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OPINIONS

ALLEGHENY COUNTY COURT OF COMMON PLEAS

Common Level Ratio

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The Gilberts commenced this proceeding at docket number GD23-3178 on March 4, 2023 by filing a "Petition to Appeal Nunc Pro Tunc December 19, 2019 Board of Property Assessment, Appeals and Review's Disposition." The impetus behind the Gilberts' GD23-3178 petition is the September 1, 2022 ruling in Gioffre, et. al. v. Fitzgerald, et. al. (GD21-7154) that reduced the Common Level Ratio for 2020 sales of real property in Allegheny County from 81.1 to 63.53. The relief that the Gilberts request is to vacate Judge Ward's March 12, 2020 order at BV20-97, utilize 63.53 as the Common Level Ratio for their residence for the years 2019 to present, refund any property tax overpayments with interest and award them attorney fees. On June 13, 2023, following argument, the court declined to issue a rule to show cause on the petition and dismissed it. The Gilberts timely filed a notice of appeal to the Commonwealth Court of Pennsylvania and a statement of errors complained of on appeal under Pennsylvania Rule of Appellate Procedure 1925(b). This opinion addresses the alleged errors.

Unjust Enrichment

The dispute was submitted to the court for resolution via non-jury trial, with claims for breach of contract, unjust enrichment and fraud remaining to be decided by the court at the conclusion of the trial. The verdict, entered on March 27, 2023, was in favor of Plaintiff CMC 271 Holdings, LLC for $246,000 on the unjust enrichment claim only. CMC filed a motion to include prejudgment interest, which the court granted, and TMD filed a motion for judgment notwithstanding the verdict or a new trial, which the court denied. TMD then appealed to the Superior Court of Pennsylvania and identified errors the court allegedly made in the concise statement of errors complained of on appeal that it filed.

Child Support

Murray Bradford, Jr., (Father), pro se, appeals the decision of the Allegheny Court of Common Pleas – Family Division, which denied his exceptions and adopted the report and recommendation of hearing officer as its final child support order. Father had sought to modify his support obligation regarding the parties' son. In denying Father's modification petition, the court concluded that, while the son had reached the age of majority, the son was still entitled to support due to his special needs and the fact that he was still enrolled in high school. Secondly, the court adopted the hearing officer's recommendation that the support order be terminated, per the request of Jamie Grace (Mother). Father contested this decision because he sought to re-litigate prior support orders.

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Opinions

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PETER RAY GILBERT and NANCY BRENNAN GILBERT vs. BOARD OF PROPERTY ASSESSMENT, APPEALS, and REVIEW, COUNTY OF ALLEGHENY, NORTH ALLEGHENY SCHOOL DISTRICT, and MARSHALL TOWNSHIP

Common Level Ratio

Petitioners Peter Ray Gilbert and Nancy Brennan Gilbert purchased a residence located at 172 Seneca Place, Marshall Township, Allegheny County on February 23, 2019 for $593,478. The residence's 2019 property tax assessment of $472,500 was appealed by North Allegheny School District, and on December 19, 2019 the Board of Property Assessment, Appeals and Review increased the 2019 assessment to $518,700. North Allegheny School District appealed to the Court of Common Pleas, Board of Viewers at docket number BV20-97, but on March 12, 2020 the Honorable Court of Common Pleas Judge Christine Ward entered an order settling and discontinuing the appeal with the property tax assessment at $518,700 for 2019 and 2020. The parties stipulated to this assessment amount, withdrawal of the appeal and settlement and discontinuance.

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Case No.: G.D. 23-003178. Commonwealth Court docket no. 724 CD 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Hertzberg, J. August 29, 2023.

OPINION

Petitioners Peter Ray Gilbert and Nancy Brennan Gilbert purchased a residence located at 172 Seneca Place, Marshall Township, Allegheny County on February 23, 2019 for $593,478. The residence's 2019 property tax assessment of $472,500 was appealed by North Allegheny School District, and on December 19, 2019 the Board of Property Assessment, Appeals and Review increased the 2019 assessment to $518,700. North Allegheny School District appealed to the Court of Common Pleas, Board of Viewers at docket number BV20-97, but on March 12, 2020 the Honorable Court of Common Pleas Judge Christine Ward entered an order settling and discontinuing the appeal with the property tax assessment at $518,700 for 2019 and 2020. The parties stipulated to this assessment amount, withdrawal of the appeal and settlement and discontinuance.

