

## LACKAWANNA JURIST

### JUDICIAL OPINION

**CASE NAME AND NUMBER:** Rogowski v. Harrison House Personnel Care Home & Advocacy Alliance,  
2020 WL 5498766 (Lacka. Co. 2020)

**DATE OF DECISION:** September 28, 2020

**JUDGE:** Terrence R. Nealon

#### **ATTORNEYS INVOLVED:**

Carl J. Guagliardo, Esquire, Counsel for Plaintiff  
Anthony P. Trozzolillo, Esquire, Counsel for Defendants, Harrison House Personal Care Home and Scranton Counseling Center  
Joseph A. O'Brien, Esquire, Travis M. Eckersley, Esquire, Counsel for Defendant, Advocacy Alliance

#### **SUMMARY OF OPINION:**

The daughter of a deceased former resident of a personal care home filed an action against that home and its social services agency owner, and sought to recover damages for physical and emotional harm suffered by her mother at the personal care home as a result of her sexual and physical assault by another resident, substandard medical care, and institutional neglect there. She alleged that the personal care home and its owner were aware of other male residents' criminal histories for sexual assaults of female residents at the personal care home, the mother's deficient medical treatment there, and an ongoing investigation of its operations by a state agency, but failed to protect the mother from foreseeable abuse and mistreatment. In addition, the daughter asserted that the "representative payee" appointed by the Social Security Administration to manage and use her mother's social security benefits improperly paid her mother's room and board at the personal care home in advance and above the contracted monthly rate, and also misused her mother's funeral and burial funds. The representative payee demurred to any claims for damages caused by physical and sexual abuse, inadequate medical care, and insufficient supervision at the personal care home on the ground that the payee did not have a duty to protect the mother or scrutinize the services provided at the personal care home.

Although the daughter contended that the personal care home and its owner were aware of serious problems at home which increased the risk of foreseeable harm to her mother, the complaint lacked any allegation that the payee knew, or should have known, of any issues there that could have exposed her mother to possible injury. Nor did it contain any factual averment or reasonably deducible inference that the payee undertook or otherwise assumed any responsibility to monitor or review the quality of care furnished at the personal care home. Therefore, based upon the facts averred, the representative payee did not owe the mother any common law duty of care upon which to premise a negligence claim for physical and emotional harm suffered by the mother at the personal care home, as a result of which the daughter's claims against the payee for those noneconomic damages were dismissed. However, in light of the payee's fiduciary duties relative to the mother's social security benefits, the demurrer to the "pecuniary loss" claims relating to the advance payment of rent and expenditure of funeral and burial funds was overruled.

### JUDICIAL OPINION

**CASE NAME AND NUMBER:** Loomis v. Bomba, 2020 WL 5875944 (Lacka. Co. 2020)

**DATE OF DECISION:** October 2, 2020

**JUDGE:** Terrence R. Nealon

#### **ATTORNEYS INVOLVED:**

Marion K. Munley, Esquire, Counsel for Plaintiffs  
Lauren E. Dobrowski, Esquire, Counsel for Defendants, Mia Bomba, Gina Bomba, and William Farber, Jr.  
Harry T. Coleman, Esquire, Personal Counsel for Defendant, William Farber, Jr.

#### **SUMMARY OF OPINION:**

In this wrongful death action arising from a boating fatality, the defendant boat operator and owners filed motions *in limine* seeking to bar the boat passenger from offering lay opinion testimony concerning the speed of the boat, and to preclude the introduction of the boat operator's post-accident exclamations to an independent witness and the decedent's mother that she "killed" and "murdered" the decedent. Based upon the record submitted, the passenger had (1) a sufficient opportunity to observe the boat's movement and (2) adequate experience with moving boats, so as to be competent to provide a numerical estimate of the boat's speed pursuant to Pa.R.E. 701. Although the operator's statement that she "killed" the decedent was a party admission that was relevant to the issue of whether the death was caused by her negligence, and would be admitted subject to the issuance of a limiting instruction under Pa.R.E. 105, any reference to the decedent being "murdered" was irrelevant and unfairly prejudicial since the operator had not been accused of an unlawful killing with malice or the specific intent to kill. Consequently, the motion to exclude the passenger's lay opinion testimony regarding speed was denied, but the motion concerning the operator's post-incident statements was granted as to her "murdered" remarks and denied in all other respects.

