

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTEN HAYES-YEARICK,	:	CV-14-21574
Plaintiff	:	
vs.	:	
	:	
JOHN YEARICK, JR.,	:	
Defendant	:	

RULE 1925(a) OPINION IN SUPPORT OF ORDER

AND NOW, this 28th day of March 2023, having received Plaintiff Kristen Hayes-Yearick's ("Hayes")¹ Concise Statement of Matters Complained of on Appeal, filed February 23, 2023, the Court issues the following Opinion in support of its Order of December 21, 2022.

BACKGROUND

A. Divorce

Hayes commenced this action by filing a Complaint in Divorce on November 11, 2014 against her then-husband, Defendant John Yearick, Jr. ("Yearick"). Hayes filed an Amended Complaint in Divorce on July 21, 2016, and on November 21, 2016, the Honorable Joy Reynolds McCoy entered a Decree in Divorce, terminating the parties' marriage.

¹ Following the parties' divorce, Plaintiff uses the name Kristin Hayes, which is how post-divorce Orders of Court refer to her.

B. Property Settlement Agreement

Virtually all litigation in this case, including the issues presently before the Court, concerns a Property Settlement Agreement between the parties dated November 21, 2014 (the “PSA”).² The PSA contains twenty-eight paragraphs outlining the parties’ agreement concerning the distribution of various assets, their waiver or reservation of various legal claims, and the legal effect of the PSA.³ As noted in the PSA, the parties have three children: Morgan Yearick, Ryenn Yearick, and Aiden Yearick, listed from oldest to youngest.⁴ Notably, multiple provisions of the PSA imposed certain obligations – most significantly, the obligation to make all mortgage payments on the parties’ previous marital residence – upon Yearick “until Aiden graduates from college/trade school if he is attending full time.” The PSA states, however, that “[i]f Aiden does not attend college/trade school full time,” those obligations cease when Aiden “graduates from high school, which is anticipated to be June, 2021.”

² Paragraph 1 of the PSA notes that the PSA was prepared by William J. Miele, Esq., the attorney who represented Hayes from the filing of the Complaint in Divorce on November 11, 2014 through February 29, 2016. Paragraph 1 states that Yearick “has had the opportunity to obtain counsel both during negotiations and prior to the signing of this Agreement, however, he has chosen not to have counsel represent him. For purposes of contract interpretation and resolving any ambiguity herein, the Parties agree that this Agreement was prepared jointly by them.”

³ This Opinion reproduces the full text of each provision relevant to the instant appeal below.

⁴ Each child is now at least 18 years old.

C. Prior Litigation Concerning PSA

Hayes has filed two previous petitions to enforce various aspects of the PSA, though neither has been adjudicated in Court due to Hayes's failure to pursue them as described herein.

1. 2015 Petition to Enforce

On September 23, 2015, Plaintiff, represented by Attorney William J. Miele, Esq., filed a Petition to Enforce the PSA (the "2015 Petition"), averring that Yearick was in violation of multiple provisions of the PSA concerning the marital residence, a vehicle owned by Hayes (the "Audi A6"), and the parties' children's college loans. On October 15, 2015, Plaintiff requested that the Court expedite hearing of this Petition, as she had received a notice that the mortgage on the marital residence was overdue.

The Court scheduled argument for October 30, 2015, but due to a miscommunication neither Hayes nor Attorney Miele received notice of that argument date. On the date of the rescheduled argument, December 7, 2015, Plaintiff and Attorney Miele again failed to appear; when the Court contacted Attorney Miele, he expressed his intention to withdraw from his representation of Hayes. The Court scheduled a hearing on Attorney Miele's Motion to Withdraw for February 29, 2016, and provided Hayes an opportunity to object to the Motion in writing or appear for the hearing in person. Hayes did neither, and the Court granted Attorney Miele's Motion to Withdraw.