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The Gilberts first contend I made an error because Allegheny County's base year tax assessment system, as presently applied, is unconstitutional. They argue Allegheny County's base year system, as applied, was held to be unconstitutional by Clifton v. Allegheny County (600 Pa. 662, 969 A.2d 1197 (2009)) when the base year was in place for approximately three years, hence the current system's base year in place for ten years also is unconstitutional. However, the Gilberts offer no studies, data or expert testimony, either in their petition or that they intend to present in the future, as proof that application of the current base year system is unconstitutional. In Clifton, an example of some of the data showed property values decreased in one municipality in a school district by 16.03% between 2002 and 2005 and increased in another municipality in the same school district by 35.87%, and two experts opined to disparate, non-uniform rates of changes in property values among many other neighborhoods in Allegheny County. Id. at 600 Pa. 662, 708-70, 969 A.2d 1197, 1225-1226. The Gilberts cannot ask me to rely solely on evidence produced during a trial held in December of 2006 to prove that the county's current tax assessment system routinely over assesses owners of properties that are declining in value and has inequity pervasive throughout it. Hence, Clifton is not a basis for any error by me.

The Gilberts next contend I made an error because use of an artificially inflated Common Level Ratio violates the uniformity clause of Article VIII, Section 1 in the Pennsylvania Constitution. This argument could have had merit if the Gilberts litigated it instead of agreeing to the settlement of the assessment appeal at docket number BV20-97. However, the doctrine of res judicata bars any future suit between the same parties on the same cause of action when there has already been an agreed upon settlement in the past. See Bailey v. Harleysville Mut. Ins. Co., 341 Pa. Super. 420, 491 A.2d 888 (1985). Therefore, I was correct in dismissing this proceeding even if the inflated Common Level Ratio violates the uniformity clause.

The Gilberts next contend I made an error because Allegheny County's Office of Property Assessment's miscoding of sales data that it supplied to the State Tax Equalization Board for computation of the common Level Ratio was fraudulent. This argument is premised on my statement in the November 14, 2022 Gioffre opinion (Pittsburgh Legal Journal Vol. 171, No. 14, p. 105, 7/24/2023) that Allegheny County's Office of Property Assessment had been "cooking the books." However, the use of the term "cooking the books" was not intended to describe the miscoding as fraud. Rather, it was hoped use of the term could help those that could be confused by mathematical formulas in the opinion grasp a simpler concept. According to the Gioffre deposition of Allegheny County's acting Chief Assessment Officer, the artificial intelligence created to automatically code sales data was only intended to make the process more efficient and not to inflate the Common Level Ratio. There was no finding of fraud in Gioffre, nor could there have been since the trial judge could make no credibility determinations from this deposition testimony. Accordingly, I was correct not to base my ruling on fraud.

The Gilberts next contend I made an error because they should have been permitted a nunc pro tunc appeal from the December 2019 disposition by the Board of Property Assessment, Appeals and Review. For an appeal in a civil case to be permitted over three years after the deadline, there must be fraud or a breakdown in the court's operations. See Union Elec. Corp. v. Board of Property Assessment, Appeals & Review of Allegheny County, 560 Pa. 481, 746 A.2d 581 (2000). But, as explained above, there was no fraud. In Union Elec. Corp., a breakdown in the court's operations occurred when the Board of Property Assessment, Appeals and Review acted without authority to extend the appeal deadline. There was no type of breakdown in court operations that caused the Gilberts to file an appeal three years past the deadline. As a result, my decision not to allow them a nunc pro tunc appeal was correct.

The Gilberts next contend I made an error because there was a mutual mistake made as to the applicable Common Level Ratio.

The doctrine of mutual mistake of fact serves as a defense to the formation of a contract and occurs when the parties to the contract have an erroneous belief as to a basic assumption of the contract at the time of formation which will have a material effect on the agreed exchange as to either party. A mutual mistake occurs when the written instrument fails to set forth the true agreement of the parties. The language on the instrument should be interpreted in the light of subject matter, the apparent object or purpose of the parties and the conditions existing when it was executed.

