IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Roderick G. Strohl, Jr., Richard E. Houser, and Concerned Citizens of South Annville, an unincorporated association, by and through Roderick G. Strohl, President, Appellants	:	
v.	:	No. 878 C.D. 2007
South Annville Township, South Annville Township (Lebanon County) Authority, Dale L. Hoover and Donald H. Umberger, Sr., in their official capacities as Supervisors of the Township of South Annville and individually, Roy A. Meyer in his official capacity as Chairman of the Board of the South Annville Township (Lebanon County) Authority, Jeffrey D. Steckbeck, P.E. and Steckbeck Engineering & Surveying, Inc., a professional corporation	:	Submitted: November 9, 2007

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: June 20, 2008

Roderick G. Strohl, Jr., Richard E. Houser, and Concerned Citizens of South Annville (collectively, Strohl) appeal from an order of the Court of Common Pleas of Lebanon County (Trial Court) that sustained the Preliminary Objections of South Annville Township, South Annville Township Lebanon County Authority,

Dale L. Hoover and Donald H. Umberger, Sr., in their official capacities as Supervisors of the Township of South Annville and individually, Roy A. Meyer in his official capacity as Chairman of the Board of the South Annville Township Lebanon County Authority (collectively, the Municipal Defendants), and Jeffery D. Steckbeck and Steckbeck Engineering. The Trial Court's order further dismissed with prejudice each count brought by Strohl, and dismissed with prejudice Strohl's entire Complaint. We affirm.

We revisit this matter, originally addressed in our opinion in Strohl, et al. v. South Annville Township, et al. (Pa. Cmwlth., No. 51 C.D. 2006, filed December 13, 2006) (hereinafter, Strohl I). We will recount the initial portion of the convoluted procedural history of this case as detailed in Strohl I.

On July 8, 2005, Strohl filed in the Trial Court a Complaint, solely against South Annville Township (Township), seeking relief under both the Local Government Unit Debt Act (Debt Act),[1] and under what is commonly referred to as the Right to Know Law (RTKL),[2] for asserted violations thereof. In brief, Strohl alleged in the Complaint that the Township had violated the Debt Act by entering into an agreement to borrow approximately $5.5 million dollars to fund the South

[1] 53 Pa.C.S. §§ 8001-8271. The Debt Act establishes certain controls over a local government that seeks to borrow money on bonds or notes. Section 8001(d) of the Debt Act, 53 Pa.C.S. § 8001(d). The general purpose of the Debt Act is to require the disclosure of a project to ensure lawfulness and public notice while respecting the discretion of a governmental body to pursue a major construction project in a reasonable and business-like manner. Skonieczny v. Department of Community and Economic Development, 853 A.2d 1172 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 538 Pa. 666, 875 A.2d 1077 (2005).

[2] Act of June 21, 1957, P.L. 390, as amended, 65 P.S. §§ 66.1-66.4. The General Assembly's recent amendments to the RTKL are not applicable to this appeal.

Annville Sewer Project, and had violated the RTKL by denying Strohl access to requested documents.

Also on July 8, 2005, Strohl filed a Motion for Preliminary Injunction seeking to enjoin the Township from taking any further action on the Sewer Project until debt incurred therefor complied with the Debt Act, and until disclosure of certain information was made pursuant to the RTKL. Following expedited argument, the Trial Court denied[3] the Motion on the bases, *inter alia*, of a lack of jurisdiction, improper initial service, and Strohl's failure to name indispensable parties. Strohl subsequently appealed the Trial Court's denial of the Motion to this Court, but prior to any issuance of a disposition on the merits, we granted an Application to Discontinue the appeal filed herewith by Strohl, by order dated July 17, 2006.[4]

Strohl then commenced on a prolonged procedural path of repeated amendments to the original Complaint, filing a First Amended Complaint on July 27, 2005. The First Amended Complaint added defendants Donald Umberger, Dale Hoover, and Roy Meyer (the Individual Defendants), and further added the South Annville Township Lebanon County Authority (Authority). While maintaining the original two counts under the Debt Act and the RTKL, the First Amended Complaint also: added a count against the Individual Defendants for

[3] The Trial Court order denying Strohl's Motion for Preliminary Injunction was dated July 12, 2005.

[4] See Strohl, et al. v. South Annville Township (Pa. Cmwlth., No. 1551 C.D. 2005, filed July 17, 2006).

negligent misrepresentation; requested certification as a class action; requested attorney's fees, and; requested transfer of the matter to the Department of Community and Economic Development (DCED) in the event that the Trial Court found a lack of jurisdiction over the Debt Act actions. On August 16, 2005, the Municipal Defendants collectively filed Preliminary Objections, and on August 19, 2005, they filed a Praecipe for Disposition.

