IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DARRIS WILBURN and PAMELA WILBURN, Plaintiffs	:	No. 20-00526
vs.	:	CIVIL ACTION – LAW
NARCOTICS ANONYMOUS WORLD SERVICES, INC. (WILLIAMSPORT, PA LOCAL CHAPTER), NARCOTICS ANONYMOUS WORLD SERVICES, INC., CENTRAL SUSQUEHANNA VALLEY CHAPTER OF NARCOTICS ANONYMOUS WORLD SERVICES, INC., MID-ATLANTIC REGION OF NARCOTICS ANONYMOUS WORLD SERVICES, INC., DONALD L. HEITER COMMUNITY CENTER, INC., JOHN DOE, INC., RICHARD ROE, INC., Defendants	:	

OPINION AND ORDER

AND NOW, following argument held on March 1, 2022 regarding the Stipulation for Discontinuance as to Less than All Defendants filed February 22, 2022, the accompanying Motion for Dismissal, and Defendant Donald L. Heiter Community Center, Inc.'s objection to the entry of that Stipulation and grant of that Motion, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiffs filed a Complaint in this matter on July 30, 2020, alleging that Plaintiff Darris Wilburn suffered injury on May 19, 2018 when, at a Narcotics Anonymous event, the chair he was attempting to sit in broke, causing him injury. The Complaint named seven Defendants:

1. Narcotics Anonymous World Services, Inc. (Williamsport, PA, Local Chapter);

2. Narcotics Anonymous World Services, Inc.;

3. Central Susquehanna Valley Chapter of Narcotics Anonymous World Services, Inc.;

4. Mid-Atlantic Region of Narcotics Anonymous World Services, Inc.;

5. Donald L. Heiter Community Center, Inc.;

6. John Doe, Inc.; and

7. Richard Roe, Inc.[1]

Plaintiff contends the injury occurred at the Donald L. Heiter Community Center's property, at an event sponsored or organized by the other Defendants.

On August 14, 2020, Defendant Donald L. Heiter Community Center, Inc. ("Heiter Community Center," Defendant #5 above) filed an Answer to Plaintiffs' Complaint. Heiter Community Center was, and remains, represented by John McGrath, Esq.

On September 8, 2020, Defendant Narcotics Anonymous World Services, Inc. ("NA World Services," Defendant #2 above) filed Preliminary Objections to Plaintiffs' Complaint. NA World Services was, and remains, represented by Bryon Kaster, Esq.

On July 19, 2021, the Defendants identified in the Complaint as "Narcotics Anonymous World Services, Inc. (Williamsport, Pa. Local Chapter)" (Defendant #1 above) and "Central Susquehanna Valley Chapter of Narcotics Anonymous World Services, Inc." (Defendant #3 above) filed a joint Answer to Plaintiff's Complaint indicating that their correct names are Williamsport Area of Narcotics Anonymous ("Williamsport NA")[2] and Central Susquehanna Valley Area Narcotics Anonymous

[1] No counsel has ever entered an appearance for Defendants Mid-Atlantic Region of Narcotics Anonymous World Services, Inc., John Doe, Inc., or Richard Roe, Inc.
[2] Williamsport NA is sometimes referred to in filings by both its correct and incorrect designation, as "Williamsport Area of Narcotics Anonymous, misnamed Narcotics

("CSV NA"), respectively (collectively, the "Local NA Chapters").[3] These parties were, and remain, represented by Scott McCarroll, Esq. and Amanda Hennessey, Esq.

Throughout 2020 and 2021, the parties conducted discovery. On July 21, 2021, this Court issued an Order directing, *inter alia*, the parties to file any dispositive motions by January 13, 2022. On August 30, 2021, NA World Services filed a Motion for Summary Judgment. By Order of October 21, 2021, the Court scheduled argument on any dispositive motions, including NA World Services' Motion for Summary Judgment, for March 1, 2022. On January 11, 2022, the Local NA Chapters filed a Motion for Sanctions against Plaintiff; the Court scheduled argument on this motion for the same time as argument on dispositive motions. Ultimately, no party other than NA World Services filed a dispositive motion prior to the January 11, 2022 deadline.[4]

STIPULATION AND ARGUMENT

On February 22, 2022, the Local NA Chapters filed a Stipulation for Discontinuance as to Less Than All Defendants Pursuant to Pa.R.C.P. 229 and an accompanying "Uncontested Motion for Dismissal of Defendants Williamsport Area of Narcotics Anonymous, Misnamed Narcotics Anonymous World Services, Inc.

