

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JENNIFER ABBAMONDI,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2268 EDA 2012

Appeal from the Judgment of Sentence June 14, 2012  
In the Court of Common Pleas of Philadelphia  
Criminal Division No(s): MC-51-CR-0004365-2012

BEFORE: BOWES, OTT, and JENKINS, JJ.

MEMORANDUM BY BOWES, J.:

**FILED JUNE 16, 2014**

Jennifer Abbamondi appeals from the aggregate judgment of sentence of two years probation imposed after the court found Appellant guilty of simple assault, harassment, and criminal contempt of a protection from abuse ("PFA") order. Based on the unusual circumstances presented in this matter, we remand to allow Appellant to appeal *nunc pro tunc* to the Court of Common Pleas relative to her simple assault and harassment charges, and reverse her criminal contempt conviction and remand for the Court of Common Pleas to hear that count in the first instance.

The pertinent facts of this matter are as follows. Appellant and the victim, Michael Kates, shared custody of one child, a son who at the time of the relevant incident was four years old. The victim and Appellant are not married. On August 11, 2011, a PFA order was entered by agreement

without admission against Appellant in the Philadelphia Court of Common Pleas, which prohibited her from abusing, harassing, stalking or threatening the victim. In addition, the PFA order directed that custody exchanges between Appellant and the victim transpire at the Eighth District Philadelphia Police Department.

On January 27, 2012, the victim arrived at the Philadelphia Police Department to pick up his son. Appellant dropped off the child. Thereafter, the victim and his son drove away. As the victim was driving, he observed Appellant driving next to him, waving at him while holding a white shopping bag. Appellant beeped her horn at the victim and motioned for him to stop. The victim pulled to the side of the road, believing that he had left something at the police station. After the victim exited his vehicle, Appellant struck him in the head with either the bag or her hand, and screamed at him to stay away from another one of her children from a different relationship.

As a result of the blow to the head, Appellant began to bleed and drove back to the police station to report the incident. Officer Stephen Carr saw the victim upon his return to the police station, and observed blood running down the left side of the victim's head. The victim discussed the incident with Officer Carr and the victim was also interviewed by Northeast Detectives. Due to the injury, the victim visited the hospital three days later after Tylenol did not assuage his nausea and headaches.

Police arrested Appellant on February 1, 2012, charging her with simple assault, summary harassment, and criminal contempt for violation of the PFA order. Thereafter, on June 14, 2012, Appellant appeared before Judge Nina Wright-Padilla. Judge Wright-Padilla was a Court of Common Pleas judge, however, due to the nature of the charges, the case was given a Philadelphia Municipal Court docket number. Appellant proceeded to a non-jury trial. The court found Appellant guilty of the aforementioned charges and sentenced Appellant to eighteen months probation for the simple assault count and six months probation for the contempt conviction. The court indicated that the sentences were consecutive. No penalty was imposed for the harassment charge.

Subsequently, Appellant attempted to timely appeal for a trial *de novo* before the Court of Common Pleas. The clerk of courts refused to accept the notice of appeal, indicating that Judge Wright-Padilla was a Common Pleas judge and that the appeal would lie with the Superior Court.<sup>1</sup> This timely appeal ensued. The court directed Appellant to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant complied, and the court authored its Pa.R.A.P. 1925(a) opinion. Appellant now presents two issues for our review.

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<sup>1</sup> Appellant, via counsel, corresponded with the Philadelphia Court of Common Pleas President Judge, believing that Appellant was entitled to appeal for a trial *de novo*, prior to filing the instant appeal.

- I. Was Appellant's purported waiver of her right to a jury trial knowingly and voluntarily made where the trial court failed to colloquy her, either orally or in writing, in violation of Pa.R.Crim.P. 620?
- II. If Appellant's trial took place in Philadelphia's Municipal Court, is Appellant entitled to pursue her right to a trial *de novo* in the Philadelphia Court of Common Pleas due to a breakdown in the judicial system that prevented her from obtaining relief in the Court of Common Pleas in the first instance?

Appellant's brief at 4.

We begin by noting that the Commonwealth agrees that Appellant is entitled to a trial *de novo* in the Court of Common Pleas on the charges of simple assault and harassment. In this respect, defendants have a right to a *de novo* jury trial when convicted of misdemeanor criminal offenses in the Philadelphia Municipal Court and a *de novo* bench trial before the Court of Common Pleas for summary offenses. Accordingly, following criminal convictions by a Municipal Court, a defendant generally must appeal to the Court of Common Pleas. **See** 42 Pa.C.S. § 932;<sup>2</sup> **see also** 42 Pa.C.S. § 1123(a)(2).