On August 30, 2005, Strohl filed a Second Amended Complaint, including the prior claims and adding twelve additional claims, which new claims included, *inter alia*,[5] counts asserting that the Individual Defendants: conspired to violate the Debt Act; conspired to conceal feasible sewer alternatives; breached a duty under Section 607 of The Second Class Township Code (Township Code);[6]

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[5] Due to Strohl's addition and subsequent withdrawal of certain claims within the convoluted procedural history of this matter, not all claims and/or counts have been recounted herein.

[6] Act of May 1, 1933, P.L. 103, as amended, 53 P.S. § 65607. Section 607 enumerates the duties of township supervisors, which duties include in relevant part:

> Duties of supervisors
>
> The board of supervisors shall:
>
> (1) Be charged with the general governance of the township and the execution of legislative, executive and administrative powers in order to ensure sound fiscal management and to secure the health, safety and welfare of the citizens of the township.
>
> * * *
>
> (3) Employ persons as may be necessary for the general conduct of the business of the township and provide for the compensation, organization and supervision of the persons so employed. Records

(Continued....)

violated Section 3109[7] of the Township Code; violated the Pennsylvania Wiretapping and Electronic Surveillance Control Act (Wiretap Act),[8] and; violated Strohl's rights under the First Amendment to the United States Constitution.

> shall be kept and reports made and filed giving the names of all persons employed, dates on which work was done and the number of hours worked with compensation paid to each person and the capacity in which employed.
>
> * * *
>
> (5) Annually, on or before the first day of February, furnish to the board of auditors information on the construction or maintenance of roads or other matters that may be required by any department of the Commonwealth to be included in the annual township report.
>
> * * *
>
> (7) Perform duties and exercise powers as may be imposed or conferred by law or the rules and regulations of any agency of the Commonwealth.

[7] Section 3109 of the Township Code, 53 P.S. § 68109, states:

> Engineers and architects not to be interested in contracts
>
> (a) No architect or engineer in the employ of a township and engaged in the preparation of plans, specifications or estimates may bid on any public work at any letting of the work in the township.
>
> (b) An officer of a township who is charged with letting any public work may not award a contract to any architect or engineer in the employ of the township.
>
> (c) An architect or engineer in the employ of a township may not be interested in any contract for public work in the township or receive any remuneration or gratuity from any person interested in any contract except under section 3102(l).

(Continued....)

Thereafter, on September 19, 2005, the Municipal Defendants again filed Preliminary Objections. Citing Pa.R.C.P. No. 1028,[9] the Municipal

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(d) Any person who violates this section commits a misdemeanor of the third degree.

[8] 18 Pa. C.S. §§ 5701-5781.

[9] Pennsylvania Rule of Civil Procedure 1028 states:

Preliminary Objections

(a) Preliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(1) lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;

(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer);

(5) lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;

(6) pendency of a prior action or agreement for alternative dispute resolution;

(7) failure to exercise or exhaust a statutory remedy, and

(8) full, complete and adequate non-statutory remedy at law.

(b) All preliminary objections shall be raised at one time. They shall state specifically the grounds relied upon and may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(Continued....)

Defendants challenged the Trial Court's jurisdiction over certain counts within the Second Amended Complaint, challenged the specificity of factual averments within the Second Amended Complaint, and challenged the legal sufficiency of certain counts therein.

On October 7, 2005, Strohl filed a Third Amended Complaint, deleting certain counts not relevant to the action *sub judice*, and maintaining and reorganizing those counts enumerated above as set forth in the Second Amended Complaint. On October 26, 2005, the Municipal Defendants again filed Preliminary Objections, mirroring their prior challenges under Pa.R.C.P. No. 1028.

On November 14, 2005, Strohl again pled over the prior counts, and filed a Fourth Amended Complaint. The Fourth Amended Complaint made no

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> (c)(1) A party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections. If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.
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> (2) The court shall determine promptly all preliminary objections. If an issue of fact is raised, the court shall consider evidence by depositions or otherwise.
>
> (d) If the preliminary objections are overruled, the objecting party shall have the right to plead over within twenty days after notice of the order or within such other time as the court shall fix.
>
> (e) If the filing of an amendment, an amended pleading or a new pleading is allowed or required, it shall be filed within twenty days after notice of the order or within such other time as the court shall fix.

(Continued....)

substantive changes to the previously plead counts, with the exception of consolidating the prior separate First Amendment claims into a single count.

On November 25, 2005, the Municipal Defendants again filed Preliminary Objections, repeating their challenges under Pa.R.C.P. No. 1028. Additionally, the Municipal Defendants requested that Strohl, and their counsel, be ordered to pay attorney's fees and costs on the assertion that Strohl's action was frivolously filed and pursued. The Municipal Defendants further filed a Praecipe for the matter to be listed for oral argument. The Trial Court promptly listed the matter for oral argument to be heard on December 30, 2005.