2. 2016 Petition to Enforce

On August 25, 2016, Plaintiff, now represented by John A. Zurzola, Esq., filed a renewed Petition for Special Relief to Enforce Property Settlement Agreement (the “2016 Petition”), raising those issues contained in the 2015 Petition as well as new claims concerning the residence and Yearick’s life insurance policy. After a conference with counsel, the Court scheduled the 2016 Petition for a half-day hearing on December 22, 2016. On that date, however, Plaintiff failed to appear, and her counsel filed a Praecipe to Withdraw the Petition.⁵

PETITIONS BEFORE THE COURT

This Court’s December 21, 2022 Order, from which Hayes instantly appeals, addresses two filings – Yearick’s June 30, 2022 Amended Petition to Enforce Statement⁶ (“Yearick’s Petition”) and Hayes’s July 21, 2022 Petition to Enforce Property Settlement Agreement (“Hayes’s Petition”).⁷

A. Yearick’s Petition

On February 9, 2022, Yearick filed a counseled Petition to Enforce Agreement. This petition noted that multiple provisions of the PSA depended on

⁵ In the December 21, 2022 Order from which Plaintiff presently appeals, the Court erroneously stated that Plaintiff failed to appear for argument on August 25, 2016. As noted above, August 25, 2016 was the day Plaintiff filed the 2016 Petition, and December 22, 2016 was the date she failed to appear for the hearing on the Petition.

⁶ As modified and incorporated by Yearick’s August 18, 2022 Modified Amended Petition to Enforce Agreement.

⁷ On July 21, 2022, Hayes also filed a “Petition for Contempt” which is identical to Hayes’s Petition to Enforce Property Settlement Agreement except for its title.

whether Aiden had begun attending college or trade school full time following his graduation from high school in June 2021. The gravamen of this petition was that Yearick requested proof that Aiden had indeed started attending college full time, but Hayes failed to provide such proof. The Court initially scheduled a hearing on this Motion for April 11, 2022, which was continued until July 6, 2022.

Before the Court held argument on the February 9, 2022 Petition, however, Yearick filed an Amended Petition to Enforce Agreement on June 30, 2022.⁸ Yearick's Petition asserted that in May 2021 Hayes sent Yearick "an envelope... enclosing information indicating that Aidan was enrolled to attend college [full time] at Saint Joseph's University." Because of this information, Yearick continued to make the mortgage payments that the PSA required only if Aiden attended college full time after his graduation from high school. Yearick's Petition averred that since he filed the February 9, 2022 Petition, he had "learned that [Aiden] did not attend college at any period of time following his graduation from high school in June 2021." Despite this, Yearick contended, Hayes never corrected the false impression created by the information she provided, instead allowing Yearick to continue making payments under the mistaken belief that Aiden was attending college full time.

⁸ This Petition, as amended by Yearick's August 18, 2022 Modified Amended Petition to Enforce Agreement, is one of the two Petitions the Court addressed in its December 21, 2022 Order.

Yearick sought recovery of all mortgage payments he had made from June 2021 through January 2022. On August 18, 2022, Defendant filed a Modified Amended Petition to Enforce Agreement, incorporating Yearick's Petition and amending the total amount he claims he wrongfully paid on the mortgage.⁹

B. Hayes's Petition

On July 21, 2022, Hayes filed a *pro se* Petition to Enforce Property Settlement Agreement. Hayes's Petition contained, essentially, the same five allegations made in her 2016 Petition, albeit in greater detail. Hayes alleges that Yearick violated the PSA by:

- Failing to maintain the marital residence, causing the property to suffer damage and depreciation;
- Failing to pay for repairs to the Audi A6 and ultimately absconding with it;
- Failing to obtain or cosign educational loans for the parties' three children;
- Failing to provide proof that the children remain named beneficiaries on his life insurance policy; and

⁹ Paragraph 13 of Yearick's June 30, 2022 Petition stated "[i]t is believed that [Yearick] paid the sum of \$11,078.76 as a result of [Hayes's] failure to communicate the correct information to [Yearick] regarding their son's attendance at college." This amount corresponded to monthly seven payments of \$1,582.68 each. In his August 18, 2022 Modified Amended Petition, Yearick averred that he paid a total of \$13,389.68 toward the mortgage on the marital residence after his obligations ceased under the PSA, corresponding to eight payments of \$1,673.71. At the hearing on this matter, Yearick provided evidence that he had made eight total mortgage payments after his obligation to do so under the PSA ceased, and clarified that under the structure of the mortgage five of those payments were for \$1,582.68 and three were for \$1,673.71, resulting in a total payment of \$12,934.53.

- Switching to a health insurance plan that did not meet the children's needs, resulting in Hayes paying large deductibles out-of-pocket.

