NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

JOAN CASTILLO	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
DANIEL TOMASSETTI	:	
Appellant	:	No. 266 WDA 2026

Appeal from the Order Entered February 3, 2026
In the Court of Common Pleas of Allegheny County Family Court at
No(s): FD-20-007237-005

BEFORE: KING, J., NEUMAN, J., and BENDER, P.J.E.

MEMORANDUM BY NEUMAN, J.: **FILED: NOVEMBER 25, 2026**

Daniel Tomassetti ("Appellant") appeals *pro se* from the order entered on February 3, 2026, in the Court of Common Pleas of Allegheny County Family Court, which granted Joan Castillo's ("Appellee") petition to enforce the parties' marital settlement agreement ("MSA"). After careful review, we vacate the order and remand with instructions.

We glean the following relevant facts and procedural history from the record. Appellant and Appellee married on June 6, 2015, and divorced five years later, on December 11, 2020. During the divorce proceedings, the parties entered into the MSA, which was incorporated but not merged into the divorce decree.[1] The relevant alimony portion of the MSA provides:

ARTICLE V - ALIMONY

[1] Appellant proceeded *pro se* throughout the divorce proceedings.

[Appellant] and [Appellee] agree and recognize that during the course of their marriage, [Appellee] paid off all of [Appellant's] pre-marital debt with her pre-marital assets, totaling approximately $323,000. To equitably reimburse [Appellee] for her contributions to the marriage, [Appellant] agrees to pay alimony to [Appellee] as follows:

1. [Appellant] shall pay to [Appellee] non-modifiable alimony in the amount of $1,800 per month for a period of five (5) years … (60[] months[)] effective June 1, 2020[,] until June 30, 2025 (the "Alimony Obligation"), subject to the provision of Article V herein.

2. From June 1, 2020[,] through the date of the decree, the Alimony Obligation shall be paid by [Appellant] as $1,400 per month direct deposited into Wife's checking account, plus the cost of [Appellee's] health insurance coverage through [Appellant's] employer, so long as [Appellant] is eligible for coverage.

3. From the date of the decree, onward, the Alimony Obligation shall be paid by direct deposit into [Appellee's] checking account from [Appellant's] paycheck in the full amount of $1,800 per month. In the alternative, only if that method is unavailable, the Alimony Obligation shall be paid by check mailed to [Appellee]…. If being paid by check, [Appellant] may pay the entire $1,800 by the 5th of the month or in two installment payments of $900 each to be received by [Appellee] on the 5th and 20th of every month.

4. The parties agree that [Appellant] has a 40% ownership interest in his former marital residence located [in] St. Clairsville, Ohio[] … ("Ohio Property"), pursuant to his Property Settlement Agreement with Jill Tomassetti. If Jill Tomassetti should sell the Ohio Property prior to June 30, 2025, [Appellee] shall receive half of the proceeds [Appellant] receives from the sale (20% of the total proceeds). If Jill Tomassetti does not sell the Ohio Property prior to June 30, 2025, [Appellant] shall pay [Appellee] an additional $1,800 per month for an additional six (6) months, totaling an additional … $10,800[] and ending December 31, 2025 ("Additional Alimony Obligation"). If the Ohio Property is not sold by June 30, 2025, the payment of the Additional Alimony Obligation will end [Appellant's] financial obligation to [Appellee] and [Appellee] will not receive any proceeds for the sale of the Ohio Property after that time.

> 5. If [Appellant] ever becomes unemployed, non-voluntarily, [Appellant] shall pause the Alimony Obligation or Additional Alimony Obligation (collectively "Alimony Obligations") for a period not to exceed one (1) year.
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> 6. The Alimony Obligation shall terminate in the event of [Appellee's] death or remarriage, or [Appellee's] securing employment of more than $75,000 per year.

MSA, 6/3/20, at 5-6. Additionally, the MSA provides:

> **ARTICLE VIX – COUNSEL FEES AND EXPENSES**
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> The parties agree … [Appellee] shall be solely responsible for her own counsel fees.
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> ***
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> **ARTICLE XIII – DEFAULT**
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> If either party defaults in the due performance of any of the terms, conditions[,] and covenants of this Agreement on his or her part to be performed, the non-defaulting party shall have the right to sue for specific performance or damages for the breach of this Agreement, and the defaulting party shall reimburse the non-defaulting party for the reasonable legal fees and related costs incurred incident to all services rendered by the non-defaulting party's attorney in any action or proceeding to compel the defaulting party's due performance hereunder.

Id. at 7, 9.

On January 10, 2022, the parties agreed to an amendment of the MSA ("First Amended MSA"), which provides in relevant part:

> 1. The parties recognize that [Appellant] owed alimony to [Appellee] in the amount of $1,800 per month … for a period of 60 months.
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> 2. [Appellant] has paid $24,800 thus far and therefore his remaining obligation is $83,200.
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> 3. The parties agree that instead of $1,800 per month, the payment shall be reduced to $600 per month until the remaining balance is satisfied in full. In the event, however, [Appellant] resumes full[-]time employment, the obligation

shall resume to be due and payable at the rate of $1,800 per month until the full balance is satisfied.

4. This alimony will not terminate upon [Appellee's] remarriage or cohabitation.

5. Said amount shall be increased by $2,000 to cover legal fees and expenses incurred by [Appellee] as a result of [Appellant's] failure to comply with the [MSA].

First Amended MSA, 1/10/22, at 1.

