award of attorneys' fees, an amount of \$1,678.70. The Court finds the other fees and costs sought by counsel to be reasonable.

These are among the reasons for the Court's Non-Jury Verdict of this same date.

DATED: July 12, 2022

BY THE COURT:
Hon. Mary C. McGinley

¹ Following appeal from an arbitration award of the Fifth Judicial District's Civil Arbitration Department, Tenants amended their Answer, Matter and Counterclaim on or about January 26, 2022 to which no issue was raised.

² Defendants/Tenants have maintained their monthly rental obligation.

³ The email also provided a rationale for plaintiffs previously sending a 30-day termination notice and then sending the updated letter with 90-day advance notice of termination, which was based upon advice of counsel.

⁴ As previously referenced, the parties have claims pending against one another relating to sale of the Property in the matter of Jesse Warner and Laura Yutzy v. Frank W. Gleue and Amy Gleue, GD 21-010936. The Court's finding and conclusions in the case at bar relate only to the parties' landlord/tenant relationship.

⁵ The court recognizes that review before the trial court is de novo. However, the procedural history is pertinent to the award of attorneys' fees.

LISA REZZETANO LACHINA vs. LACHINA DRAPERY & BLIND FACTORY, LLC, LEONARD LACHINA and MARGARET POLLOCK

Preliminary Objections–Enforcement of Marriage Settlement Agreement–Local Rules

Plaintiff Landlords filed a complaint against Defendant Tenants seeking possession of a premises pursuant to a residential lease. Plaintiff and Defendant Leonard Lachina are former spouses. Throughout the marriage Plaintiff was employed by Defendant Lachina Drapery & Blind Factory. Part of the Marriage Settlement Agreement between Plaintiff and Defendant Leonard Lachina dealt with Plaintiff's continued employment with the business. Plaintiff filed a Petition for Enforcement of Marriage Settlement Agreement in the Allegheny County Court of Common Pleas Family Division which was docketed at FD 21-7043. The Petition alleges that Defendant Leonard Lachina engaged in conduct which amounted to constructive discharge. Plaintiff subsequently filed a Complaint in the Civil Division alleging breach of contract. Defendants filed Preliminary Objections which were granted by the Court.

Allegheny County Local Rule 198(1) states "cases between spouses, former spouses, or persons living as spouses shall be filed in the Family Division." The Lachina divorce complaint was filed in the Family Division and docketed at FD 21-7043. The marriage settlement agreement was incorporated into the divorce decree entered at the same docket number. Local Rule 1930(f)(1) requires that once a Family Division docket number is assigned, "all pleadings regardless of the caption or nature of the case ... shall be filed under the originally assigned number." Litigants may not unilaterally decide to file a new action in a different division. The Court held that Plaintiff's civil complaint was insufficient to constitute a separate action from the Petition for Enforcement of Marriage Settlement Agreement as all the averments in the civil complaint relate to Defendant Leonard Lachina's personal actions. Plaintiff's concerns regarding a jury trial were unfounded as the Family Division is equipped to provide a jury trial. Pa.R.C.P. 1920.34 permits joinder of parties, and no local rule exists which prevents Plaintiff from joining additional defendants in the Family Division case.

Case No.: GD 22-3585. 760 WDA 2022. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Hertzberg, J. August 22, 2022.

OPINION

I write this Opinion in support of my June 8, 2022 Order of Court, which granted Defendants' Preliminary Objections and dismissed Plaintiff's civil action. Plaintiff and Defendant Leonard Lachina are former spouses who entered into a marriage settlement agreement on June 10, 2021. Throughout the marriage, Plaintiff was employed by Defendant Lachina Drapery & Blind Factory. Part of the marriage settlement agreement addresses Plaintiff's continued employment by Defendant Lachina Drapery & Blind Factory. On January 1, 2022 Plaintiff served a Petition for Enforcement of Marriage Settlement Agreement and for Contempt of Court in the Family Division of the Allegheny County Court of Common Pleas, at docket number FD 21-7043.¹ Plaintiff's Petition alleges, inter alia, that Defendant Leonard Lachina engaged in conduct amounting to constructive discharge that forced Plaintiff to leave her position with Defendant Lachina Drapery & Blind Factory. A three-day hearing on this Petition was scheduled to commence on September 13, 2022 in the Family Division.² On April 4, 2022 Plaintiff initiated this proceeding by filing a complaint in civil action in the Civil Division against Lachina Drapery & Blind Factory, LLC, Leonard Lachina, and Margaret Pollock alleging breach of contract. Defendants filed Preliminary Objections, which I granted on June 8, 2022. Plaintiff has appealed that Order to the Superior Court of Pennsylvania. This Opinion explains my decision.