Anonymous World Services, Inc. (Williamsport, Pa. Local Chapter)." In light of the multiple parties with similar names, sometimes reproduced incorrectly at various points in the record, attempts to determine which parties are being referenced in pleadings and filings are not always straightforward, which may have been a factor in the instant dispute.

[3] CSV NA is sometimes referred to in filings by both its correct and incorrect designation, as "Central Susquehanna Valley Area Narcotics Anonymous, misnamed Central Susquehanna Valley Chapter of Narcotics Anonymous World Services, Inc."

[4] The Heiter Community Center filed a Motion for Summary Judgment on April 29, 2022. No party has yet contested the propriety of this filing, though the deadline for the filing of responses to this Motion has not yet passed.

(Williamsport, Pa. Local Chapter), and Central Susquehanna Valley Area Narcotics Anonymous, Misnamed Central Susquehanna Valley Chapter of Narcotics Anonymous World Services, Inc., and Narcotics Anonymous World Services, Inc."

The Stipulation reads, in its entirety, as follows:

> "AND NOW comes Plaintiff, by and through his counsel, Stephen B. Lavner, Esq. and the Law Office of Stephen B. Lavner, P.C., and files the instant Stipulation for Discontinuance as to Less Than All Defendants Pursuant to Pa.R.Civ.P. 229, as follows:
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> 1. It is hereby agreed by the undersigned that Defendants Williamsport Area of Narcotics Anonymous, misnamed Narcotics Anonymous World Services, Inc. (Williamsport, Pa. Local Chapter), and Central Susquehanna Valley Area Narcotics Anonymous, misnamed Central Susquehanna Valley Chapter of Narcotics Anonymous World Services, Inc., and Narcotics Anonymous World Services, Inc. (collectively the "Discontinued Defendants") are hereby dismissed from this action with prejudice and the action as to said Discontinued Defendants is hereby discontinued.
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> 2. It is hereby agreed by counsel for the parties that this Stipulation may be executed in any number of counterparts or telecopied or electronic exchanged counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute on and the same instrument."

The Stipulation attached the signatures, executed separately, of Attorneys Lavner (for Plaintiffs), Kaster (for NA World Services), McCarroll (for the Local NA Chapters), and McGrath (for the Heiter Community Center). The accompanying Motion filed by the Local NA Chapters asked the Court to enter the Stipulation as a matter of record and to cancel the March 1, 2022 argument, averring that the Stipulation rendered both the pending Motion for Summary Judgment and Motion for Sanctions moot.

On February 28, 2022, at 11:47 a.m., the Court emailed all counsel informing counsel of its intent to sign the Motion for Dismissal and indicating its belief that this would obviate the need for argument the following day. The Court asked all counsel to let the Court know, as soon as possible, if any party believed that argument was still necessary to address any outstanding matter.

At 12:58 p.m. that day, Attorney McGrath emailed a letter to the Court,[5] copying all counsel, indicating that he "had mistakenly signed a Stipulation dismissing all of the defendants except" the Heiter Community Center, when it was his intent to consent only to the dismissal of NA Worldwide Services and not the Local NA Chapters. Attorney McGrath indicated that once he realized he had signed a stipulation releasing more Defendants than his client consented to, he immediately informed counsel for the Local NA Chapters, but "[t]hey went forward with the stipulation to have their clients dismissed in spite of [his] objection." Attorney McGrath asked the Court not to sign the Order dismissing the Local NA Chapters from the case, indicating that doing so would create unnecessary motion practice.

In light of Attorney McGrath's correspondence, the Court informed the parties that it would hold argument the following day not on the Motion for Summary Judgment or Motion for Sanctions but instead on the Stipulation to Dismiss and accompanying Motion. Counsel for all parties appeared telephonically.

At the outset, Counsel for Plaintiff and Counsel for NA World Services indicated that they were not taking a position, as the grant or denial of the Heiter Community Center's proposed relief would not affect their interest in the case.

[5] This letter is attached to this Opinion and Order as Exhibit A.

Attorney McCarroll, counsel for the Local NA Chapters, argued that as soon as counsel for all four parties had signed the Stipulation it was binding on the parties and the Court, with filing and Court approval a mere procedural formality.[6]

Attorney McGrath responded that this was not a case of a party having a change of heart, but rather simply a clerical mistake of counsel that he noticed the following day. He stressed that he clearly indicated to the other parties that his signing of the Stipulation was erroneous, and that he did so quickly and prior to the entry of a court order granting the Motion for Discontinuance accompanying the Stipulation. Attorney McGrath further argued that under Rule of Civil Procedure 229 and general principles of law concerning discontinuance, the Court has the power to set aside a discontinuance in its discretion as long as doing so would not prejudice any party.