On January 9, 2023, the parties executed a second amendment of the MSA ("Second Amended MSA"), which reduced Appellant's Alimony Obligation to $350 per month, "with the first monthly payment due on or before February 20, 2023." Second Amended MSA, 1/9/23, at ¶ 1; ***see also id.*** at ¶ 2 ("[Appellee's] income is no longer capped, meaning … [Appellee's] income level shall not affect or terminate [Appellant's] remaining alimony obligations."). The parties further acknowledged that the Second Amended MSA does not reduce the remaining alimony owed by Appellant to Appellee. ***Id.*** at ¶ 3.

On March 5, 2025, Appellee filed a Petition to Enforce Marital Settlement Agreement ("Petition"). Therein, she averred Appellant is in breach of the MSA due to his failure to make payments in accordance with the terms of the agreement. Petition, 3/5/25, at ¶¶ 23-24. More specifically, Appellee alleged she has only received a total of $22,604 from Appellant since the execution of the MSA,[2] and $96,196 remained due on Appellant's Alimony Obligation. ***Id.***

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[2] Appellee claimed she received the following amounts from Appellant, totaling $22,604: $9,100 in 2020; $9,104 in 2021; $3,000 in 2022; and $1,400 in
(Footnote Continued Next Page)

at ¶¶ 16, 19.[3] Appellee claimed that, despite her agreeing on two separate occasions to permit Appellant to make lower monthly payments, she has not received a payment from Appellant since July 2023. ***Id.*** at ¶¶ 18, 25. As such, Appellee requested the trial court enter an order directing Appellant to make the necessary payments to satisfy the outstanding balance or, alternatively, provide Appellee with a list of his assets, income, properties, and/or business ownership interests. ***Id.*** at ¶¶ 26-27. Additionally, Appellee sought recovery of attorney's fees and costs resulting from Appellant's defaulting on the MSA. ***Id.*** at ¶¶ 20-21, 28.

An evidentiary hearing was held on September 4, 2025, during which Appellee testified regarding the payments she received from Appellant pursuant to the MSA as amended. ***See*** N.T. at 11-18; ***see also*** Appellee's Exhibit 4 (providing copies of checks received from Appellant, as well as bank

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2023. Petition at ¶¶ 12-15; N.T., 9/4/25, at 11-13, 15, 17; ***but see*** First Amended MSA at ¶ 2 ("[Appellant] has paid $24,800 thus far…."); N.T. at 32 (Appellee's acknowledging the parties agreed, at the time of executing the First Amended MSA, Appellant had paid Appellee a total of $24,800).

[3] Presumably, the amount Appellee claimed to be due on Appellant's Alimony Obligation ($96,196) represents the original Alimony Obligation of $108,000, plus the Additional Alimony Obligation of $10,800 owed to Appellee if the Ohio Property is not sold by June 30, 2025, less the total of payments purportedly received by Appellee ($22,604); ***but see*** First Amended MSA at ¶ 2 ("[Appellant] has paid $24,800 thus far and therefore his remaining [Alimony O]bligation is $83,200."); ***id.*** at ¶ 5 ("Said amount shall be increased by $2,000 to cover legal fees and expenses incurred by [Appellee] as a result of [Appellant's] failure to comply with the agreement."); N.T. at 8-9 (Appellee's explaining Appellant also owed her the Additional Alimony Obligation of $10,800, because the Ohio Property was not sold prior to June 30, 2025).

statements reflecting direct deposits made to Appellee from Appellant's paychecks). Appellee admitted that pursuant to the First Amended MSA, the parties agreed Appellant owed $83,200 on his original Alimony Obligation and said amount would be increased by $2,000 to cover "attorney's fees up to that point[.]" ***Id.*** at 13-14; ***see also id.*** at 16 (Appellee's acknowledging, in accordance with the First Amended MSA, the total balance due on Appellant's Alimony Obligation was $85,200). Appellee further conveyed Appellant subsequently "paid $3,000 in 2022[,]" ***id.*** at 15, and $1,400 in 2023, ***id.*** at 17.[4] Thus, she agreed the remaining balance of Appellant's Alimony Obligation at the end of 2023 was $80,800 ($85,200 less payments totaling $4,400, which Appellee received in 2022 and 2023). ***Id.*** at 17-18. In addition, Appellee believed Appellant owed her $10,800 for the Ohio Property which had not yet been sold, plus attorney's fees and costs incurred as a result of Appellant's defaulting on payments. ***Id.*** at 18-20; ***see also id.*** at 53 (Appellant's relaying that to the best of his knowledge, Jill Tomassetti "currently … has no plans to sell" the Ohio Property).

Regarding attorney's fees and costs, Appellee explained that before she retained her current counsel, she was represented by "Attorney [Christine] Gale from Frank, Gale, [Bails &] Pocrass[, P.C.,]" in connection with this matter. ***Id.*** at 20-21. The parties agreed Appellant would pay $2,000 for the attorney's fees and costs incurred by Appellee through January 10, 2022, in

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[4] Appellant did not produce any evidence of additional payments.

connection with enforcement of the MSA. ***See id.*** at 22; First Amended MSA at ¶ 5. Appellee testified that after January 10, 2022, she incurred "approximately $5,000" in additional attorney's fees through Attorney Gale. N.T. at 22; ***see also*** Appellee's Exhibit 5 (containing invoices Appellee received from Frank, Gale, Bails & Pocrass, P.C.). She then produced invoices from the law firm currently representing her, Very Law, as evidence of further attorney's fees and costs incurred in connection with this matter. ***See*** Appellee's Exhibit 6 (consisting of invoices Appellee received from Very Law pertaining to their representation of her in this case); ***see also*** Appellee's Exhibit 7 (reflecting Appellee signed an engagement letter with Very Law on January 23, 2025); N.T. at 46-48 (Appellee's counsel's testifying Very Law's fees and costs for representing Appellee in this matter up until, but not including, the September 4, 2025 evidentiary hearing totaled $29,716.37); Appellee's Exhibit 8 (detailing the billing entries made by Very Law on Appellee's account).

