NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JOHN A. PARRISH & MARIA PARRISH TUNGOL,

v.

GILBERTO A. WILSON AND STROEHMANN'S LINE HAUL CO.

JOHN A. PARRISH & MARIA PARRISH TUNGOL

v.

TAYSTEE BAKING CO., INDIVIDUALLY AS THE GENERAL PARTNER OF, AND T/A STROEHMANN LINE HAUL, L.P., ET AL

APPEAL OF: JOHN A. PARRISH AND MARIA PARRISH TUNGOL, H/W

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 2597 EDA 2013

Appeal from the Order July 17, 2013
in the Court of Common Pleas of Philadelphia County
Civil Division at No.: 1902

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.: **FILED MAY 12, 2014**

Appellants, John A. Parrish and Maria Parrish Tungol, husband and wife, appeal *pro se* from the order directing the prothonotary to release and pay to Appellee, the law firm of Zarwin, Baum, DeVito, Kaplan, Schaer &

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* Retired Senior Judge assigned to the Superior Court.

Toddy, P.C. (Zarwin), $41,440.83, plus $4.48 per day interest from October 27, 2011, with the remainder to be paid to Appellants. We affirm.

This is an appeal from an order directing the payment of legal fees to Appellee law firm, Zarwin, from a fund generated by the settlement of Appellants' lawsuit in an underlying motor vehicle accident case.[1] The trial court reports that the case has "a long and tortuous history." (Trial Court Opinion, 9/11/13, at 1). The voluminous record supports the trial court's assessment. We summarize only the facts and procedural history most relevant to the issues raised in this appeal.

At the time the underlying civil suit commenced, in 2001, Appellee Zarwin represented Appellants. By the time of settlement, in 2004, Appellants had engaged new counsel.[2] Appellants maintain that there is a dispute in this appeal whether Appellant Parrish Tungol discharged Appellee

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[1] Ms. Parrish Tungol alleged direct injury from the accident. (***See*** Appellants' Brief, at 7). Mr. Parrish claimed loss of consortium. Mr. and Mrs. Parrish are apparently **both** Pennsylvania attorneys. (***See*** Motion for Leave to Withdraw of Robert B. White Esq., 1/22/08, at 4 ¶ 23; ***see also*** Appellee's Brief, at 14). However, Appellants merely describe themselves as "self-employed seniors." (Appellants' Brief, at 45). They assert, without citation or other support, that "Appellee is a multi-million dollar business employing scores of attorneys. The amount claimed by Appellee is a mere fraction of its revenues and profits that are likely in millions of dollars." (***Id.***).

[2] The trial court subsequently permitted successor counsel, Robert B. White, Jr., Esq., to withdraw. He is not a party to this appeal. A third attorney, John M. Dodig, Esq. apparently served as counsel to Appellants after Zarwin (and before White). (***See*** Letter of John M. Dodig, Esq. to Robert White, Esq., 3/03/04 (notifying Attorney White of Attorney Dodig's assertion of lien). Attorney Dodig is not a party to this appeal.

from representation, or not. However, Appellants concede that in a related, but independent case, Appellee Zarwin obtained a judgment by directed verdict for breach of contract against Appellant Parrish-Tungol. (***See*** Appellants' Brief, at 7; ***see also*** Trial Court Opinion, 6/01/06, at 1-2; Trial Ct. Op., 9/11/13, at 1 n.1).[3]

On March 4, 2004, the parties agreed to settle the underlying motor vehicle accident case, but apparently could not reach agreement on the terms of the release. The trial court directed that the parties sign the defendants' release. Both Appellants signed the release, which was duly witnessed and notarized; it represented *inter alia*, that they would be responsible for payment "of any lien **or charges** . . . including **any liens by prior counsel or any other attorney**." (General Release of All Claims, 10/31/07, at 2) (emphases added).

As noted in the trial court opinion for this appeal, Appellee filed "[n]umerous petitions . . . for release of the funds" which were repeatedly denied by the then-presiding trial court judge, the Honorable Nitza Quiñones Alejandro. (Trial Ct. Op., 9/11/13, at 2). The ongoing process included an appeal to the Superior Court, which this Court quashed *per curiam* on December 5, 2012, as interlocutory. (***See Parrish v. Wilson***, 64 A.3d 10 (Pa. Super. 2012) (unpublished memorandum)).

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[3] For reasons not entirely clear from the record, Appellee did not pursue a companion claim against Appellant Parrish (husband).

It is undisputed that as part of the orders denying payment to Appellee, Judge Quiñones Alejandro ordered Zarwin to file a petition for fees.[4] (***See e.g.***, Order, 3/21/13).

