

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN RE: ESTATE OF FREDDY TODD  
LOUCKS

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: MONICA MILLER

Appellant

No. 451 MDA 2013

Appeal from the Order Entered February 6, 2013  
In the Court of Common Pleas of Tioga County  
Orphans' Court at No(s): 17 O.C. 2010

BEFORE: PANELLA, J., MUNDY, J., and MUSMANNO, J.

MEMORANDUM BY MUNDY, J.:

**FILED NOVEMBER 06, 2013**

Appellant, Monica Miller, appeals from the February 6, 2013 order finding her in civil contempt and sentencing her to six months' incarceration unless she returned to Appellee, Cameron Loucks, all of the remaining ashes of the Decedent, Freddy Todd Loucks, and ordering her to pay \$8,932.69 in fees and costs to Appellee. After careful review, we affirm.

The orphans' court summarized the relevant facts and procedural background of this case as follows.

The [orphans'] court has heard previous petitions in this case dating back to 2010 on issues related to the administration of the estate and distribution of assets between Decedent's paramour, [Appellant] and his son/administrator [Appellee]. One of the orders entered in this case directed that the ashes of the Decedent be divided equally between [Appellee] and [Appellant]. [Appellant]

appealed that order to [this] Court and a [p]etition for [s]upersedeas was granted by [the orphans' court] on December 2, 2010. The supersedeas was granted on the condition that the Decedent's ashes, which were in the custody of [Appellant], be turned over to the Tioga County Sheriff pending disposition of the appeal.

[This] Court issued a [m]emorandum [o]pinion affirming in part, and vacating in part, the [orphans' court's o]rder on September 12, 2011. The portion of the [o]rder [which] directed that the Decedent's ashes be divided equally between [Appellee] and [Appellant] was affirmed. After issuance of [this] Court's decision, the Tioga County Sheriff delivered the ashes to Jacquelyn A. Buckheit Funeral Chapel, Crematory and Monuments, PC for the purposes of equally dividing the ashes in order to effectuate th[e orphans'] court's order. Jacquelyn Buckheit divided the ashes in two equal portions, and they were returned to the Tioga County Sheriff for distribution to [Appellant] and [Appellee].

While she had possession of the ashes, Buckheit contacted [Appellee] and indicated that she had concerns as to whether the ashes were indeed cremated human remains. Buckheit was the individual who performed the actual cremation and she stated that the ashes presented to her did not appear to be actual cremated human remains. Buckheit divided the ashes equally as requested, placing half of the ashes into a separate container.

After receiving this information from Buckheit, [Appellee] sent his half of the ashes to Dr. Steven A. Symes at Mercyhurst University for analysis. Dr. Symes' in[-]depth analysis determined beyond a doubt that the ashes were not cremated human remains. Upon receiving those results, [Appellee] filed a [p]etition for [c]ontempt asking the [orphans'] court to hold [Appellant] in contempt of the December 2, 2010 order, to provide him with any and all cremated remains of the [D]ecedent and to reimburse him for costs associated with the filing

of the contempt petition. [Appellee] also requested that [Appellant] be ordered to a period of incarceration as deemed appropriate by the [orphans'] court. [A h]earing on the contempt petition was held on February 6, 2013, following which the [orphans'] court found [Appellant] in contempt and committed her to the Tioga County Prison for a period not to exceed six (6) months. [Appellant] was directed to return all of the remaining cremated ashes of the [D]ecedent to [Appellee] and to reimburse [Appellee] for legal fees and expenses associated with the contempt petition. The [orphans'] court suspended incarceration of [Appellant] for a period of thirty (30) days to allow compliance with the order.

Orphans' Court Opinion, 5/2/13, at 1-2. On March 5, 2013, Appellant filed a timely notice of appeal.<sup>1</sup>

On appeal, Appellant raises two issues for our review.

1. Did the [orphans' c]ourt abuse its discretion by finding Appellant in contempt of court for willfully disregarding a court order?
2. Did the [orphans' c]ourt abuse its discretion by imposing a sentence of incarceration on Appellant?

Appellant's Brief at 5.

We begin by noting our well-settled standard of review.