In total, Hayes sought over \$100,000 in damages arising out of these asserted violations.

ARGUMENTS AND ANALYSIS¹⁰

The Court held a hearing on the parties' Petitions over two days, September 27, 2022 and December 7, 2022. Yearick appeared represented by counsel, and Hayes appeared *pro se*. On December 21, 2022, the Court filed an Order granting Yearick's Petition and denying Hayes's Petition for the reasons described below.

A. Yearick's Petition – Contents and Argument

Yearick's Petition raises a single issue, which arises out of Paragraph 4 of the PSA. Paragraph 4, concerning the parties' marital residence, reads as follows:

"4.) HUSBAND and WIFE hereby agree that they are joint owners as tenants by the entireties of real estate located at 103 Marble Lane, Jersey Shore, Lycoming County, Pennsylvania. HUSBAND hereby agrees to transfer any and all right, title and interest he may have in this real estate to WIFE. In doing this, HUSBAND waives and releases all current and future equity in this property.

HUSBAND shall continue to pay the mortgage on this property with Chase (which includes taxes and insurance). HUSBAND may deduct the interest paid on the mortgage from his tax obligations as long as he is paying on the mortgage. HUSBAND agrees to make the mortgage payments until the parties' youngest child, Aiden, graduates from college/trade school if he is attending full time. If Aiden does not attend college/trade school full-time, payments on the mortgage will

¹⁰ This section addresses the reasoning underlying the Court's December 21, 2022 Order, from which Hayes appeals. The next section of this Opinion responds to the issues Hayes raises on appeal.

end when he graduates from high school which is anticipated to be June, 2021. When WIFE assumes the mortgage she agrees to refinance it to have HUSBAND'S name removed.

HUSBAND may continue to reside in the house until July, 2021. At that time he shall vacate the property and remove all of his personal property. Neither party may have a third person reside in the house. During the time HUSBAND resides in the house, he shall be responsible for the maintenance and upkeep of the property. He shall pay for all repairs during this time."

At the hearing, Yearick presented testimony and evidence consistent with the claim in his Petition establishing that Hayes informed him that St. Joseph's University had accepted Aiden to study full time beginning in the fall of 2021. Believing that Aiden had matriculated at that time, Yearick continued to make mortgage payments on the residence. Yearick learned in early 2022, however, that Aiden had not in fact begun attending college at any location.

Hayes testified that Aiden had in fact applied to St. Joseph's University, which had accepted him for full time enrollment beginning in the fall of 2021 and even awarded him a scholarship. At that time, however, all students at St. Joseph's University were required to wear masks in public in accordance with COVID-19 mitigation efforts. Hayes explained that Aiden, who is on the autism spectrum, is unable to wear a mask due to sensory issues, and thus would be unable to attend any university requiring masking. For this reason, Hayes testified, Aiden requested and received a one-year deferral from St. Joseph's University, which delayed his start at the university from fall of 2021 to fall of 2022. Hayes did not dispute that

after providing Yearick information stating that Aiden would begin attending St. Joseph's University full time in the fall of 2021, she failed to inform Yearick that Aiden had not begun full time study but had instead obtained a one-year deferral.

Under Paragraph 4 of the PSA, the date on which Yearick's obligation to make mortgage payments ends depends on whether Aiden "attend[s] college/trade school full time." According to the plain language of Paragraph 4, "[i]f Aiden does not attend college/trade school full-time," the obligation would cease upon Aiden's graduation from high school; however, "if [Aiden] is attending [college/trade school] full time," the obligation would continue until his graduation from whatever institution he was attending.

A plain reading of these provisions places a single factual question before the Court: is Aiden attending college or trade school full time? The testimony and evidence established that he was not, and therefore Yearick's obligation to continue paying the mortgage ended upon Aiden's graduation from high school in June of 2021. The evidence established that Yearick had made mortgage payments of \$12,934.53¹¹ between the time his obligation to do so ended and his discovery that Aiden was not attending college full time. Because Yearick only made these payments due to a false understanding that Hayes failed to correct, the Court held that Yearick is entitled to reimbursement of this entire amount, plus attorney's fees.

¹¹ See fn.9, *supra*.