Thus, the Commonwealth concedes that a remand is warranted to allow Appellant to file a *nunc pro tunc* notice of appeal to that court for

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<sup>2</sup> 42 Pa.C.S. § 932 provides, "Except as otherwise prescribed by any general rule adopted pursuant to section 503 (relating to reassignment of matters), each court of common pleas shall have exclusive jurisdiction of appeals from final orders of the minor judiciary established within the judicial district."

purposes of those counts. However, the Commonwealth also argues that we should affirm the contempt conviction. The Commonwealth asserts that because Appellant is not entitled to a jury trial for purposes of contempt, she is not entitled to a *de novo* jury trial on that charge. A defendant adjudicated to be in contempt of a PFA order has no right to a jury trial. 23 Pa.C.S. § 6114(b)(3) (“The defendant shall not have a right to a jury trial on a charge of indirect criminal contempt. However, the defendant shall be entitled to counsel.”).

Since we agree that Appellant was entitled to a jury trial *de novo* on the simple assault charge and a *de novo* bench trial as to the summary harassment count in the Court of Common Pleas, due to the lower court proceeding as a Municipal Court as to those charges, we address our analysis to Appellant’s PFA contempt adjudication.

Both parties rely on ***Commonwealth v. Burton***, 624 A.2d 138 (Pa.Super. 1993). In ***Burton***, the defendant was charged in Municipal Court with a single count of indirect criminal contempt for violating a PFA order. A Common Pleas judge presided over the proceeding and found the defendant guilty. The defendant unsuccessfully attempted to file a post-verdict motion, and filed an appeal to the Court of Common Pleas. The court quashed that appeal. On appeal to this Court, we concluded that, although the case was docketed as a Municipal Court matter, the judge presiding over the case was sitting in her capacity as a Common Pleas judge, and therefore had

jurisdiction to find the defendant in contempt. *Id.* at 143 (“the hearing before Judge Chen (as a Common Pleas Court judge) was proper and dispensed with the allowance of an appeal (a second “bite at the apple”) for a trial *de novo* (in Common Pleas Court) from the adjudication of indirect criminal contempt.”). The **Burton** Court ruled that the defendant was not entitled to an appeal to the Court of Common Pleas for a trial *de novo*. Nevertheless, due to the breakdown in the judicial system in not allowing the defendant to file a post-verdict motion, this Court remanded.

Instantly, there is no dispute that Appellant is not entitled to a jury trial for purposes of her PFA adjudication. 23 Pa.C.S. § 6114(b)(3). Further, as a general matter, the right to appeal a Municipal Court judge’s contempt finding lies with the Superior Court. 42 Pa.C.S. § 1123(a.1). Hence, Appellant has no statutory right to appeal her PFA contempt to the Court of Common Pleas. However, Appellant argues that pursuant to Pa.R.Crim.P. 1010, she is entitled to a *de novo* bench trial in the Court of Common Pleas.

Before reaching this question, however, we must examine whether a Municipal Court has subject matter jurisdiction in the first instance to find a defendant in indirect criminal contempt of a PFA order where it did not grant the PFA petition. Issues of subject matter jurisdiction cannot be waived and may be raised at any time. **Commonwealth v. Little**, 314 A.2d 270, 272 (Pa. 1974). “Subject matter jurisdiction relates to the competency of a court to hear and decide the type of controversy presented.” **Commonwealth v.**

**Bethea**, 828 A.2d 1066, 1074 (Pa. 2003). In **In re Melograne**, 571 Pa. 490, 812 A.2d 1164, 1167 (2002), our Supreme Court discussed the distinction between subject matter jurisdiction and the power of a court, opining:

jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. Power, on the other hand, means the ability of a decision-making body to order or effect a certain result.

Hence, we look to whether the Philadelphia Municipal Court is competent to determine controversies regarding indirect criminal contempt of PFA orders that it did not enter. The statute governing the jurisdiction of the Philadelphia Municipal Court, 42 Pa.C.S. § 1123(a)(2), reads in relevant part:

**(a) General rule.--**Except as otherwise prescribed by any general rule adopted pursuant to section 503(relating to reassignment of matters), the Philadelphia Municipal Court shall have jurisdiction of the following matters:

. . . .

(2) Criminal offenses by any person (other than a juvenile) for which no prison term may be imposed or which are punishable by imprisonment for a term of not more than five years, including indictable offenses under Title 75 (relating to vehicles). In cases under this paragraph the defendant shall have no right of trial by jury in the municipal court, but shall have the right of appeal for trial de novo, including the right of trial by jury, to the court of common pleas. The judges of the municipal court exercising jurisdiction under this paragraph shall have the same jurisdiction in probation and parole arising out of

sentences imposed by them as judges of the court of common pleas.

Indirect criminal contempt from a PFA order is considered a criminal offense and is punishable for a term of not more than five years. Thus, taking the Philadelphia Municipal Court jurisdictional provision alone, it would appear that the Philadelphia Municipal Court would have subject matter jurisdiction. Nonetheless, over two decades ago this Court opined,

there appears to be a conflict between the jurisdictional perimeters of the Protection From Abuse Act (to be presided over by the Court of Common Pleas, when available, and for which a sentence of no more than six months can be issued for punishment), and the Philadelphia Municipal Court (which by statute and Rule of Criminal Procedure has exclusive jurisdiction of all crimes for which no more than a five-year term of imprisonment can be imposed).