On December 16, 2005, Strohl plead over and filed a Fifth Amended Complaint. The Fifth Amended Complaint made no substantive changes to Strohl's previously plead claims, but added certain conclusory statements without adding any additional factual averments. Additionally, the Fifth Amended Complaint added two new defendants, Jeffery D. Steckbeck and Steckbeck Engineering (collectively, Steckbeck; collectively with all other defendants, Defendants), including Steckbeck as defendants to Strohl's counts for negligent misrepresentation, conspiracy to conceal feasible sewer alternatives, breach of fiduciary duty under Section 3109 of the Township Code, and violations of the Wiretap Act. The stylistic changes to the Fifth Amended Complaint, in combination with Strohl's prior course of amendment to their various counts under

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> (f) Objections to any amended pleading shall be made by filing new preliminary objections.

the multiple amended complaints, resulted in the following organization of Strohl's surviving claims (named defendants noted in parentheses):

Count I – Violations of the Debt Act (Municipal Defendants)

Count II – Violations of the RTKL (Municipal Defendants)

Count III – Negligent Misrepresentation (Individual Defendants and Steckbeck)

Count IV – Civil Conspiracy to Violate the Debt Act (Individual Defendants)

Count V – Civil Conspiracy to Conceal Feasible Sewer Alternatives (Individual Defendants and Steckbeck)

Count VI – Breach of Fiduciary Duty under Section 607 of the Township Code (Individual Defendants)

Count VII – Breach of Duty under Section 3109 of the Township Code (Individual Defendants and Steckbeck)

Count VIII – Violations of the Wiretap Act (Individual Defendants and Steckbeck)

Count IX – Violations of Strohl's First Amendment Rights (Individual Defendants)

Included after Strohl's specific Counts as listed, Strohl included a section within the Fifth Amended Complaint entitled "Class Action Allegations", which are not at issue presently.

Thereafter, the Trial Court deemed the Municipal Defendants' Preliminary Objections to the Fourth Amended Complaint moot, and removed the

matter from the pending argument schedule. Further, the Trial Court notified Strohl that their pleading over was outside the twenty-day mandate of Pa.R.C.P. No. 1028, and informed the parties that the Rules of Civil Procedure would be strictly applied to all future stages of the litigation.

On December 23, 2005, all Defendants filed Preliminary Objections. Pursuant to Pa.R.C.P. No. 1028(a)(1), the Defendants challenged the Trial Court's jurisdiction over Counts I, II, IV, V, VI and VII. Under Pa.R.C.P. No. 1028(a)(2) and (3), the Defendants again challenged the specificity of factual averments made in Counts IV, V, VI, VII, and IX. Under Pa.R.C.P. No. 1028(a)(4), the Defendants challenged the legal sufficiency of every count in the Fifth Amended Complaint. The Defendants renewed their request for attorney's fees and costs, and further requested an award of sanctions against Strohl's attorney under Pa.R.C.P. No. 1023.1(d), for alleged ongoing violations of Pa.R.C.P. No. 1023.1(c).[10] Finally, the

[10] The relevant sections of Pa.R.C.P. No. 1023.1 read:

> Scope. Signing of Documents. Representations to the Court. Violation
>
> * * *
>
> (c) The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, motion, or other paper. By signing, filing, submitting, or later advocating such a document, the attorney or pro se party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation,

(Continued....)

Defendants filed, with their Preliminary Objections to the Fifth Amended Complaint, another Praecipe for Disposition.

The Trial Court then reviewed the record in the matter, without waiting for any response to the Defendants' Preliminary Objections from Strohl, and without receiving any oral argument from any of the parties. The Trial Court concomitantly entered an order dated December 30, 2005, which granted the Defendants' Preliminary Objections, and dismissed every count within the Fifth Amended Complaint, and the Fifth Amended Complaint itself, with prejudice. The Trial Court further found that the Defendants' request for oral argument, within their Praecipe for Disposition, was rendered moot by its order. Finally, the Trial Court directed the parties to prepare testimony and legal argument on the subject of

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> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law,
>
> (3) the factual allegations have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual allegations are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
>
> (d) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (c) has been violated, the court may, subject to the conditions stated in Rules 1023.2 through 1023.4, impose an appropriate sanction upon any attorneys, law firms and parties that have violated subdivision (c) or are responsible for the violation.

the requested sanctions against Strohl and their attorney, and ordered a subsequent hearing on that sole issue.

Strohl thereafter filed a timely Notice of Appeal of the Trial Court's December 30, 2005, order, to this Court, and the Trial Court subsequently issued an opinion in support of its order, pursuant to Pa.R.A.P. 1925(b). That appeal resulted in this Court's opinion in Strohl I.