## LACKAWANNA JURIST

### JUDICIAL OPINION

**CASE NAME AND NUMBER:** McGrath v. Scranton School Board, 2020 WL 5904514 (Lacka. Co. 2020)

**DATE OF DECISION:** October 4, 2020

**JUDGE:** Terrence R. Nealon

**ATTORNEYS INVOLVED:**

Marc L. Gelman, Esquire, Counsel for Plaintiff  
John Audi, Esquire, Counsel for Defendants

**SUMMARY OF OPINION:**

Plaintiff's request for preliminary injunctive relief involved the novel issue of citizens' rights to observe public meetings, to witness the deliberations and decision-making of their public officials, and to comment during public meetings that are conducted virtually during the pendency of the COVID-19 disaster emergency. In this declaratory judgment action filed by a school district employee whose employment and health insurance coverage the school board voted to terminate at a public meeting, it was uncontroverted that: (1) the school board scheduled a regular meeting for September 14, 2020, to consider the furlough of and termination of health insurance for 218 school district employees; (2) the only public notice published for that meeting advised the public that the meeting would be conducted virtually on the Zoom platform, and that the public could "view the meeting" on the school district's YouTube Channel; (3) prior to the start of that meeting, the school board and the school district "learned that the YouTube livestream was inoperable due to technical difficulties;" (4) during the course of their ensuing discussions as to whether the school board and the school district would violate the Sunshine Act by proceeding forward with the meeting, the school board "acknowledged that members of the public whose only access to the meeting was YouTube would be deprived of the opportunity" to observe the meeting; (5) the school board and school district nevertheless "made the decision to proceed" with the meeting notwithstanding the inability of the public to view the meeting on the school district's YouTube channel, as advertised in the public notice; (6) more than two hours after the meeting had commenced, the school board and school district began to livestream the meeting on the school district's Facebook page, but did not communicate that subsequent access to the public at large, nor did it comply with the public access information contained in the public notice for the meeting; and (7) not every citizen, who had registered in advance to offer public comment, was granted access to the school board's Zoom platform to provide remarks during the meeting.

The furloughed employee satisfied her burden of proving that the school board and the school district violated Sections 702, 704, and 710.1 of the Sunshine Act and Section 5741(c)(f) of Act 15 of 2020, 35 Pa.C.S., by conducting official action and deliberations at its public meeting on September 14, 2020. The employee also established the six prerequisites for the issuance of a preliminary injunction, so as to be entitled to an order under 65 Pa.C.S. § 713 temporarily enjoining the school board's action in furloughing those employees and terminating their health insurance. Consequently, the employee's request for a preliminary injunction was granted, subject to her posting of nominal bond or deposit of nominal legal tender, but her request for an award of counsel fees under 65 Pa.C.S. § 714.1 was denied.

### JUDICIAL OPINION

**CASE NAME AND NUMBER:** Tracy v. O'Bell, 2020 WL 6277842 (Lacka. Co. 2020)

**DATE OF DECISION:** October 26, 2020

**JUDGE:** Terrence R. Nealon

**ATTORNEYS INVOLVED:**

Joseph C. Borland, Esquire, Counsel for Plaintiff  
Joseph A. O'Brien, Esquire, Jenna Kraycer Tuzze, Esquire, Counsel for Defendants

**SUMMARY OF OPINION:**

A Roman Catholic priest, who claimed that his appointment as a priest at a parish was terminated by the Bishop of the Diocese of Scranton based upon parishioners' false complaints that he made "outright lies to his congregation," "spends the Diocese's money like a drunken sailor," "spent an exorbitant amount on light fixtures," and harassed a parish employee, filed this action against those parishioners seeking damages for tortious interference with his contractual relationship. The parishioners filed preliminary objections asserting, *inter alia*, that the priest cannot pursue a civil claim against them due to the "ministerial exception" which constitutionally prohibits judicial intervention in disputes stemming from ecclesiastical decisions to remove clergy from assigned positions. The priest contended that the judicial "deference rule" relied upon by the parishioners was inapplicable since it applies only to "cases of religious controversy."

According to the Supreme Court of the United States, the Establishment Clause and the Free Exercise Clause of the First Amendment to the United States Constitution bars judicial interference with employment decisions made by religious institutions concerning their ministerial employees, regardless of whether the decision to discipline or terminate a member of the clergy is made for a religious reason. The application of the "deference rule" in this context is known as the "ministerial exception," which operates as an affirmative defense on the merits to an otherwise cognizable claim. The Supreme Court of Pennsylvania has extended the civil liability protection provided by the "ministerial exception" to congregants whose words or actions provoke the ecclesiastical decision to discharge or transfer a member of the clergy. Therefore, based upon the facts averred in the priest's pleading, it was clear and free from doubt that the priest could not recover damages from the parishioners for tortious interference with a contractual relationship due to the "ministerial exception." For that reason, the parishioners' preliminary objections in the nature of a demurrer were sustained.

