

**[J-93-2008]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, JJ.**

|                       |   |  |
|-----------------------|---|--|
| MARJORIE R. MCMULLEN, | : | No. 103 MAP 2007                         |
|                       | : |  |
| Appellant             | : | Appeal from the order of the Superior    |
|                       | : | Court entered May 16, 2007, at No. 544   |
|                       | : | MDA 2006, affirming the Order of the     |
| v.                    | : | Court of Common Pleas of Cumberland      |
|                       | : | County, Civil Division, Entered February |
|                       | : | 21, 2006, at No. 2000-4155               |
| RONALD E. KUTZ,       | : |  |
|                       | : |  |
| Appellee              | : | 925 A.2d 832                             |
|                       | : |  |
|                       | : | ARGUED: May 14, 2008                     |

**OPINION**

**MR. JUSTICE BAER**

**DECIDED: December 28, 2009**

We granted review in this case to determine whether a court may consider the reasonableness of attorney fees claimed in a breach of contract action where the contract does not specify that the fees incurred must be reasonable. In the case before us, the parties entered into a marriage and property settlement agreement that provided for the payment of attorney fees and costs incurred by one party in enforcing the contract against the breaching party. The trial court concluded that Appellee Ronald E. Kutz (“Husband”) breached the agreement by failing to pay Appellant Marjorie R. McMullen (“Wife”) sufficient child support and that the contract provided that the breaching party must pay the attorney fees expended by the non-breaching party. The trial court, however, granted Wife less than half of the attorney fees she claimed to have incurred in litigating her breach of contract action because the court found that the amount claimed was unreasonable in light

of the nature of the claim and Wife's failure to seek an out-of-court settlement of the dispute prior to initiating litigation. On appeal to the Superior Court, Wife claimed that the trial court erred in considering the reasonableness of the fees when the contract provided for the full payment of the attorney fees "incurred." A divided Superior Court panel held that the trial court had the inherent duty to consider the reasonableness of a counsel fee award. We granted allowance of appeal, and, after full and careful consideration of Wife's arguments, affirm the decisions of the trial court and Superior Court, finding that courts may consider reasonableness when making a counsel fee award, regardless of the precise verbiage of the document authorizing such award.

Wife and Husband were married in December 1985 and had five children prior to their divorce. On July 7, 2000, Wife and Husband entered into a Separation and Property Settlement Agreement ("Agreement"), under which Husband conceded that thirty-five percent of "his disposable military pension shall be the sole and exclusive property" of Wife. Agreement at ¶ 9(d). Additionally, Husband agreed to pay Wife \$1200 per month as support for the five children until an "Emancipation Event." Agreement at ¶ 12(a). The contractual provision describing an emancipation event relevant to this case states:

Reaching the age eighteen (18); except and provided that an emancipation event shall be deferred beyond the eighteenth birthday of the child if and so long as the child pursues full time college education with reasonable diligence and on a normally continuous basis, and during such time the child lacks sufficient resources to be self-sustaining and is dependent upon his parents for support; but, in this respect, in no event shall emancipation be deferred beyond the child's twenty-first birthday

Agreement at ¶12(c)(1). Significantly, the Agreement also provided that in the event of a breach, the non-breaching party would be entitled to collect the attorney fees incurred in enforcing the Agreement:

If either party breaches any provision of this Agreement, the other party shall have the right, at his or her election, to sue for damages for such breach or seek such other remedies or relief as may be available to him or her, and the

party breaching this contract shall be responsible for payment of legal fees and costs incurred by the other in enforcing their rights under this Agreement.

Agreement at ¶ 17. The Agreement did not require the non-breaching party to attempt to settle the claim prior to initiating suit, nor did it explicitly provide that the fees incurred must be reasonable.

