

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MONSOUR MICHAEL ZARREII AND
MARILYN ZARREII, H/W

Appellee

v.

RICHARD C. ANGINO, ESQUIRE AND
ANGINO & ROVNER, P.C.

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 181 EDA 2013

Appeal from the Order Dated January 2, 2013
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): September Term, 2012, 120900262

BEFORE: BOWES, J., DONOHUE, J., and OTT, J.

MEMORANDUM BY OTT, J.:

FILED NOVEMBER 27, 2013

Richard C. Angino, Esquire, and Angino & Rovner, P.C. ("Angino")¹ appeal the order entered January 2, 2013, in the Philadelphia County Court of Common Pleas, granting the motion to coordinate actions filed by Monsour Michael Zarreii and his wife Marilyn Zarreii (collectively "the Zarreii's"). The order directed coordination of a breach of contract action filed in Dauphin County by Angino with the instant declaratory judgment action filed in Philadelphia County by the Zarreii's, and stayed the Dauphin County proceedings. On appeal, Angino argues the trial court erred and/or

¹ For ease of disposition, we will refer to Angino individually, although both he and his law firm are appellants in this matter.

abused its discretion in granting the Zarreiis' motion for coordination because (1) only the Dauphin County court had the authority to coordinate the actions since the first complaint was filed there, (2) the trial court failed to provide Angino with 20 days to respond to the Zarreiis' motion, and (3) coordination was not warranted under the facts of this case. After our review of the record, the parties' briefs and the applicable statutory and case law, we reverse the order of the trial court.

As the trial court explained in its opinion, "[t]he underlying matter is a vigorously contested dispute over attorney's fees where both sides are engaging in gamesmanship." Trial Court Opinion, 3/1/2013, at 1. Suffice it to say, in June of 2007, the Zarreiis engaged Angino to represent them in a personal injury action. Ultimately, in March of 2010, the Zarreiis discharged Angino and hired Jeffrey Lessin, Esquire. After the Zarreiis received an arbitration award in excess of \$600,000.00, a dispute arose concerning the attorney's fees owed to Angino.²

On September 4, 2012, the Zarreiis instituted an action by filing a *praecipe* for a writ of summons in the Philadelphia County Court of Common

² Angino contends that he is entitled to 20% of the gross award pursuant to his fee agreement with the Zarreiis and an oral agreement with Lessin. The Zarreiis and Lessin dispute any agreement, written or oral, and argue that Angino's recovery is limited to *quantum meruit*.

Pleas, naming Angino as defendant.³ One week later, on September 11, 2012, Angino filed a breach of contract action in the Dauphin County Court of Common Pleas against the Zarreiiis.⁴ Subsequently, on December 3, 2012, the Zarreiiis filed a declaratory judgment complaint in the Philadelphia County Court of Common Pleas.

On December 5, 2012, the Zarreiiis filed a petition for coordination of the actions in Philadelphia County pursuant to Pa.R.C.P. 213.1. The next day, before Angino was served with that petition, he filed a petition to stay the proceedings in Philadelphia County pending the outcome of the Dauphin County action. On December 12, 2012, the Philadelphia trial court entered an order granting Angino's petition to stay, and stamped "UNCONTESTED." Order, 12/12/2012.

Thereafter, on December 27, 2012, the Zarreiiis filed a motion for reconsideration of the trial court's December 12, 2012, order. The Zarreiiis argued they were not provided with the requisite 20 days to respond to the motion, and their petition for coordination was still outstanding. On January 2, 2013, the trial court entered two orders. The first order expressly granted the Zarreiiis' motion for reconsideration, vacated the December 12,

³ The Philadelphia County action named the Zarreiiis as plaintiffs, and both Angino and his law firm as defendants.

⁴ The Dauphin County action named only Angino as the plaintiff, and the Zarreiiis and Lessin as defendants.

2012, order staying the proceedings, and denied Angino's petition to stay. **See** Reconsideration Order, 1/2/2013. The second order, which was stamped "UNCONTESTED," granted the Zarreii's' outstanding petition for coordination, directed that the actions be coordinated in Philadelphia County, and imposed a stay on the proceedings in Dauphin County. **See** Coordination Order, 1/2/2013.

The next day, Angino filed a motion for reconsideration of the January 2, 2013, order granting coordination of the actions in Philadelphia County. Specifically, he argued that once the trial court imposed a stay on the Philadelphia proceedings, he was precluded from filing a response to the petition for coordination. Thereafter, when the stay was lifted on January 2, 2013, the court immediately granted the Zarreii's' petition for coordination, without first providing Angino with 20 days to respond. On January 15, 2013, the trial court entered an order denying Angino's motion for reconsideration. This timely appeal followed.⁵

Before we may consider the issues raised by Angino in this appeal, we must determine whether the order before us is appealable. Although none of the parties questioned the appealability of the order, it implicates our jurisdiction, and therefore, "this Court has the power to inquire at any time,

⁵ The trial court did not order Angino to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P 1925.

sua sponte, whether an order is appealable.” ***Estate of Considine v. Wachovia Bank***, 966 A.2d 1148, 1151 (Pa. Super. 2009).