Appellant testified he was unable to work for an unspecified period of time due to his corneal disease, which had progressed, and that is why he was unable to pay Appellee. N.T. at 55. He then alluded to the provision in the MSA which provides Appellant can pause his alimony payments for up to one year if he is "unable to work[,]" but did not indicate if or when he invoked this provision, and if so, for how long. ***Id.*** at 56; ***see also id.*** (the trial court's clarifying the relevant provision states Appellant shall pause his Alimony Obligation for a period not to exceed one year, if he "ever become[s]

unemployed non-voluntarily"); ***id.*** at 57-58 (Appellant's informing the trial court he returned to work part-time on May 26, 2025). Appellant expressed doubt regarding Appellee's averment that he had not made a single payment since July 2023, yet he was unable to provide any documentation to dispute the allegation. ***Id.*** at 60-61.

Following the evidentiary hearing, the parties were given an opportunity to brief their positions. In Appellee's brief, she asked the trial court — for the first time — to, *inter alia*, rescind the MSA and enter a judgment in her favor in the amount of $150,840, which would consist of the following: (1) the unpaid balance of the Alimony Obligation in the amount of $80,800, plus the Additional Alimony Obligation in the amount of $10,800; (2) Appellee's attorney's fees and costs incurred from January 10, 2022 until September 4, 2025, totaling $35,000; and (3) interest on the unpaid balance of the Alimony Obligation at a rate of 6% per annum, totaling $24,240. Appellee's Brief in Support of Petition, 10/3/25, at 4 (unpaginated); ***see also id.*** at 5-6 (arguing Appellee is entitled under principles of contract law and the Divorce Code[5] to rescind the MSA and be awarded restitution); ***id.*** at 6 ("[Appellee] is seeking a judgment in her favor, rescinding the [MSA] and awarding her restitution, to put her in the position she would have been [in] had she never agreed to it."). Appellant filed a reply brief, in which he argued the trial court is not permitted to accelerate the debt, as the MSA does not contain an acceleration

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[5] ***See*** 23 Pa.C.S. §§ 3101-3904.

clause. Appellant's Reply Brief, 10/15/25, at 1 (unpaginated); ***see also id.*** (stating "it is not the province of the court to alter or re-write a contract) (citation omitted).[6]

On January 29, 2026, the trial court issued an order finding Appellant in breach of the MSA and responsible for an outstanding balance of $91,600, plus $29,716.37 in attorney's fees and costs. ***See*** Order, 2/3/26, at 1 (single page) (directing Appellant to pay the total of $121,316.37 to Appellee within 90 days).[7, 8] On February 18, 2026, Appellant filed a timely *pro se* notice of appeal,[9] followed by a timely, court-ordered Pa.R.A.P. 1925(b) concise

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[6] The certified record contains only the first page of Appellant's reply brief. We remind Appellant it is the responsibility of an appellant "to make sure … the record forwarded to an appellate court contains those documents necessary to allow a complete and judicious assessment of the issues raised on appeal." ***Layton-Herron v. Litke***, 352 A.3d 510, 515 n.1 (Pa. Super. 2026) (citation omitted).

[7] The order was entered on the docket on January 29, 2026. However, the docket indicates Pa.R.Civ.P. 236 notice of said order was not sent to the parties until February 3, 2026; thus, we consider the order entered on February 3, 2026. ***See*** Pa.R.A.P. 108(b) (explaining the "date of entry of an order … shall be the day on which the clerk makes the notation in the docket that written notice of entry of the order has been given as required by [Rule] 236(b)"); ***see also*** Pa.R.Civ.P. 236(a)(2) (requiring the prothonotary to provide notice of the entry of an order to each party).

[8] Upon Appellee's filing of a praecipe, judgment was entered on February 4, 2026, in favor of Appellee and against Appellant in the amount of $121,316.37.

[9] Appellant properly filed his appeal from the February 3, 2026 order granting Appellee's Petition to Enforce the MSA. ***See Whittaker v. Lu***, 323 A.3d 871, 875 (Pa. Super. 2024) ("[A]n order granting enforcement of a settlement

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statement of matters complained of on appeal. The trial court filed its Rule 1925(a) opinion on May 12, 2026.

On appeal, Appellant presents the following issues for our review:

> 1. Did the trial court error [*sic*] as a matter of law by awarding [Appellee] the future debt balance of $91,600 rather than the sum of missed monthly installment payments, particularly where the parties[']contract did not include an acceleration clause?
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> 2. Did the t[r]ial court abuse its discretion generally by awarding a broad brush of over $29,000 in attorney['s] fees without explaining which fees reasonably related to the [Petition] and specifically by including fees for claims, such as acceleration[,]on which [Appellee] did not prevail?[10]

Appellant's Brief at 5 (unpaginated).