Attorney McCarroll replied that generally, a unilateral mistake by a party, not induced or otherwise caused by a different party, is not an excuse sufficient to justify the striking off of otherwise appropriately filed documents or stipulations. Attorney McCarroll indicated that the parties discussed the Stipulation at length in email correspondence, and highlighted the fact that he was the one who circulated the proposed Stipulation. It would not be reasonable, Attorney McCarroll argued, for another party to mistakenly believe that Attorney McCarroll had drafted and circulated a stipulation to dismiss a Co-Defendant only without dismissing his own clients, the Local NA Chapters, as well.

[6] Counsel cited *Kershner v. Prudential Ins. Co.*, 554 A.2d 964 (Pa. Super. 1989), discussed *infra*, as well as Pa. R.C.P. 229.

ANALYSIS

A. Issue Before the Court

Pennsylvania Rule of Civil Procedure 229 governs discontinuances, stating in relevant part:

> "(a) A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the plaintiff before commencement of the trial.
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> (b)(1) Except as otherwise provided in subdivision (b)(2),[7] a discontinuance may not be entered as to less than all defendants except upon the written consent of all parties or leave of court upon motion of any plaintiff or any defendant for whom plaintiff has stipulated in writing to the discontinuance.
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> …
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> (c) The court, upon petition and after notice, may strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense, or prejudice."

This Rule permits a discontinuance in two distinct situations: 1) upon the written consent of all parties; or 2) with leave of Court. Here, the parties filed a written stipulation consenting to the discontinuance. The Court must first determine whether that stipulation has legal effect in light of the Heiter Community Center's arguments. If the stipulation is valid, the Court must determine whether to enter the discontinuance, or whether to refuse to do so with regard to the Local NA Chapters "in order to protect the rights" of the Heiter Community Center "from unreasonable inconvenience, vexation, harassment, expense, or prejudice."[8]

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[7] The exception in Rule 229(b)(2) concerns a failure to file a certificate of merit, an issue not implicated here.

[8] There is no difference in legal effect between the Court denying a Motion for Discontinuance and the Court granting a Motion for Discontinuance and immediately striking it; as discussed *infra*, the standards for each of these two actions are identical.

B. Validity of Stipulation and Legal Standard for Entry of – and Motion to Strike – Discontinuance

The Pennsylvania Rules of Civil Procedure have long recognized that attorneys may enter into procedural stipulations. Rule of Civil Procedure 201 states that "[a]greements of attorneys relating to the business of the court shall be in writing, except" when made orally on the record. Generally, it is "the settled law and practice in Pennsylvania, that whatever does not affect the jurisdiction, or due order of business and convenience of the court is capable of arrangement between the parties or their counsel, and an agreement by them will become the law of the case."[9] This is true regardless of whether counsel files the stipulation of record.[10]

A well-established principal of contract law is that "a unilateral mistake which is not caused by the fault of the opposing party affords no basis for relief."[11] This common-sense principal, while of course informative generally, is not dispositive of

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[9] *Marmara v. Rawle*, 399 A.2d 750 (Pa. Super. 1979).

[10] *Id*. In *Marmara*, counsel for plaintiffs and one of the defendants agreed to stipulate to the opening of a default judgment against that defendant. The defendant's counsel circulated the stipulation to all parties; although counsel for the final party was requested to provide the last signature and file the stipulation, he failed to do so and no action was taken. Three years passed during which counsel for the defendant assumed the stipulation had been filed and acted as though his client was a party to the suit. Upon learning that the stipulation had not been filed, counsel promptly petitioned the court to open the default judgment. After the trial court granted the petition, the plaintiffs appealed. The Superior Court first stated that, although the timeliness and good-cause requirements for opening default judgments would have typically precluded the court from opening the judgment, the stipulation constituted "an overriding consideration…." The Superior Court, noting that "any legitimate agreement… between (attorneys) is sacrosanct and should be observed without equivocation," held that "[t]he fact that the stipulation was not filed is of no consequence, for although filing may be preferable in some cases, it is not required by the Pennsylvania Rules of Civil Procedure." The Court affirmed the trial court's order; in doing so, it did consider prejudice, noting "there is no indication on the record that now any more appreciable prejudice would result to [the plaintiffs] than enforcement of the agreement at its inception would have entailed."

