

Adams County Legal Journal

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IN THIS ISSUE

COMMONWEALTH OF PENNSYLVANIA VS.
TODD RICHARD OYLER



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NOTICE

NOTICE IS HEREBY GIVEN that JUSTIN CRAIG NELL, ESQUIRE, intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 8th day of December, 2016, and that he intends to practice law with the Nell Law Office, County of Adams, 130 West King Street, East Berlin, Pennsylvania.

11/11, 11/18, 11/23

NOTICE

NOTICE IS HEREBY GIVEN that Adam D. Boyer, intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on December 8, 2016, and that he intends to practice law as an Associate in the office of Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, Pennsylvania.

11/11, 11/18, 11/23

NOTICE

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of the Act of December 16, 1982, P.L. 1309, No. 295, codified as amended (54 Pa. C.S.A. §311), there it was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, Department of State, Bureau of Corporations, and Charitable Organizations, at Harrisburg, Pennsylvania an application for Registration of Fictitious Name of Matching Buds, the address of the principal place of business being 1245 Zeigler Mill Road, Biglerville, PA 17307. The name and address of the parties to said registration are: Celine C. Wilkinson, 1245 Zeigler Mill Road, Biglerville, PA 17307 and Mattie J. Wetzel, 101 West Chestnut Hill Road, Aspers, PA 17304.

Puhl, Eastman & Thrasher
Attorneys

11/23

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION-LAW
NO. 16-SU-717

NOTICE OF ACTION IN
MORTGAGE FORECLOSURE

Finance of America Reverse, LLC, Plaintiff vs. Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest From or Under Jean A. Zartman and Jennifer K. Miller, Known Heir of Jean A. Zartman, Defendant(s)

TO: Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest From or Under Jean A. Zartman, Defendant(s), whose last known address is 335 Brough Road, Abbottstown, PA 17301.

COMPLAINT IN MORTGAGE
FORECLOSURE

TO DEFENDANTS:

You are hereby notified New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, has filed a Complaint in Mortgage Foreclosure with regard to 303 Matthew Drive, New Oxford, PA 17350, endorsed with a Notice to Defend, against you at No. 16-SU-604 in the Civil Division of the Court of Common Pleas of Adams County, Pennsylvania, wherein plaintiff seeks to foreclose on the mortgage encumbering said property, which foreclosure would lead to a public sale by the Adams County Sheriff.

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the notice above, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH THE INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYERS REFERRAL SERVICE,
Adams County Court Admin.
Adams County Courthouse
Gettysburg, PA 17325
717.337.9846

Mark J. Udren, Lorraine Gazzara Doyle,
Sherri J. Braunstein, Elizabeth L. Wassall, John Eric Kishbaugh, Nicole B. Labletta, David Neeren & Morris Scott,
Attys. for Plaintiff
Udren Law Offices, P.C.
111 Woodcrest Rd., Ste. 200
Cherry Hill, NJ 08003
856.669.5400

11/23

NOTICE

NOTICE IS HEREBY GIVEN that the Board of Directors of the Central Pennsylvania Transportation Authority, a Pennsylvania municipal authority, at a meeting duly called and held, approved the proposed Application for Joinder to set forth the terms and conditions of joining the Central Pennsylvania Transportation Authority, a Pennsylvania municipal authority, with the Perry County Transportation Authority, a Pennsylvania municipal authority, and the transportation department of Franklin County, Pennsylvania under provisions of 53 Pa.C.S. Section 5604(b)-(c) of the Municipal Authorities Act and that, as a result of the proposed Joinder, to become effective with the Secretary of the Commonwealth of Pennsylvania on January 1, 2017.

CGA Law Firm
Timothy J. Bupp, Esq.

11/23

Continued on page 3

COMMONWEALTH OF PENNSYLVANIA VS.
TODD RICHARD OYLER

1. A final order puts litigants out of court by either ending the litigation or entirely disposing of the case. An order that does not end the litigation or dispose of a case is an interlocutory order. Ordinarily, all pre-trial orders are considered interlocutory and not appealable.