When we review a trial court's finding of contempt, "we are limited to determining whether the trial court committed a clear abuse of discretion. This Court must place great reliance on the sound discretion of the trial judge when reviewing an order

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<sup>1</sup> Appellant and the orphans' court have timely complied with Pa.R.A.P. 1925.

of contempt.” ***P.H.D. v. R.R.D.***, 56 A.3d 702[, 706] (Pa. Super. 2012) (citation omitted). This [C]ourt also has stated that “each court is the exclusive judge of contempts against its process.” ***Royal Bank of Pennsylvania v. Selig***, [] 644 A.2d 741, 747 ([Pa. Super.] 1994).

***G.A. v. D.L.***, 72 A.3d 264, 269 (Pa. Super. 2013).

In her first issue, Appellant avers that the orphans’ court abused its discretion because the evidence showed that “[Appellant] lacked exclusive possession of the cremains.” Appellant’s Brief at 8. As a result, Appellant concludes that “[Appellee] failed to prove that [Appellant] intentionally replaced the cremains of the Decedent with non-human ashes.” ***Id.*** at 10.

At the contempt hearing, Appellee testified that after he picked up the urn containing Decedent’s ashes from Buckheit following the cremation, he drove to the property Decedent shared with Appellant. N.T., 2/6/13, at 25. Appellant and Appellee walked to a place in the woods on the property where they agreed the urn would be buried, adjacent to a bench. ***Id.*** at 26, 37. Appellee dug a hole about two feet deep due to the soil’s rocky condition. ***Id.*** at 26. Appellee buried the urn, placed the rocks back on top with some soil on the very top. ***Id.*** at 27. After doing so, Appellee left the property. ***Id.*** Appellant subsequently sent Appellee a letter informing him that he was no longer allowed on Appellant’s property and would be arrested for trespassing if he came onto the property. ***Id.*** at 29. Appellee never returned to the spot where he had buried his father. ***Id.*** at 29, 59.

Appellant testified that four individuals including, the Decedent's sister, the Decedent's sister's boyfriend, Chief Merle Garrison of the Mansfield Police Department, and Constable Mike Blair were present when the urn was exhumed. **Id.** at 46. The Decedent's sister's boyfriend physically dug up the urn. **Id.** at 47. After the urn was retrieved, he placed the urn in a cardboard box and Appellant placed it in Chief Garrison's truck. **Id.** at 48-49. Chief Garrison drove his truck to his home, and Appellant followed him in her vehicle. **Id.** at 49. Once at Chief Garrison's home, he took the box containing the ashes out of his truck and placed it in Appellant's truck. **Id.** Once at the courthouse, Chief Garrison took the box to the sheriff. **Id.** at 49-50.

Chief Garrison testified that the top of the bench had to be removed in order to dig up the urn. **Id.** at 63. He also noted that the bench was frozen and actually broke when they tried to move it. **Id.** Chief Garrison also noted that they had to remove rock prior to using a shovel and a pick to dig up the urn. **Id.**

In ruling on the petition, the orphans' court concluded as follows.

[Appellee] in his testimony made no mention of having to disassemble a bench in order to dig a hole for the urn. It was clear from his testimony that the urn was buried beside the bench and not underneath it as was testified to by [Appellant]. When [Appellant] went to disinter the ashes as directed by the [orphans'] court, she took four individuals with her to provide witness to her actions. [Chief] Garrison accompanied [Appellant] that day and testified at the contempt hearing that the bench

had to be removed to dig up the ashes and that it broke apart during the attempt. He also testified that the ground was frozen in October and that a shovel and pick were used to dig up the urn. This description of the actual burial site differs from the description given by [Appellee] in that the ground consisted of mainly rocks and not soil and that he covered the urn with stone and a small amount of soil. This variance in the description of the actual burial hole and location would indicate to the [orphans'] court that at some point after the original burial the urn had been removed from its resting place, that the ashes had been removed and replaced with the non-human remains and then re-buried. A little over a year's time had elapsed between [the] original burial and exhumation.

Orphans' Court Opinion, 5/2/13, at 4.