Voracek v. Crown Castle USA Inc., 907 A.2d 1105, 1107-08 (Pa. Super. 2006), appeal denied, 591 Pa. 716, 919 A.2d 958 (2007). There are three reasons a mutual mistake was not made as to the Common Level Ratio. First, the Common Level Ratio is a law, not a fact. See 71 P.S. §1709.1509 and 72 P.S. §5020-102. Second, the Common Level Ratio is not a basic assumption of the stipulation as it is not mentioned in it. Third, the stipulation does set forth the agreement of the parties, which is that the assessed value is $518,700 and not any particular Common Level Ratio. Since there was no mutual mistake, I did not make an error.

The Gilberts' final contention is that the order settling and discontinuing BV20-97 is void because the stipulation upon which it was based is void. Since this topic does not appear in the Gilberts' petition, it has been waived and need not be addressed.

BY THE COURT:
/s/The Hon. Alan Hertzberg

CMC 271 HOLDINGS, LLC and POWERS MEDICAL GROUP, LLC vs. TMD HOLDINGS, LLC

Unjust Enrichment

The dispute was submitted to the court for resolution via non-jury trial, with claims for breach of contract, unjust enrichment and fraud remaining to be decided by the court at the conclusion of the trial. The verdict, entered on March 27, 2023, was in favor of Plaintiff CMC 271 Holdings, LLC for $246,000 on the unjust enrichment claim only. CMC filed a motion to include prejudgment interest, which the court granted, and TMD filed a motion for judgment notwithstanding the verdict or a new trial, which the court denied. TMD then appealed to the Superior Court of Pennsylvania and identified errors the court allegedly made in the concise statement of errors complained of on appeal that it filed.

Case No.: GD-20-011255. Superior Court docket no. 792 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Civil Division. Hertzberg, J. August 30, 2023.

OPINION

Craig Cox started a company called Performance Health with a product called BioFreeze, that was the number one product in the United States healthcare market and was exported to seventy other countries. After selling the Performance Health business fifteen years ago, Mr. Cox was retired when the COVID-19 pandemic struck. Late in March of 2020, when he was introduced to Henry Wang, who imported personal protective equipment (PPE) from China, Mr. Cox saw a business opportunity. Mr. Cox discussed the potential business opportunity with David Powers, a friend with connections into hospitals and doctors offices from his occupation as a medical device distributor. They agreed to try to take advantage of the opportunity and split the profits from it. While meeting with Mr. Wang at Mr. Wang's business, TMD Holdings, Mr. Cox telephoned Mr. Powers. Mr. Cox put Mr. Powers on speakerphone, introduced him to Mr. Wang, and Mr. Cox asked Mr. Powers if his hospitals needed any of the masks or gowns TMD Holdings was selling. Mr. Powers then called three medical providers that were each "pleading" with him to buy the products from him. Next, Mr. Powers found out from Mr. Wang the quantities of the PPE products he had available and made arrangements with the hospitals to purchase them. Mr. Powers and Mr. Cox then went to TMD Holdings, LLC with a check from CMC 271 Holdings, LLC (a company formed by Mr. Cox) and obtained the PPE products that Mr. Powers immediately then sold for a profit to the hospitals.

Before April 3, 2020, there was one more similar transaction that involved Mr. Cox simultaneously exchanging a check for PPE products at TMD Holdings. Then, on April 3, 2020, at the request of Mr. Wang, a purchase order for 500,000 masks and a down payment of $160,000 (50 percent of the price) was provided to TMD Holdings by Mr. Cox's company. Mr. Wang led Mr. Cox and Mr. Powers to believe the products being ordered would be available for them to pick up within one week. See Transcript of Proceedings, March 24, 2023 ("T" hereafter), pp. 48-49, 60, 65, 71 and 127-128. However, 100,000 masks were not available until April 20 and another 100,000 until April 28. Similarly, after an April 8 purchase order for 60,000 level 2 gowns and a downpayment of $110,000, 10,000 were not available until May 6 and 15,000 until May 8. An order also was made on April 20 for 60,000 level 1 gowns with a downpayment of $180,000, and no delivery of them was available as of May 8. On that date, May 8, Mr. Powers determined the hospitals had stopped demanding more PPE from him. Mr. Cox told Mr. Wang to cancel all undelivered orders and sell them to other TMD customers.

