WANDA P. LITTLE,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner/Plaintiff/Appellant	:	
	:	
vs.	:	NO. 03-00,994
	:	
CASEY WAYNE ENGLE, a minor	:	
	:	
Respondent/Defendant/Appellee	:	1925(a) OPINION

Date: September 16, 2004

OPINION IN SUPPORT OF THE ORDER OF JUNE 22, 2004 IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Petitioner Wanda P. Little (hereafter "Little") has appealed this Court's June 22, 2004 Order in which the Court granted Defendant's Motion for Sanctions and to Adjudicate Contempt. As a contempt sanction for failing to participate in a Court-ordered deposition, the June 22nd Order dismissed Little's claim against Respondent Casey Wayne Engle (hereafter "Engle").

To understand the basis for the Order under appeal, a brief background is necessary. Little has sued Engle to recover for personal injury losses arising out of an automobile accident. Little has pleaded that she was the driver of a car, which was stopped and negligently rear-ended by Engle, thereby causing her to suffer multiple physical and emotional injuries.

On October 10, 2003, Little failed to appear for her properly scheduled deposition. Engle filed a motion on January 5, 2004, to compel Little to submit to a deposition. After a hearing, this Court issued an Order on March 8, 2004, directing Little to submit to a deposition on March 23, 2004 in the Conference Room of the basement of the Lycoming County Courthouse. Little appeared at the deposition on March 23, 2004, but refused to answer

any questions. In response to Little's refusal to participate in the deposition, Engle filed a Motion for Sanctions and to Adjudicate Contempt on April 12, 2004.

A hearing was held on that Motion on June 22, 2004. Following the hearing, the Court concluded Little was in willful contempt of the March 8, 2004 Order directing her to participate in the deposition and, as a sanction, dismissed her claims against Engle. The Court permitted Little to purge the sanction of dismissal if two conditions were met. The first required her to post with the Lycoming County Prothonotary's Office the sum of $1,500.00, as a deposit for the payment of expenses incurred by the Defendant in preparing for and appearing at the March 23, 2004 deposition. This deposit was to be paid not later than June 30, 2004. The second condition was that Little was to appear and submit to a deposition no later then August 15, 2004. A failure to meet either condition would render the dismissal absolute. The Court is unaware of any attempt by Little to meet the two-purge conditions.

Little filed her Notice of Appeal on June 30, 2004. On July 26, 2004, this Court issued an order in compliance with Pa.R.A.P. 1925(b) directing Little to file a Concise Statement of Matters Complained of on Appeal within fourteen days of the Order. No such document was filed with the Lycoming County Prothonotary's Office. However, the Court did receive a document through the mail entitled "Response To Order of Lycoming County Court of Common Pleas Dated 12 July 2004" on August 13, 2004. The document sets forth the issues raised by Little on appeal; therefore, the Court will view this document as her Statement of Matters, and have it made part of the record.

After reviewing the Statement of Matters, the Court concludes that the June 22, 2004 Order should be affirmed and the appeal dismissed. The first reason for this conclusion is

that the Superior Court lacks jurisdiction to hear the appeal. Questions regarding the appealability of an order go directly to the jurisdiction of the appellate court to hear the appeal. ***Capuano v. Capuano***, 823 A.2d 995, 998 (Pa. Super. 2003); ***Kulp v. Hrivnak***, 765 A.2d 796, 798 (Pa. Super. 2000); ***Bolmgren v. State Farm Fire and Cas. Co.***, 758 A.2d 689, 690 (Pa. Super. 2000). An appeal to the Superior Court is appropriate "only if it is from a final order, unless otherwise specifically permitted by statute or rule." ***Christian v. Pennsylvania Financial Responsibility Assigned Claims Plan***, 686 A.2d 1, 4 (Pa. Super. 1996), *app. denied*, 699 A.2d 733 (Pa. 1997). As a general rule, an order granting or denying a discovery sanction pursuant to Pa.R.C.P. 4019 is "interlocutory in nature and therefore not typically subject to an appeal until the underlying case is completed." ***Ibid***. However, an appeal of a discovery sanction order may lie if it is a final order. ***Ibid***. An order is a final order if: (1) it disposes of all claims and of all parties; or (2) is expressly defined as a final order by statute; or (3) it is entered as a final order pursuant to Pa.R.A.P. 341(c). Pa.R.A.P. 341(b)(3).