After careful review of the record, we conclude the orphans' court did not commit a clear abuse of discretion. Appellee testified that he dug the two-foot hole to bury the Decedent's ashes adjacent to the wooden bench. N.T., 2/6/13, at 37. Appellee further noted that the soil was rocky and he placed rocks and then soil on top of the urn after placing it in the ground. **Id.** at 27. By contrast, Appellant testified that the ashes were buried completely underneath the bench. **Id.** at 41. Chief Garrison testified that the burial site when he witnessed the exhumation contained mostly rocks and that the site was located under the bench. **Id.** at 63.

Ultimately, the resolution of this case came down to an issue of credibility. The orphans' court explicitly found Appellee's testimony to be credible and Appellant's to be not credible. Orphans' Court Opinion, 5/2/13, at 3, 4. "[T]his Court defers to the credibility determinations of the

[orphans'] court with regard to the witnesses who appeared before it, as that court has had the opportunity to observe their demeanor." **Habjan v. Habjan**, --- A.3d ---, 2013 WL 3832679, \*12 (Pa. Super. 2013) (citation omitted). "Additionally, where credibility and the weight to be accorded the evidence are at issue, this Court will not substitute its judgment for that of the fact-finder." **Exec. Risk Indem., Inc. v. Cigna Corp.**, --- A.3d ---, 2013 WL 3756763, \*2 (Pa. Super. 2013) (citation omitted). Based on these considerations, Appellant's first argument on appeal fails.

In her second issue, Appellant avers that the orphans' court abused its discretion by imposing a sentence of incarceration on Appellant. Appellant's Brief at 10. Prior to addressing this claim, we must first determine whether Appellant has complied with Pennsylvania Rule of Appellate Procedure 1925(b) to preserve this claim for our review. Our Supreme Court has recently held that "Rule 1925(b) sets out a simple bright-line rule, which obligates an appellant to file and serve a Rule 1925(b) statement, when so ordered[.]" **Commonwealth v. Hill**, 16 A.3d 484, 494 (Pa. 2011).<sup>2</sup> Rule 1925(b) by its text requires that statements "identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all

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<sup>2</sup> We note "[s]ince the Rules of Appellate Procedure apply to criminal and civil cases alike, the principles enunciated in criminal cases construing those rules are equally applicable in civil cases." **Lineberger v. Wyeth**, 894 A.2d 141, 148, n.4 (Pa. Super. 2006), citing **Kanter v. Epstein**, 866 A.2d 394, 400 n.6 (Pa. Super. 2004), appeal denied, 880 A.2d 1239 (Pa. 2005).

pertinent issues for the judge.” Pa.R.A.P. 1925(b)(4)(ii). The Rule also requires that “[e]ach error identified in the Statement will be deemed to include every subsidiary issue contained therein which was raised in the trial court ....” **Id.** at 1925(b)(4)(v). Finally, any issues not raised in accordance with Rule 1925(b)(4) will be deemed waived. **Id.** at 1925(b)(4)(vii).

In the case *sub judice*, Appellant timely filed her Rule 1925(b) statement. Therein, she only raised the following issue.

1. The [orphans’ c]ourt erred in finding that Appellant acted willfully and contemptuously by failing to return one-half of the cremains of [the Decedent] to Appellee and instead fraudulently provided non-human ash to Appellee, when the record reflects that Appellant lacked exclusive possession of said cremains.

Appellant’s Statement of Matters Complained of on Appeal, 3/22/13, at ¶ 1. Appellant did not raise a separate issue regarding the orphans’ court’s decision to impose incarceration on Appellant. As a result, we deem Appellant’s second issue waived for failure to include it in her Rule 1925(b) statement. **See Hill, supra**; Pa.R.A.P. 1925(b)(4)(vii).

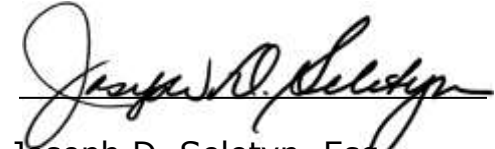
Based on the foregoing, we conclude the orphans’ court did not commit a clear abuse of discretion when it found Appellant in contempt of its previous order. **See G.A., supra**. Accordingly, the orphans’ court’s February 6, 2013 order is affirmed.

Order affirmed.



J-S57019-13

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: 11/6/2013