

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37**

AHLAM KHALIL,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
APPELLANT	:	
	:	
v.	:	
	:	
JASON DIEGIDIO, ANNE MARIE	:	
DIEGIDIO, STATE FARM FIRE AND	:	
CASUALTY CO., TRAVELERS	:	
PROPERTY AND CASUALTY CO.,	:	
TRAVELERS PROPERTY & CASUALTY	:	
COMPANY OF AMERICA AND	:	
TRAVELERS INDEMNITY COMPANY OF	:	
AMERICA	:	No. 1019 EDA 2013

Appeal from the Orders entered  
January 7, 2013, February 21, 2013, and March 15, 2013  
in the Court of Common Pleas of Philadelphia County  
Civil Division at No(s): May Term, 2008, No. 3145

BEFORE: FORD ELLIOTT, P.J.E., OTT, and STRASSBURGER,\* JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED APRIL 10, 2014**

Ahlam Khalil (Appellant) appeals from the March 15, 2013 order denying her motion to set aside or vacate stipulation for settlement and release. Appellant also purports to appeal from the January 7, 2013 order marking this case as settled, discontinued, and ended; and, from the February 21, 2013 order denying reconsideration of the same. For the following reasons, we quash the instant appeal.

Since 1997, Appellant has owned a condominium unit in the Pier 3 Condominium building (Pier 3) located in Philadelphia, Pennsylvania. On or

\* Retired Senior Judge assigned to the Superior Court

about May 25, 2007, Appellant's unit sustained damage caused by a water leak in an adjacent unit owned by Jason and Anne Marie Diegidio (collectively, the Diegidios). This appeal concerns the property damage litigation commenced by Appellant against the Diegidios, State Farm Fire and Casualty Company (State Farm), and Travelers Property Casualty Company of America (Travelers) (Property Damage Litigation).<sup>1</sup>

On July 16, 2008, Appellant filed a complaint sounding in negligence against the above-named defendants.<sup>2</sup> After three years and multiple motions on both sides, the Property Damage Litigation was set for trial on

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<sup>1</sup> The Diegidios' unit was insured under a condominium owners' policy issued by State Farm; the unit was also covered by policies issued to the Pier 3 Condominium Association by Travelers.

<sup>2</sup> In 2009, while the Property Damage Litigation was pending, Pier 3 filed a complaint against Appellant seeking repayment of outstanding condominium association fees incurred when Appellant was forced to leave her unit due to the water damage (the Pier 3 Litigation). Appellant filed a counterclaim against the Pier 3 Condominium Association related to the water damage to her unit. Appellant also filed a joinder complaint against the Diegidios, individually and as members of the Pier 3 Condominium Board, and Wentworth Property Management. Travelers, as the insurer of Pier 3 provided a defense for Pier 3 as the counterclaim defendant. Wentworth filed a motion for summary judgment, which was denied. However, prior to trial the Honorable Judge George Overton dismissed Appellant's claims against Pier 3 and Wentworth. On August 5, 2011, Judge Moss approved a stipulation by and between all parties which allowed Appellant to withdraw her claims, with prejudice, against the Diegidios in the Pier 3 Litigation. On July 10, 2012, a jury entered a verdict in favor of Pier 3 in the Pier 3 Litigation. Appellant filed post-trial motions, which were denied. Appellant appealed to the Commonwealth Court. ***Pier 3 Condominium Assoc. v. Khalil***, 15 CD 2013 (Pa. Cmwlth. 2013). The disposition of that appeal has been stayed pending the outcome of the instant appeal.

May 16, 2011. Prior to trial, on or about May 12, 2011, Appellant and Travelers reached a settlement agreement. The terms of the settlement provided, *inter alia*, that Appellant's claims against Travelers would be settled in the amount of \$17,500. Appellant, with counsel present, signed the settlement and release, which was then forwarded by electronic mail to counsel for Travelers. As a result, Travelers was excused from attending trial.

The Property Damage Litigation proceeded to trial before the Honorable Frederica Massiah-Jackson. During trial, Appellant agreed on the record to settle her remaining claims against the Diegidios and State Farm for \$50,000 and \$40,000, respectively. N.T., 5/20/2011, at 3-5. Appellant further agreed to release Jason Diegidio, individually and in his capacity as a condominium board member, from the Pier 3 Litigation and the Property Damage Litigation.<sup>3</sup> N.T., 9/30/2011, at 17. The matter was then marked "settled by the parties" by Judge Massiah-Jackson on May 26, 2011.

Appellant refused to accept any of the payments in the Property Damage Litigation. As a result, on September 30, 2011, Judge Massiah-Jackson held a hearing to review, clarify, and confirm the terms of the three settlement agreements. At the hearing, Appellant raised three objections to the proposed settlement agreements: (1) following the Property Damage

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<sup>3</sup> This intent also was memorialized in a stipulation before Judge Moss on August 5, 2011, whereby the parties agreed to release the Diegidios from the Pier 3 Litigation.