Initially, we recognize:

> [A] marital settlement agreement that is incorporated but not merged into the divorce decree is considered a contract subject to the law of contracts. ***Carosone v. Carosone***, … 688 A.2d 733 (Pa. Super. 1997)…; ***Sorace v. Sorace***, … 655 A.2d 125 ([Pa. Super.] 1995). The law of contracts requires contractual terms that are clear and unambiguous to be given effect without reference to matters outside the contract. [***Carosone***,] 688 A.2d at 735. Further, "a contract must be construed as a whole and

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agreement constitutes a final, appealable order."); ***id.*** at 876 (concluding the entry of judgment by the prothonotary following the trial court's entry of the order granting a petition to enforce a settlement agreement was "a purely ministerial act" and "did not spawn a new 30[-]day window" during which an appeal could be taken); ***see also*** 20 West's Pa. Prac., Appellate Practice § 341:3.1S (Dec. 2025) (explaining an order granting enforcement of a settlement agreement is immediately appealable because post-trial motions do not apply and are not permitted).

[10] As addressed further *infra*, the trial court's February 3, 2026 decision reflects an acceleration of the debt; however, the trial court later admitted in its Rule 1925(a) opinion that it accelerated the debt in error.

> the parties' intentions must be ascertained from the entire instrument; effect must be given to each part of a contract." ***Id.*** (citations omitted). A contract is deemed "ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." ***Lower v. Lower***, … 584 A.2d 1028[, 1031] ([Pa. Super.] 1991). Therefore, a contract will be deemed unambiguous if reasonable persons could not differ as to the contract's interpretation.

Purdy v. Purdy, 715 A.2d 473, 475 (Pa. Super. 1998). "The terms of a marital settlement agreement cannot be modified by a court in the absence of a specific provision in the agreement providing for judicial modification." ***Stamerro v. Stamerro***, 889 A.2d 1251, 1258 (Pa. Super. 2005).

"In determining whether the trial court properly applied contract principles, the reviewing [c]ourt must decide, based on all the evidence, whether the trial court committed an error of law or abuse of discretion." ***Lewis v. Lewis***, 234 A.3d 706, 711 (Pa. Super. 2020) (citation omitted). "In conducting appellate review, we will not usurp the trial court's fact-finding function. To the extent we must decide a question of law, however, our standard of review is *de novo* and our scope of review is plenary." ***Id.*** (internal citations, brackets, and quotation marks omitted). "Because contract interpretation is a question of law, this Court is not bound by the trial court's interpretation." ***Stamerro***, 889 A.2d at 1257 (citation omitted). "However, we are bound by the trial court's credibility determinations." ***Id.*** at 1257-58 (citation omitted).

Instantly, Appellant argues, "[t]he trial court erred in accelerating the alimony debt and awarding all future alimony debt, particularly in the absence

of an acceleration clause." Appellant's Brief at 8 (unpaginated); ***see also id.*** at 9 (arguing where a contract does not contain an acceleration clause, judgment may only be entered in the amount that has already been defaulted) (citation omitted). He suggests, rather, the trial court should have awarded only "the sum of [the] missed monthly payments (less 12 payments which were contractually paused)." ***Id.*** at 8; ***see also id.*** at 9 (averring "not each missed monthly payment should be included in the calculation inasmuch as [12] payments were contractually paused per the MSA's pause provision").

In fact, the trial court admits in its Rule 1925(a) opinion that it "erred in ordering damages for the entire value of the MSA where there was no acceleration clause." TCO at 5. It states, "Damages should have only been awarded for payments missed and proven to be missed as of the hearing date." ***Id.*** Recognizing the law of contracts governs the parties' MSA, the trial court opines:

> In a contract[] where there is no acceleration clause, judgment may only be entered in the amount for which the defendant has already defaulted. ***See Vincler v. Vincler***, 583 A.2d 4, 5 (Pa. Super. 1990) (examining an MSA similar to the one at issue here and concluding … where no acceleration clause was present, damages were limited to installments in default). Pennsylvania's [c]ourts have long held … acceleration clauses are disfavored[] and are not to be read into contracts — acceleration is only enforceable where "expressed with clearness and certainty." ***Baldwin v. American Motor Sales Co***[.], 163 A. 507, 509 (Pa. 1932).
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> Instantly, the parties provisioned for default in their original MSA, a provision left undisturbed by the two subsequent amendments:
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> **ARTICLE XIII – DEFAULT**

> > If either party defaults in the due performance of any of the terms, conditions and covenants of this Agreement on his or her part to be performed, the non-defaulting party shall have the right to sue for specific performance or damages for the breach of this Agreement, and the defaulting party shall reimburse the non-defaulting party for the reasonable legal fees and related costs incurred incident to all services rendered by the non-defaulting party's attorney in any action or proceeding to compel the defaulting party's due performance hereunder.
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> [MSA at 9]. This default provision does not contain an acceleration clause[,] nor does any other provision of the MSA. This [c]ourt should have only entered a judgment for the total for which [Appellant] was in default at the time of the hearing, plus [Appelee's] attorney's fees. Moreover, the $10,800 "penalty" for his failure to liquidate his interest in his former marital residence by the provided deadline was similarly not the subject of any acceleration provision: "[Appellant] shall pay [Appellee] an additional $1[,]800 per month for an additional six months." ***Id.*** at 5.

Id. at 6-7.

Nonetheless, Appellee contends Appellant's argument "rests upon a fundamental misunderstanding of both the relief sought by Appellee and the relief actually awarded by the trial court." Appellee's Brief at 7. She insists that contrary to Appellant's mischaracterization, the trial court did not "accelerate" future alimony payments. ***Id.***; ***see also id.*** (stating the February 3, 2026 order "contains no acceleration language whatsoever"). Instead, Appellee avers the trial court entered judgment for an outstanding balance following her request that the MSA be rescinded and that she be awarded restitution under Pennsylvania contract law and the enforcement powers contained in 23 Pa.C.S. § 3502(e). ***Id.***; ***see also id.*** at 11 (arguing Section 3502(e) of the Divorce Code "expressly authorizes a court enforcing a marital

settlement agreement to 'enter judgment' and to award additional equitable relief necessary to effect compliance").