In Strohl I, we held, in relevant part, that the Trial Court erred in granting the Defendants' Preliminary Objections prior to any response thereto by Strohl, which denied Strohl an opportunity to be heard, and further erred in concomitantly dismissing Strohl's Fifth Amended Complaint. As such, we vacated the Trial Court's December 30, 2005, order, and remanded the matter for further proceedings to allow Strohl an opportunity to answer the Preliminary Objections.

In the course of resuming the proceedings in the Trial Court, Strohl filed, on March 29, 2006, a Motion for Recusal. That Motion requested that the Honorable Samuel A. Kline, presiding over the Trial Court proceedings, recuse himself due to bias shown to Strohl's counsel. The Trial Court denied Strohl's Motion for Recusal by order dated April 5, 2006. Reproduced Record (R.R.) at 79a.

Following our Strohl I remand instructions, the Trial Court subsequently entered two orders dated December 19, 2006. The first order transferred Counts 1 and 4 of Strohl's Fifth Amended Complaint to the DCED

pursuant to the Debt Act.[11] R.R. at 118a-119a. The second order reinstated Defendants' Preliminary Objections, and directed Strohl to file a response consistent with Pa.R.C.P. No. 1028. R.R. at 115a-116a. That order further directed Strohl to timely file a Sixth Amended Complaint, if they chose to remedy any Preliminary Objections to which they agreed, and to timely file a reply to any Preliminary Objections to which Strohl objected. Id. The Trial Court additionally imposed a disposition and briefing schedule upon the parties, including specific directions to all parties as to the brief content required; further, the Trial Court stayed the pending request for award of sanctions filed by Defendants. Id. Following a motion by the Defendants, the Trial Court entered an order dated December 26, 2006, staying all discovery in the case until it had ruled on the Preliminary Objections. R.R. at 120a.

Strohl thereafter filed in the Trial Court a Sixth Amended Complaint,[12] including responses to Defendants' Preliminary Objections. Strohl's Sixth Amended Complaint withdrew, consolidated, and/or reorganized all of Strohl's Counts from their Fifth Amended Complaint, thereby essentially advancing four remaining Counts. In Counts I and II of the Sixth Amended Complaint, Strohl labeled the Debt Act claims previously transferred to the DCED as "suspended." R.R. at 147a, 155a. Strohl's RTKL claims and negligent

[11] The transfer of the Debt Act claims to the DCED is not at issue in the instant matter.

[12] We note that Strohl labeled this filing as its Sixth Amended Complaint, and that the Trial Court consistently refers to this pleading as Strohl's "Proposed Sixth Amended Complaint". Strohl does not raise this seemingly harmless mislabeling before this Court, and we will refer to the pleading as Strohl's Sixth Amended Complaint.

misrepresentation claims were withdrawn. R.R. at 149a, 152a. Newly labeled Count III sought a Writ of Mandamus requiring evaluation and address by the Township of its sewage needs and conflicts of interest prior to incurring any Sewer Project debt. R.R. at 156a-164a. Newly labeled Count IV reasserted Strohl's First Amendment claims. R.R. at 164a-168a. The Defendants thereafter filed Preliminary Objections to the Sixth Amended Complaint. Subsequently, the Trial Court received both written and oral argument on these filings.

By order dated April 3, 2007, the Trial Court sustained the Defendants' Preliminary Objections to the Fifth Amended Complaint, and dismissed each count of the Fifth Amended Complaint, and that Complaint in its entirety, with prejudice. R.R. at 205a. In addressing the Sixth Amended Complaint, the Trial Court concluded that its disposition of the Fifth Amended Complaint and Preliminary Objections resolved all issues that Strohl had attempted to plead over in the Sixth Amended Complaint, with exception of those claims that were either withdrawn by Strohl or transferred to the DCED. Strohl now appeals from the Trial Court's April 3, 2007, order.[13,14]

[13] Strohl's instant appeal also encompasses the Trial Court's denial of Strohl's Motion for Recusal by order dated April 5, 2006.

[14] We note that in addition to the above listed procedural history of this case leading up to the appeal of the order at issue *sub judice*, the Trial Court entered another order, dated May 21, 2007, in response to a Motion by the Defendants requesting that the Trial Court lift the stay of the sanctions proceedings. In that order, the Trial Court wrote that it would continue that stay of those proceedings until the exhaustion of Strohl's appeals, at which time the Trial Court would restate the status of the proceedings. R.R. at 229a.

