

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Ann Wilson,	:	
	:	
Appellant	:	
	:	
v.	:	No. 659 C.D. 2008
	:	No. 660 C.D. 2008
Travelers Insurance Company and	:	
Allied Signal, Inc.	:	Submitted: October 30, 2009

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: January 29, 2010**

Before this Court is the appeal of Anne Wilson (Claimant) from the order (Order) of the Court of Common Pleas of Philadelphia County (trial court) dated January 2, 2008, directing Claimant to pay to Travelers Insurance Company (Insurer) all attorney's fees and costs associated with Insurers' Petition for Special Injunction (Injunction Petition). Claimant argues that the trial court lacked subject

matter jurisdiction and did not issue findings of fact or cite statutory authority that would support an award of costs and attorney's fees to Insurer.<sup>1</sup>

The background of this case is set forth more fully in Wilson v. Workers' Compensation Appeal Board (Allied Corp.), No. 893 C.D. 2007, No. 989 C.D. 2007, No. 2297 C.D. 2007, No. 2298 C.D. 2007 (Pa. Cmwlth. July 8, 2008). The facts most pertinent to the present matter are as follows. After 25 years of litigation in a workers' compensation dispute, Claimant prevailed before the Workers' Compensation Appeal Board (Board) and received an award of approximately \$517,958.41. Claimant and Allied Signal, Inc. (Allied)<sup>2</sup> petitioned for review of the Board's decision in May of 2007. Allied requested supersedeas from this Court, which we denied because Allied had failed to first request supersedeas from the Board. Wilson, slip op. at 10 n.7. "On May 16, 2007 . . . Claimant filed in the trial court a praecipe to enter judgment on the [Workers' Compensation Judge's (WCJ)] fatal claim award in the amount of \$517,958.41, including penalties, interest and attorneys fees . . . ." Wilson, slip op. at 21. Claimant also filed a praecipe for writ of execution in this amount, along with interest and costs. Finally:

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<sup>1</sup> Claimant also appeals from the Bill of Costs filed by Insurer on January 14, 2008. This Bill of Costs is a filing of Insurer, not an order of the trial court; therefore, no appeal may be taken from it. See Pa. R.A.P. 311-13, 341 (appeals may be taken from final orders, collateral orders and certain interlocutory orders). We note that appealing a party's bill of costs is not the correct method of challenging an alleged error in the amount of costs. See 25A Standard Pa. Practice 2d §§ 127:90 – 127:94 (describing proper method for challenging allegedly erroneous taxation of costs). We, therefore, quash Claimant's appeal from Insurer's Bill of Costs.

<sup>2</sup> Insurer is Allied's workers' compensation carrier.

[o]n August 14, 2007, [Insurer] filed [its Injunction Petition], alleging that it paid Claimant \$545,733.02 and attempted to resolve the matter amicably, but Claimant refused to mark the \$517,958.41 judgment satisfied and threatened to file the judgment in counties throughout the Commonwealth. [Insurer] requested an order instructing Claimant to mark the judgment satisfied and prohibiting Claimant from entering the judgment in any other county, including Philadelphia County.

On September 12, 2007, the trial court granted [the Injunction Petition]. . . . The trial court issued an order [(Injunction Order)] prohibiting Claimant from re-entering the judgment in Philadelphia County and from entering the judgment in any other county of the Commonwealth; the [Injunction Order] also directed Claimant to mark the judgment “satisfied” within ten days. The [Injunction Order] states that the special injunction shall continue in effect until further order of the court. Claimant appealed [the Injunction Order] to Superior Court . . . and did not comply with the directive to mark the judgment satisfied.

Id. at 22-23 (internal citations omitted). The Superior Court transferred the matter to this Court to be consolidated with the appeal of the underlying workers’ compensation case. This Court affirmed the Board’s order, except “insofar as it affirm[ed] the denial of attorneys’ fees to Claimant with respect to the claim petition.” Id. at 24-25. This Court also affirmed the Injunction Order.