According to Appellee, Appellant conflates the doctrines of acceleration and restitution. ***Id.*** at 8; ***see also id.*** at 7 ("The concepts of acceleration and restitution are legally distinct. Acceleration enforces future installments before they become due under a continuing contract. Rescission and restitution terminate the contract and restore the non-breaching party to the position she occupied before entering the agreement."). Appellee contends she "never sought acceleration." ***Id.*** at 9. Contrarily, Appellee says she argued in her brief in support of her petition to enforce the MSA that "Appellant's repeated and material breaches entitled her to rescind the parties' contractual modification and recover restitution under Pennsylvania contract law." ***Id.***; ***see also id.*** at 10 (arguing "an injured party may elect rescission and restitution rather than continued enforcement of the contract") (citing 23 Pa.C.S. § 3502(e); ***Ferrer v. Trustees of the Univ. of Pa.***, 825 A.2d 591 (Pa. 2002); ***McCausland v. Wagner***, 78 A.3d 1093 (Pa. Super. 2013)). Appellee fails to convince us she rescinded the MSA and is entitled to an award of restitution.

It is well-established that three elements are necessary to plead a cause of action for breach of contract: (1) the existence of a contract, including its essential terms; (2) a breach of the contract; and (3) resultant damages, *i.e.*, those damages suffered from the breach. ***412 N. Front St. Assocs., LP v. Spector Gadon & Rosen, P.C.***, 151 A.3d 646, 657 (Pa. Super. 2016)

(citations omitted). Here, the averments in Appellee's Petition clearly sound in breach of contract. ***See*** Petition at ¶¶ 1, 5-11 (averring the parties executed the original MSA, First Amended MSA, and Second Amended MSA, and providing the relevant terms to each agreement); ***id.*** at ¶¶ 23-25 (alleging Appellant "has breached" the MSA by failing to make payments on his Alimony Obligation); ***id.*** at ¶¶ 19, 21 (stating Appellant owes Appellee an outstanding balance of $96,196, plus attorney's fees and costs incurred in connection with Appellant's default).

It is well-settled under Pennsylvania law:

> In a breach of contract suit, the plaintiff **either** may rescind the contract and seek restitution **or** enforce the contract and recover damages based on expectation.[11] In such a case, the inconsistent nature of those actions is obvious — one cannot attempt to terminate his contractual obligations and, at the same time, seek to enforce the contract and enjoy its full benefits in an action for breach.

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[11] ***See Strub v. Wesol***, Nos. 2904 & 3022 EDA 2024, unpublished memorandum at 27 (Pa. Super. filed Apr. 23, 2026) (recognizing rescission as an equitable remedy in lieu of monetary damages in a breach of contract action); ***see also*** Pa.R.A.P. 126(b) (stating unpublished non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value). Moreover, we observe the purpose of rescission "is to return the parties to their original positions concerning the subject matter of the contract." ***Lackner v. Glosser***, 892 A.2d 21, 31 n.7 (Pa. Super. 2006) (citation omitted); ***see also Klopp v. Keystone Ins. Cos.***, 595 A.2d 1, 4 n.6 (Pa. 1991) ("A rescission amounts to the unmaking of a contract and is not merely a termination of the rights and obligations of the parties towards each other, but is an abrogation of all rights and responsibilities of the parties towards each other from the inception of the contract.").

McCausland, 78 A.3d at 1102 (citation omitted; emphasis in original). Our Supreme Court clarified a party is permitted to "simultaneously plead and attempt to prove alternative causes of action seeking damages through inconsistent remedies supported by the same factual scenario"; however, damages may only be recovered pursuant to one of those inconsistent theories. ***Gamesa Energy USA, LLC v. Ten Penn Ctr. Assocs., L.P.***, 217 A.3d 1227, 1239 (Pa. 2019); ***see also id.*** at 1238 (stating the doctrine of election of remedies prevents a windfall or double recovery for a single injury). "[O]nce a party makes a 'binding' election[12] of one remedy over other inconsistent remedies, it is precluded from thereafter maintaining an action on those inconsistent remedies…." ***Id.*** at 1238-39.

Moreover, "our Rules of Civil Procedure expressly allow the pleading of alternative causes of action, ***see*** Pa.R.C[iv.]P. 1020(c),[13] and … permit liberal amendment of pleadings in order to secure a proper determination of the merits." ***Id.*** at 1239; ***see also id.*** (acknowledging "a plaintiff's initially-

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[12] The Court explained:

> [A] 'binding' election of remedies occurs when there has been a legal resolution, such as a settlement, a stipulation, a waiver, an expressed withdrawal or abandonment of claims, a judgment, or application of another exclusionary rule, and in such circumstances, the electing party may no longer pursue alternative forms of relief on a given claim.

Gamesa Energy USA, LLC, 217 A.3d at 1239.