In September 2005, Wife filed a petition to enforce the Agreement alleging that Husband had breached it by failing to pay support for their eldest son during July and August 2005, following his graduation from high school, and for failing to pay Wife her full share of the military pension due. Although not relevant to our inquiry, the discrepancy resulted when Husband interpreted the Agreement as permitting him to cease payment of child support for his oldest son during the summer between his high school graduation and the beginning of college, despite the son's uncontested intent to enroll in college in the fall. Additionally, during the first few months of Husband's retirement, Husband paid to Wife 35% of Husband's net retirement check. At some point thereafter, the Defense Finance and Accounting Service (DFAS) began to pay Wife directly, and paid her 35% of his gross retirement check. Wife asserted that she was entitled to the child support for the months between the parties' eldest son's high school graduation and his enrollment in college, and the discrepancy in the calculation of her percentage of his retirement checks. The trial court found for Wife on both issues in December of 2005, and later explained its ruling: "While [Husband's] uncounseled interpretation of the [Agreement] was reasonable, we found that it was also erroneous." Tr. Ct. Op. at 2. The court, thus, calculated the amount owed by Husband to Wife as \$792.12 in unpaid retirement benefits and unpaid child support.

Based upon the trial court's determination, there was no dispute that Husband breached the agreement, thus triggering the assessment of Wife's counsel fees against

Husband. The court, in considering the imposition of counsel fees, refused to grant Wife the \$3000 of fees she claimed. The court noted the following in this regard:

We did not, however, feel that it was reasonable for [Wife] to incur almost \$3000 in legal fees to litigate this matter. We note that there was no attempt by her counsel to resolve these issues short of involving the courts. Counsel's first contact with [Husband] in connection with these matters was a letter which accompanied the "Petition to Enforce." The letter demanded payment of all sums due **plus counsel fees**. However, there was no breakdown of what sums were due, or the counsel fees being claimed.

The issues involved in this case were simple and straightforward. Further, the record is devoid of any attempt by [Wife], or her counsel, to resolve the issues or to keep counsel fees reasonable. Under those circumstances, we felt the award of \$1200 for counsel fees (about 1.5 times the amount awarded for the underlying dispute) was reasonable.

Trial Court Opinion at 2 (internal footnote omitted, emphasis in original).

Wife appealed to the Superior Court urging that the trial court erred in considering the reasonableness of the attorney fees when the Agreement, signed by the parties, granted the non-breaching party the fees "incurred" without any qualification regarding the reasonableness of the fees. Wife argued that the decision should be controlled by the Superior Court's decision in Creeks v. Creeks, 619 A.2d 754 (Pa. Super. 1993). It is unclear to us why Wife views Creeks as controlling. In that case, the principal dispute concerned whether a party had, in fact, breached an agreement. The Superior Court concluded that the party had breached the applicable contract, and premised thereon, reversed the trial court's denial of attorney fees. The court in Creeks, however, did not address the reasonableness of the fees. Moreover, unlike the case at bar, the agreement in Creeks contained a clause specifically addressing the reasonableness of the potential attorney fees: "the prevailing party in such proceedings shall be entitled to an award of counsel fees for all time reasonably expended in connection with the enforcement of this

Agreement.” Creeks, 619 A.2d at 757 (emphasis added). Indeed, the agreement in Creeks even stipulated that \$100 per hour was a reasonable hourly fee.

The Superior Court, in the case at bar, framed the question as whether a court could find a reasonableness requirement to be implicit in a contract. In finding the reasonableness criteria to be implicit, the court relied upon its earlier decision in Duffy v. Gerst, 429 A.2d 645, 650 (Pa. Super. 1981), holding, “It may be assumed that implicit in this provision is the condition that the attorney's fee must be a reasonable fee.” The Superior Court also considered the decisions of our sister state Maryland, which read a reasonable fee term into contracts providing for the recovery of attorney fees in the event of breach. See Atlantic Contr. & Material Co., Inc. v. Ulico Cas. Co., 844 A.2d 460, 478 (Md. 2004) (“When a contract entitles a party to recover attorney’s fees, the trial court must examine the fee request to determine whether it is reasonable even in the absence of a provision requiring that the fee request be reasonable.”).

The Superior Court additionally concluded that the trial court properly considered Wife’s counsel’s failure to seek settlement when the court weighed the reasonableness of counsel’s fees. Ultimately, the Superior Court held that the trial court did not abuse its discretion in reducing the amount claimed in counsel fees after finding the fees sought to be unreasonable.

