NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

BRIAN M. PURICELLI, Appellant v. RAYMOND CARNATION, MICHAEL MCKENNA & BETH MCKENNA, H/W, WILLIAM MCKENNA AND CYNTHIA MCKENNA, H/W AND CITY OF PHILADELPHIA AND ELEANOR EWING, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3193 EDA 2013

Appeal from the Order October 16, 2013
in the Court of Common Pleas of Philadelphia County
Civil Division at No.: December Term, 2011, No. 003620

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.: **FILED JUNE 24, 2014**

Appellant, attorney Brian M. Puricelli, appeals *pro se* from the trial court's order issuing a preliminary injunction in this legal fee dispute case. In relevant part, the court's order barred all parties from making further reference to Appellee, William McKenna's, personal medical condition to non-parties. We dismiss this appeal as moot.

We take the facts and procedural history pertinent to the instant appeal from the trial court's January 6, 2014 opinion and our independent review of the record. On December 29, 2011, Appellant filed a complaint

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* Retired Senior Judge assigned to the Superior Court.

seeking payment of attorney's fees allegedly due in connection with his successful representation of certain of the Appellees in a civil rights lawsuit brought against the Philadelphia Police Department. On August 15, 2013, Appellees, William and Cynthia McKenna, filed an answer to the complaint and included counterclaims alleging legal malpractice, breach of contract, and unjust enrichment. On October 3, 2013, Appellant filed preliminary objections to the counterclaims and a supporting memorandum of law. Appellant's memorandum of law included a footnote referencing a personal medical condition of Appellee, William McKenna. The trial court notes that Mr. McKenna's medical condition is wholly unrelated to the underlying fee dispute or Appellees' counterclaims. (***See*** Trial Court Opinion, 1/06/14, at 2).

On October 7, 2013, Appellee, William McKenna, filed an emergency motion objecting to Appellant's reference to his medical condition in the memorandum of law. By order entered October 16, 2013, the court directed: "No party to this action shall make further reference, written or verbal, to Mr. McKenna's medical condition to any person who is not a party to this case[.]" (Order, 10/16/13, at 1 ¶ 4). The order also: struck the reference to Mr. McKenna's health condition from Appellant's memorandum of law; directed Appellant to file an amended memorandum excluding the reference; ordered the prothonotary to place the original memorandum and emergency motion under seal; and directed that any documents filed by the parties containing reference to Mr. McKenna's health condition be filed under

seal "[f]rom this date forward[.]" (***Id.*** at 2 ¶ 5; ***see id.*** at 1-2). The court did not hold a hearing on the issue of the injunction before or subsequent to entering its order. On November 7, 2013, Appellant timely filed this appeal.[1]

Appellant raises the following issues challenging the injunction for our review:

> [1.] Whether the process used to issue the injunction that enjoins Appellant from speaking to other persons and filing documents in other courts afforded the Appellant valid and proper due process, such as notice and an opportunity to reply (denied due process)?
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> [2.] Whether the trial court complied with rule of court and law when it granted *ex parte* the injunction that reads the restraints apply forever "from this date forward" to any litigation Appellant is involved with [Appellees] in any court?

(Appellant's Brief, at 2).[2]

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[1] Pursuant to the trial court's order, Appellant timely filed a Rule 1925(b) statement of errors on November 27, 2013. ***See*** Pa.R.A.P. 1925(b). The trial court filed a Rule 1925(a) opinion on January 6, 2014. ***See*** Pa.R.A.P. 1925(a).

We note that, with exceptions not relevant here, a trial court order granting a preliminary injunction is an appealable order. ***See*** Pa.R.A.P. 311(a)(4); ***see also Weis Mkts., Inc. v. United Food & Commercial Workers Union***, 632 A.2d 890, 895 (Pa. Super. 1993). Appellate courts generally review an order granting a preliminary injunction for an abuse of discretion. ***See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.***, 828 A.2d 995, 1000 (Pa. 2003).

[2] Although Appellant raises two issues in his statement of the questions involved, he divides his argument into four sections in which he combines and blends his discussion of the issues, in violation of Pennsylvania Rule of Appellate Procedure 2119(a). ***See*** Pa.R.A.P. 2119(a) (requiring argument

(Footnote Continued Next Page)

Preliminarily, we must determine if we can review these claims. On appeal, Appellant challenges the injunctive portion of the trial court's order, which prohibited all parties from communicating about Mr. McKenna's health condition to non-parties. (***See*** Appellant's Brief, at 4-14; ***see also*** Rule 1925(b) Statement, 11/27/13, at 1 ¶ 1). He argues that this Court should determine that the injunction is invalid, because "it was never established that the footnote comment [regarding Mr. McKenna's health condition] was not speech permitted by law." (Appellant's Brief, at 9; ***see id.*** at 10). Appellant asserts that the trial court denied him due process because it did not provide him with notice, a hearing, or opportunity to develop a record before issuing the injunction, and that reference to Mr. McKenna's health condition was permissible under the circumstances of this case. (***See id.*** at 8-10). The trial court and Appellee William McKenna, however, maintain that, because the court did not hold a hearing within five days of entering the order pursuant to Pennsylvania Rule of Civil Procedure 1531(d), the injunction is no longer in effect, and this appeal is moot. ***See*** Pa.R.C.P. 1531(d); (***see also*** Trial Ct. Op., at 3-5; Appellee William McKenna's Brief, at 3-6). We agree with the trial court and Appellee.