[13] "Causes of action and defenses may be pleaded in the alternative." Pa.R.Civ.P. 1020(c).

pleaded claim for contract-based damages did not foreclose a subsequent, properly-pleaded substitution of that claim with one seeking the inconsistent remedy of contract rescission") (citing ***Schwartz v. Rockey***, 932 A.2d 885 (Pa. 2007)). Yet, the relief sought must be set forth in the pleading. ***See*** Pa.R.Civ.P. 1021(a) ("Any pleading demanding relief shall specify the relief sought."); ***see also*** Pa.R.Civ.P. 1920.1(b) ("Except as otherwise provided in this chapter, the procedure in [a divorce] action shall be in accordance with the rules relating to a civil action."); ***Martindale Lumber Co. v. Trusch***, 681 A.2d 803, 805-06 (Pa. Super. 1996) (determining the lower court erred by awarding monetary damages in a case seeking only equitable relief because a general plea in a complaint for "such other and further relief … as your Honorable Court may deem proper" was insufficient to plead entitlement to monetary damages pursuant to Pa.R.Civ.P. 1021(a)).

We further recognize, "Contract rescission is permitted only in limited circumstances. For instance, a contract can be repudiated by mutual agreement of all parties to it." ***In re Bridgeport Fire Litig.***, 8 A.3d 1270, 1282 (Pa. Super. 2010); ***see also id.*** ("One party to a contract cannot force rescission on the other parties thereto.") (citation omitted). Pennsylvania courts have also long recognized "a material breach of a contract, which is vital to the existence of the contract, relieves the non-breaching party from any continuing duty of performance under the contract." ***Umbelina v. Adams***, 34 A.3d 151, 159 (Pa. Super. 2011) (emphasis and citations omitted). "A contract can also be avoided if it was procured by fraud or

misrepresentation that has been relied upon by the party seeking to rescind the instrument." ***Bridgeport Fire Litig***., 8 A.3d at 1282; ***see also Umbelina***, 34 A.3d at 158 (stating "the only grounds upon which equity will permit rescission of an executed contract are fraud, mistake, failure of consideration, and *quia timet*") (citations omitted).[14] "Absent, fraud, misrepresentation, or duress, parties are generally bound by the terms of their agreements." ***Lewis***, 234 A.3d at 714; ***see also id.*** ("Because settlement agreements are presumed valid and binding, the party seeking to avoid or nullify the agreement has the burden of proving the invalidity of the agreement by clear and convincing evidence.").

Mindful of the foregoing procedural rules and principles of contract law, we observe Appellee initiated this matter with the filing of a petition to **enforce** the MSA — not to rescind the agreement. Therein, she expressly asked the trial court "to enter an order directing [Appellant] to make the necessary payments to satisfy the outstanding balance **as identified in the MSA**[,]" Petition at ¶ 26 (emphasis added), and to award her attorney's fees and costs due to her for "[Appellant's] breach **and the necessity to enforce the MSA, as contracted for in the MSA**[,]" ***id.*** at ¶ 28 (emphasis added). While we acknowledge Appellee asked the trial court to rescind the MSA and award her restitution in her brief in support of her Petition, which was filed

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[14] '*Quia timet*' is defined as: "A legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest." Black's Law Dictionary 1281 (8th ed. 2004).

after the September 4, 2025 evidentiary hearing, nowhere in her Petition did Appellee seek rescission and/or restitution, nor did she establish any of the legal criteria, *i.e.*, mutual agreement, material breach, fraud, misrepresentation, or duress, necessary to establish a right to rescission. ***See*** Pa.R.Civ.P. 1021(a); ***Umbelina***, ***supra***; ***Bridgeport Fire Litig.***, ***supra***; ***Martindale Lumber Co.***, ***supra***; ***see also ChildFirst Servs., Inc. v. Dept. of Human Servs.***, 277 A.3d 622 (Pa. Cmwlth. 2022) (emphasizing Pa.R.Civ.P. 1021(a) requires any pleading demanding relief to specify the relief sought; noting the Court previously determined an appellant did not receive sufficient notice the appellee sought injunctive relief where the appellee's petition failed to request or even reference injunctive relief or the legal criteria necessary to establish a right thereto) (citation omitted).[15] Appellee would have been permitted to plead rescission and seek restitution as an alternative remedy in her Petition, but she chose not to do so. ***See*** Pa.R.Civ.P. 1020(c); ***Gamesa Energy USA, LLC***, ***supra***.

Nonetheless, even if Appellee had sought rescission and restitution in her Petition,

> where a non-breaching party opts to continue performing post-breach and receiving benefits as it would under the contract, the law presumes the non-breaching party has elected against a remedy of rescission, or retroactive termination, of the contract,

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[15] We recognize "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) (citation omitted).

> and the non-breaching party cannot recover restitution damages as if the contract ceased to exist at the time of the breach.

Gamesa Energy USA, LLC, 217 A.3d at 1240. "A claim calling for a contract's rescission must also be pursued with sufficient promptitude, including prompt notification to the breaching party." ***Id.*** at 1241. "Failure to rescind within a reasonable time is evidence, and may be conclusive evidence, of an election to affirm the contract." ***Id.*** (quoting ***Fichera v. Gording***, 227 A.2d 642, 644 (Pa. 1967)).