Mr. Cox and Mr. Powers refused to accept any more PPE deliveries from TMD, and Mr. Cox requested a refund of the unused portions of the downpayments, which amounted to $246,000 *(TMD does not dispute the calculation of the unused portions of the downpayments. The price for the April 3 purchase order was $320,000, and CMC paid $224,000 to TMD leaving $96,000 unused. The price for the April 8 purchase order was $220,000, and CMC paid $145,000 to TMD but owed TMD $30,000. The price for the April 20 order was $360,000, and CMC paid $180,000 to TMD leaving $180,000 unused. See T, pp. 69-70 and trial exhibit 8. $96,000-30,000+180,000=$246,000.).* TMD refused to refund the $246,000, and on October 30, 2020 the complaint that commenced

this proceeding was filed. The dispute was submitted to me for resolution via non-jury trial, with claims for breach of contract, unjust enrichment and fraud remaining to be decided by me at the conclusion of the trial. My verdict, entered on March 27, 2023, was in favor of Plaintiff CMC 271 Holdings, LLC for $246,000 on the unjust enrichment claim only. CMC filed a motion to include prejudgment interest, which I granted, and TMD filed a motion for judgment notwithstanding the verdict or a new trial, which I denied. TMD then appealed to the Superior Court of Pennsylvania and identified errors I allegedly made in the concise statement of errors complained of on appeal that it filed.

TMD first contends I made an error by finding in favor of CMC on its unjust enrichment claim because there was a contract between TMD and CMC that acts as a bar to any unjust enrichment claim. While conceding there was no written contract (See T, p. 210), TMD premises this argument upon the purchase orders constituting offers by CMC to enter into a contract and acceptance by TMD issuing "pro-forma" invoices. However, of the three disputed transactions, only one involved a purchase order from verdict winner CMC, with a second involving a purchase order from Powers Medical Group and the third transaction not involving any purchase order. See T, pp. 88-89, 213 and 218. Even more important to my decision that there was no contract between CMC and TMD was the disagreement between them concerning date of delivery, which was critical to them both. Before placing each PPE order with TMD, Mr. Powers contacted the hospitals to ensure they would purchase the PPE if CMC and Powers delivered it shortly after the dates of delivery that TMD provided. But, the one week date of delivery representations were mostly made verbally by TMD, which insisted that multiple factors beyond its control made nailing down a date of delivery deadline impossible.

Pennsylvania Uniform Commercial Code section 2204 addresses the effect of open terms in contract formation. "Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy." 13 Pa. C.S. §2204(c). With date of delivery critical to both parties, yet left open, I do not believe the parties intended a contract, with each not feeling bound to perform. The case of Bethlehem Steel Corp. v. Litton Industries (321 Pa. Super 357, 468 A.2d 748 (1983), affirmed 507 Pa. 88, 488 A.2d 581 (1985)), while involving much more money and a much lengthier non-jury trial, is very similar to the case at bar. Because the parties in that case left open the terms necessary to calculate the escalation in price to be allowed for inflation, under 13 Pa. C. S. §2204(c) they did not intend to make a contract. In addition, the comment to 13 Pa.C.S.§2204(c) states that "the more terms the parties leave open, the less likely it is that they have intended to conclude a binding agreement…." CMC and TMD left many additional terms open, such as whether CMC could cancel an order and when CMC was entitled to a refund of its downpayment. Hence, I correctly decided there was no contract and therefore made no error in finding in favor of CMC on its unjust enrichment claim.

Even if it were determined there was a contract between CMC and TMD, I agree with CMC's argument that when it justifiably canceled the orders, any contract was no longer enforceable and the unjust enrichment claim was appropriate. The Restatement (Second) of Contracts §376, entitled "Restitution When Contract is Voidable," states:

A party who has avoided a contract on the ground of lack of capacity, mistake, misrepresentation, duress, undue influence or abuse of a fiduciary relation is entitled to restitution for any benefit that he has conferred on the other party by way of part performance or reliance.

The comment to this provision clarifies its application "to avoidance on any ground" and not only those grounds specified. TMD breached its obligation to deliver the PPE within one week, with the PPE becoming worthless to CMC on May 8 because the hospitals were no longer able to purchase via an "emergency valve." See T, pp. 130, 136 and 153-154. CMC, under the Restatement, could therefore cancel or "avoid" the contract and "is entitled to restitution" of the downpayments "conferred on the other party by way of part performance." Hence, even if there was a contract, it was avoided and unenforceable, entitling CMC to restitution of the downpayments.