Before addressing Strohl's presented issues, we note that Strohl's counsel[15] repeats the pattern that he firmly established in the Trial Court of either failing to comprehend, or consciously ignoring, the procedural rules applicable to his clients' action. Strohl's brief to this Court does not comply in numerous respects with the Pennsylvania Rules of Appellate Procedure. Strohl's Statement of Questions Presented exceeds the suggested length thereof in violation of Pa.R.A.P. 2116.[16] Strohl's Statement of the Case section includes numerous points of legal argument,[17] and further references facts that are not part of the record in this matter, all in violation of Pa.R.A.P. 2117. The Argument section of Strohl's

[15] We emphasize that while, in this instance we distinguish between the individual plaintiffs to this action, and their counsel, Jaromir Kovarik, Esq., throughout this opinion our address of the errors attributed to "Strohl" are intended to reflect on the plaintiffs' counsel.

[16] We emphasize that Pa.R.A.P. 2116 "is to be considered in the highest degree mandatory, admitting of no exception. . . " Further, we direct Strohl's attention to the oft-quoted insights of the esteemed Honorable Ruggero J. Aldisert:

> With a decade and a half of federal appellate court experience behind me, I can say that even when we reverse a trial court it is rare that a brief successfully demonstrates that the trial court committed more than one or two reversible errors. I have said in open court that when I read an appellant's brief that contains ten or twelve points, a presumption arises that there is no merit to any of them. I do not say that it is an irrebuttable presumption, but it is a presumption nevertheless that reduces the effectiveness of appellate advocacy. Appellate advocacy is measured by effectiveness, not locquaciousness.

United States v. Hart, 693 F.2d 286, 287 n.1 (3d Cir. 1982).

[17] Any allegations of error not set forth or suggested in the Statement of Questions Involved portion of the brief have been waived for purposes of appeal, and will not be addressed herein. Pa.R.A.P. 2116(a); Dunn v. Board of Property Assessment, 877 A.2d 504 (Pa. Cmwlth. 2005).

brief is peppered throughout with procedural minutiae that is not related to the arguments asserted, which procedural detail is to be set forth exclusively within the Statement of the Case section. Further, Strohl's Argument section does not correspond to the issues advanced in the Statement of Questions Involved in violation of Pa.R.A.P. 2119. Strohl's Reproduced Record does not comply with our rules pertaining to docket entry content, and table of contents indexing. See Pa.R.A.P. 2152, 2174, 2175.

Notwithstanding this noncompliance by Strohl, and despite Defendants' argument to this Court that Strohl's noncompliance merits a quash or dismissal of the appeal, we can and will undertake meaningful review of the limited issues presented and developed, respectively, in Strohl's Statement of Questions Involved and Argument sections, which have been reordered and consolidated in the interests of clarity. In the interests of judicial economy, and in order to expedite resolution of this protracted litigation, we will address the merits of Strohl's issues herein to the extent that those issues have been properly preserved and argued before this Court. We strongly caution Attorney Kovarik, in any future dealings with this Court, to strictly adhere to the letter of our procedural rules.

We first address Strohl's initial set of arguments to this Court, which center on their assertion that the Trial Court erred, and/or abused its discretion, in denying Strohl's motion that Judge Samuel A. Kline recuse himself from the proceedings in the Trial Court. On this issue, Strohl first argues that Judge Kline exhibited antagonism against Strohl in open court, demonstrating the Trial Court's

bias towards Strohl's counsel, and that a fair judgment on the merits of the issues below was therefore impossible. We disagree.

In support of this argument, Strohl relies primarily upon an extended exchange between the Trial Court and Attorney Kovarik, occurring in the July 12, 2006, proceedings, that centered around the Court's questions regarding significant and fundamental defects within Strohl's Complaint, most notably, a lack of the most basic jurisdictional knowledge on Attorney Kovarik's part, defects in joining purported necessary parties, and defects in service. R.R. at 8a-46a. Strohl argues that the Court's pointed questioning of Attorney Kovarik demonstrates clear bias. Strohl further references the Trial Court's address of Attorney Ferry in the proceedings on March 1, 2006. For those proceedings, Attorney Ferry entered an appearance in the matter on the morning of the proceedings in question for, apparently, the limited purpose of defending Attorney Kovarik in the ongoing sanctions proceedings before the Trial Court.[18] R.R. at 55a-62a. Strohl argues that the Trial Court's treatment of Attorney Ferry, in relation to his last minute

[18] We note that the sanctions proceedings are not before this Court in the instant appeal, as those proceedings have been stayed by the Trial Court pending the outcome of this appeal. Notwithstanding, Strohl presents a request that, given the "intertwin[ing]" nature of the Motion for Recusal with the issues involved in the pending Motion for Sanctions, this Court should "give some guidance on the disposition of the sanctions." Strohl Brief at 17. Commonwealth Court is not an advisory body. It is axiomatic, and an elementary foundational truism, that this Court, in its appellate function, does not dispense, upon request, "guidance" as to the disposition of legal actions, or individual issues, that have not been finally ruled upon by a Trial Court, properly preserved, and timely appealed. See Pa.R.A.P. 106, 301-342 (describing, respectively, Commonwealth Court's limited original jurisdiction, and the requisites for appealable orders and reviewable issues). As no final order regarding sanctions has been entered in this matter, and no proper appeal thereof taken, no issues regarding the sanctions proceedings are currently before this Court.

appearance, and the Trial Court's stay of the sanctions proceedings, further demonstrate the Trial Court's bias towards Strohl.