The divorce complaint was filed by Defendant Leonard Lachina in the Family Division, as required by Allegheny County Local Rule 198(1), which provides that "cases between spouses, former spouses, or persons living as spouses shall be filed in the Family Division." The case was given a family division "docket number" of FD 21-7043 and was adjudicated under this number and the marriage settlement agreement at issue here was incorporated into the divorce decree entered on July 13, 2021 at FD 21-7043. Regarding domestic relations matters, Allegheny County Local Rule 1930(f)(1) requires that once a family division docket number has been assigned to a case, "all pleadings, regardless of the caption or nature of the case...shall be filed under the originally assigned number." While it is true that "the Administrative Judge of the Division in which a case is filed has the authority, in consultation with the other Administrative Judge, to transfer a case to the other Division," (Allegheny County Local Rule

198(2)), it does not provide for a litigant to unilaterally make that decision simply by filing a new action in a different division of the court of common pleas, as Plaintiff did with this civil action. Plaintiff attempts to frame her civil complaint as a separate action from the Petition for Enforcement of Marriage Settlement Agreement by including Lachina Drapery & Blind Factory, LLC and Margaret Pollock as Defendants in the civil action, and against Defendant Leonard Lachina “in his capacity as president...not in his individual capacity as Plaintiff’s former spouse”; however, all averments in her complaint are about defendant Leonard Lachina’s personal actions. The alleged actions of Defendant Leonard Lachina all relate to Plaintiff’s employment and role at the company, which are addressed in provisions of the marriage settlement agreement. Plaintiff even alleges in her civil complaint that these alleged actions were done to “punish” Plaintiff. It is clear that any further litigation regarding the marriage settlement agreement should be conducted in the Family Division at the case number originally assigned.

Plaintiff also argues that her claims should be heard in the Civil Division so that she can have a jury trial guaranteed by Article I, section 6 of the Pennsylvania Constitution. However, there is no state or local rule prohibiting the Family Division from conducting a jury trial. I am confident, that if Plaintiff requests a jury trial in the Family Division proceeding at FD 21-7043, she will receive one. Indeed, one of the court rooms in the Family Division building is outfitted with a “jury box” to accommodate instances of a Family Division jury trial. The parties can coordinate with the Jury Assignment room in the Civil Division for jury selection.

Finally, Pa.R.C.P. 1920.34 allows for the joinder of parties and there is no prohibition in the local rules from joining a party to a case given a Family Division docket number. Thus, Plaintiff may Petition to join Defendants Lachina Drapery & Blind Factory and Margaret Pollock³ to the Family Division case. Therefore, I committed no error by granting Defendants’ Preliminary Objections and dismissing Plaintiff’s civil claim.

DATED: August 22, 2022

BY THE COURT:
Hon. Alan Hertzberg

¹ This Petition does not appear on the electronic docket. Apparently Defendant Leonard Lachina objected to the filing of exhibits, but he has since withdrawn his objection and the Honorable Jessel Costa of the Family Division ordered the Petition to be filed. See FD 21-7043, Document 45, July 18, 2022 Order of Court, ¶4. In any event, the Petition is attached to the preliminary objections to Plaintiff’s Complaint at GD 22-3585.

² The hearing has been stayed pending resolution of this appeal.

³ In the complaint in civil action no facts are averred that could subject Margaret Pollock to liability to the Plaintiff for breach of contract. In her response opposing preliminary objections Plaintiff avers only that Ms. Pollock is a member of Defendant Lachina Drapery and Blind Factory, LLC. Since Ms. Pollock is not a party to the marriage settlement agreement, Plaintiff will need to aver a factual basis for her individual liability if the Defendants continue to object.