The June 22, 2004 Order was not a final order at the time the Notice of Appeal was filed. The June 22, 2004 Order gave Little until June 30, 2004 to comply with the conditions otherwise her claim would be dismissed. It was not until July 1, 2004 that Little would have been out of court and her case disposed of. Therefore, the Notice of Appeal was filed a day early and the June 22, 2004 Order cannot be considered a final order.

Since the June 22, 2004 Order was not final as of the Notice of Appeal, the only other way the Superior Court could have jurisdiction to hear the appeal is if the order is interlocutory. "Interlocutory orders are appealable only in accordance with Pa.R.A.P. 311 or 312." ***Levy***, 795 A.2d at 421. The June 22, 2004 Order does not meet the requirements of

Pa.R.A.P. 311 or 312. As such, it cannot be appealed as an interlocutory order. Consequently, the Superior Court lacks jurisdiction to hear the appeal because the Order of June 22, 2004 was not a final order or an interlocutory order as of the date the Notice of Appeal was filed.

The lack of jurisdiction notwithstanding, the Superior Court should deny the appeal based on its merits. " '[T]he decision whether to sanction a party for a discovery violation and the severity of such a sanction are matters vested in the sound discretion of the [trial]court.'" ***Philadelphia Contributionship Ins. Co., v. Shapiro***, 789 A.2d 781, 784 (Pa. Super. 2002) (quoting ***Pioneer Commercial Funding Corp. v. Am. Fin. Mortgage Corp.***, 797 A.2d 269, 286 (Pa. Super. 2002)). The trial court's discovery sanction will only be disturbed if there was an abuse of discretion. ***Ibid***. Dismissal of the lawsuit is the most severe discovery sanction the court can impose. ***Id***. at 785. "Therefore, dismissal is only appropriate where after "balancing the equities," the court concludes that "the violation [of the discovery rules] is willful and the opposing party has been prejudiced.'" ***Ibid***. (change in original) (quoting ***Estate of Ghaner v. Bindi***, 779 A.2d 585, 589 (Pa. Super. 2001)).

The dismissal of Little's action was not an abuse of discretion. As set forth in the June 22, 2004 Order and the record made that date, Little's failure to participate in the deposition scheduled for March 23, 2004 was willful and indicative of past conduct. This was not the first time Little failed to participate in a deposition. Little was directed to appear for the March 23, 2004 deposition by an Order dated March 8, 2004. The March 8, 2004 Order was issued granting Engle's Motion to Compel Discovery Under a Protective Order, which was partially filed because of Little's failure to appear for a deposition scheduled on October 10, 2003.

Little did appear at the March 23, 2004 deposition. However, at the deposition Little refused to provide verbal responses to questions, but instead submitted a document entitled "Statement of Plaintiff" and gestured to it when asked questions. The Court believes that Little had no intention of meaningfully participating in the deposition, and likely would not participate in any deposition that would be scheduled in the future. Little's conduct and attitude on this issue are best summed up in her own words, "Consequently, I recognize neither the authority of the court nor defense counsel to require me to speak. I exercise my Constitutional right and remain mute before this assemblage." Plaintiff's Statement, dated March 23, 2004, 3, attached as Exhibit A to Engle's Motion for Sanctions and to Adjudicate Contempt.

Contrary to the position advanced by Little at the June 22, 2004, argument on the Motion for Sanctions and to Adjudicate Contempt, her deposition is important to the Engle's case and without it he is prejudiced. Even if one were to agree with Little's claim that the facts clearly establish liability, there would still remain issues concerning the damages in this case. The deposition of the individual alleged to have suffered those damages is a vital means of obtaining information to provide a clear picture of exactly what damages would be at issue in the case. Therefore, the information that would be ascertained from a deposition is required for Engle to prepare an adequate defense to the claims lodged by Little, and her failure to submit to a deposition thereby prejudices Engle. As such, it was not an abuse of discretion for the Court to dismiss Little's action as a sanction for her steadfast and willful refusal to submit to a deposition.

Although not germane to the disposition of the appeal, the Court feels the need to comment on the allegations of unethical behavior asserted in the Statement of Matters. The Court finds them to be utterly baseless and devoid of merit. The allegations concerning bribes and backroom deals are extremely offensive to the Court. Such allegations are completely without justification and are categorically denied by the Court. Despite Little's efforts, the Court has refrained from participating in the *ad hominem* approach she has taken in this case. The Court has kept an open mind throughout the proceedings, and based its rulings on how the law applied to the facts. As such, no weight should be given to Little's accusations.

Accordingly, the Superior Court should deny the appeal and affirm the June 22, 2004 Order of this Court.

BY THE COURT,

William S. Kieser, Judge

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