(Footnote Continued) ———————————

section of party's brief to "be divided into as many parts as there are questions to be argued"); (***see also*** Appellant's Brief, at 2, 4-14).

It is well-settled that "courts in our Commonwealth do not render decisions in the abstract or offer purely advisory opinions[.]" ***Pittsburgh Palisades Park, LLC v. Commonwealth***, 888 A.2d 655, 659 (Pa. 2005) (citation omitted). Appellate courts generally will not review moot claims. ***See*** Pa.R.A.P. 1972(a)(4); ***see also Johnson v. Martofel***, 797 A.2d 943, 946 (Pa. Super. 2002), *appeal denied*, 813 A.2d 842 (Pa. 2002) ("The appellate courts of this Commonwealth will not decide moot or abstract questions except in **rare** instances[.])" (emphasis added) (citation omitted).

> Our courts cannot decide moot or abstract questions, nor can we enter a judgment or decree to which effect cannot be given.
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> > As a general rule, an actual case or controversy must exist at all stages of the judicial process, or a case will be dismissed as moot. An issue can become moot during the pendency of an appeal due to an intervening change in the facts of the case or due to an intervening change in the applicable law. In that case, an opinion of this Court is rendered advisory in nature. An issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any legal force or effect.
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> > This Court will decide questions that otherwise have been rendered moot when one or more of the following exceptions to the mootness doctrine apply: 1) the case involves a question of great public importance, 2) the question presented is capable of repetition and apt to elude appellate review, or 3) a party to the controversy will suffer some detriment due to the decision of the trial court.

Orfield v. Weindel, 52 A.3d 275, 277-78 (Pa. Super. 2012) (citations and quotation marks omitted).

Pennsylvania Rule of Civil Procedure 1531 permits a court to issue a preliminary injunction without written notice to the adverse party or a hearing under certain circumstances and states, in pertinent part, as follows:

> **Rule 1531. Special Relief. Injunctions**
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> (a) A court shall issue a preliminary or special injunction only after written notice and hearing unless it appears to the satisfaction of the court that immediate and irreparable injury will be sustained before notice can be given or a hearing held, in which case the court may issue a preliminary or special injunction without a hearing or without notice. In determining whether a preliminary or special injunction should be granted and whether notice or a hearing should be required, the court may act on the basis of the averments of the pleadings or petition and may consider affidavits of parties or third persons or any other proof which the court may require.
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> (d) An injunction granted without notice to the defendant **shall be deemed dissolved unless a hearing on the continuance of the injunction is held within five days after the granting of the injunction** or within such other time as the parties may agree or as the court upon cause shown shall direct.

Pa.R.C.P. 1531(a), (d) (emphasis added).

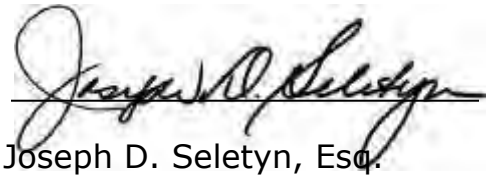
Here, without notice or a hearing, the trial court entered its order issuing an injunction prohibiting all parties from communicating to non-parties about Mr. McKenna's medical condition. (***See*** Order, 10/16/13, at 1). However, following entry of the order, the court did not hold a hearing on the matter in accordance with Rule 1531(d). (***See*** Trial Ct. Op., at 4). Therefore, the portion of the court's order granting injunctive relief was dissolved by operation of law. ***See*** Pa.R.C.P. 1531(d). Because the

challenged portion of the court's order is no longer in effect, the issue is moot, and this Court cannot "render decisions in the abstract or offer purely advisory opinions." ***Pittsburgh Palisades Park, LLC***, ***supra*** at 659.

Furthermore, we agree with the trial court that this issue does not fall within one of the limited exceptions to the general rule that moot claims are unreviewable. ***See Orfield***, ***supra*** at 278; ***Johnson***, ***supra*** at 946; (***see also*** Trial Ct. Op., at 5). The trial court's order addressed the narrow issue of protecting Mr. McKenna's privacy concerning his personal health condition, a matter wholly unrelated to the underlying litigation. The court in effect struck the injunctive portion of its order by declining to hold a hearing, and the remainder operates merely as a seal order to protect Mr. McKenna's privacy.

Appeal dismissed as moot.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/24/2014