TMD next contends I made an error in finding that TMD was unjustly enriched because TMD used CMC's downpayments to purchase the PPE at issue. While this may be true, it is highly likely that TMD was able to sell all of the PPE ordered by CMC to other customers. See T, pp. 67-75 and 242-243. In fact, TMD had threatened to sell CMC's PPE to others to extract downpayments from CMC. See T, p. 73. If TMD did not sell all of the PPE ordered by CMC to other customers, it would have made no business sense. See T, p. 243-245. Thus, when the PPE was sold or should have been sold to other customers, TMD was unjustly enriched, and I made no error.

TMD's final contention is that I made an error measuring damages without consideration of the value conferred upon TMD or the PPE that was available to CMC had it not canceled its orders. I disagree. Given the testimony of how three different TMD representatives said the canceled orders would be sold to other customers, if the prices would be lower than what CMC was paying there would have been testimony from TMD on this subject. Since there was none, it was logical for me to infer that other customers would pay TMD at least as much as it was charging CMC. Thus, the value conferred upon TMD was at least as great as the requested downpayment refunds. In addition, the comment to Restatement §376 states that "uncertainties in measuring the benefit…are more likely to be resolved in favor of the party seeking restitution if the other party engaged in misconduct…." Mr. Wang's response to CMC's request for a refund was "I'll drag this out forever. I'll toy with you." T, p. 76. Such misconduct, pursuant to the Restatement, is a valid reason to resolve any uncertainty in measuring TMD's benefit in favor of CMC. With respect to my consideration of the PPE available to CMC had it not canceled its orders, I found the testimony that it became worthless to CMC on May 8 was credible. See T, pp. 130-131. Therefore, I correctly measured the damages awarded to CMC.

BY THE COURT:
/s/The Hon. Alan Hertzberg

JAMIE GRACE vs. MURRAY BRADFORD, JR.

Child Support

Murray Bradford, Jr., (Father), pro se, appeals the decision of the Allegheny Court of Common Pleas – Family Division, which denied his exceptions and adopted the report and recommendation of hearing officer as its final child support order. Father had sought to modify his support obligation regarding the parties' son. In denying Father's modification petition, the court concluded that, while the son had reached the age of majority, the son was still entitled to support due to his special needs and the fact that he was still enrolled in high school. Secondly, the court adopted the hearing officer's recommendation that the support order be

terminated, per the request of Jamie Grace (Mother). Father contested this decision because he sought to re-litigate prior support orders.

Case No.: FD 04-08114. Superior Court No. 906 WDA 2023. In the Court of Common Pleas of Allegheny County, Pennsylvania. Family Division. Bubash, J. September 7, 2023.

OPINION OF THE COURT

Defendant, Murray Bradford, Jr. (Father) appeals from my July 7, 2023, Order which overruled his exceptions to the March 28, 2023, Report and Recommendation of Support Hearing Officer Wendy Duchene. The Hearing Officer denied Father's December 29, 2022, Petition which sought a modification of child support and, at request of Plaintiff, Jamie Grace (Mother), terminated the support order. In his Concise Statement of Matters Complained of on appeal, which consists of a single, run on paragraph with a litany of complaints about how his case has been handled for years, it is difficult to discern exactly what specific issue he will raise in this appeal. I will, therefore, address the two decisions made by the hearing officer; the denial of Father's modification Petition and the granting of the request by Mother to terminate the support order and the support case.

The child, Anthony, subject to the support order was 21 years of age when the Modification petition was filed. Pursuant to a prior support order, support was being paid after the child turned 18 because he has autism. This disability allows him to remain enrolled in high school through his 22nd birthday. (See Plaintiff's Exhibit 1, letter from Bryce Vandenberg of the Roanoke School District.)

In his Petition to Modify, and at the hearing, Father argued that the modification should be granted on two grounds: First, that Anthony was not regularly attending school and, second, that Mother had not provided evidence as to her income and/or had committed fraud.