B. Hayes's Petition – Contents

As noted above, Hayes raised five separate issues in her Petition.¹²

1. Maintenance and Deterioration of Marital Residence

The first claim in Hayes's Petition concerned the provision of Paragraph 4 making Yearick "responsible for the maintenance and upkeep" of, and requiring him to "pay for all repairs" to, the marital property during the time he resided in the residence. Hayes alleged that Yearick violated this provision in numerous ways.

First, Hayes contended that upon obtaining possession of the residence she had to have Yearick's personal items removed, fill the propane tank, and clean the septic tank at a total cost of \$1,436.95.

Next, Hayes stated that at some point during or before 2016, the residence's roof sustained damage. Hayes stated that in 2016 she made an insurance claim for roof repair, resulting in the insurance company sending a check to Yearick; Yearick, however, did not cash this check or conduct repairs. Hayes asserted that Yearick "then filed a claim in 2017, but Ms. Hayes's name had to be on the check; so he refused to sign it." Hayes contended that Yearick's failure to repair the roof resulted in further damage to the roof, devaluing the residence's sale price by \$15,000, as well as water damage to electrical systems and carpeting requiring repairs costing \$1,011.73.

¹² Due to the volume of claims contained in Hayes's Petition, this Opinion addresses the contents of the Petition and the parties' testimony, evidence, and arguments in separate subsections.

2. Audi A6 Repairs and Upkeep

The second claim in Hayes's Petition implicated Paragraph 6 of the PSA, which reads as follows:

"6.) WIFE shall retain possession and be given ownership of the 2004 Audi A6. HUSBAND will make all the payments and pay off the loan with the Department of Justice Credit Union. HUSBAND agrees to hold WIFE harmless from this debt. HUSBAND shall also pay all repairs/[upkeep] on this vehicle plus pay the automobile insurance on this vehicle at the current level until Aiden graduates from high school which is anticipated to be June, 2021. Title to this vehicle shall be transferred to WIFE when the loan [on] the vehicle is paid off. Until that time the Audi shall continue to be used by WIFE."

Hayes alleged that the Audi A6 needed repairs in 2015 but Yearick refused to pay for them, instead retrieving the car from the garage. Hayes stated that she has not seen the Audi A6 since that time, and has neither received title to the Audi A6 nor learned what Yearick did with the vehicle.

Hayes stated that both the car payment and car insurance payments, totaling \$328 monthly, were improperly deducted from her child support, despite being Yearick's sole responsibility under the PSA. Hayes contended that the insurance payments continued to be deducted from her child support even after Yearick "was kicked from his auto insurance due to a DUI in January 2017," and asserted that Yearick had an obligation to report his loss of insurance to the Domestic Relations office. Hayes sought reimbursement of \$22,304, representing \$328 per month for each of the 68 months the car loan and insurance payments were deducted from her child support.

3. Parent Plus Loans

The third claim in Hayes's Petition arose out of Paragraph 9 of the PSA, which states in its entirety:

"9.) HUSBAND agrees that he will sign all necessary documents so the children can receive a Parent Plus College Loan when they attend college."

Hayes asserted that Yearick took out a Parent Plus loan for the freshman year of their oldest child, Morgan, while the parties were still married. Hayes alleged that after she and Yearick divorced, however, he obtained a Parent Plus loan "only... for the fall of [Morgan's] sophomore year in 2015," with Hayes taking out the remainder of the loans for Morgan and Ryenn to attend college, with a total debt of \$65,650. Hayes asked the Court to order Yearick to reimburse this amount and compel him to obtain all future Parent Plus loans for Aiden.

4. Life Insurance

The fourth claim in Hayes's Petition arose under Paragraph 10 of the PSA, which reads:

"10.) HUSBAND agrees to name the parties' surviving children as the beneficiaries to his life insurance policy he has through his employer at FCC Allenwood or any similar life insurance policy he obtains after leaving his employment at Allenwood. HUSBAND agrees to provide proof every January 2nd that the children are still the name[d] beneficiaries."

Hayes asserted that Yearick failed to provide proof that the children remained the named beneficiaries on his life insurance policy, and asked the Court to direct Yearick to provide such proof.

5. Health Insurance

The final claim in Hayes's Petition implicated Paragraph 11 of the PSA, which states:

"11.) HUSBAND agrees to keep the children on his health insurance plan for as long as he is able to cover them on this plan and to pay the cost of doing so."