This Court has found that an order granting a motion to coordinate actions pursuant to Pa.R.C.P. 213.1 is an interlocutory order appealable as of right pursuant to Pa.R.A.P. 311(c). ***Pennsylvania Manufacturers’ Assoc. Insurance Co. v. Pennsylvania State University***, 63 A.3d 792, 793 n.1 (Pa. Super. 2013); ***Digimatics, Inc. v. ABC Advisors, Inc.***, 760 A.2d 390, 391 n.1 (Pa. Super. 2000). Pennsylvania Rule of Appellate Procedure 311(c) provides,

[a]n appeal may be taken as of right from an order in a civil action or proceeding changing venue, transferring the matter to another court of coordinate jurisdiction, or declining to proceed in the matter on the basis of forum non conveniens or analogous principles.

Pa.R.A.P. 311(c). In most instances in which a trial court grants a motion to coordinate actions, it also, concomitantly orders the transfer of the case from the foreign county to the county in which the actions will be coordinated. ***See Pennsylvania Manufacturers’ Assoc. Insurance Co., supra***, 63 A.2d at 793 (granting coordination of actions in Philadelphia County and transferring Centre County case to Philadelphia County); ***Digimatics, Inc., supra***, 760 A.2d at 391 (granting coordination of actions in Delaware County and transferring Franklin County case to Delaware County). Therefore, in those cases, the order was appealable under Rule

311(c) since it “tranferr[ed] the matter of another court of coordinate jurisdiction.” Pa.R.A.P. 311(c).

In the present case, however, the Philadelphia County trial court did not order the transfer of the Dauphin County case to Philadelphia County. Rather, it directed coordination of the actions, and stayed the Dauphin County case, in an order which as we will discuss *infra*, it had no authority to enter. Although the trial court did not transfer venue, the effect of the order was tantamount to a change of venue. Indeed, the order compels Angino to present his case in a forum not of his choosing. ***See Zappala v. Brandolini Prop. Mgmt., Inc.***, 909 A.2d 1272, 1281 (Pa. 2006) (“Plaintiff’s choice of forum is entitled to weighty consideration and should not be disturbed lightly.”). Therefore, we conclude that the order *sub judice* is appealable as an interlocutory order as of right affecting venue pursuant to Pa.R.A.P. 311(c).

In his first issue, Angino contends the trial court erred in coordinating the actions in Philadelphia County because the first complaint was filed in Dauphin County. He asserts “Rule 213.1 is clear on its face; a motion for coordination must be filed in, and decided by, the court in which the **complaint** was first filed.” Angino’s Brief at 16 (emphasis in original). Therefore, the Philadelphia County trial court had no authority to order coordination of the actions, and the coordination order must be reversed.

“We review an order coordinating actions for abuse of discretion by the trial court.” ***Pennsylvania Manufacturers’ Ass’n Ins. Co. v.***

Pennsylvania State Univ., 63 A.3d 792, 794 (Pa. Super. 2013). “To the extent that the question presented involves interpretation of rules of civil procedure, our standard of review is *de novo*.” ***Sigall v. Serrano***, 17 A.3d 946, 949 (Pa. Super. 2011).

The coordination of actions filed in different counties is governed by Pennsylvania Rule of Civil Procedure 213.1, which provides, in pertinent part:

(a) In actions pending in different counties which involve a common question of law or fact or which arise from the same transaction or occurrence, any party, with notice to all other parties, may file a motion **requesting the court in which a complaint was first filed** to order coordination of the actions. Any party may file an answer to the motion and the court may hold a hearing.

(b) **The court in which the complaint was first filed** may stay the proceedings in any action which is the subject of the motion.

Pa.R.C.P. 213.1 (a)-(b) (emphasis supplied).

When interpreting the Pennsylvania Rules of Civil Procedure, we must follow the mandate that “words ... shall be construed ... according to their common and approved usage.” Pa.R.C.P. 103(a). Further, “when the words of a rule are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” Pa.R.C.P. 127(b). As emphasized above, Rule 213.1 explicitly states that a party may request coordination of similar actions filed in different counties from “the court in which a complaint was first filed.” Pa.R.C.P. 213.1(a). That same language is repeated in subsection (b) of the Rule, which states that “[t]he court in

which the complaint was first filed may stay the proceedings in any action which is the subject of the motion.” Pa.R.C.P. 213.1(b). The Rule is clear and unambiguous. The only relevant consideration for determining where to file a motion for coordination is the county in which the first complaint was filed.