Here, the record reflects Appellant first defaulted on the MSA in 2020. ***See*** N.T. at 10 (Appellee's testifying Appellant "missed several payments" in 2020); ***id.*** at 11 (Appellee's stating she received a total of $9,100 from Appellant in 2020); ***see also*** MSA at 5 (requiring payments of $1,800 per month effective June 1, 2020, for a period of 60 months). Despite his defaulting so soon after entering the agreement, Appellee continued to accept payments from Appellant throughout 2021. ***See*** N.T. at 12 (Appellee's reporting she received $9,104 from Appellant in 2021). After only making approximately five monthly payments that year, Appellee agreed on January 10, 2022, to amend the MSA reducing the monthly payment and then continued to benefit from Appellant's alimony payments, albeit sparse. ***See*** First Amended MSA at ¶ 3 (reducing the monthly payment amount to $600); N.T. at 15 (Appellee's indicating Appellant paid her a total of $3,000 in 2022). Even though Appellant continued to default on his payments, Appellee agreed again, on January 9, 2023, to amend the MSA to reduce the monthly payment amount. ***See*** Second Amended MSA at ¶ 1 (reducing the monthly payment

amount to $350). In 2023, Appellee accepted $1,400 from Appellant, with Appellant's last payment being received in July 2023. ***See*** N.T. at 17 ("In 2023[,] I received [$]1,400."); Petition at ¶ 18 ("July 2023 was the last time [Appellee] received an Alimony payment from [Appellant]."). Appellee did not proceed with filing her Petition **to enforce** the MSA until March 5, 2025. Moreover, Appellee does not point us to any evidence in the record indicating that she notified Appellant of her intention to rescind the MSA. Based on her conduct, we would presume Appellee had elected against a remedy of rescission. ***See Gamesa Energy USA, LLC***, 217 A.3d at 1240-41.

Having determined Appellee's Petition sought to enforce the MSA, we return to the merits of Appellant's claim regarding acceleration. We discern the trial court properly found there is no acceleration clause within the MSA or either of the subsequent amendments. ***See*** TCO at 7; ***see also generally*** MSA; First Amended MSA; Second Amended MSA. Hence, we conclude the trial court erred in awarding damages for the entire balance owed under the MSA. As the trial court opined, it "should have only entered a judgment for the total for which [Appellant] was in default at the time of the hearing, plus [Appellee's] attorney's fees." TCO at 7; ***see also Vincler***, ***supra***; MSA at 9 (providing that upon default, the non-defaulting party has the right to sue for "damages for the breach of this Agreement" and shall be reimbursed for the reasonable attorney's fees and costs incurred in connection with attempting "to compel the defaulting party's due performance hereunder"). Thus, we

vacate the February 3, 2026 order and remand for the trial court to amend its award accordingly.[16, 17]

To the extent Appellant suggests any amount awarded to Appellee should be reduced by 12 monthly payments allegedly paused pursuant to the terms of the MSA, we note his entire argument in support of his position states *verbatim*:

> In so remanding , the Appellant notes that not each missed monthly payment should be included in the calculation inasmuch as twelve payments were contractually paused per the MSA'a pause provision .That specific provision provides up to twelve payments shall be paused during a stretch of unemployment. (See attached MSA at p.5 and exerpt of Appellee testimony admitting pause provision in place and invoked)

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[16] Because the judgment entered against Appellant on February 4, 2026, stems from the February 3, 2026 order, which we vacate herein, we further direct the prothonotary to strike said judgment. We note, however, nothing herein shall preclude Appellee from subsequently filing another praecipe for the entry of judgment pursuant to Pa.R.Civ.P. 227.4(2).

[17] We caution the trial court that its proposed calculation of the correct default amount as set forth in its Rule 1925(a) opinion appears to contain some errors. First, we presume the trial court calculated the default amount for 2020 based on the assumption 12 monthly payments of $1,800 (or 24 semi-monthly payments of $900) were due under the MSA for that year. ***See*** TCO at 8 (stating Appellant failed to make 14 semi-monthly payments of $900 in 2020, totaling $12,600); N.T. at 11 (Appellee's testifying Appellant paid her $9,100 in 2020). However, under the terms of the MSA, Appellant was not required to begin making payments until **June 1, 2020**. ***See*** MSA at 5 ¶ 1. Further, as the record indicates Appellant paid Appellee $3,000 in 2022, which is the equivalent of five monthly $600 payments as per the First Amended MSA, we discern the trial court mistakenly concluded Appellant missed nine monthly payments in 2022, instead of seven missed monthly payments. ***See*** TCO at 8 (stating Appellant failed to make nine $600 payments in 2022, totaling $5,400); N.T. at 15 (Appellee's testifying Appellant paid her a total of $3,000 in 2022).

Appellant's Brief at 9. Appellant fails to specify when the pause provision was invoked and for how long, nor does he indicate precisely which payments and how many were paused. The only testimony attached to Appellant's brief consists of three copies of page 32 from the September 4, 2025 hearing transcript, and the testimony therein is irrelevant.[18] As Appellant failed to properly develop his argument on appeal, we deem this issue waived. ***See Milby v. Pote***, 189 A.3d 1065, 1079 (Pa. Super. 2018) ("We shall not develop an argument for an appellant, nor shall we scour the record to find evidence to support an argument; instead, we will deem [the] issue to be waived.") (citation omitted); ***Commonwealth v. Beshore***, 916 A.2d 1128, 1140 (Pa. Super. 2007) ("The failure to develop an adequate argument in an appellate brief may [] result in waiver of the claim….").