[11] *Su Hoang v. W.C.A.B.*, 51 A.3d 905, 910 (Pa. Cmwlth. 2012) (citing *Welsh v. State Employees' Retirement Bd.*, 808 A.2d 261 (Pa. Cmwlth. 2002)).

the effect of such a mistake on a written procedural stipulation of legal counsel. Additionally, unique considerations are involved when a party asks the Court to strike a motion for discontinuance.[12] This section will address each of these issues in turn before applying the relevant law to the facts at hand.

1. Motions to Set Aside Stipulations

Though scarce, a handful of cases have addressed the concerns presented by a party's attempts to withdraw stipulations made in the course of legal proceedings. Although no case addresses the specific factual circumstance presented here, a review of cases dealing with attempts to withdraw stipulations is helpful to elucidate the background principles informing the appropriate treatment of this quintessential legal predicament.

In *Norwich Pharmacal Company*, the plaintiff and the defendant entered into a stipulated preliminary injunction "with the proviso that if the defendant did not file an answer within 60 days of the date on which such injunction was entered, the preliminary decree [would] become a final one."[13] The defendant did not file an answer until the seventy-second day after the entry of the stipulation; upon the filing of the answer, the court automatically listed the case for trial.[14] Nearly a year later,

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[12] Inasmuch as the Local NA Chapters argue that the stipulation is sufficient to finalize a *de facto* discontinuance, the principles regarding the striking of a discontinuance are applicable to the instant case regardless of whether the purported stipulation has legal effect. If the stipulation is not valid, then there is no discontinuance; if the stipulation is valid, then the question of whether the discontinuance it effects should be set aside is squarely before the Court.

[13] *Norwich Pharmacal Co. v. Rakway, Inc.*, 189 F.Supp. 348 (E.D. Pa. 1960). As a federal case dealing with federal rules of procedure, *Norwich Pharmacal Co.* is not binding on this Court but is cited for its persuasive value and to illustrate principles implicated by procedural stipulations.

[14] *Id*. at 349.

after the case had been preliminarily called for trial, the plaintiff filed a motion "to strike the [defendant's] answer on the ground that the case had been concluded and there is in existence a final decree."[15]

The District Court, after noting that it had been unable to identify any authority addressing the issue, stated that it was "convinced that stipulations voluntarily entered into by counsel for the parties with the approval of the Court must be given full force and effect in the absence of fraud, accident, or mistake."[16] Recognizing that none of those factors were present, the Court held that "[m]ere inadvertence or inattention of counsel is not enough" to set aside a voluntary stipulation, and concluded that "written stipulations of counsel… should be open to unilateral challenge only on the basis of the most fundamental and compelling reasons."[17]

In *Kulp*, another case in the Eastern District of Pennsylvania, two criminal defendants entered into factual stipulations concerning the location and value of stolen goods.[18] The government planned to call the witness who could testify to that

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[15] *Id*.

[16] *Id*. Whereas the stipulation in *Norwich Pharmacal Co.* had been approved by the Court and filed, the present issue here is the subtly different consideration of whether the Court should approve the signed stipulation and give it effect over Heiter Community Center's objection.

[17] *Id*. *See also Rarick v. United Steelworkers of America*, 202 F.Supp. 902-03 (W.D. Pa. 1962). In *Rarick*, a plaintiff entered into a voluntary stipulation to withdraw his lawsuit against his union; he had been "advised by experienced counsel that he had no legal remedy available" as the United States Department of Labor had interpreted a particular Act in a manner that foreclosed recovery. Shortly thereafter, a separate federal case was decided affirming the plaintiff's theory of relief and establishing the plaintiff's likely right to recover had his case continued. The District Court held that because the plaintiff's "decision to stipulate to a dismissal of his action with prejudice was based upon a conscientious and informed estimate by his counsel of his legal chances… [and he] clearly understood the effect of the stipulation," he had not demonstrated any grounds for setting aside the stipulation. Such a stipulation, the Court remarked, could potentially be set aside due to "mistake of law or excusable neglect," if "procured by coercion or fraud or under exceptional or compelling circumstances justifying the setting aside of the order."