Hayes first claimed that like the automobile payments, Yearick's health insurance payments were wrongfully deducted from Hayes's child support. Hayes asserted that at some point Yearick switched to a less expensive health insurance plan, but the prior amount continued to be deducted from her support payments.

Hayes noted that Yearick maintains vision and dental insurance for himself but not for the parties' children. Hayes described various treatments for which she or the parties' children have paid out of pocket or incurred debt, and stated that various anticipated medical expenses are likely to carry high deductibles. Hayes requested that this Court compel Yearick "to obtain a plan that meets the needs of the children within his means."

C. Hayes's Petition – Argument and Analysis

1. Maintenance and Deterioration of Marital Residence

At argument, Hayes testified consistently with the assertions in her Petition, but provided no proof of damage to the residence other than a copy of a 2016 check in the amount of \$5,900, issued by Erie Insurance and payable to Yearick, which Hayes asserted Yearick refused to cash.

Yearick testified that Hayes's claim of damage to the roof was incorrect, and that he addressed typical wear-and-tear of the shingles and the occurrence of a leaking pipe within the house. Yearick explained his belief that Hayes's insurance claim, which she submitted while not living at the residence, was fraudulent. Yearick testified that he refused to sign the check because he honestly believed doing so would have been fraudulent, and that he informed Erie Insurance of his belief. Yearick explained that despite his communications to Erie Insurance, the company sent a second check in the same amount the following year, prompting Yearick to inform Erie that if they were insistent on paying the claim they would need to make the check out to Hayes.

The Court found that Yearick's testimony was credible, and adequately explained his reasons for not cashing the checks issued by Erie. Furthermore, Hayes failed to substantiate her claims of damage to the residence or the removal of Yearick's personal items. Concerning Hayes's claims regarding the need to fill the propane tank and clean the septic tank, the Court determined that the PSA did not

require Yearick to take these steps prior to transferring the residence to Hayes; rather, the plain language of the PSA obligated him only to maintain the property.

Additionally, the Court noted that Hayes previously raised these claims in the 2016 Petition. In that Petition, Hayes contended that Yearick allowed the residence “to fall into a deplorable condition” resulting from damage to the roof, but Yearick “refused to cash, endorse or otherwise negotiate the insurance check and otherwise make or address the repairs.” Hayes’s counsel presented these issues to the Court in August of 2016 and appeared at the December 22, 2016 hearing prepared to present testimony and evidence. Hayes, however, failed to appear despite notice. The Court concluded that these issues were thus previously litigated, and that the four-year statute of limitations governing contract actions¹³ prevented Hayes from raising those claims anew after nearly six years of taking no action.¹⁴

2. Audi A6 Upkeep and Repair

At the hearing, Yearick testified that when Hayes possessed the Audi A6 she frequently sought unnecessary work and sent Yearick the bills to harass him. Yearick stated that in 2015 Hayes forwarded him a bill from a dealership in the Philadelphia area for \$22,000 in repairs to the Audi A6. Yearick explained that he contacted the dealership, which told him that the Audi A6 was worth approximately \$3,000 but Hayes was insisting on expensive work far in excess of that necessary to

¹³ 42 Pa. C.S. § 5525(a)(8).

¹⁴ The Court discusses this reasoning below.

render the car safe and functional. Yearick testified that he retrieved the Audi A6 from the dealership and took it to a garage where he paid \$1,000 for repairs, after which the vehicle was fully operational. Yearick stated that when he contacted Hayes concerning the vehicle, she insisted he obtain the \$22,000 in work she originally requested or purchase her a new vehicle worth approximately that amount. Yearick refused, and the Audi A6 has been in his garage since. Yearick stated that the Audi A6 has been available for Hayes's use during this time, but she has not retrieved it.

The Court found Yearick's testimony credible. Thus, the Court found that Yearick had satisfied his obligation under Paragraph 6 of the PSA to "pay all repairs/[u]pkeep on" the Audi A6. This provision cannot be reasonably interpreted to require unnecessary or cosmetic work on the vehicle, which goes beyond repairs and upkeep into the realm of modification and restoration. Additionally, the Court noted that Hayes previously raised these issues in the 2016 Petition. As such, the Court found them previously litigated and barred by the relevant statute of limitations.