2. The Pennsylvania Superior Court's appellate jurisdiction extends to non-final orders only where: (a) an appeal from an interlocutory order is authorized by law; (b) a lower court has certified the issue involved in the interlocutory order as a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter; or (c) the appellee has waived an objection to the jurisdiction of the court.

3. Unless exceptional circumstances are involved, defendants are prohibited from appealing interlocutory orders in criminal cases. Such exceptional circumstances arise (1) where an appeal is necessary to prevent a great injustice to the defendant, or (2) where an issue of basic human rights is involved, or (3) where an issue of great public importance is involved.

4. Because a Motion to Continue Trial generally is not enumerated as an interlocutory order that is appealable as of right, Appellant is required to file a petition for permission to appeal to the Pennsylvania Superior Court.

5. Appellant has not raised an issue in his appeal claiming that he has suffered a great injustice, a basic human right is involved, or an issue of great public importance is involved. Therefore, the exceptional circumstances doctrine does not apply to Appellant's appeal.

6. The United States Supreme Court has held that the right of confrontation is a trial right.

7. Pennsylvania Rule of Criminal Procedure 542(E) promulgated by the Pennsylvania Supreme Court provides that hearsay evidence alone is sufficient to establish a prima facie case at a preliminary hearing. As the Rule is promulgated by the Supreme Court, it is deemed to be constitutional.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CP-01-CR-1246-2015, COMMONWEALTH
OF PENNSYLVANIA VS. TODD RICHARD OYLER.

Megan C. Zei, Esq., Attorney for Commonwealth

Gerald A. Lord, Esq., Attorney for Appellant

Samuel A. Gates, Esq., Attorney for Appellant

Campbell, J., October 6, 2016

OPINION PURSUANT TO PA. R.A.P. 1925(A)

Appellant, Todd Richard Oyler, appeals from this Court's August 2, 2016 Order denying Appellant's Motion to Continue Trial Generally. For the reasons set forth below, it is respectfully requested that this Court's August 2, 2016 Order be affirmed.

Appellant is charged with two counts of Involuntary Deviate Sexual Intercourse with a Child, a felony of the first degree¹; two counts of Unlawful Contact with a Minor, a felony of the first degree²; one count of Unlawful Contact with a Minor, a felony of the third degree³; one count of Aggravated Indecent Assault of a Child, a felony of the first degree⁴; one count of Indecent Assault of a Person Less than 13 Years of Age, a felony of the third degree⁵; one count of Corruption of Minors, a felony of the third degree⁶; one count of Corruption of Minors, a misdemeanor of the first degree⁷; one count of Indecent Exposure, a misdemeanor of the first degree⁸; one count of Indecent Assault - statutory, a misdemeanor of the second degree⁹; and one count of open lewdness, a misdemeanor of the third degree¹⁰.

On November 24, 2015, a preliminary hearing was held in this matter before Magisterial District Judge Tony Little. At Appellant's preliminary hearing, the Commonwealth only presented hearsay testimony of statements made by M.L, the juvenile victim in this case. All charges were held for court. Appellant filed an Omnibus Pre-Trial Motion on March 9, 2016 which included a Habeas Corpus Motion, a Motion to Quash or Dismiss the Criminal Information, and a Motion for Remand for Preliminary Hearing. This Court denied Appellant's Omnibus Pre-trial Motion in its entirety on April 29, 2016. Appellant filed a second Omnibus Pre-Trial Motion on May 10, 2016 seeking this Court to preclude the Commonwealth from

¹ 18 Pa. C.S. § 3123 (B)

² 18 Pa. C. S. § 6318(a)(1)

³ 18 Pa. C.S. § 6318(a)(1)

⁴ 18 Pa. C.S. § 3125(b)

⁵ 18 Pa. C.S. § 3126(a)(7)

⁶ 18 Pa. C.S. § 6301(a)(1)(ii)

⁷ 18 Pa. C.S. § 6301(a)(1)(i)

⁸ 18 Pa. C.S. § 3127(a)

⁹ 18 Pa. C.S. § 3126(a)(7)

¹⁰ 18 Pa. C.S. § 5901

prosecuting Appellant for Unlawful Contact With a Minor.¹¹ This Court denied Appellant's Omnibus Pre-trial Motion in its entirety on May 19, 2016. On June 23, 2016, the Commonwealth moved to admit out of court statements under the Tender Years Hearsay Exception.¹² This Court granted that motion on July 15, 2016. The Appellant then moved to continue trial generally. On August 2, 2016, this Court denied Appellant's Motion to Continue Trial Generally. Appellant then filed his Notice of Appeal and Concise Statement on September 1, 2016 and September 22, 2016 respectively¹³.