Judge Colville wrote in dissent. He agreed with the panel majority that reasonableness was an implicit component to the fee provision of the Agreement, but opined that a court may not evaluate the reasonableness of the fee unless a party contested that factor, whereas the panel majority stated that a trial court “must” consider the reasonableness of the fee. McMullen v. Kutz, 925 A.2d 832, 836 n.5 (Colville, J, dissenting). The dissent also found fault with the trial court’s finding that the fee was unreasonable based upon Wife’s counsel’s failure to seek settlement: “Whether [Wife] attempted to settle this matter short of litigation simply is not a factor to be considered by a

court in assessing the reasonableness of attorney's fees. Furthermore, the parties' agreement did not require that [Wife] attempt to settle her dispute with [Husband] before involving the courts." Id. at 837. The dissent opined that the better resolution would have been to remand the case to the trial court for further assessment of the reasonableness of the fees.

We granted Wife's petition for allowance of appeal to consider whether reasonableness is an implicit term in a contractual provision awarding attorney fees for a breach of contract.<sup>1</sup> We note that the interpretation of the terms of a contract is a question

---

<sup>1</sup> Specifically, the question phrased for our review provided:

Should this Court grant this petition for allowance of appeal when the decision by the Superior Court in this case is in conflict with the decisions of the Superior Court in both Creeks v. Creeks, [619 A.2d 754 (Pa. Super. 1993)] and Profit Wize Marketing v. Wiest, [812 A.2d 1270 (Pa. Super. 2002)]?

McMullen v. Kutz, 934 A.2d 1162 (Pa. 2007). We respectfully disagree with the dissent's interpretation of this question. Instead, we take a broader view of the arguably poorly worded question presented to us in Appellant's Petition for Allowance of Appeal. Obviously, we did not grant review to determine whether the Court "should ... grant this petition" as the question is literally phrased, and we recognize that the dissent does not so claim. Additionally, however, we did not grant review, as the dissent would suggest, to decide the very limited question of whether the Superior Court's decision in the case sub judice conflicts with prior decisions of that court. Our Rules of Appellate Procedure provide that we grant review "only when there are special and important reasons therefore." Pa.R.A.P. 1114. While our Internal Operating Procedures §5(A)(1) provides for granting review where "the holding of the intermediate appellate court conflicts with another intermediate appellate court opinion," there would be no special or important reason to draft an opinion that holds merely that a Superior Court decision does or does not conflict with prior precedent of that court unless we then clarified for the bench and bar the correct rule of law in the explored area. Accordingly, we conclude that the question granted extended to whether the decision below, finding that the trial court was authorized to consider the reasonableness of attorney fees, was correct, and we conclude further that it was for the reasons set forth in this Opinion.

of law for which our standard of review is de novo, and our scope of review is plenary. Chen v. Chen, 893 A.2d 87, 93 (Pa. 2006).

Wife observes that a court cannot rewrite a contract but instead must interpret the contract as written. She quotes the Superior Court's decision in Creeks for the standard of law that a court cannot modify the terms of a contract under the guise of interpretation because the written terms are the best indication of the parties' intent. Creeks, 619 A.2d at 756. She argues that the plain language of the Agreement provides that the "party breaching this contract shall be responsible for payment of legal fees and costs incurred by the other in enforcing their rights under this Agreement," Agreement at ¶ 17. She contends that the lower courts impermissibly inserted a reasonableness term into the contract, when the plain language of the contract provides the non-breaching party with the total fees "incurred." Wife urges this Court to reverse the decisions of the courts below, which she claims destroys the bargained-for exchange of the parties:

It was obviously created so that the parties could avoid the additional cost and burden on the non-breaching spouse of litigating the issue of attorney's fees, expenses, and costs in court. However, the failure of the trial court to adhere to the plain language of the contract resulted in just that.

Brief for Appellant at 13.

Assuming arguendo that we hold reasonableness to be implicit in the attorney fee provision, Wife also faults the trial court for raising the issue sua sponte, failing to hold hearings to ascertain whether the fees were in fact reasonable, and for not considering pre-established standards of reasonableness. Wife asserts that the trial court should have held hearings to consider the reasonableness of the attorney fees in accord with the factors set forth by this Court in In re Estate of LaRocca, 246 A.2d 337 (Pa. 1968):

The facts and factors to be taken into consideration in determining the fee or compensation payable to an attorney include: the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property

in question; the degree of responsibility incurred; whether the fund involved was “created” by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question.