While the appeal of the Injunction Order was pending, Insurer filed with the trial court a Motion for Sanctions on October 18, 2007. On November 26, 2007, the trial court denied the Motion for Sanctions on the grounds that it lacked subject matter jurisdiction because of the pendency of the appeal of its Injunction Order. On January 2, 2008, without further filing by Insurer, the trial court, “upon consideration of [Insurer’s] Motion for Sanctions,” ordered Claimant to pay Insurer “all costs and attorneys’ fees associated with the preparation and prosecution of the

[Injunction Petition].” (Order.) Claimant appealed the Order to the Superior Court, which transferred the appeal to this Court.<sup>3, 4</sup>

The salient issues in this case are: whether the trial court retained jurisdiction to act on Insurer’s Motion for Sanctions after Claimant’s appeal of the Injunction Order; and whether the trial court’s Order cites the appropriate statutory authority and contains the necessary findings to support the award of attorney’s fees to Insurer.

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<sup>3</sup> Generally, jurisdiction over an appeal from a trial court’s order dealing with judgments entered on the basis of workers’ compensation decisions lies with the Pennsylvania Superior Court. See Sections 742 and 762 of the Judicial Code, 42 Pa. C.S. §§ 742 (relating to jurisdiction of the Superior Court over appeals from courts of common pleas), and 762 (relating to the jurisdiction of the Commonwealth Court). Pursuant to Rule 741 of the Pennsylvania Rules of Appellate Procedure, however:

[t]he failure of an appellee to file an objection to the jurisdiction of an appellate court on or prior to the last day under these rules for the filing of the record shall, unless the appellate court shall otherwise order, operate to perfect the appellate jurisdiction of such appellate court, notwithstanding any provision of law vesting jurisdiction of such appeal in another appellate court.

Pa. R.A.P. 741. Since the parties have not objected to the jurisdiction of this Court over this matter, it has waived such an objection. In the interest of judicial economy, this Court will decide the merits of the appeal. Moreover, the Superior Court transferred the current case to this Court because related cases were pending before this Court. See Pa. R.A.P. 752 (stating that this Court or the Superior Court may *sua sponte* “transfer any appeal to the other court for consideration and decision with any matter pending in such other court involving the same or related questions of fact, law or discretion”).

<sup>4</sup> Generally, the decision whether to award attorney’s fees is within the trial court’s discretion and will not be overturned absent an abuse of discretion so long as the trial court has statutory authority to grant attorney’s fees and the trial court’s findings of fact are supported by the record. Township of South Strabane v. Piecknick, 546 Pa. 551, 558 n.6, 686 A.2d 1297, 1300 n.6 (1996).

Claimant first argues that the trial court lacked jurisdiction to issue the Order. In support, Claimant cites Rule 1701 of the Pennsylvania Rules of Appellate Procedure, which states that, generally, “after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.” Pa. R.A.P. 1701(a). Claimant is correct that Rule 1701(a) applies; however, this Court must first determine whether “the matter” on appeal is the same as “the matter” before the trial court. In making such a determination, the courts have considered whether the issues raised by a petition for fees are identical or substantially similar to the issues raised on appeal. For example, the Pennsylvania Supreme Court, in Old Forge School District v. Highmark, Inc., 592 Pa. 307, 924 A.2d 1205 (2007), determined that a motion for attorney’s fees pursuant to Section 2503 of the Judicial Code, 42 Pa. C.S. § 2503, was a separate “matter” from this Court’s order sustaining preliminary objections in the case. Old Forge, 592 Pa. at 316-17, 924 A.2d at 1211. However, a request for attorney’s fees is not always a separate matter from the order being appealed. In In re Appeal of Affected and Aggrieved Residents from the Adverse Action of the Supervisors of Whitpain Township, 472 A.2d 619 (Pa. Super. 1984), the Superior Court held that the trial court in that case lacked jurisdiction to consider a petition for attorney’s fees after the other party appealed the trial court’s determination that the party would have to post bond to proceed with its appeal of a board of supervisors’ zoning decision. The Superior Court offered the following rationale for this holding:

The petition for counsel fees filed by appellant averred that appellees were liable for reasonable counsel fees incurred by appellant on the grounds that the appeals filed by appellees were “arbitrary, vexatious or in bad faith”. This issue was not ancillary to the matter

then on appeal before the Commonwealth Court, namely, whether the appeals undertaken by appellees were “frivolous and for the purposes of delay.” The Common Pleas Court was, therefore, without jurisdiction to entertain the petition.