3. Parent Plus Loans

At the hearing Hayes testified in accordance with her Petition that Yearick had taken out one Parent Plus loan for Morgan's studies, but had not obtained or signed any other Parent Plus loan for the parties' three children.

Yearick agreed that he had not obtained additional Parent Plus loans, but argued that he had not violated Paragraph 9 of the PSA. Yearick first noted that Paragraph 9 obligated him to “sign all necessary documents so the children can receive a Parent Plus College Loan when they attend college,” which Yearick argued imposed a singular obligation rather than a recurring one. The plain language of Paragraph 9, Yearick argued, simply does not require him to take out Parent Plus loans himself, for each of the three children, for each semester they are in school. Rather, Yearick contends, the provision simply requires him to sign all documents to *allow* the children to receive a Parent Plus loan when they attend college, which can be interpreted as simply requiring him not to obstruct the children’s receipt of Parent Plus loans by refusing to sign, *inter alia*, financial aid documents from the school. Yearick further argued that despite the language of Paragraph 1 purporting to bind the parties to an agreement that they jointly prepared, Hayes’s attorney in fact prepared the PSA, and therefore the Court should construe any ambiguity in the PSA against her.

The Court agreed with Yearick’s position that the language of Paragraph 9 of the PSA is insufficiently specific to impose upon him a requirement to take out, and accept responsibility for the repayment of, Parent Plus loans for the children’s education. Paragraph 9 simply does not say that Yearick must obtain one Parent Plus loan for each semester that each of the three children attend school and assume responsibility for paying it back himself; rather, it says that he must “sign al

necessary documents” to allow the children to “receive a Parent Plus College Loan when they attend college.” Paragraph 9 lacks any language functioning to place the responsibility for repayment of the loan upon Yearick, let alone any language clarifying that the responsibility is an ongoing duty rather than a one-time obligation occurring at the beginning of each child’s post-secondary education.

Additionally, Hayes previously raised this matter in the 2016 Petition. In that Petition, Hayes alleged that Yearick obtained a single Parent Plus loan for Morgan’s schooling in the fall of 2015, but afterward had “refused to comply with the Property Settlement Agreement and obtain Parent Plus Loans for the Spring and Fall Semesters [of] 2016” for Morgan. Hayes sought both the reimbursement of the loan balance for the 2016 Parent Plus loans she obtained, as well as an order directing Yearick to obtain Parent Plus loans going forward. As noted above, however, Hayes failed to appear at the hearing to present testimony and evidence, and this claim was withdrawn.

4. Life Insurance

At the hearing, Yearick admitted that he had failed to furnish Hayes with appropriate proof that the children remained the named beneficiaries on his life insurance policy. Yearick provided such proof, however, at the hearing on the parties’ petitions.

5. Health Insurance

At the hearing, Yearick testified that the children remain on his health insurance plan, which Hayes continues to use. Yearick argued that because the children remain on his health insurance plan for which he pays, he has satisfied the requirements of Paragraph 11 of the PSA.

The Court agreed with Yearick's position, as the PSA requires him to "keep the children on his health insurance plan for as long as he is able to cover them on this plan and to pay the cost of doing so." The PSA does not require Yearick to maintain a specific level of plan, or to pay the cost of deductibles. Although Hayes suggested that Yearick switched to a plan that does not "meet[] the needs of the children," she did not explain how the PSA obligates Yearick to maintain the same plan or tailor any new plan to the anticipated but as yet unrealized medical needs of the children.

6. Claims Concerning Child Support

As noted above, Hayes asserted that various payments Yearick made pursuant to the PSA were deducted from her child support award. However, she took no action to remedy this matter over the 7 years between parties' signing of the PSA on November 21, 2014 and the conclusion of the hearing on the parties' petitions on December 7, 2022, at which time each of the parties' children was at least 18 years old. Furthermore, at the hearing, Hayes did not present evidence

sufficiently demonstrating the amount of various deductions or the manner in which these sums were allegedly deducted.

The amount of child support is awarded according to a statutory formula that takes numerous factors into account. When child support obligations are determined, each party has the opportunity to present relevant information to the domestic relations office; if factual circumstances change, the parties have the right to seek a modification of the award and present new evidence in support.