In general, recusal is required whenever there is a substantial doubt as to a jurist's ability to preside over a matter impartially. Dunn (additional citation omitted). Before it can be said that a judge should have recused himself, however, the record must clearly and expressly show prejudice, bias, capricious disbelief or prejudgment. Id. The ultimate decision on recusal is within the sound discretion of the jurist whose recusal is sought, and therefore the propriety of a trial court's ruling on a motion to recuse is reviewed under an abuse of discretion standard. Id. As Strohl correctly notes in its own brief, the Pennsylvania Supreme Court has stated:

> Under the extra-judicial source doctrine, alleged bias stemming from facts gleaned from the judicial proceeding will rarely be grounds for recusal. See United States v. Antar, 53 F.3d 568, 574 (3d Cir. 1995). As the United States Supreme Court has stated: [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible. Liteky v. United States, 510 U.S. 540 [] (1994) (emphasis in original).

Commonwealth v. Druce, 577 Pa. 581, 591, 848 A.2d 104, 110 (2004).

In the matter *sub judice*, the record undeniably shows that the Trial Court questioned the attorneys in the passages cited by Strohl in an increasingly pointed and strident tone. While this Court may not necessarily condone the escalating harsh timbre that the Trial Court's address assumed with Strohl, it is clear that any lack of patience on the Trial Court's part in addressing the matters relied upon by Strohl on this issue were, in fact, created solely by Strohl's counsel. Attorney Kovarik's complete lack of preparation and fundamental knowledge, in addressing the Trial Court's rudimentary questions regarding jurisdiction in this matter, as well as the address of the purported necessary parties that were not joined and Strohl's repeated and uncorrected pleading deficiencies, were not of the Trial Court's creation. Responsibility therefor is rooted solely in the lack of preparation and/or knowledge of those attorneys, most especially Attorney Kovarik. Most simply put, the Trial Court's reaction is proportional to the egregiousness of Attorney Kovarik's errors. The Trial Court's harsh tone, whether deserved or not in its timbre, does not reveal an opinion derived from any extrajudicial source, and does not reveal any degree of favoritism. Any tone of antagonism on the Trial Court's part is proportional to Attorney Kovarik's failures, and does not rise to such a high degree as to make a fair judgment impossible. As such, the Trial Court did not abuse its discretion in denying Strohl's Motion for Recusal. Druce; Dunn.

Strohl next argues that the Trial Court erred, and demonstrated antagonistic bias, in reusing portions of its earlier opinion in its opinion after

remand by this Court. Following our remand instructions after Strohl I, the Trial Court issued an Opinion dated April 3, 2007, in which it addressed the Preliminary Objections at issue presently after allowing Strohl an opportunity to respond thereto. In that April 3, 2007, Opinion, the Trial Court reused portions of its pre-remand Opinion dated February 21, 2006, specifically, sections encompassing the history of the case, and discussing the merits of Strohl's Fifth Amended Complaint. Strohl, however, failed to raise this issue in the Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P. 1925(b),[19] and thusly, has waived this issue. Solebury Township v. Solebury Township Zoning Hearing Board, 914 A.2d 972 (Pa. Cmwlth. 2007).[20,21]

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[19] Pa. R.A.P. 1925(b) provides:

> Direction to file statement of matters complained of.
>
> The lower court forthwith may enter an order directing the appellant to file of record in the lower court and serve on the trial judge a concise statement of the matters complained of on the appeal no later than 14 days after entry of such order. A failure to comply with such direction may be considered by the appellate court as a waiver of all objections to the order, ruling or other matter complained of.

[20] Notwithstanding the dispositive nature of Strohl's waiver on this issue, we note that there is no authority for the proposition that a court errs or demonstrates bias if it reuses applicable portions of an earlier opinion in a subsequent opinion. We further note that this Court, and this very opinion in the procedural history to this case, employs the same economical method when applicable.

[21] Strohl also argues that the Trial Court's reused material includes its application of the rule of Holiday Lounge, Inc. v. Shaler Enterprises Corp., 441 Pa. 201, 272 A.2d 175 (1971), which application this Court held to be error in Strohl I. In Strohl I, we found error where the Trial Court relied upon Holiday Lounge for the proposition that Strohl could be precluded from timely responding to preliminary objections once the Trial Court had taken action to address

(Continued....)