In his Concise Statement, Appellant alleges that this Court erred by denying his Motion to Continue Trial Generally pending the Supreme Court of Pennsylvania's decision in *Commonwealth v. Ricker*, 120 A.3d 349 (Pa. Super. 2015). Appellant also argues that his constitutional right to confront and cross-examine his accuser at his preliminary hearing was violated.

Appellant first alleges that this Court erred by denying his Motion to Continue Trial Generally until the Supreme Court of Pennsylvania renders an opinion in *Commonwealth v. Ricker*. "The Superior Court shall have exclusive appellate jurisdiction of all appeals from final orders of the courts of common pleas." 42 Pa. C.S.A. § 742. A final order is an order which "disposes of all claims and of all parties; ... or is entered as a final order pursuant to paragraph (c) of this rule."¹⁴ A final order puts "litigants out of court by either ending the litigation or entirely disposing of the case." *Commonwealth v. Jackson*, 849 A.2d 1254, 1256 (Pa. Super. 2004) (quoting *Commonwealth v. Rosario*, 615 A.2d 740, 743 (Pa. Super. 1992)). An order that does not end the litigation or dispose of a case is an interlocutory order. *Rosario*, 615 A.2d at 743 (quashing an appeal of

¹¹ 18 Pa. C.S. § 6318(c)

¹² 42 Pa. C.S. § 5985.1

¹³ It is noted that Appellant has failed to appeal this Court's April 29, 2016 Order or its July 15, 2016 Order, denying Appellant's Omnibus Pre-trial Motions in which Appellant sought remand for a preliminary hearing and attempted to prevent the Commonwealth from admitting M.L.'s hearsay statements under the Tender Years Hearsay Exception. This Court further notes that as its July 15, 2016 Order states, M.L. was under the age of twelve, made statements describing an offense enumerated in 18 Pa. C.S. Chapter 31, and her statements provided sufficient indicia of reliability. Under the Tender Years Hearsay Exception, M.L.'s statements will be admissible at trial.

¹⁴ See PA. R. A. P. 341

an order that was not final and therefore an interlocutory order). “Ordinarily all pre-trial orders are considered interlocutory and not appealable.” *Commonwealth v. Bennett*, 345 A.2d 754, 755 (Pa. Super. 1975) (citing *Commonwealth v. Rucco*, 324 A.2d 388, 389 (PA. Super. 1974)). Interlocutory orders may be appealed¹⁵ as of right¹⁶ or by permission¹⁷. An appellant may appeal an interlocutory order by permission by seeking certification from the lower court within thirty days of the lower court’s issuance of the order in question.¹⁸ An appellant may request that the lower court add the language pursuant to 42 Pa. C.S.A. § 702 (b)¹⁹ to the order being challenged.²⁰

[The Pennsylvania Superior Court’s] appellate jurisdiction extends to Non-final orders only where: (a) an appeal from an interlocutory order is authorized by law; (b) a lower court has certified the issue involved in the interlocutory order as ‘a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter; or (c) the appellee has waived an objection to the jurisdiction of the court.

Rucco, 324 A.2d at 389 (internal quotation marks and citations omitted).

Generally in criminal cases, “a defendant can appeal only from a final judgment of sentence, and an appeal from any prior Order or judgment will be quashed.” *Commonwealth v. Swanson*, 225 A.2d 231, 232 (PA. 1967).