Here, although Hayes pled that multiple fees were wrongfully deducted from her child support payments, she only asked for reimbursement of \$22,304 for “car and insurance payments made between October 2015 and June 2021 that were deducted from [her] child support...” Hayes has not presented sufficient evidence demonstrating that she is entitled to such reimbursement, nor satisfactorily explained why she did not seek a modification of her support award during that time period but instead waited until after each of the children turned 18 to seek retroactive reimbursement for deductions that stopped over a year before she filed her Petition.

D. December 21, 2022 Order of Court

The Court issued an Order ruling on the parties’ Petitions on December 21, 2022. The Court granted Yearick’s Petition, awarding Yearick \$12,934.53¹⁵ plus

¹⁵ See fn.9 *supra*.

reasonable attorney's fees. The Court denied Hayes's Petition for the reasons detailed above.

INSTANT APPEAL

A. Appeal and Matters Complained Of

Hayes timely filed a Notice of Appeal on January 12, 2023, and a concise statement of matters complained of on appeal on February 23, 2023. Hayes's concise statement is in narrative form, but the Court reads the statement as raising the following issues (re-ordered for clarity):

1. Did the Court err in concluding that the statute of limitations governing contract claims applied to Hayes's claims concerning the Parent Plus loans?
2. Did the Court err in concluding that the statute of limitations governing contract claims applied to Hayes's claims concerning maintenance of the marital residence?
3. Did the Court err in concluding that Hayes was not entitled to repayment of the payments associated with the Audi A6?
4. Did the Court err or abuse its discretion in concluding that Yearick's obligation to pay the mortgage ceased in June 2021 and ordering Hayes to reimburse him for subsequent mortgage payments?

The remainder of this Opinion will address these claims, addressing the two statute of limitations questions together before addressing the allegations of error concerning the Audi A6 and the mortgage.¹⁶

¹⁶ Following the filing of her concise statement, Hayes sent over twenty emails to the Chambers of the undersigned raising new claims arising out of the PSA, alleging further error in the Court's Order, and attaching numerous documents, photographs, and copies of

B. Statute of Limitations Claims

Hayes alleges that the Court erred in concluding that her claims regarding the Parent Plus loans and maintenance of the marital residence were beyond the relevant statute of limitations.

At the outset, although the Court cited the failure to abide by the statute of limitations as one reason it ruled against Hayes, there are multiple other, independently sufficient, grounds upon which it concluded Hayes was not entitled to relief. With regard to the Parent Plus loans, the Court concluded that the language of Paragraph 9 of the PSA did not require Yearick to take out loans for which he was personally responsible on the children's behalf; rather, it required him to sign all necessary documents for the children to receive Parent Plus loans. Regarding maintenance of the marital residence, the Court found that Hayes had not met her burden of establishing the damage she claimed the marital residence sustained.

prior email exchanges. Hayes explained that she was sending the voluminous documents and raising additional claims because the Court "didn't have all of the information or proof... during our hearings." Of course, the time for Hayes to present the Court with evidence supporting her claims was at the hearing itself or, at the very latest, as part of a timely motion for reconsideration of the Court's December 21, 2022 Order. Any information submitted to the Court over two months after the Court issued its final ruling is woefully late, and emails sent to Court staff are insufficient to place any matter on the record for proper consideration by either this Court or an Appellate Court. Regardless of the relevance of the information to the dispute concerning the PSA, this Court lost jurisdiction over the matter when Hayes filed her appeal. Furthermore, the Court's 1925(b) Order directing Hayes to file a concise statement of matters complained of on appeal informed her that any issue not properly contained in the concise statement would be waived. The Court has not considered – and is not permitted to consider – the substance of the information furnished in, and claims raised by, the numerous emails Hayes sent in February and March of 2023.

With regard to both of these issues, the Court noted that Hayes previously raised these but repeatedly failed to appear for properly noticed hearings, resulting in her claims lying dormant for six years while she took no action to address them. On all of the claims raised in her Petition, the Court found that Hayes did not testify credibly, whereas Yearick's testimony was credible. Therefore, regardless of the application of the statute of limitations, Hayes is not entitled to relief.