Next, Appellant claims the trial court abused its discretion by issuing "a broad[-]brush[,] unexplained award" of attorney's fees and costs to Appellee without first conducting a detailed analysis pursuant to ***McMullen v. Kutz***, 925 A.2d 832 (Pa. Super. 2007), and explaining which fees were reasonably

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[18] We again remind Appellant it is his responsibility to make sure the record contains the documents necessary to allow us to complete our appellate review. ***See Layton-Herron***, ***supra***. Moreover, we note Pennsylvania Rule of Appellate Procedure 2119(d) provides: "When the finding of, or the refusal to find, a fact is argued, the argument must contain a synopsis of all the evidence on the point, with a reference to the place in the record where the evidence may be found." Pa.R.A.P. 2119(d). *Pro se* litigants are expected to comply with the procedural rules of this Court. ***See Commonwealth v. Lyons***, 833 A.2d 245, 252 (Pa. Super. 2003). "[A]lthough this Court is willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant." ***Id.*** at 251-52.

related to Appellee's Petition to Enforce the MSA. Appellant's Brief at 10 (unpaginated). Appellant fails to explain, however, what the ***McMullen*** analysis entails, nor does he provide any further meaningful discussion or analysis regarding how ***McMullen*** applies to the instant matter. Instead, he merely baldly asserts: "Because the award was a broad[-]brush award[,] it currently includes substantial sums for the acceleration argument on which Appellee did not prevail. To allow the award to stand would result in an impermissible windfall to Appellee." ***Id.***

Again, while we are willing to liberally construe materials filed by *pro se* appellants, they are not entitled to special treatment by virtue of the fact they lack legal training. ***Commonwealth v. Maris***, 629 A.2d 1014, 1017 n.1 (Pa. Super. 1993) (citation omitted); ***see also Lyons***, ***supra***. Consequently, we are constrained to deem this issue waived. ***See Banfield v. Cortes***, 110 A.3d 155, 168 n.11 (Pa. 2015) ("Where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived. It is not the obligation of an appellate court to formulate an appellant's arguments for him.") (cleaned up); ***see also In re S.T.S., Jr.***, 76 A.3d 24, 42 (Pa. Super. 2013) ("This Court is neither obliged, nor even particularly equipped, to develop an argument for a party. To do so places the Court in the conflicting roles of advocate and neutral arbiter.") (citations omitted); ***Smathers v. Smathers***, 670 A.2d 1159, 1160 (Pa. Super. 1996) (observing a *pro se* appellant cannot expect this Court to act as her attorney).

Notwithstanding waiver, we would deem Appellant's claim meritless. As this Court recently explained:

> "Appellate review of a trial court's order awarding attorney's fees to a litigant is limited solely to determining whether the trial court palpably abused its discretion in making a fee award." ***Thunberg v. Struase***, … 682 A.2d 295, 299 ([Pa.]1996).
>
> > An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion, the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias[,] or ill-will, as shown by the evidence of record. Review of the grant of counsel fees is limited … and we will reverse only upon a showing of plain error.
>
> ***Habjan v. Habjan***, 73 A.3d 630, 642 (Pa. Super. 2013) (internal quotation marks, citations, and brackets omitted). "Under the American Rule, applicable in Pennsylvania, a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception." ***Trizechahn Gateway LLC v. Titus***, … 976 A.2d 474, 482-[]83 ([Pa.]2009). ***See also McMullen v. Kutz***, … 985 A.2d 769, 776-77 ([Pa.]2009) (explaining … "parties may contract to provide for the breaching party to pay the attorney fees of the prevailing party in a breach of contract case").
>
> In interpreting a fee shifting provision in a contract, this Court has stated "[w]hen terms in a contract are not defined, we must construe the words in accordance with their natural, plain, and ordinary meaning." ***Profit Wize Marketing v. Wiest***, 812 A.2d 1270, 1274 (Pa. Super. 2002). "As the parties have the right to make their own contract, we will not conflict with the accepted meaning of the language used." ***Id.*** at 1274-75.

Foster v. DNT Automotive Group, LLC, No. 1037 WDA 2023, unpublished memorandum at 32-33 (Pa. Super. filed May 11, 2026) (some brackets and ellipses added).

Instantly, the trial court found the parties entered into the original MSA on June 3, 2020, which expressly provided the court may direct the payment of reasonable attorney's fees to the non-defaulting party by the defaulting party. TCO at 2, 4; ***see also*** MSA at 8. As the trial court opined, the propriety of the MSA was not assailed by Appellant, nor did Appellant contest the fees to which Appellee's counsel testified during the hearing. TCO at 9. Moreover, the trial court conveyed that it heard testimony substantiating the existence of "a significant default[] and … that the fees in question were incurred in connection with [Appellee's] recovering [on Appellant's] default." ***Id.*** at 11; ***see also id.*** (finding Appellee's and Appellee's counsel's testimony credible). Hence, it concluded, "The award of the fees in question was the product of a clear agreement of the parties and … was reasonable based upon the testimony taken…." ***Id.*** at 9; ***see also id.*** at 11 (opining the award of attorney's fees in this matter was appropriate under the terms of the MSA). As we are bound by the trial court's credibility determinations and we discern no abuse of discretion in the trial court's decision, we would not disturb the award of attorney's fees. ***See Stamerro***, ***supra***.[19]

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[19] In its Rule 1925(a) opinion, the trial court indicates it erroneously omitted from its attorney's fees award the $4,706.15 in fees incurred after January 10, 2022, by Appellee's former counsel, Attorney Gale. TCO at 4; ***see also id.*** (noting the attorney's fees and costs awarded in the amount of $29,716.37 represents the fees incurred by Appellee's current counsel, Very Law). Nothing herein precludes the trial court from amending its decision to include the attorney's fees mistakenly omitted.

Accordingly, we vacate the February 3, 2026 order and remand for the trial court to modify the amount of Appellee's award consistent with this memorandum. We further direct the prothonotary to strike the February 4, 2026 judgment.

Order vacated and judgment stricken. Case remanded. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/25/2026