**ESTATES**

## LACKAWANNA JURIST

### First Notice

NOTICE IS HEREBY GIVEN that Letters of Administration have been issued to Angelo J. Bertinelli, Administrator of the **ESTATE OF LUCIA V. BERTINELLI**, Deceased, who died on February 2, 2020, late of Jessup, Lackawanna County, Pennsylvania. All creditors are requested to present their claims and all persons indebted to the decedent will make payment to the aforementioned Administrator or his attorney. ROSENN, JENKINS & GREENWALD, LLP, 15 South Franklin Street, Wilkes-Barre, PA 18711-0075.

Notice is hereby given that Letters Testamentary have been granted in the **ESTATE OF ALBERT J. BURNETTI**, deceased, late of Olyphant, Lackawanna County, Pennsylvania who died on October 12, 2020. All persons indebted to the estate are required to make payment and those having claims or demands are to present the same, without delay, to James Burnett, 17721 Shady Mill Road, Derwood, MD, or to Donald P. Dolan, Esquire, Attorney for the Estate, 436 Jefferson Avenue, Scranton, PA 18510.

**ESTATE OF JOHN J. EARLEY, SR.**, Late of Dunmore, died September 25, 2020. Notice is hereby given that Letters Testamentary on the above estate have been granted to Marianne Poluluk, as Executrix. All persons indebted to this Estate are required to make payment and those having claims are required to present the same without delay to the Executor named within or to Kelly Hadley, Esq., 345 Wyoming Ave., Scranton, PA 18503.

**ESTATE OF MARY ANNE EGGLESTON A/K/A MARY EGGLESTON**, Deceased. Late of Scranton, Lackawanna County, PA. D.O.D. 10/5/19. Letters of Administration on the above Estate have been granted to the undersigned, who request all persons having claims or demands against the estate of the decedent to make known the same and all persons indebted to the decedent to make payment without delay to Robert H. Eggleston, Jr., Administrator, c/o Margaret Gallagher Thompson, Esq., 200 Four Falls Corp. Center, Ste. 400, West Conshohocken, PA 19428. Or to his Atty.: Margaret Gallagher Thompson, Cozen O'Connor, 200 Four Falls Corp. Center, Ste. 400, West Conshohocken, PA 19428.

**ESTATE OF DOMINICK FIORILLO**, DECEASED, late of Scranton, Lackawanna County, Pennsylvania, (died October 5, 2020). Letters Testamentary having been granted, creditors shall make demand and debtors shall make payment to Stephen J. Evers, Esq., Attorney for the Estate, 213 R. North State Street, Clarks Summit, PA, 18411.

NOTICE IS HEREBY GIVEN that Letters Testamentary have been granted in the **ESTATE OF ALOYSIUS T. HUGHES A/K/A AL T. HUGHES**, late of Scranton, Lackawanna County, Pennsylvania, who died September 29, 2020. All persons indebted to said decedent are requested to make payment and those having claims or demands against the estate are to present the same without delay to Timothy Hughes, Executor, C/O Bruce K. Anders, Esquire, 1107 Highway 315, Suite 2, Plains, PA 18702.

**ESTATE OF MARGARET P. MCHALE**, DECEASED, late of Olyphant, Lackawanna County, Pennsylvania, (died October 3, 2013). Letters of Administration having been granted, creditors shall make demand and debtors shall make payment to Stephen J. Evers, Esq., Attorney for the Estate, 213 R. North State Street, Clarks Summit, PA, 18411.

**ESTATE OF PETER D. NORTHUP**, late of West Abington Township, Lackawanna County, Pennsylvania (died June 23, 2020). Letters of Administration having been granted, all persons having claims or demands against estate of decedent shall make them known and present them, and all persons indebted to said decedent shall make payment thereof without delay to Samuel Northup, Administrator, of 105 Jennifer Drive, South Abington Twp., Pennsylvania 18411 or to John M. Price, of Oliver, Price & Rhodes, Attorney for the Estate, 1212 South Abington Road, P.O. Box 240, Clarks Summit, Pennsylvania 18411.