[18] *U.S. v. Kulp*, 365 F.Supp. 747, 762 (E.D. Pa. 1973).

information for other reasons, but shortly before the trial she sustained an injury and was unavailable to testify.[19] Upon learning that the witness could not attend the trial, both defendants moved for a mistrial or, in the alternative, to withdraw the stipulation, because "they entered into the stipulation on the government's implied representation that all witnesses were ready and available to testify, and… since that implied representation was not in fact true, the entire stipulation [was] tainted by fraud, accident or mistake…."[20]

The District Court explained that "[a] court may allow a party to withdraw from a stipulation if [he] can prove that he relied to his detriment on representations that were untrue, or that the stipulation stemmed from fraud, accident, mistake, inadvertence, surprise, or excusable neglect, or that some other reason justifies relief."[21] Where the party was "not deceived and did not rely as such on any misrepresentations," but rather "entered into [the] stipulations… as a tactical decision," then that party will be bound by the stipulation, especially in the absence of any evidence of bad faith.[22]

In *Daniels*, the Supreme Court of Pennsylvania cited *Kulp* when confronted with a prosecutor's attempts to set aside a stipulation "that the identity of certain witnesses and the murder weapon had been disclosed to the Commonwealth by [the defendant's] inadmissible statement."[23] The prosecutor alleged that he "mistakenly entered into a stipulation of the facts solely as a result of erroneous representations

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[19] *Id*.
[20] *Id*. at 762-63.
[21] *Id*. at 763.
[22] *Id*. at 763-64.
[23] *Com. v. Daniels*, 387 A.2d 861, 862 (Pa. 1978).

by" the defendant's counsel, though at a subsequent hearing he "admitted he was somewhat negligent in his handling of [this case]… recall[ed] being told by defense counsel that the evidence in question was disclosed by [the defendant's] confession… [and] did not discover that he had mistakenly entered into the stipulation until an appeal had been filed."[24] The trial court "held that the stipulation was invalid and unenforceable because it was at odds with the facts in the case."[25] After reviewing *Kulp* and related cases, the Supreme Court of Pennsylvania affirmed the trial court's order, holding that "the prosecutor was not merely inadvertent and inattentive, but rather, he mistakenly relied on representations made by defense counsel."[26] In a footnote, the Court drew a distinction between the prosecutor's entry into the stipulation "mistakenly" and the mere "inadvertence or inattention of counsel" in *Norwich*.[27]

Counsel for the Local NA Chapters cited *Kershner v. Prudential Ins. Co.* as applicable to the instant case. In *Kershner*, the defendant insurance company denied coverage for an injury based on a "collateral benefits" clause in the plaintiff's policy; the plaintiff alleged that she had never added such a clause to her policy or, at the very least, she had never received required documentation explaining the effect of the clause.[28] Prior to trial, the parties stipulated that "[i]f [the plaintiff's] policy did contain a coordination of benefits clause at the time of the accident then the only issue for the jury is whether the payments of money by [the plaintiff's employer] is a

[24] *Id*.
[25] *Id*.
[26] *Id*. at 864.
[27] *Id*. at 863 n.1.
[28] *Kershner v. Prudential Ins. Co.*, 554 A.2d 964, 965 (Pa. Super. 1989).

benefit that precludes [the plaintiff's] claim for those moneys."[29] The jury found that the policy did contain the clause, which under the terms of the stipulation meant that "the only issue for the jury [was] whether the payments of money… preclude[] [the plaintiff's] claim"; the trial court, however, granted a directed verdict on a different ground – that the defendant "had not met its burden of producing evidence of the primary insurance contracts," which was an issue that "had not been in the case until raised at this point by the court."[30]

The Superior Court, sitting *en banc*, first reviewed the principles surrounding stipulations discussed above, including that "stipulations are binding upon the court as well as on the parties agreeing to them."[31] Applying these standards, the Superior Court held that the stipulation reflected that "[t]he parties agreed that if the clause were found to be in the contract, then the sole remaining issue would be whether [the plaintiff] was due wage loss benefits," and thus the trial court erred when it disregarded the stipulation to inject another issue – "evidence of the primary insurance" – into the case.[32]

2. Striking of Discontinuances

As noted above, under Rule 229 a court may strike a discontinuance "to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense, or prejudice." It has long been established that:

> "A discontinuance… must be by leave of court, but it is the universal practice in Pennsylvania to assume such leave in the first instance [dating back] as long ago as 1843…. The causes which will move the

[29] *Id*.
[30] *Id*. at 965-66.
[31] *Id*. at 966 (citing *Park v. Greater Delaware Valley Savings & Loan Association*, 523 A.2d 771 (Pa. Super. 1987).
[32] *Id*. at 967.