Id. at 339; see also Estate of Murray v. Love, 602 A.2d 366, 370 (Pa. Super. 1992). Additionally, she argues that the fees were reasonable because Husband contested the merits of Wife’s petition. Moreover, Wife notes that the factor cited by the trial court to justify the reduction in the fees was the failure of counsel to seek settlement. Wife asserts that this is an improper factor under our caselaw which provides that “an offer to compromise a claim, not accepted, cannot be introduced into evidence,” quoting Durant v. McKelvey, 144 A.2d 527, 529 (Pa. Super. 1958) and citing Danks v. Government Employees Insurance Co., 453 A.2d 655, 657 (Pa. Super. 1982) (holding that offers of settlement and compromise were not admissible to show that the amount of time spent by attorneys was unreasonable).

Accordingly, Wife urges the Court to remand to the trial court to enter an order granting Wife all the fees incurred, or in the alternative, to remand with an order that the trial court take evidence regarding the factors set forth above relating to the reasonableness of the fees actually incurred by Wife’s counsel.

In countering Wife’s arguments, Husband addresses the two cases cited in the grant of review by this Court, supra note 2. He contends that Profit Wize Marketing v. Wiest, 812 A.2d 1270 (Pa. Super. 2002), and Creeks are not inconsistent with the decision of the Superior Court in the case at bar. He notes that neither cited decision involved the question of whether reasonableness is an implicit factor to be considered in the award of attorney fees for breach of contract. Husband notes that Profit Wize Marketing turned on a determination of which party had prevailed. When the Superior Court concluded that neither party had prevailed, and thus that neither party could be granted attorney fees, it did not need to address the reasonableness of the fees allegedly incurred.

Similarly, Husband asserts that Creeks is neither inconsistent nor relevant to the issues in this case. Rather than addressing whether reasonableness can be an implicit criterion in the award of legal fees, the Superior Court in Creeks considered a contract where reasonableness was a stated criterion for the award of fees. Indeed the contentious issue in Creeks did not hinge on the reasonableness of the award but rather, on whether the contract had been breached. Finding a breach of the contract, the Superior Court remanded for determination of the reasonableness of the fees.

Given the lack of on-point precedent, Husband next addresses whether courts must consider the reasonableness of the claimed attorney fees even where the contract is silent on reasonableness of the fees. Husband contends that public policy supports the incorporation of a reasonableness inquiry. He claims that reasonableness is implicit because Pennsylvania courts have inherent supervisory authority over attorneys and thus have the power to rule on the reasonableness of any attorney fee. Second, Husband contends that to refuse to read reasonableness into every provision for attorney fees could place courts in the untenable situation of being forced to award a “clearly excessive or scandalous” attorney fee. Brief for Husband at 7. Citing Duffy, Husband notes that the Superior Court has considered a reasonableness inquiry proper since at least 1981.

For the reasons discussed above, we agree with Husband that a trial court’s consideration of the reasonableness of the attorney fees claimed does not conflict with the prior decisions of the Superior Court in Profit Wise Marketing and Creeks. In neither case did the Superior Court consider whether reasonableness could be an implied factor in determining an award of attorney fees in the event of a breach of contract. The cases support Wife’s theory only to the extent that they stand for the general proposition that courts are bound by the plain language of a contract as the best evidence of the intent of the parties.

Next, we must consider whether courts can find that contractual provisions for the shifting of attorney fees implicitly require that the claimed fees be reasonable, despite the lack of specific language, and thus, whether courts have the authority, and perhaps the obligation, to inquire into the reasonableness of the attorney fees claimed. “The general rule within this Commonwealth is that each side is responsible for the payment of its own costs and counsel fees absent bad faith or vexatious conduct.” Lucchino v. Commonwealth, 809 A.2d 264, 267 (Pa. 2002). This so-called “American Rule” holds true “unless there is express statutory authorization, a clear agreement of the parties or some other established exception.” Mosaica Academy Charter School v. Com. Dept. of Educ., 813 A.2d 813, 822 (Pa. 2002). As in similar fee-shifting provisions, the Agreement in this case contained the necessary “clear agreement of the parties” that in the event of a breach of the Agreement, the breaching party must pay the attorney fees “incurred” by the non-breaching party in enforcing the Agreement. There is no dispute that Husband was the breaching party, and thus, that Wife was entitled to attorney fees incurred in enforcing the Agreement against Husband.