¹⁵ 42 Pa. C.S.A. § 5105(c)

¹⁶ PA. R. A. P. 311

¹⁷ PA. R. A. P. 1311 and PA. R. A. P. 312

¹⁸ Pa. R. A. P. 1311

¹⁹ “When a court or other government unit, in making an interlocutory order in a matter in which its final order would be within the jurisdiction of an appellate court, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.” 42 Pa. C.S.A. § 702 (b).

²⁰ Pa. R. A. P. 1311

Unless ‘exceptional circumstances’ are involved, defendants are prohibited from appealing interlocutory orders in criminal cases. Such exceptional circumstances arise (1) where an appeal is necessary to prevent a great injustice to the defendant, or (2) where an issue of basic human rights is involved, or (3) where an issue of great public importance is involved.

Id. at 232. See also *Ricker*, 120 A.3d at 353.

This Court’s Order denying Appellant’s Motion to Continue Trial Generally is not a final order. The Order did not end the litigation or dispose of the case. Therefore, Appellant has filed an appeal from an interlocutory order. Because a Motion to Continue Trial Generally is not enumerated as an interlocutory order that is appealable as of right²¹, Appellant is required to file a petition for permission to appeal to the Pennsylvania Superior Court.²² To date, Appellant has failed to seek certification and have this Court’s Order amended to include the language specified in 42 Pa. C.S.A. § 702. Appellant failed to follow appellate procedure under Pa. R. A. P. 1311 and 42 Pa. C.S.A. § 702, and the thirty day window to do so has expired.²³

The Pennsylvania Superior Court has quashed such appeals in the past. See *Commonwealth v. Fleming*, 794 A.2d 385, (Pa. Super. 2002) (quashing an appeal in which appellant failed to file a petition for permission to file an interlocutory appeal)); *Commonwealth v. Wills*, 476 A.2d 1362 (PA. Super. 1984) (quashing an appeal because appellants failed to petition for permission to appeal, as required by Pa. R. A. P. 1311)); *Rucco*, 324 A.2d at 390 (quashing an appeal of an interlocutory order denying relief of an alleged violation of the ‘180 day rule’).

Appellant’s appeal cannot be legitimized by exceptional circumstances either. A motion to continue trial generally does not fit into any of the categories that would warrant invoking the exceptional circumstances doctrine. Appellant has not raised an issue in his appeal claiming that he has suffered a great injustice, a basic human right is involved, or an issue of great public importance is involved.

²¹ See PA. R. A. P. 311

²² See PA. R. A. P. 1311 and PA. R. A. P. 312

²³ This Court filed the Order in question on August 2, 2016. Appellant would have had to file for certification on or before September 1, 2016.

Therefore, the exceptional circumstances doctrine does not apply to Appellant's appeal.

Appellant's appeal of the interlocutory order is not as of right, he has failed to comply with Pa. R. A. P. 1311 and 42 Pa. C.S.A. § 702, and a motion to continue trial generally does not warrant the application of the exceptional circumstances doctrine. Therefore, Appellant's appeal should be quashed. Even if Appellant properly perfected his appeal, his claims are meritless.

Appellant next alleges that his constitutional right to confront his accuser at his preliminary hearing was violated. Both the United States Constitution and the Pennsylvania Constitution provide that a defendant has the right to confront the witnesses against him in criminal prosecutions.²⁴ U.S. CONST. amend. VI; PA. CONST. art. 1, § 9. The right of confrontation triggers when the prosecution seeks to admit testimonial evidence against the accused, and the right operates to bar admission of the testimonial statements of witnesses who were not called at trial unless the witness was unavailable at trial and the defendant had a prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36, 54 (2004). The United States Supreme Court has held that "the right of confrontation is a trial right." *Pennsylvania v. Ritchie*, 480 U.S. 39, 53 (1987). See also *Commonwealth v. Herrick*, 660 A.2d 51, 60 (PA. Super. 1995).

Pennsylvania Rule of Criminal Procedure 542(E) promulgated by the Pennsylvania Supreme Court, provides that hearsay evidence alone is sufficient to establish a prima facie case at a preliminary hearing.²⁵ As the Rule is promulgated by the Supreme Court, it is deemed to be constitutional. Further, in *Commonwealth v. Ricker*, 120 A.3d 349, the Pennsylvania Superior Court has established appellate authority in this regard.