**Burton, supra** 142.<sup>3</sup> Notably, the PFA statute has two separate provision that expressly discuss jurisdiction. Under § 6103, entitled "Jurisdiction," the General Assembly provided, "The court shall have jurisdiction over all proceedings under this chapter." 23 Pa.C.S. § 6103(a). In addition, the PFA Act discusses jurisdiction as it relates to indirect criminal contempt charges. Section 23 Pa.C.S. § 6114(a.1) reads,

**(a.1) Jurisdiction.--**A court shall have jurisdiction over indirect criminal contempt charges for violation of a protection order issued pursuant to this chapter in the county where the violation

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<sup>3</sup> Despite this Court highlighting the anomaly between the Philadelphia Municipal Court statute, the rules of criminal procedure governing Municipal Court proceedings, and the PFA statute in 1993, our legislature has taken no action to clarify the apparent conflict.



occurred and in the county where the protection order was granted. A court shall have jurisdiction over indirect criminal contempt charges for violation of a foreign protection order in the county where the violation occurred.

The term “court” is not specifically defined,<sup>4</sup> but when read in context throughout the remainder of the statute, it leads to the conclusion that the phrase refers to the Court of Common Pleas. **See e.g.** 23 Pa.C.S. § 6110 (distinguishing between Court of Common Pleas and minor judiciary for purposes of entering a PFA petition); **see also** 23 Pa.C.S. § 6113(c). Moreover, the statute differentiates between a “hearing officer,” which includes the Philadelphia Municipal Court, and the Court of Common Pleas. 23 Pa.C.S. § 6102 (“Hearing officer.’ A magisterial district judge, judge of the Philadelphia Municipal Court, arraignment court magistrate appointed under 42 Pa.C.S. § 1123 (relating to jurisdiction and venue), master appointed under 42 Pa.C.S. § 1126 (relating to masters) and master for emergency relief.”).

Further, whenever a Philadelphia Municipal Court enters an emergency PFA order, it “shall provide the plaintiff instructions regarding the commencement of proceedings in the court of common pleas at the

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<sup>4</sup> The PFA statute does clarify that, “Terms not otherwise defined in this chapter shall have the meaning given to them in 18 Pa.C.S. (relating to crimes and offenses).” 23 Pa.C.S. § 6102. The definition of “court” in the Crimes Code is as follows: “Includes (when exercising criminal or quasi-criminal jurisdiction pursuant to 42 Pa.C.S. § 1515 (relating to jurisdiction and venue)) a magisterial district judge.” 18 Pa.C.S. § 103.

beginning of the next business day and regarding the procedures for initiating a contempt charge should the defendant violate the emergency order.” 23 Pa.C.S. § 6110(d). Thus, it appears that the PFA statute intends for the Court of Common Pleas to preside over indirect criminal contempt charges for violating a PFA order.

In **Burton** this Court held:

the *specific* provision of the Protection From Abuse Act, vesting jurisdiction in the court of Common Pleas to adjudicate and impose punishment for indirect criminal contempt of an order issued pursuant thereto, takes precedence over the broader and more *general* language of the Philadelphia Municipal Court statute and Rules of Criminal Procedure which apply to the commission of any criminal offense with a penalty not exceeding five years.

**Burton, supra** at 142 (italics in original).

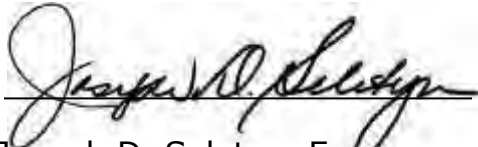
Of course, our Supreme Court has recognized that courts have the inherent power to enforce their orders via contempt, **Commonwealth v. McMullen**, 961 A.2d 842, 849 (Pa. 2008), and where the Court of Common Pleas is unavailable, a Municipal Court can enter a PFA order. Therefore, it would appear that a Municipal Court could find a person in contempt of a PFA order that the Municipal Court itself entered.

Unlike in **Burton, supra**, this case does not involve a single charge of indirect criminal contempt, and the court herein expressly set forth in its Rule 1925(a) opinion that it was acting as a Municipal Court and not as a Court of Common Pleas. While we believe that a Common Pleas judge could act in dual capacities at one proceeding, *i.e.*, as a Municipal Court judge for

the non-contempt charges, and as a Court of Common Pleas for the indirect criminal contempt, that was not made clear at the underlying trial. As it is not certain whether a Municipal Court has subject matter jurisdiction under the present circumstances or merely is without the power to act, and it was not apparent that the judge below was acting in her capacity as a Common Pleas judge, **compare *Burton, supra***, we find that a breakdown in the judicial system occurred. Accordingly, we direct that Appellant be permitted to appeal to the Court of Common Pleas for *de novo* proceedings on her non-contempt charges, and we reverse her contempt conviction and remand to have the Court of Common Pleas hear that charge in the first instance.

Judgment of sentence reversed in part.<sup>5</sup> Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/16/2014

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<sup>5</sup> We do not vacate the order as to the simple assault sentence since our resolution permits Appellant to appeal from that sentence to the Court of Common Pleas.