The dispute in this case concerns the trial court’s authority to address the reasonableness of the attorney fees claimed. Wife, and a minority of courts across the country,<sup>2</sup> would read the plain language of the contract to require any and all fees incurred by the non-breaching party to be payable by the breaching party. We cannot accept this

---

<sup>2</sup> See, e.g., Carter v. Warren Five Cents Sav. Bank, 564 N.E.2d 579, 583 (Mass. 1991) (“The agreement was to pay attorney’s fees Carter incurred in pursuing his rights. The agreement was not to pay Carter’s reasonable attorney’s fees as determined by a judge.”); Turner v. Terry, 799 So.2d 25, 38 (Miss. 2001) (holding prevailing party is “entitled to all attorneys’ fees resulting from this litigation, as a plain reading of the contract provides”); Lee v. Investors Title Co., 241 S.W.3d 366, 368 (Mo. Ct. App. 2007) (“The decision to award attorney’s fees is not a matter of discretion in this situation and failure to do so is erroneous.”)

reading, however, because the potential for abuse is too high. If we were to forbid a reasonableness inquiry by a trial court, there would be no safety valve and courts would be required to award attorney fees even when such fees are clearly excessive.

Instead, we join the majority of our sister states<sup>3</sup> in finding that parties may contract to provide for the breaching party to pay the attorney fees of the prevailing party in a breach

---

<sup>3</sup> See, e.g., Alabama Educ. Ass'n v. Black, 752 So.2d 514, 519 (Ala. Civ. App. 1999) (“In Alabama, where there is an agreement to pay an attorney fee and the agreement does not speak specifically to the reasonableness of the fee, a “reasonable” fee will be inferred.”); McDowell Mountain Ranch Community Ass'n, Inc. v. Simons, 165 P.3d 667, 671 (Ariz. Ct. App. 2007) (collecting cases and stating: “Notwithstanding the general rule that attorneys' fees are enforced in accordance with the terms of a contract, a contractual provision providing for an award of unreasonable attorneys' fees will not be enforced.”); Griffin v. First Nat. Bank of Crossett, 888 S.W.2d 306, 311 (Ark. 1994) (“Implicit in our holding is a requirement that any attorney's fees awarded should be reasonable.”); Crest Plumbing and Heating Co. v. DiLoreto, 531 A.2d 177, 183 (Conn. App. Ct. 1987) (“We construe the term ‘attorney's fees’ as an award for ‘reasonable attorney's fees’ in this case because the term ‘reasonable’ is implied by law even when it is absent in the contractual provision.”) (emphasis in original); Mahani v. Edix Media Group, Inc., 935 A.2d 242, 245 - 246 (Del. 2007) (“Delaware law dictates that, in fee shifting cases, a judge determine[s] whether the fees requested are reasonable.”); Concord Enterprises, Inc. v. Binder, 710 A.2d 219, 225 (D.C. 1998) (“[W]here a contractual agreement expressly provides for the payment of attorney's fees, the trial court's discretion is limited to ascertaining what amount constitutes a ‘reasonable’ fee award.”); Dunn v. Sentry Ins., 462 So.2d 107, 108 (Fla. Dist. Ct. App. 1985) (holding that a prevailing party is not entitled to recover the total amount which it has paid or agreed to pay if that amount is excessive or unreasonable); Lettunich v. Lettunich, 111 P.3d 110, 120 (Idaho 2005) (providing for trial courts to consider several factors in arriving at a reasonable attorney fee calculation); Heller Financial, Inc. v. Johns-Byrne Co., 637 N.E.2d 1085, 1092 (Ill. App. Ct. 1994) (“While the parties may, by a private agreement, override the “American Rule” which holds that each will be responsible for any legal fees they incur in a civil litigation, such contractually-provided fees will be approved by the court only if they are reasonable.”); Walton v. Claybridge Homeowners Ass'n, Inc., 825 N.E.2d 818, 826 (Ind. Ct. App. 2005) (“Attorney fees awarded under a contract must be reasonable.”); Ales v. Anderson, Gabelmann, Lower & Whitlow, P.C., 728 N.W.2d 832, 842 (Iowa 2007) (“When a written contract allows for the recovery of attorney's fees, the award must be for reasonable attorney's fees.”); Hollenbach v. Holden, 728 So.2d 544, 551 (La. Ct. App. 1999) (“[I]mplied within the attorney's fee provision of the contract is that the amount of attorney's fees to be determined to be due either party will be reasonable.”); Yim K. Cheung v. Wing Ki Wu, 919 A.2d 619, 625 (Me. 2007) (“As a general rule, courts (continued...)”) (continued...)

of contract case, but that the trial court may consider whether the fees claimed to have been incurred are reasonable, and to reduce the fees claimed if appropriate.

