

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

AL,	Plaintiff	:	NO. 12-20,925
		:	
	vs.	:	879 MDA 2020
		:	
DD,	Defendant	:	CIVIL ACTION - LAW RULE 1925(a) OPINION

Date: August 10, 2020

**OPINION IN SUPPORT OF THE ORDER OF JUNE 4, 2020,
IN COMPLIANCE WITH RULE 1925(a)(2) OF THE RULES OF APPELLATE
PROCEDURE**

AL, (hereinafter “Appellant”) has appealed this Court’s Order docketed on June 4, 2020, following a hearing held on June 3, 2020, which granted DD’s (hereinafter “Appellee”) Petition for Contempt filed on February 26, 2020.

Appellant filed her timely Notice of Appeal on June 25, 2020, and the appeal is docketed to 879 MDA 2020. By Order docketed June 25, 2020, Appellant was directed to file a Concise Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). Appellant filed her Concise Statement on July 9, 2020.

This Court notes that the underlying Order dated January 24, 2020, which resulted in Appellee’s current Petition for Contempt, is currently on appeal, docketed at 341 MDA 2020. Appellant did not apply for a stay of that Order pending appeal pursuant to Pa.R.A.P. 1731(b), and therefore this Court had jurisdiction to hear Appellee’s Petition for Contempt of that underlying Order

pursuant to Pa.R.A.P. 1701(b)(2), as Appellee was requesting enforcement of said Order, which required Appellee to make a payment of \$3,000 to Appellee's counsel on or before February 24, 2020.

Appellee's Petition for Contempt, and subsequent hearing, was limited to a very narrow issue. From start to finish, the hearing transcript consisted of 18 pages of testimony and argument. At the time of the hearing on June 3, 2020, counsel for the parties stipulated that the \$3,000 check payable to Attorney Protasio's office was dated February 26, 2020, and that it was received by Attorney Protasio's office on February 28, 2020. Appellee briefly testified about her use of electronic banking and stated that she requested the check on February 19, 2020, and asked that it be delivered by February 24, 2020. (T.P. 6/3/20, pg. 8). Appellee also testified that she is only able to pay bills online – she does not have paper checks. (T.P. 6/3/20, pg. 10). She further testified that she did not reach out to notify Appellee's counsel when she received confirmation that the estimated delivery date would be February 26, 2020.

(T.P. 6/3/20, pg. 10-11). Appellee testified that he has been banking through USAA for years and they do offer paper checks (T.P. 6/3/20, pg. 13). Appellant's counsel argued that it was his client's intention to make the payment in full by the deadline and that she could not control the delivery date. Appellee's counsel argued that Appellant was familiar with how her bank worked and should have planned accordingly. Additionally, she argued that they gave the Appellant a 2 day grace period before filing the Petition for Contempt and because Appellant

had not notified them that the check would be late, it appeared from the date on the check that it was not cut until *after* the Petition for Contempt was filed.

After the brief testimony and argument, this Court found that payment was not received by the due date, and Appellee's counsel incurred legitimate expenses in preparing the Petition for Contempt, which was filed before payment was received. Appellant was ordered to pay \$418 in counsel fees to Appellee's counsel by August 3, 2020. This timely appeal followed.

Appellant's Concise Statement consists of 15 alleged errors of law and/or abuses of discretion. We note from the outset that our law makes it clear that the statement must be "concise" and coherent as to permit the trial court to understand the specific issues being raised on appeal. ***Tucker v. R.M. Tours***, 939 A.2d 343, 346 (Pa. Super. 2007) (citations omitted) (finding waiver of issues where appellants filed a concise statement consisting of sixteen pages, 76 paragraphs, and exhibits). Specifically, the Superior Court has held that when appellants raise an "outrageous" number of issues in their 1925(b) statement, the appellants have "deliberately circumvented the meaning and purpose of Rule 1925(b) and ha[ve] thereby effectively precluded appellate review of the issues [they] now seek to raise." ***Id.*** citing ***Kantner v. Epstein***, 866 A.2d 394, 401 (Pa. Super. 2004). Additionally, such "voluminous" statements often do not identify the issues that appellants actually intend to raise on appeal because the briefing limitations contained in Pa.R.A.P. 2116(a) makes the raising of so many issues impossible. ***Id.*** "Further, this type of extravagant 1925(b) statement makes it all

but impossible for the trial court to provide a comprehensive analysis of the issues.” *Id.* citing ***Jones v. Jones***, 878 A.2d 86, 90 (Pa. Super. 2005).