Next, Strohl argues that the Trial Court erred and/or abused its discretion in granting the Defendants' Preliminary Objections and dismissing Strohl's Fifth Amended Complaint, without first ruling on Strohl's Counter-Preliminary Objections.[22] This argument is without merit. Although the Trial Court could have more clearly expressed its ruling on Strohl's Counter-Preliminary Objections in its Opinion, the Trial Court expressly addresses the merit of those Counter-Preliminary Objections, and expressly states, in its May 15, 2007, Opinion, that the substance of Strohl's Counter-Preliminary Objections was considered in resolving the Defendants' Preliminary Objections. Trial Court Opinion of May 15, 2007, at 3. As Strohl presents no argument to this Court on the merits of the Trial Court's resolution of Strohl's Counter-Preliminary Objections, this argument must fail.

Strohl also argues that the Trial Court erred in requiring Strohl to simultaneously defend its Fifth Amended Complaint and amend that Fifth Amended Complaint by filing a Sixth Amended Complaint. Strohl asserts that this

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those objections. This errant reliance on the Trial Court's part was the primary foundation for our remand. Our review of both the April 3, 2007, Trial Court Opinion, as well as the record as a whole in this matter, reveals that the Trial Court did not, after remand, preclude Strohl from responding to the preliminary objections, despite its somewhat imprecise reuse of the Holiday Lounge citation. The Trial Court's Opinions of April 3, 2007, and May 15, 2007, make clear that Strohl's response to the Preliminary Objections was indeed received and considered by the Trial Court. Notwithstanding Strohl's waiver of this argument, it is without question that the Trial Court's mere reuse of the precedent, within the repeated material but without misapplying the holding therein, is not error.

[22] Our scope of review of a trial court's order sustaining preliminary objections is limited to determining whether the trial court committed an error of law or abused its discretion. Timothy F. Pasch, Inc. v. Springettsbury Township Board of Supervisors, 825 A.2d 719 (Pa. *(Continued....)*

requirement forced it to plead over in advance, and denied Strohl an opportunity to plead over after the resolution of the Preliminary Objections to the Fifth Amended Complaint. Given the convoluted procedural history necessitated by Strohl's repeatedly unsuccessful amending of its Complaints in this matter, we disagree. An examination of Strohl's various multiple amended Complaints in this case reveal a consistent and protracted pattern of repeated pleading mistakes, an inability to correct prior procedural and substantive legal errors within the pleadings with subsequent amended Complaints, and a general protracted and consistent failure to offer to the Trial Court a viable Complaint in the face of the Defendant's Preliminary Objections. We emphasize that this pattern of repeated offerings to the Trial Court of insufficient Complaints emerged despite Strohl's entry of no less than seven full attempts at constructing a competent Complaint to advance his perceived causes of action, in regards to those Counts that have not been transferred to the DCED. We further emphasize that the Trial Court's very specific instructions regarding the Sixth Amended Complaint did afford Strohl one final and contextually reasonable opportunity to respond to any Preliminary Objections to which Strohl did not agree, including briefing thereon. We conclude, under the specific procedural facts of this case that the Trial Court's December 19, 2006, filing and briefing order constituted a full and fair and deservedly final opportunity for Strohl to respond to the Preliminary Objections at issue.

Cmwlth. 2003), petition for allowance of appeal denied, 577 Pa. 730, 847 A.2d 1291 (2004).

It is axiomatic that leave to amend a complaint is within the sound discretion of the trial court.[23] Feldman v. Lafayette Green Condominium Association, 806 A.2d 497 (Pa. Cmwlth. 2002). We have held that leave to amend may be withheld where the initial complaint reveals that the *prima facie* elements cannot be established, or where the defects are so substantial that amendment is unlikely to cure them. Id. In the matter *sub judice*, we agree with the Trial Court[24] that Strohl's protracted pattern of failing to advance a viable Complaint in this matter, and in particular, the lack of merit as noted by the Trial Court in Strohl's Fifth and Sixth Amended Complaints, reveal defects so substantial that further amendment was unlikely to cure them. While the right to amend a complaint should be, and has herein been, liberally construed, that right is not absolute and amendment is properly refused where it appears to be a reasonable possibility that the amendment will be futile. Koresko v. Farley, 844 A.2d 607 (Pa. Cmwlth.), petition for allowance of appeal denied, 579 Pa. 706, 857 A.2d 680 (2004). Strohl, in the lengthy history of this case, has been given ample opportunity to amend and to provide the Court with a viable action on which to proceed. Strohl has,

[23] Pa.R.C.P. No. 1028(c)(1) allows for the filing of an amended pleading *as a matter of course* within 20 days after service of a copy of preliminary objections. However, in the instant matter, the Trial Court reinstated Defendant's Preliminary Objections by order dated December 19, 2006, and expressly directed Strohl to comply with Pa.R.C.P. No. 1028. R.R. at 115a-117a. Strohl's Answers and Counter-Preliminary Objections to Defendants' Preliminary Objections, and Strohl's Sixth Amended Complaint, were filed in the Trial Court on January 18, 2007, beyond the 20-day period in which Strohl was entitled to amend as of course pursuant to Pa.R.C.P. No. 1028(c)(1). As such, any amendment sought under these facts was subject to the discretion of the Trial Court, pursuant to Pa.R.C.P. No. 1033.