Id. at 622. Claimant argues that the key difference between Whitpain Township and Old Forge is that the petition for attorney’s fees in Old Forge was filed prior to the appeal of the Commonwealth Court’s order, while the petition for attorney’s fees in Whitpain Township was filed after the trial court’s order. However, the issue to be considered when determining whether a court of original jurisdiction has jurisdiction to consider a petition for attorney’s fees pursuant to Section 2503 after the appeal of a prior final order is whether the issues raised by the petition for fees are identical or substantially similar to the issues raised by the appeal.

In this case, the issues raised by Insurer’s Motion for Sanctions are not substantially similar to the issues involved in Claimant’s appeal of the Injunction Order. The issue raised in Claimant’s appeal of the Injunction Order was whether Claimant had been properly served and whether the trial court had “personal and subject matter jurisdiction to issue” the Injunction Order. Wilson, slip op. at 24. Insurer cited, as the basis for its Motion for Sanctions, Section 2503 and Rule 1023.1(c) of the Pennsylvania Rules of Civil Procedure. The issue implicated by these provisions and in Insurer’s Motion for Sanctions was whether Claimant’s conduct “in commencing and continuing to litigate this action was arbitrary, vexatious and/or in bad faith.” (Motion for Sanctions ¶ 19.) See also 42 Pa. C.S. § 2503(7), (9) (attorney’s fees may be awarded to “[a]ny participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter” or “[a]ny participant who is

awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith”). Because the issues are not identical or substantially similar, per Old Forge, the Motion for Sanctions was not the same “matter” that was appealed to this Court for purposes of Rule 1701(a). Therefore, the trial court had jurisdiction to consider the Motion for Sanctions.<sup>5</sup>

Claimant next argues that the trial court lacked statutory authority to award attorney’s fees to Insurer because the trial court, in the Order, did not cite any such authority. Interwoven<sup>6</sup> with this argument is the argument that the Order was

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<sup>5</sup> Claimant also appears to argue that, because the trial court initially denied the Motion for Sanctions and Insurer did not appeal this denial, the trial court did not have jurisdiction to reconsider its denial and later grant the Motion for Sanctions. Claimant does not develop this argument with any reference to relevant authority. We note, however, that Section 5505 of the Judicial Code, 42 Pa. C.S. § 5505, allows a court to “modify or rescind any order within 30 days after its entry . . . if no appeal from such order has been taken or allowed.” 42 Pa. C.S. § 5505. The trial court’s order denying the Motion for Sanctions, while dated November 26, 2007, was not entered until December 3, 2007. The Order was dated January 2, the 30th day after entry of the order initially denying the Motion for Sanctions. Therefore, because the trial court acted within 30 days of its initial order denying the Motion for Sanctions, it retained authority to modify or rescind that order. We note that, although the Order was not entered until January 7, 2008, an order does not need to be entered in order to effectively modify or rescind a prior order for purposes of Section 5505. Barbour v. Department of Transportation, Bureau of Driver Licensing, 701 A.2d 990, 992 (Pa. Cmwlth. 1997) rev’d on other grounds 557 Pa. 189, 732 A.2d 1157 (1999); PNC Bank, N.A. v. Unknown Heirs, 929 A.2d 219, 227 (Pa. Super. 2007) (citing Jackson v. Hendrick, 560 Pa. 468, 746 A.2d 574 (2000) (plurality)).

<sup>6</sup> Claimant states the question presented in this section of her brief as:

Did the court err or abuse its discretion in ordering sanctions that appellant and her counsel are required to pay defendant, [Insurer], all costs and attorney’s fees associated with the preparation and prosecution of [the] petition for special injunction upon presentation of defendant’s bill of costs within ten (10) days

unsupported by any factual determination that Claimant's conduct in the underlying proceeding was obdurate, vexatious or exhibited bad faith. We initially note that, as set forth above, Section 2503 provides that a court may grant attorney's fees to:

(7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.

....

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

42 Pa. C.S. § 2503. Insurer, in its Motion for Sanctions, sought attorney's fees pursuant to Section 2503. (Motion for Sanctions ¶ 18.) Insurer also cited various acts by Claimant which might be construed as dilatory, vexatious, obdurate or undertaken in bad faith. Such acts include: (1) refusing to mark Claimant's

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hereof and further ordering plaintiff and her counsel are required to pay [Insurer] all costs and attorney's fees associated with the preparation and prosecution of the instant motion for sanctions including without notice, hearing, evidence or specific findings of fact including contrary to the Pennsylvania Constitution including Article I Section [sic] 1, 9, 10 and Judicial Code 42 Pa. C.S.A. Section [sic] 1726, 2503 and P.R.C.P. 1023.1 and the Worker's Compensation Act and applicable law and decisions where defendant is not the prevailing party and waived the issue and the court erroneously failed to decide appellants' exceptions to an alleged bill of costs which in fact was not filed in the lower court?