**ESTATE OF HELEN PFISTERER**, late of South Abington Township, Lackawanna County, Pennsylvania (died September 1, 2020). Letters of Administration having been granted, all persons having claims or demands against estate of decedent shall make them known and present them, and all persons indebted to said decedent shall make payment thereof without delay to Cynthia D. Caffall, Administrator, of 108 Maggies Rd., South Abington Twp., Pennsylvania 18411 or to John M. Price, of Oliver, Price & Rhodes, Attorney for the Estate, 1212 South Abington Road, P.O. Box 240, Clarks Summit, Pennsylvania 18411.

IN RE: **ESTATE OF ANTOINETTE M. VOJACK**, late of Olyphant, Lackawanna County, Pennsylvania (died December 15, 2018). Letters of Administration in the above Estate having been granted, all person having claims or demands against the Estate of the Decedent shall make them known and present them, and all persons indebted to the said Decedent shall make payment thereof, without delay, to Estate Personal Representative, Walter Vojack, Jr., or to Joseph S. Toczydlowski, Jr., Esquire, 723 North Main Street, Archbald, PA 18403.

### Second Notice

In re: **ESTATE OF JOSEPH CIANNELLA** late of Scranton, Lackawanna County, PA, (died August 8, 2020). Letters of Administration in the above Estate having been granted, all person having claims or demands against the Estate of the Decedent shall make them known and present them, and all persons indebted to the said Decedent shall make payment thereof, without delay to Estate Personal Representatives Catherine Jacobs or Frank Ciannella, or to Joseph S. Toczydlowski, Jr., Esquire of the Toczydlowski Law Office, 723 North Main Street, Archbald, PA 18403.

**ESTATE OF GERALDINE F. KAY**, deceased, of Scranton, County of Lackawanna, PA. Notice is hereby given that Letters Testamentary for the above Estate were granted to Denise O'Brien, Executrix, on August 25, 2020. All persons indebted to the Estate are required to make immediate payment, and those having claim or demand are to present same without delay to Denise O'Brien, 885 Graystone Circle, Northampton, PA 18067

**ESTATE OF RICHARD D. VOLOVITCH**, DECEASED, late of 731 THEODORE STREET, SCRANTON, PA 18508, (Died June 9, 2020) CAROL A. VOLOVITCH, Executrix; Dante A. Cancelli, Suite 260, 125 N. Washington Ave., Scranton, Pennsylvania 18503, Attorney.

### Third Notice

## LACKAWANNA JURIST

**ESTATE OF RICHARD J. BELL**, late of Clarks Summit, Lackawanna County, Pennsylvania (died September 19, 2020). Personal Representative is Richard J. Bell, Jr., 1632 Brighton Bluff Court, Fleming Island, FL 32003. Attorney for the Estate is Nancy M. Barrasse, Esquire, 224 Adams Avenue, Scranton, Pennsylvania 18503.

**ESTATE OF MARGARET DEE A/K/A MARGARET J. DEE**, deceased on August 20, 2020, late of Dunmore, Lackawanna County, Pennsylvania. Letters of Administration have been granted to the individual named below, who requests all persons having claims or demands against the Estate of the Decedent to make known the same, and all person indebted to the Decedent to make payments without delay to: Michael Hayes, c/o Robert C. Trichilo, Esquire, Trichilo Law Firm, LLC, 117 W. Drinker Street, Dunmore, PA 18512.

**ESTATE OF GERTRUDE GAMBUCCI A/K/A GERTRUDE K. GAMBUCCI**, late of Eynon, Lackawanna County, Pennsylvania (died July 25, 2020). Letters Testamentary having been granted, all persons having claims or demands against estate of decedent shall make them known and present them, and all persons indebted to said decedent shall make payment thereof without delay to Anthony J. Gangemi, Jr., Executor, 620 Dunmore Street, Throop, Pennsylvania 18512 or to James J. Gillotti, of Oliver, Price & Rhodes, Attorney for the Estate, 1212 South Abington Road, PO Box 240, Clarks Summit, PA 18411.

NOTICE IS HEREBY GIVEN that Letters Testamentary in the **ESTATE OF THERESA M. IVES ALSO SOMETIMES KNOWN AS THERESA IVES ALSO SOMETIMES KNOWN AS THERESA MARY IVES**, (date of death: May 15, 2020) late of Moscow, Lackawanna County, Pennsylvania, have been granted to the undersigned. All persons indebted to said estate are required to make immediate payment and those having claims shall present them for settlement to: CARL IVES, EXECUTOR, KEVIN R. GREBAS, Esquire, COLBERT & GREBAS, P.C., 210 Montage Mountain Road – Suite A, Moosic, PA 18507.