Here, Appellant argues that his constitutional right to confront his accuser was violated and that right will be lost forever if he is forced to go to trial before the Pennsylvania Supreme Court makes its dec-

²⁴ The Sixth Amendment applies to the United States via the Fourteenth Amendment. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 309 (2009) (citing *Pointer v. Texas*, 380 U.S. 400, 403 (1965)). A criminal defendant's rights under the Confrontation Clause of the Pennsylvania Constitution are coextensive with those guaranteed by the Sixth Amendment of the United States Constitution. *Commonwealth v. Geiger*, 944 A.2d 85, 97 n.6 (PA. Super. 2008).

²⁵ PA. R. CRIM. P. 542(E)

sion in ***Ricker***. Although the Supreme Court has granted allocatur in that case, at the time of the preliminary hearing, at the time of the omnibus pre-trial hearing, and currently, the Superior Court's published Opinion in ***Ricker*** was good and binding law. This Court did not err in relying on ***Ricker*** and its precedents. Currently, the right to confront witnesses is a *trial* right; the Pennsylvania Supreme Court has not extended that right.

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NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Thursday, December 8, 2016 8:30 am

DOVE — Orphans' Court Action Number OC 118 2016 The First and Final Account of Charles G. Dove and Glenda Dove, Executors of the Estate of Charles J. Dove, Deceased, late of Latimore Township, Adams County, Pennsylvania

NUTT — Orphans' Court Action Number OC 119 2016 The First and Final Account of Christine A. Smith, Executrix of the Estate of Charles A. Nutt, Deceased, late of Union Township, Adams County, Pennsylvania

Kelly A. Lawver
Clerk of Courts

11/23

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF MAHLON R. CRAWFORD, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Rodney W. Crawford, c/o Laucks & Laucks, PC, 105 West Broadway, Red Lion, PA 17356

Attorney: David M. Laucks, Esq., Laucks & Laucks, PC 105 West Broadway, Red Lion, PA 17356

ESTATE OF DOROTHY FREITAG, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: PNC Bank, N.A., P.O. Box 308, 4242 Carlisle Pike, Camp Hill, PA 17001-0308

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF RICHARD G. KING, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Estelle B. King, 2596 Hanover Pike, Hanover, PA 17331

Attorney: Elyse E. Rogers, Esq., Saidis, Sullivan & Rogers, 100 Sterling Parkway, Suite 100, Mechanicsburg, PA 17050

SECOND PUBLICATION**ESTATE OF MAUDE E. DEAL, a/k/a MAUDE ELIZABETH DEAL, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Elizabeth D. Deal, 314 High St., 1st Fl, Hanover, PA 17331

Attorney: Amy E.W. Ehrhart, Esq., 118 Carlisle St., Suite 202, Hanover, PA 17331

ESTATE OF FLORENCE L. DIEHL, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: John E. Watson, Sr., 6995 Old Harrisburg Road, York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF PHILIP D. HOFFMAN, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Abby Young, 3070 Willow Lane, Glenville, PA 17329

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF EVELYN V. WARNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Joyce E. Arndt, 611 Moul Avenue Hanover, PA 17331

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MICHAEL H. WILT, SR., DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Administrators: Eric A. Wilt, 143 Fohl Street, Biglerville, PA 17307; Michael H. Wilt, Jr., 222 Ewell Avenue, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF EDWARD L. KRANTZ, DEC'D**

Late of Freedom Township, Adams County, Pennsylvania

Administratrix: Wenette J. Drum, 203 Linden Blvd., Middletown, MD 21769

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF GLORIA L. WISEMAN a/k/a GLORIA LADYNE WISEMAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Mr. Bradley M. Wiseman, 125 Park Heights Boulevard, Hanover, PA 17331

Attorney: Arthur J. Becker, Jr., Esq., Becker & Strausbaugh, P.C., 544 Carlisle Street, Hanover, PA 17331