(Claimant's Br. at 9.) Claimant's Summary of Argument spans 4 pages, and Claimant's elucidation of this issue spans approximately 24 pages. Given the discursive and unfocused nature of Claimant's arguments, it is sometimes difficult to discern exactly what Claimant is attempting to argue. This Court has previously admonished Claimant's counsel regarding the quality of the briefs filed on behalf of Claimant. Wilson, slip op. at 25 n.26. It does not appear that Claimant's counsel has taken this admonition to heart.



judgment as satisfied after receiving funds in the amount of the judgment from Insurer (Motion for Sanctions ¶¶ 6-9); (2) attempting to collect upon the judgment after being paid the amount of the judgment (Motion for Sanctions ¶ 9); (3) threatening to file judgments in additional counties after having already received amounts equal to the judgment filed in Philadelphia County (Motion for Sanctions ¶ 14); and (4) refusing to mark the judgment as satisfied despite the trial court's order to do so (Motion for Sanctions ¶ 17.) "Generally, if the record supports a court's *finding of fact* that a party's conduct was dilatory, obdurate or vexatious, an award of counsel fees will not be disturbed in absence of an abuse of discretion." Township of South Strabane v. Piecknick, 546 Pa. 551, 558 n.6 686 A.2d 1297, 1300 n.6 (1996) (emphasis added). However, in order for a trial court to award attorney's fees pursuant to Section 2503(7), the trial court must make a "specific finding of dilatory, obdurate or vexatious conduct." Id. at 560, 686 A.2d at 1301. In this case, unfortunately, the trial court's Order made no specific findings of fact regarding the obdurate, dilatory or vexatious nature of Claimant's conduct, stating simply:

And now, this 2nd day of January, 2008, upon consideration of [Insurer's] Motion for Sanctions, any responses thereto, and/or any replies thereto, it is hereby ORDERED and DECREED that [Claimant and Claimant's counsel] are required to pay [Insurer] all costs and attorney's fees associated with the preparation and prosecution of the [Injunction Petition] upon presentation of [Insurer's] Bill of Costs, within ten (10) days thereof.

It is further ORDERED and DECREED that [Claimant and Claimant's counsel] are required to pay [Insurer] all costs and attorneys' fees associated with the preparation and prosecution of the instant Motion for Sanctions, per and as above.

(Order). From the face of this Order, it is not clear precisely what conduct of Claimant the trial court found to be dilatory, vexatious or obdurate.<sup>7</sup> While one might infer from the trial court's reference to the Motion for Sanctions that the trial court was granting attorney's fees pursuant to Section 2503, this is itself not clear, nor is it clear which subsection of Section 2503 the trial court is invoking. Unfortunately, without a "specific finding of dilatory, obdurate or vexatious conduct," we cannot review that finding for support in the record as is required by precedent. *Id.* at 560, 686 A.2d at 1301.

We must, therefore, reluctantly, vacate the Order and remand the matter of attorney's fees to the trial court so that it may set out the statutory basis for its award of attorney's fees and make findings of fact necessary to support such an award.

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**RENÉE COHN JUBELIRER, Judge**

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<sup>7</sup> As noted above, Insurer, in its Motion for Sanctions, complains of a number of different acts and omissions by Claimant, which the trial court could reasonably find to be obdurate, vexatious or dilatory.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Ann Wilson,	:	
	:	
Appellant	:	
	:	
v.	:	No. 659 C.D. 2008
	:	No. 660 C.D. 2008
Travelers Insurance Company and	:	
Allied Signal, Inc.	:	

**ORDER**

**NOW**, January 29, 2010, the order of the Court of Common Pleas of Philadelphia County in the above-captioned matter is hereby **VACATED**, and this matter is hereby **REMANDED** for further proceedings. Furthermore, the appeal of Ann Wilson from the Bill of Costs filed by Travelers Insurance Company on January 14, 2008 is hereby **QUASHED**.

Jurisdiction relinquished.

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**RENÉE COHN JUBELIRER, Judge**