> court to withdraw its assumed leave and set aside the discontinuance are addressed to its discretion, and usually involve some unjust disadvantage to the defendant or some other interested party, such as a surety.
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> It is apparent, then, that the question is the same whether it is placed before the court by the plaintiff requesting express leave to discontinue or by the defendant seeking to have a discontinuance stricken. Moreover, it is clear that the question is addressed to the court's discretion."[33]

A number of cases have discussed the standards for striking a discontinuance. In *Hopewell*, a wrongful death action, the plaintiff retained an attorney who engaged co-counsel to take over.[34] "Inexplicably, [the original attorney] filed a praecipe to mark the case settled, discontinued and ended" even though "neither [the plaintiff] nor [co-counsel] authorized the filing [or] ha[d] knowledge of it."[35] The original attorney affirmed that it was his signature on the praecipe, though he did not recall filing it and asserted that it must have been erroneous.[36] The plaintiff proceeded with pretrial matters for approximately nine months before realizing that the matter had been marked discontinued on the docket; at that time, the plaintiff promptly filed a petition to strike the discontinuance, to which the defendants did not consent.[37] The trial court denied the petition, "finding that appellant had inexcusably waited nine months from the date of the filing of the praecipe to seek to strike the discontinuance and that the [defendants] would be prejudiced by striking it."[38]

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[33] *Fancsali ex rel. Fancsali v. University Health Center of Pittsburgh*, 761 A.2d 1159, 1161-62 (Pa. 2000) (quoting *Consolidated National Bank v. McManus*, 66 A. 250 (Pa. 1907)).
[34] *Hopewell v. Hendrie*, 562 A.2d 899, 900 (Pa. Super. 1989).
[35] *Id*.
[36] *Id*.
[37] *Id*.
[38] *Id*.

The Superior Court reversed the trial court, finding that the refusal to strike the discontinuance constituted an abuse of discretion.[39] The Court explained that "[t]he facts of the instant case reveal that the discontinuance was merely the result of simple error, not by [the plaintiff] herself but by her counsel of record. There is no indication that [the plaintiff] discontinued the action in order to gain any procedural advantage, i.e. to recommence the suit in another county or otherwise."[40] The Court held that the nine-month delay was overshadowed by the fact that the plaintiff "acted immediately upon discovering the error," first contacting opposing counsel to remove the discontinuance by stipulation and, failing that, "[seeking] to remove the discontinuance within one month of discovering it had been filed."[41] The Court also discussed prejudice:

> "On the surface, it is clear that [the defendants] will be prejudiced in the sense that they will have to defend the action. However, we do not see this as the kind of prejudice that should be focused on in deciding whether to strike a discontinuance for the simple reason that in every action where the plaintiff seeks to strike its own discontinuance the result will be that the defendant must defend the formerly discontinued action. The prejudice that is relevant is the impact on the defendant's *ability* to defend. We must focus on whether allowing the action to proceed after it had been discontinued will put the defendant at any significant disadvantage."[42]

Finding that the defendants had given "no indication that the fact that the action had been discontinued for ten months has had any impact on [the defendants'] ability to defend," but that "the prejudice to [the plaintiff] is obvious" given the

[39] *Id*. at 902.
[40] *Id*. at 901.
[41] *Id*.
[42] *Id*. (emphasis in original).

expiration of the statute of limitations, the Court rejected the "harsh result" imposed by the trial court.[43]

Similarly, in *Nastasiak*, the plaintiffs' prior attorney filed an unexplained, unauthorized discontinuance.[44] Unlike in *Hopewell*, the plaintiffs waited six months between discovering the discontinuance and filing a petition to strike.[45]

Even so, the Superior Court found that the trial court's refusal to strike the discontinuance constituted an abuse of discretion. The Court first noted that "a trial court does not abuse its discretion by refusing to strike off a discontinuance where (1) the plaintiff was fully aware that his or her lawyer had entered a discontinuance and the lawyer had been authorized to enter a discontinuance upon the client's receipt of monetary consideration; (2) the plaintiff was unable to prove that the discontinuance was a result of fraud, imposition or mistake; [or] (3) the discontinuance was entered to enable the plaintiff to bring a new action in another court."[46] The Court found that the defendants' ability to defend had not been impaired by the delay, but "to compel [the plaintiffs] to rely on a new action will not serve judicial efficiency and may prejudice [them] by limiting the period for which