While we recognize that our decision herein results in affirming the curtailment of the fees in this case, we emphasize that we render no opinion on whether the attorney fees

---

(...continued)

must enforce contract provisions that require the payment of attorney fees, so long as they are reasonable.”); Myers v. Kayhoe, 892 A.2d 520, 532 (Md. 2006) (“Even in the absence of a contract term limiting recovery to reasonable fees, trial courts are required to read such a term into the contract and examine the prevailing party’s fee request for reasonableness.”); Zeeland Farm Services, Inc. v. JBL Enterprises, Inc., 555 N.W.2d 733, 736 (Mich. Ct. App. 1996) (“[R]ecover is limited to reasonable attorney fees.”); State Bank of Cokato v. Ziehwein, 510 N.W.2d 268, 270 (Minn. Ct. App. 1994) (“Where loan documents authorize a lender to recover legal expenses associated with collection, however, Minnesota courts will enforce the provision as long as the fees are reasonable.”); Belfer v. Merling, 730 A.2d 434, 443 (N.J. Super. Ct. App. Div. 1999) (“[A]ny fee arrangement is subject to judicial review as to its reasonableness.”); Robison v. Katz, 610 P.2d 201, 209 (N.M. Ct. App. 1980) (“It is clearly within the equitable power of the court to consider and reduce excessive fees.”); SO/Bluestar, LLC v. Canarsie Hotel Corp., 825 N.Y.S.2d 80, 81 - 82 (N.Y. App. Div. 2006) (“While the plaintiff was entitled to attorneys’ fees pursuant to the Note, [a]n award of attorneys’ fees pursuant to such a contractual provision may only be enforced to the extent that the amount is reasonable and warranted for the services actually rendered.”) (internal quotations omitted); Northwoods Condominium Owners’ Ass’n v. Arnold, 770 N.E.2d 627, 630 - 631 (Ohio Ct. App. 2002) (“Under Ohio law, contractual provisions awarding attorney fees are enforceable and not void as against public policy so long as the fees awarded are fair, just, and reasonable as determined by the trial court upon full consideration of all the circumstances of the case.”); Benchmark Northwest, Inc. v. Sambhi, 83 P.3d 348, 349 (Or. Ct. App. 2004) (“The award is mandatory; the trial court has no discretion to deny it, although it does have discretion as to what amount is ‘reasonable.’”); South Carolina Elec. & Gas Co. v. Hartough, 654 S.E.2d 87, 91 (S.C. Ct. App. 2007) (“When an award of attorney’s fees is based upon a contract between the parties, the determination of the fees is left to the discretion of the trial court and will not be disturbed absent an abuse of discretion.”); Trayner v. Cushing, 688 P.2d 856, 858 (Utah 1984) (“Where the parties have agreed by contract to the payment of attorney fees, the court may award reasonable fees in accordance with the terms of the parties’ agreement.”); Dewey v. Wentland, 38 P.3d 402, 420 (Wyo. 2002) (“Even in the face of a valid contractual provision for attorney’s fees, we have clearly stated that a trial court has the discretion to exercise its equitable control to allow only such sum as is reasonable or the court may properly disallow attorney’s fees altogether on the basis that such recovery would be inequitable.”).

claimed were, in fact, reasonable, as that issue is not implicitly encompassed in the questioned granted for review. Instead, we hold only that the trial court had the authority to consider the reasonableness of the attorney fees claimed. Accordingly, we affirm the decisions of the Superior Court and the trial court.

Madame Justice Todd did not participate in the consideration or decision of this case.

Messrs. Justice Eakin and McCaffery join the opinion.

Mr. Justice Saylor files a concurring and dissenting opinion.

Mr. Chief Justice Castille files a dissenting opinion.