Litigation settlements Appellant determined that a large quantity of her personal property, which had been placed into storage with two separate third-party companies by State Farm, was missing and/or destroyed, a loss not envisioned at the time of the settlement and for which Appellant held State Farm accountable; (2) Appellant contended that she never agreed to release Jason Diegidio, either individually or in his capacity as a board member, from the Pier 3 Litigation; and (3) Appellant argued that the settlement with Travelers in the Property Damage Litigation would negatively impact her counterclaims in the then-pending Pier 3 Litigation.

On October 11, 2011, Judge Massiah-Jackson issued an order finding valid settlements as to all three defendants, and directed each defendant to deposit its respective settlement amount into a designated court account, pending a motion for release of funds. The record reflects that on November 14, 2011, the full settlement amount as to all defendants in the Property Damage Litigation, \$107,500, was placed in escrow with the Philadelphia County Court of Common Pleas.

Over a year later, on November 14, 2012, Appellant's counsel filed a motion to withdraw his appearance. On January 7, 2013, a hearing was held, following which the Honorable Sandra Mazer Moss granted the motion to withdraw and further ordered the case "settled, discontinued, and

ended".<sup>4</sup> Judge Moss informed Appellant that she had 30 days to file a motion for reconsideration of the January 7, 2013 order.

On February 6, 2013, Appellant, acting *pro se*, filed a motion for reconsideration of Judge Moss's January 7, 2013 order and a "Motion to Vacate and/or Set Aside Stipulation for Settlement and Release(s)" with Judge Massiah-Jackson.

On February 21, 2013, Judge Moss entered an order denying Appellant's motion for reconsideration. On March 15, 2013, Judge Massiah-Jackson entered an order denying Appellant's motion to vacate.

On March 19, 2013, Appellant filed a notice of appeal from Judge Moss's January 7, 2013 order marking the case settled, discontinued, and ended, Judge Moss's February 21, 2013 order denying her motion for reconsideration, and Judge Massiah-Jackson's March 15, 2013 order denying her motion to vacate. Appellant and the trial courts have complied with Pa.R.A.P. 1925.<sup>5</sup>

Appellant raises the following issues for our consideration.

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<sup>4</sup> During the hearing, Judge Moss questioned Appellant extensively regarding the finality of the settlements reached in the Property Damage Litigation. In particular, Judge Moss inquired whether Appellant had ever filed a motion to vacate the settlements or appealed Judge Massiah-Jackson's September 25, 2011 order listing the case as settled or the subsequent order, entered September 30, 2011, escrowing the funds. Appellant indicated that she had not. N.T., 1/7/2013.

<sup>5</sup> On May 8, 2013, this Court issued an order directing Appellant to show cause why the instant appeal should not be quashed as untimely. Appellant timely responded to that order.

1. Did Judge Massiah-Jackson err or otherwise abuse her discretion by denying [Appellant's] motion to vacate and/or set aside the supposed settlements and releases?
2. Did Judge Massiah-Jackson err or otherwise abuse her discretion in failing to hold an evidentiary hearing, as required by applicable Pennsylvania appellate court rulings, before issuing a ruling on [Appellant's] motion to vacate and/or set aside the supposed settlements and releases?
3. Did Judge Moss err or otherwise abuse her discretion by marking this case "settled, discontinued, and ended" following a hearing that was intended to be devoted solely to the motion of [Appellant's] former counsel seeking to withdraw from this case, because in advance of that hearing no party had pending any motion seeking the entry of an order marking this case "settled, discontinued, and ended"?
4. Did Judge Moss err or otherwise abuse her discretion in refusing to grant reconsideration of her order marking this case "settled, discontinued, and ended"?

Appellant's Brief at 5.

Before we may address any of the issues raised on appeal, we must consider whether this appeal is properly before this Court.

Pursuant to 42 Pa.C.S. § 742(a), this Court has jurisdiction over appeals from final orders. The rule provides, in pertinent part, "e[.]xcept as otherwise prescribed by this rule, the notice of appeal ... shall be filed within 30 days after the entry of the order from which the appeal is taken." With respect to Judge Moss's February 21, 2013 order denying Appellant's petition for reconsideration, we note that the denial of a motion for reconsideration is not generally subject to review, *see Cheatham v. Temple Univ. Hospital*,

743 A.2d 518 (Pa. Super. 1999).<sup>6</sup> Thus, we are without jurisdiction to consider those claims arising out of the February 21, 2013 order.

Appellant's appeal from Judge Moss's January 7, 2013 order marking the case settled, discontinued, and ended is patently untimely pursuant to Rule 903(a). Nonetheless, Appellant urges this Court to analogize the procedural posture of the instant case with that of ***Brannam v. Reedy***, 906 A.2d 635 (Pa. Cmwlth. 2006),<sup>7</sup> and find that her appeal was filed timely. Appellant's Brief at 15-18.