The Zarreiis argue that because they instituted the first action in Philadelphia County, albeit by writ of summons rather than complaint, the Philadelphia County trial court had the authority to decide the motion for coordination. We disagree. The Rule does **not** contemplate where the first action or lawsuit was filed. **See** Pa.R.C.P. 1007 (action may be commenced by filing *praecipe* for a writ of summons or a complaint). Because Angino filed a complaint first in Dauphin County, pursuant to the clear mandate of Rule 213.1, only the trial court in Dauphin County could determine a petition for coordination of the actions. Therefore, we are constrained to agree with Angino that the Philadelphia trial court had no authority to order coordination of the actions, and its order must be reversed.⁶

The Zarreiis contend, however, Angino waived his right to oppose the coordination motion because he failed to file a response to the motion in the Philadelphia County Court of Common Pleas. Again, we disagree. The

⁶ It merits mention that the trial court did not address this issue in its opinion.

Zarreiis filed their petition for coordination on December 7, 2012, and acknowledge that Angino had until December 27, 2012, or 20 days, to respond. However, the trial court granted Angino's motion to stay the proceedings on December 12, 2012. Once the stay order was entered, Angino was precluded from responding to the Zarreiis' motion for coordination. When the trial court lifted the stay on January 2, 2012, it should have provided Angino with the requisite 20 days to respond to the motion for coordination. **See** Phila.Civ.R. 208.3(b)(2)(B) ("Other than as provided in Phila.Civ.R. 208.3(a) [not relevant here] and except for Summary Judgment Motions ... all motions have a twenty (20) day response period".) When it did not do so, Angino filed a timely motion for reconsideration. Therefore, we conclude Angino did not waive his right to oppose the motion for coordination.⁷

⁷ We note the trial court, in its opinion, states that Angino failed to respond to the petition for coordination, and "instead attempt[ed] to seek relief by filing the Petition to Stay." Trial Court Opinion, 3/1/2013, at 4. However, it is clear from the record that Angino was not served with the petition for coordination until **after** he filed his petition to stay the proceedings. Furthermore, Angino contends in his brief he filed the petition to stay, rather than a motion for coordination, because he believed the coordination motion "may be adjudicated only by Dauphin County[,]" a contention with which we agree. Moreover, the trial court does not explain why it granted the Zarreiis' motion for reconsideration when they were not provided with 20 days to respond to the petition to stay, but denied Angino's motion for reconsideration when it was not provided with twenty days to respond to the motion for coordination after the stay order was lifted.

The Zarreiis also assert Angino should be barred from relief because he operated with “unclean hands.” Specifically, they contend Angino blatantly disregarded the coordination order filed in Philadelphia County which stayed the Dauphin County proceedings, and continued to file “multiple motions with the Court of Common Pleas of Dauphin County,” and even “urged” the Dauphin County trial judge to disregard the stay order entered by the Philadelphia County trial judge. Zarreiis’ Brief at 17.

The “unclean hands” doctrine permits a court to “deprive a party of equitable relief where, to the detriment of the other party, the party applying for such relief is guilty of bad conduct relating to the matter at issue.” ***Terraciano v. Com., Dep't of Transp., Bureau of Driver Licensing***, 753 A.2d 233, 237 (Pa. 2000).

The doctrine is derived from the unwillingness of a court to give relief to a suitor who has so conducted himself as to **shock the moral sensibilities of the judge**, and it has nothing to do with the rights or liabilities of the parties. The doctrine applies where the wrongdoing directly affects the relationship subsisting between the parties and is directly connected with the matter in controversy.

In re Bosley, 26 A.3d 1104, 1114 (Pa. Super. 2011) (internal punctuation and citations omitted) (emphasis supplied).

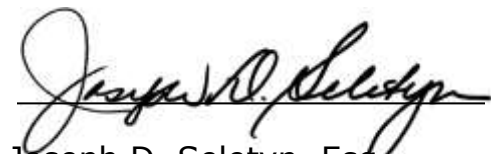
On January 8, 2013, Angino filed the following four motions in the Dauphin County Court of Common Pleas: a motion for partial judgment on the pleadings, a motion for sanctions, a petition for coordination, and a motion to compel the Zarreiis to proceed with their depositions. **See** Zarreiis’ Appendix at C-5(a)-(d). Although the Philadelphia County trial

court had entered an order staying the Dauphin County proceedings on January 2, 2013, the court had not yet ruled upon Angino's motion for reconsideration of that order. Indeed, the order denying Angino's motion for reconsideration is dated January 9, 2013, and it was not entered on the docket until January 15, 2013. Moreover, copies were not sent to the parties until January 16, 2013. Therefore, at the time Angino filed the motions in the Dauphin County Court of Common Pleas, his motion for reconsideration of the stay order was still outstanding. Accordingly, Angino's actions in continuing to litigate the Dauphin County matter until the Philadelphia County trial court ruled upon his motion for reconsideration, does not shock our "moral sensibilities" as to preclude him from the relief to which he is entitled. ***See Bosley, supra.***

Therefore, because we conclude that the trial court in Philadelphia County had no authority to order coordination of these actions, we reverse the order entered January 2, 2013, granting the Zarreii's motion for coordination and staying the Dauphin County proceedings.

Order reversed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/27/2013