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[43] *Id*. The Superior Court likened the considerations of *Hopewell* to those presented in *Jung v. St. Paul's Parish*, 560 A.2d 1356 (Pa. 1989). In *Jung*, a plurality of the Supreme Court of Pennsylvania "reiterated that in the context of opening a default judgment… the court must ascertain whether there are any equitable considerations that weigh in favor of allowing the party against whom judgment was entered his/her day in court. The Court also focused specifically on a situation like the present one, where simple attorney error indicating pure oversight, without fault of the party itself, resulted in the entry of a default judgment. In such a situation, the Court found that equity demanded the opening of the judgment." The Superior Court viewed the situation in *Hopewell* "in a similar light," concluding that the plaintiff "should not be denied her day in court simply because her attorney of record committed an error which [she] moved to correct immediately upon discovering it."
[44] *Nastasiak v. Scoville Enterprises, Ltd.*, 618 A.2d 471 (Pa. Super. 1993).
[45] *Id*. at 472.
[46] *Id*.

relief can be granted or barring the same in its entirety."[47] Noting that Rule 229 "may initially have been intended to benefit a defendant against whom baseless charges were made or multiple actions filed," the Court held that the Rule should be "appl[ied] to benefit a plaintiff whose attorney has acted without authority to discontinue an action under circumstances causing the substantive rights of the client to be impaired or prejudiced."[48]

A final case bears discussion: although it did not directly address the standards governing application of Rule 229 and the striking off of a discontinuance, the Superior Court in *Martinelli* discussed related issues arising in a posture similar to the instant case.[49] In *Martinelli*, the plaintiff sued co-defendants Mulloy and Christaldi, each of whom was in a separate vehicle involved in the accident that injured her.[50] Shortly before jury selection, the plaintiff moved orally to discontinue against Christaldi only, "claim[ing] that evidence obtained in discovery indicated that the negligence of [Mulloy] alone caused the injuries sued upon."[51] After hearing a summary of the evidence, the trial judge granted the discontinuance over Mulloy's objection; the trial judge also denied Mulloy's request for a continuance of trial "to join the former co-defendant Christaldi as an additional defendant."[52] The jury then ruled in favor of the plaintiff against Mulloy, the sole remaining defendant.[53]

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[47] *Id*. at 473.
[48] *Id*. at 473-74.
[49] *Martinelli v. Mulloy*, 299 A.2d 19 (Pa. Super. 1972).
[50] *Id*. at 19-20.
[51] *Id*. at 20.
[52] *Id*.
[53] *Id*.

Without ruling on the grant of discontinuance, the Superior Court concluded that the trial court's refusal to provide Mulloy time to join Christaldi as an additional defendant was an abuse of discretion and necessitated a new trial.[54] The Court first noted that, under Rule 2252, Mulloy had the right to join Christaldi as an additional defendant.[55] Citing the directive of Rule 126 that "[t]he [Rules of Civil Procedure] shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable," the Court held that the "[p]rocedural rules… are to be construed to accomplish the purpose of avoiding multiplicity of suits by adjudicating in one suit the rights and liabilities of all the parties to a single transaction."[56] This was especially true, the Court noted, in light of the fact that the plaintiff had possessed the relevant evidence for twenty-two months prior to moving for discontinuing the case against Christaldi; ultimately, the Court held that "[t]he Rules [of Civil Procedure] were not intended to enable a plaintiff who has no control over litigation between the defendant and the additional defendant, to effectively prevent an adjudication of their rights."[57]

D. Application to Instant Dispute

The Court will not enter a discontinuance against the Local NA Chapters. Specifically, the Court holds that the stipulation was valid the moment all four parties' counsel signed it, and thus satisfied the standards of Rule 229(b)(1) allowing for discontinuance "upon the written consent of all parties"; the unilateral mistake of

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[54] *Id*.
[55] *Id*. Although *Martinelli* was decided a half-century ago, the relevant Rules of Civil Procedure – 229 and 2252 – were similar in relevant part to their present-day counterparts.
[56] *Id*. at 21.
[57] *Id*. at 21-22.

Attorney McGrath was not by itself sufficient cause to set aside the stipulation. However, before the Court entered the discontinuance, the Donald Heiter Center withdrew its consent thereto and informed the Court of such. Upon review of the law concerning petitions to strike off discontinuances, the Court concludes that it may not enter the discontinuance, and that a decision to do so would likely constitute an abuse of discretion. It is unimportant whether this decision is construed as the Court denying leave to discontinue in the first instance, or rather as the Court granting the discontinuance but then striking it off – in light of binding precedent, the Court is constrained to conclude that had it entered a discontinuance, it would have been an abuse of discretion to refuse to strike it under the circumstances presented here.