[24] See Trial Court Opinion of April 3, 2007, at 7-23, R.R. at 212a-228a.

however, utterly failed at advancing a viable Complaint on the remaining Counts at issue, despite the multiple opportunities afforded thereto by both our Rules of Civil Procedure, and by the Trial Court's discretion. Our conclusion on this issue is bolstered by the fact that Strohl has not advanced any argument towards the Trial Court's resolution of the *merits* of the Preliminary Objections and responses thereto, in regards to either the Fifth or Sixth Amended Complaints, but limits this appeal solely to procedural matters.

Finally, Strohl argues that the Trial Court erred in granting a demurrer of Strohl's constitutional claims based on an application of an affirmative defense improperly asserted within the Defendants' Preliminary Objections, namely, an assertion by Defendants that Strohl's claims were barred by the applicable statute of limitations. As the Trial Court aptly noted in its May 15, 2007, Opinion, Strohl plainly misstates the grounds upon which the Trial Court resolved this issue. Citing to its April 3, 2007, Opinion, the Trial Court stated:

> The Municipal Defendants objected to the sufficiency of the factual averments made in Count 9 [of Strohl's Amended Complaint] under RCP 1028(a)(2) and (3) and to the legal sufficiency of Count 9 under RCP 1028(a)(4). A *prima facie* case for a violation of the First Amendment right to speech requires the plaintiff to establish that "(1) he engaged in protected speech, (2) his interest in the protected speech outweighs the [other party's] countervailing interest [….], and (3) the protected activity was a substantial or motivating factor in the alleged retaliatory action." Baldassare v. New Jersey, 250 F.3d 188, 194-195 (3d. Cir. 2001). Here, however, [Strohl] do[es] not identify the nature of the speech allegedly threatened, the interests at issue, or the alleged private meeting

> was a motivating factor behind the allegedly retaliatory conduct.
>
> The [Trial] Court resolved the matter for lack of averments to state a *prima facie* case; and mentioned the statute of limitations only in passing. Because [Strohl's] Count 9 lacked legal and factual sufficiency, the [Trial] Court properly sustained Defendants' Preliminary Objections . . .

Trial Court Opinion of May 15, 2007, at 6-7. We agree. As the Trial Court's May 15, 2007, Opinion states, the Trial Court's April 3, 2007, Opinion when read in its entirety does not dispose of Strohl's constitutional claims on the basis of the applicable statute of limitations, despite that Opinion's brief discussion thereof. Id. As such, Strohl's sole argument[25] on this issue is without merit, and must fail.

Accordingly, we affirm.[26]

JAMES R. KELLEY, Senior Judge

[25] We note, again, that Strohl does not advance any argument towards the actual merits of the Trial Court's resolution of this issue.

[26] Citing to Pa.R.A.P. 2744, Defendants request an award of attorney's fees and costs on the basis that Strohl's instant appeal is either frivolous, or taken solely for delay, or that Strohl's conduct herein was dilatory, obdurate, or vexatious. We deny Defendants' request, as we do not discern from the record frivolity, or intentionally dilatory, obdurate, or vexatious conduct on Strohl's part in the instant appellate proceedings. We emphasize that this conclusion is strictly confined to the appellate conduct herein, and is to have no bearing or influence upon any pending matters, including but not limited to the sanctions proceedings, before the Trial Court.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Roderick G. Strohl, Jr., Richard E. Houser, and Concerned Citizens of South Annville, an unincorporated association, by and through Roderick G. Strohl, President, Appellants	:	
v.	:	No. 878 C.D. 2007
South Annville Township, South Annville Township (Lebanon County) Authority, Dale L. Hoover and Donald H. Umberger, Sr., in their official capacities as Supervisors of the Township of South Annville and individually, Roy A. Meyer in his official capacity as Chairman of the Board of the South Annville Township (Lebanon County) Authority, Jeffrey D. Steckbeck, P.E. and Steckbeck Engineering & Surveying, Inc., a professional corporation	:	

O R D E R

AND NOW, this 20th day of June, 2008, the Order of the Court of Common Pleas of Lebanon County, dated April 3, 2007, at No. 2005-00911, is affirmed.

JAMES R. KELLEY, Senior Judge