**ESTATE OF WALTER T. KIESELOWSKY A/K/A WALTER KIESELOWSKY A/K/A WALTER THOMAS KIESELOWSKY**, late of Covington Township, Lackawanna County, PA. Karen Kieselowsky, 279 Union Mill Road, Covington Township, PA 18444, Executrix; Nicholas A. Barna, 207 Tenth Street, Honesdale, PA 18431, Attorney.

NOTICE IS HEREBY GIVEN that Letters of Administration have been granted in the **ESTATE OF ROBERT KLESZYK**, Deceased, late of 70 Kraky Road, Scott Township, Lackawanna County, Pennsylvania 18447, who died on September 7, 2020. All persons indebted to the Estate are requested to make payment and those having claims or demands are to present same, without delay, to the Administrator, Victor Kleszyk, or Michael N. Krisa, Attorney for the Estate, 3397 Scranton/Carbondale Highway, Suite 4, Blakely, Pennsylvania 18447.

**ESTATE OF JOHN LANE**, DECEASED (died on 09/16/2020). Late of 118 Cherry Street, Archbald, Lackawanna County, PA. Letters Testamentary have been granted and all creditors shall make demand and all debtors shall make payment without delay to Maureen Dolon, Testatrix or BRIGID E. CAREY, ESQUIRE, PO Box 4466, Scranton, PA 18505-6466.

**ESTATE OF HARRY M. MURPHY, A/K/A, HARRY MURPHY, A/K/A HENRY M. MURPHY, JR.**, late of South Abington Township, Lackawanna County, Pennsylvania,

Deceased. Letters of Testamentary on the above estate having been granted to the undersigned, all persons indebted to the estate are requested to make payment, and those having claims to present the same, without delay, to: Regina M. Pollock, Administratrix, c/o Barley Snyder LLP, 126 East King Street, Lancaster, PA 17602 or to their Attorney: Nancy Mayer Hughes, Barley Snyder LLP, 126 East King Street, Lancaster, PA 17602

Notice is hereby given that Letters Testamentary have been granted in the **ESTATE OF DORIS PARRY**, late of Clarks Summit, Lackawanna County, (died August 14, 2020) to Susan M. Bitterman, Personal Representative. Kevin J. Dempsey, Esquire, Attorney for the Estate, 114-116 North Abington Road, Clarks Green, PA 18411. All persons indebted to the said Estate are required to make payment and those having claims or demands to present the same without delay to the Personal Representative named above.

**ESTATE OF ROBERT C. SHUTTA**, late of the Borough of Dunmore, Pennsylvania, (died September 22, 2020). Notice is hereby given that Letters of Testamentary on the above Estate have been granted to Rudolph J. Shutta, Jr., of Sunland, CA. All persons indebted to the said estate are required to make payment and those having claims to present the same without delay to the Personal Representative named herein, or to Nicholas D. Tellie, Esquire, Tellie & Coleman, P.C., 310 East Drinker Street, Dunmore, PA 18512.

## ARTICLES OF INCORPORATION

Milford Farmhouse Realty, Inc has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

T1-11/6

## FICTITIOUS NAME

Notice is hereby given that an Application for Registration of Fictitious Name was filed in Department of State of the Commonwealth of Pennsylvania on September 03, 2020 for **M.G.R. Auto** at 42 Depot St., Scranton, PA 18509. The name and address of each individual interested in the business is Augustus Rivel at 42 Depot St., Scranton, PA 18509. This was filed in accordance with 54 PaC.S. 311.

T1-11/6

## NOTICE

### NOTICE OF NISI CONFIRMATION

The Tax Claim Bureau of Lackawanna County, Pennsylvania, hereby gives notice that it presented a Consolidated Return of Sale to the Court of Common Pleas of Lackawanna County, Pennsylvania, on October 22, 2020, of the Upset Tax Sales of real estate for delinquent taxes held by the Bureau on September 30, 2020, pursuant to due notices required by the Real Estate Tax Sale Law of 1947, as amended. The Court confirmed this Return nisi on October 22, 2020. Any owner or lien creditor may file exceptions or objections to the Return within thirty (30) days after October 22, 2020. If no exceptions or objections are filed by that date, the Return will be confirmed absolutely.

Tax Claim Bureau of Lackawanna County  
By: Joseph J. Joyce, III, Acting Deputy Director