In ***Brannam***, the Commonwealth Court was asked to consider whether the trial court erred in failing to hold an evidentiary hearing on plaintiffs' motion to strike judgment. The case in ***Brannam*** was marked as settled on June 23, 2005. Three-and-a-half months later, the plaintiffs filed a motion to strike the order of settlement. The trial court denied that motion by order dated November 22, 2005. Plaintiffs untimely filed an

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<sup>6</sup> "There is only one way for the trial court to toll or stay the appeal statute and thus to 'retain control' once a petition for reconsideration has been filed. As stated in the Rules of Appellate Procedure, the 30-day period may only be tolled if that court enters an order "expressly granting" reconsideration within 30 days of the final order. Pa.R.A.P. 1701(b)(3)(i), (ii) and Note thereto[.]" ***Cheatham***, 743 A.2d at 520. This limited exception does not apply to the case at bar.

<sup>7</sup> We recognize that "a decision of the Commonwealth Court is not binding precedent upon this Court; however, it may be considered for its persuasive value." ***Holland ex rel. Holland v. Marcy***, 817 A.2d 1082, 1083 n.1 (Pa. Super. 2002) quoting ***Commonwealth v. Lewis***, 718 A.2d 1262, 1265 n.10 (Pa. Super. 1998).

motion for reconsideration on December 28, 2005, which was denied as moot. Also, on December 28, 2005, the plaintiffs filed a praecipe for the entry of judgment and a notice of appeal. Appellant argues that, although jurisdiction is not expressly addressed in the **Brannam** opinion, the Commonwealth Court apparently found that the appeal was timely because it was filed within 30 days of the entry of judgment. Thus, Appellant contends that, because there has been no final judgment entered in this matter, applying the procedural posture of **Brannam**, her appeal is "at most premature." Appellant's Brief at 15-17. We disagree.

We have held that "[m]arking a case settled, discontinued and ended has the same effect as the entry of judgment". **Kaiser v. 191 Presidential Corp.**, 454 A.2d 141, 144 (Pa. Super. 1982). The record reflects that the Property Damage Litigation was marked as settled first by Judge Massiah-Jackson on October 19, 2011, nearly two years before the appeal was taken, and again by Judge Moss on January 7, 2013, a full two months before Appellant's notice of appeal was filed. Even assuming, *arguendo*, that Judge Moss's January 7 order, and not the 2011 order of Judge Massiah-Jackson, had the same effect as the entry of judgment in this case, Appellant's March 19, 2013 notice of appeal is untimely.

Further, we reject Appellant's claim that her appeal from the January 7, 2013 order is timely due to fraud or a breakdown in the trial court's operation based on Judge Moss's statement to Appellant that she had 30



days to file a motion for reconsideration of the January 7, 2013 order. Appellant's Brief at 19-21. Appellant appears to argue that, because she was proceeding *pro se* following the withdrawal of her counsel, Judge Moss's statements mislead her to believe that a motion for reconsideration would toll the time to file an appeal, or that an appeal would not be necessary if a motion for reconsideration was filed. Contrary to Appellant's assertion, Judge Moss's comment was neither incorrect nor misleading. Indeed, it was entirely accurate. **See** 42 Pa.C.S. § 5505 ("Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.")

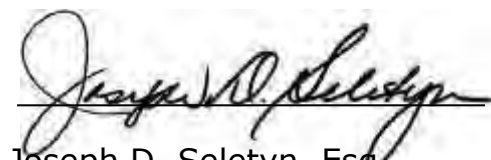
Moreover, "[t]he United States Supreme Court has explained: The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." **Jones v. Rudenstein**, 585 A.2d 520, 522 (Pa. Super. 1991) quoting **Farretta v. California**, 422 U.S. 806, 834 n. 46 (1975). Accordingly, for all of the foregoing reasons, we quash Appellant's claims with respect to Judge Moss' January 7, 2013 order. Pa.R.A.P. 903; Pa.R.A.P. 2101.

Finally, Appellant contends that, even if this Court rejects her arguments with respect to the timeliness of her appeal from Judge Moss's

orders, we still possess jurisdiction to consider her claims with respect to Judge Massiah-Jackson's March 15, 2013 order denying her motion to vacate. We disagree. After reviewing Appellant's motion, Judge Massiah-Jackson determined that the trial court "ha[d] no jurisdiction to vacate the 2011 settlement." Judge Massiah-Jackson's Opinion, 4/24/2013, at 5. The record indicates that Appellant raised with Judge Massiah-Jackson the issues which form the basis of her motion to vacate during the September 30, 2011 hearing regarding the validity of the underlying settlements. Judge Massiah-Jackson issued an order on October 19, 2011 denying Appellant relief and confirming the May 25, 2011 order listing the matter as settled. Pursuant to rule 903(a), Appellant should have filed an appeal of Judge Massiah-Jackson's order within 30 days. She failed to do so. Appellant cannot in 2013 attempt to revive claims that were previously litigated in 2011. Thus, we agree with Judge Massiah-Jackson: this matter is long over, and Appellant's attempt to effectuate an appeal of these issues at this late date is procedurally impermissible.

Appeal quashed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 4/10/2014