On the merits of this claim, Pennsylvania requires an aggrieved party to commence most "action[s] upon a contract, obligation or liability" within four years.¹⁷ This limitation applies to agreements governing the distribution of property in divorce actions.¹⁸ When a contract specifies a time for performance, the statute of limitations begins running upon the failure to perform; when a contract contains no definite fixed time for the performance of services, however, it is a "continuing contract" and the statute of limitations generally does not begin to run until the contract is terminated.¹⁹

Here, the Court acknowledges that although many of Hayes's claims are barred by the statute of limitations, Yearick's responsibility to maintain and repair the marital residence was continuing while he continued to reside at the residence; similarly, the responsibility to facilitate the children's Parent Plus loans was

¹⁷ 42 Pa. C.S. § 5525(a)(8).

¹⁸ See *K.A.R. v. T.G.L.*, 107 A.3d 770 (Pa. Super. 2014); *Crispo v. Crispo*, 909 A.2d 308 (Pa. Super. 2006).

¹⁹ *K.A.R.*, 107 A.3d at 775-76.

continuing as the children each attended college. Thus, the four-year statute of limitations applying to contract actions likely does not bar Hayes's claims concerning these particular matters. For the reasons stated above, however, the Court rejected those claims on their merits: Hayes failed to establish harm to the marital residence, Yearick testified credibly regarding his reasons for not cashing the insurance checks, and the language of Paragraph 9 of the PSA does not require Yearick to do what Hayes contends. Therefore, Hayes is not entitled to relief on the first two issues she raises on appeal.

C. Repayment of Audi 6 Insurance and Loan Repayments

Hayes next claims the Court erred in concluding she was not entitled to reimbursement for automobile loan and insurance claims that she contends were wrongfully deducted from her support calculation.

Hayes is not entitled to relief. As noted above, she did not present sufficient evidence to support this claim, and did not testify credibly. Hayes claims that \$328 was wrongfully deducted from her support payments for 68 months, ending in June 2021, but she did not raise this issue until over a year later, after the parties' youngest child turned 18. She does not explain why she could not have raised this issue immediately after the deductions began. Hayes faults Yearick for not informing the domestic relations office that he lost his insurance in 2017, but it is unclear why this is relevant to Hayes's claim that the deduction was wrongful regardless of whether Yearick was paying for insurance on the vehicle. Ultimately,

Hayes presents no evidence and develops legal argument justifying an award of back support after seven years of sitting on her claim.

D. Mortgage Payment

As discussed above, the Court concluded that Hayes told Yearick that Aiden had been accepted to St. Joseph's to begin full-time study in the fall of 2021, but Aiden did not matriculate at that time. Hayes knew Yearick was under the impression that Aiden was attending college due to the information she had provided, and therefore she had a duty to correct that misimpression. She did not do so, but rather allowed Yearick to continue making payments that he had no obligation to make under the PSA.

Hayes, essentially, argues that although the sole condition for Yearick's continued payment of the mortgage – Aiden's full-time attendance at college or trade school – was not satisfied, it would be unfair not to enforce the provision of the PSA because the condition would have been satisfied but for the COVID-19 pandemic and Aiden's sensory issues.

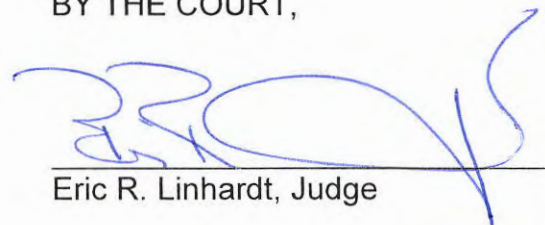
This argument fails for two reasons. First, it asks the Court to disregard the language of the PSA, enforcing not what the contract between the parties says but what Hayes believes it should have said. The PSA, drafted by Hayes's attorney, could have included language covering various contingencies such as a deferral in Aiden's attendance at college, but it did not. Second, Hayes could have addressed this issue by seeking a declaratory judgment or some other relief when it became

apparent that Aiden would not be attending college in the fall of 2021. At the very least, she had a responsibility to inform Yearick of the change in circumstances. Instead, she failed to correct the false impression she had created and reaped the financial benefits of Yearick's misbelief. Hayes does not approach this issue with clean hands, and the Court will not countenance her deceptive behavior when she knew or should have known that Yearick was laboring under a misimpression that she herself had caused.

CONCLUSION

For the foregoing reasons, Hayes is not entitled to relief from this Court's December 21, 2022 Order regarding either the grant of Yearick's Petition or the denial of Hayes's Petition.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Christina Dinges, Esq.
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Family Court

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