I previously determined, in my May 23, 2018, Order granting Mother's relocation request, that Anthony "…is a child of special needs, is autistic…and non-verbal. He attends a special life-skills, emotional support classroom to address his needs and is able to sign and use a tablet to communicate." (Slip Opinion, May 23, 2018, at 2). 42 Pa. C.S.A. § 4321 (3) states that a parent "…may be liable for the support of their children who are 18 years of age or older." Where the adult child "…has physical or mental condition which exists at the time the child reaches majority and prevent the child from being self-supporting or emancipated…" the obligation to support that child continues. In addition, "[T]he law provides unequivocally that the duty of support continues 'until a child reaches 18 or graduates from high school, whichever occurs later.' Blue v. Blue, 532 Pa. 521, 529, 616 A.2d 628, 633 (1992)." Robinson-Austin v. Robinson-Austin, 921 A.2d 1246, 1247 (Pa. Super 2007).

Anthony was still a student at Patrick Henry High School in the Roanoke City Schools, according to the testimony of Mother *("…Anthony is in school. He will go to a school or program if any more programs become available, because he will always have that assistance." (H.T. 14).)* and the letter from the Special Education Case Manager for the school district, Bryce Vandenberg, introduced by Mother. (H.T. 15). Mr. Vandenberg wrote:

Anthony Bradford, Jr. is currently enrolled and is an active student within the Roanoke City Public Schools at Patrick Henry High School. Anthony has been diagnosed with Autism Spectrum Disorder and is eligible for special education services under the primary category or Autism, secondary category of Intellectual Disabilities, and a tertiary category of Speech Language Impairment…Anthony's limited communication and deficits in social interaction inhibit his ability to make progress in the general curriculum. Anthony has difficulty making his wants and needs known to others. Anthony requires support from a targeted assistant throughout the school day to ensure his safety and to assist with his academic and sensory needs.

(Mother's Exhibit A). Mr. Vandenberg also confirmed that Anthony would remain eligible for services through his 22nd birthday.

Father offered no evidence establishing that his son was no longer disabled, nor did he present any evidence supporting his claim that his son was not still a student. All he offered was his own testimony that he has been unable to obtain records to confirm his son's attendance and his claim that on some unnamed recent date he went to the school and was told his son had not been there for two weeks. (H.T. 12). He admitted, however, when asked by the hearing officer if his position was that Anthony was not in school, "We have no way of telling. But I know from so far he hasn't been in school consistently the way he should've been." (H.T. 5).

The hearing officer heard testimony from both parties. Clearly, she credited Mother's testimony over that of the Father. I have thoroughly reviewed the record in this matter and conclude that the Hearing Officer was correct in her assessment of the credibility of the parties. The evidence overwhelmingly established that Anthony remained in High School and was, due to disability, unable to support himself. The request by Father that his support obligation be reduced because his son was no longer in school was properly rejected and his Modification Petition properly denied.

His claim that Mother was engaging in fraud in hiding income was likewise properly rejected by the hearing officer. His claims were a regurgitation of similar claims raised, and rejected, in past support proceedings. He offered no evidence to support his claim and I agree with the hearing officer's rejection of his request to modify support on that basis.

Finally, Father challenges the Hearing Officer's decision to grant Mother's request that the support order be terminated and the case itself ended. His only professed reason for opposing this is that it will deprive him of the opportunity to use the support proceedings to somehow relitigate his obligation to pay support from 2018 on. He claims that the request to terminate his support obligation is "…a maneuver to avoid any review of Plaintiff's income received for decades that could lead to fines, or reimbursement to myself, the IRS and the Pa. and Va. state courts." (Father's Concise Statement of Matters Complained of on Appeal).

None of those matters were before the hearing officer. She had no authority to continue the support matter, against Mother's wishes to provide Father with a forum in which to air his ongoing grievances against Mother and the Courts. He sought a modification of the amount of support he was paying and ended up with an end to any ongoing obligation to pay support. His insistence that the case remain open so he could pursue his frivolous claims that Mother was engaging in fraud to obtain support and his appeal of the decision to terminate support only lend credibility to Mother's assertion that she was ending the case because she was "…tired of the back and forth with this. It's been so much. From the last order, they said I wouldn't have to come back and forth with once they offered him this last order, but then he filed again. And I'm just tired of back and forth with him." (H.T. 15). The Hearing Officer's decision to grant this request was entirely appropriate and supported amply by the record.

For these reasons, my order dismissing the exceptions should be affirmed on appeal.

BY THE COURT:
/s/The Hon. Cathleen Bubash