As noted above, Appellee’s Petition for Contempt and the subsequent hearing thereon was limited solely to whether Appellant violated the January 24, 2020, Order of Court which required her to pay \$3,000 to Appellee’s counsel by February 24, 2020. Most of the 15 issues raised in Appellant’s Concise Statement are unrelated to the current Petition for Contempt and subsequent Order, and appear to be an attempt by Appellant to re-litigate the matter which was previously decided on January 24, 2020, and currently on appeal at 341 MDA 2020. In fact, issues #4-#10 and #12-#15 in Appellee’s current Concise Statement are nearly identical/verbatim to issues raised in Appellee’s Concise Statement filed to 341 MDA 2020. Those issues were no longer within the jurisdiction of this Court at the time of the hearing on the current Petition for Contempt, were not raised or addressed at the time of the hearing on June 3, 2020, and are therefore not appropriate for consideration in the current appeal.

Similarly, issues #1 and #2 in Appellant’s Concise Statement reference the allegedly “improper” Order of January 24, 2020, which found her to be in contempt of the stipulation signed by the parties which was made and Order of Court resolving all matters under four separate Lycoming County docket numbers. Unless and until the Superior Court would overturn this Court’s finding of Contempt, the Order of January 24, 2020, is valid and enforceable. The Order

was in effect at the time the current Petition for Contempt was filed and Appellee certainly had standing to file a petition to enforce said Order.

Issue #11 in Appellant's Concise Statement indicates that this Court committed "a plain error/error of law and/or abuse of discretion in originally holding that Plaintiff violated and was in Contempt of an Order dated January 2, 2020, where no such order exists." Upon review, this Court concedes that the Order from which the Contempt Petition stemmed was dated January 2, 2019, not 2020. However, as Appellant was aware of the date their stipulation was made an Order of Court and the Petition for Contempt contained the correct date for the Order, this Court submits that the typographical error in the Order finding her in Contempt was harmless error. Additionally, this typographical error was contained in the Order dated January 24, 2020, which is the subject of the appeal docketed at 341 MDA 2020. As such, Appellant should have raised this issue in that appeal rather than the current appeal.

Essentially, this Court is only able to meaningfully address issue #3 in Appellant's Concise Statement. Issue #3 boils down to a challenge to the weight of the evidence. Appellant argues that this Court erred in believing Appellee's side of the story over her own with regard to the payment obligations arising out of the Order dated January 24, 2020.

The weight of the evidence is exclusively for the finder of fact, who is free to believe all, none, or some of the evidence and to determine the credibility of the witnesses. The fact-finder also has the responsibility of resolving contradictory testimony and questions of credibility. [The Superior Court gives] great deference to the trial court's decision regarding

a weight of the evidence claim because it had the opportunity to hear and see the evidence presented.

Commonwealth v. Roane, 204 A.3d 998, 1001 (Pa. Super. 2019) (internal citations and quotation marks omitted). “A reversal is not necessary unless it is so contrary to the evidence as to shock one’s sense of justice.” ***Id.*** After consideration of the stipulations placed on the record, the testimony of the parties, and the argument of counsel, this Court exercised its discretion in finding Appellant in contempt. This Court respectfully requests that the Order docketed June 4, 2020, be affirmed and Appellant’s appeal be dismissed.

BY THE COURT,

Joy Reynolds McCoy, Judge