A number of factors compel this conclusion. First, although Attorney McGrath did not bring the issue to the Court's attention until *after* the Court contacted counsel for scheduling purposes, he did so six days after the Stipulation and accompanying Motion for Dismissal were filed.[58] In light of the delays permitted in *Hopewell* and *Nastasiak*, the Court cannot conclude that a six-day delay, even if evincing a lack of perfect diligence, would constitute anything other than a fact in favor of striking the discontinuance.

Second, there is no indication that counsel initially agreed to the discontinuance in order to gain any procedural or substantive advantage. At worst, opposing counsel charges that the Heiter Community Center had a change of heart – a charge that Attorney McGrath vehemently disputes. It would obviously be inappropriate for a party that makes a conscientious decision to agree to another

[58] Additionally, counsel explained – and opposing counsel did not dispute – that he had contacted all counsel the day after he signed the Stipulation, informing them of his error.

party's dismissal to contest an otherwise binding agreement based on mere reconsideration; however, even if that is what happened here, it would not evidence the sort of bad faith that would absolutely preclude relief on grounds of equity. This is especially true in light of Attorney McGrath's uncontested representations that he informed opposing counsel of his mistake within a day of his signing the stipulation.

Third, the cases strongly suggest that courts must liberally grant the striking of discontinuances in situations demonstrating "simple attorney error indicating pure oversight…." Here, an attorney has indicated that he erroneously signed a stipulation based on a(n unexplained) misunderstanding of its effect; this "attorney error," while borne out of "pure oversight," is certainly less substantive an error than the *filing of a praecipe to discontinue an entire case*, which the appellate courts have repeatedly excused.

Fourth, the Local NA Chapters have identified no prejudice other than the general prejudice of being forced to defend a case from which they believed they had been dismissed. This is especially true in light of the short delay between the filing of the Stipulation and the argument on the instant issue. [59]

Finally, it is clear that the Rules of Procedure should be construed to prevent unnecessary delay and expense. If the Court did enter the discontinuance, under *Martinelli* the Heiter Community Center would likely have the right to join the Local NA Chapters as additional defendants under Rule 2252. Although such a process may present its own separate considerations unique to the rules governing joinder,

[59] The Court recognizes that the passage of time between the filing of the Stipulation and the issuance of this Order may necessitate amendments to deadlines or procedure. This concern is discussed more fully *infra*.

Plaintiffs initiated this case over two years ago and it is now nearing the conclusion of pre-trial matters. Although some delay due to this issue will be unavoidable, even the limited reopening of pleadings – and any ensuing litigation concerning their form, content, or propriety – would likely delay the resolution of this case to a much greater extent.

The Court recognizes that while the parties have been awaiting this decision, deadlines have come and gone and motions have been filed. Oral argument on the Heiter Community Center's Motion for Summary Judgment is currently scheduled for July 21, 2022. The Court will allow any party to submit any filings concerning the Heiter Community Center's Motion for Summary Judgment within thirty (30) days of the filing of this Order. Additionally, if any party needs additional time to file any motion they would have filed but for the instant dispute regarding the Stipulation, including the Local NA Chapters' Motion for Sanctions against Plaintiff that was withdrawn, that party may similarly do so within thirty (30) days of the filing of this Order.

Additionally, the Court recognizes that three of the four parties in this case signed the Stipulation with the understanding that it would effect a discontinuance against *both* the Local NA Chapters and NA World Services, not just the latter. The Court will not guess, however, as to whether the parties would have agreed to the stipulation against one, but not both, of the two sets of Defendants named. Therefore, if the parties consent to the dismissal of NA World Services only, they shall file an updated stipulation to that effect.

ORDER

AND NOW, for the foregoing reasons, the Motion for Dismissal filed February 22, 2022 is DENIED. Furthermore, the Court ORDERS as follows:

- The parties may submit any filings relating to the Heiter Community Center's Motion for Summary Judgment within thirty (30) days of the date of the filing of this Order.
- The parties may submit any filings they would have filed but for the instant dispute regarding the February 22, 2022 Stipulation and Motion for Dismissal within thirty (30) days of the date of this Order.
- If the parties consent to the dismissal of NA World Services only, they shall file an updated stipulation to that effect, and the Court will issue an Order discontinuing the case as to NA World Services.

IT IS SO ORDERED this 8th day of June 2022.

By the Court,

_____
Eric R. Linhardt, Judge

ERL/jcr
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