Following the confirmation of Judge Quiñones Alejandro to the federal bench, this case was reassigned to the Honorable Mark I. Bernstein, who continues to be the presiding trial judge. By order of July 17, 2013, on motion for reconsideration, Judge Bernstein ordered the release of the funds at issue to Appellee. The trial court also denied Appellants' motion for reconsideration. This timely appeal followed.[5]

Appellants raise four questions for our review:

> [1.] Did the Trial Court err/abuse its discretion in overruling several interlocutory orders and findings of a prior presiding judge and by modifying a judgment rendered by another judge in a different action?
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> [2.] Did the Trial Court err in finding that Appellee had obtained a judgment for "attorney's lien" and/or that Appellee has ever met the requirements for an "attorney's lien" according to Pennsylvania law?
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> [3.] Did the Trial Court err/abuse its discretion in issuing the Order of July 17, 2013 because the Trial Court did not have

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[4] Appellee maintains that it had already done so. (***See*** Appellee's Brief, at 9). In any event, the certified record and accompanying docket confirm that Appellee filed the directed petition on May 16, 2013. Therefore, the trial court's assertion that "[t]o date the law firm has failed to provide any attorney fee petition justifying their fees" is incorrect. (Trial Ct. Op., 9/11/13, at 2).

[5] Judge Bernstein did not order a statement of errors. ***See*** Pa.R.A.P. 1925(b). He filed an opinion on September 11, 2013. ***See*** Pa.R.A.P. 1925(a).

> the legal authority to adjudicate Appellee's claim against the settlement funds when the claim is based on a judgment for breach of contract granted by a different court in a different matter against Appellant Wife individually?
>
> [4.] Did the Trial Court err by considering and granting Appellee's Petition and Motion for Reconsideration because Appellee does not have standing to file motions or petitions in the personal injury action?

(Appellants' Brief, at 6).

Briefly summarized, Appellants dispute a purported modification of a prior judgment in a related case, (the directed verdict in favor of Zarwin against Wife Parrish Tungol), which concluded that Appellant Parrish Tungol had breached her contract with Appellee Zarwin. (***See*** Appellants' Brief, at 25-29). They invoke the coordinate jurisdiction rule, and assert that the settlement funds are marital property immune from release to Appellee. (***See id.*** at 30-36). We disagree.

Our standard and scope of review are well-settled:

> The enforceability of settlement agreements is determined according to principles of contract law. Because contract interpretation is a question of law, this Court is not bound by the trial court's interpretation. Our standard of review over questions of law is *de novo* and to the extent necessary, the scope of our review is plenary as [the appellate] court may review the entire record in making its decision.
>
> With respect to factual conclusions, we may reverse the trial court only if its findings of fact are predicated on an error of law or are unsupported by competent evidence in the record.
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> The law of this Commonwealth establishes that an agreement to settle legal disputes between parties is favored. There is a strong judicial policy in favor of voluntarily settling lawsuits because it reduces the burden on the courts and

> expedites the transfer of money into the hands of a complainant. If courts were called on to re-evaluate settlement agreements, the judicial policies favoring settlements would be deemed useless. Settlement agreements are enforced according to principles of contract law. There is an offer (the settlement figure), acceptance, and consideration (in exchange for the plaintiff terminating his lawsuit, the defendant will pay the plaintiff the agreed upon sum).
>
> Where a settlement agreement contains all of the requisites for a valid contract, a court must enforce the terms of the agreement. This is true even if the terms of the agreement are not yet formalized in writing. ***Mazzella v. Koken****,* 559 Pa. 216, 221, 739 A.2d 531 536 (1999); ***see Commerce Bank/Pennsylvania v. First Union Nat. Bank****,* 911 A.2d 133, 147 (Pa. Super. 2006) (stating an agreement is binding if the parties come to a meeting of the minds on all essential terms, even if they expect the agreement to be reduced to writing but that formality does not take place.). Pursuant to well-settled Pennsylvania law, oral agreements to settle are enforceable without a writing. An offeree's power to accept is terminated by (1) a counter-offer by the offeree; (2) a lapse of time; (3) a revocation by the offeror; or (4) death or incapacity of either party. However, once the offeree has exercised his power to create a contract by accepting the offer, a purported revocation is ineffective as such.

Mastroni-Mucker v. Allstate Ins. Co., 976 A.2d 510, 517-18 (Pa. Super. 2009) (most citations, internal quotation marks and other punctuation omitted), *appeal denied*, 991 A.2d 313 (Pa. 2010).[6]

As a prefatory matter, we observe that Appellants in this case are *pro se*. "While this [C]ourt is willing to liberally construe materials filed by a *pro*

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[6] We note that both parties agree that this Court reviews findings of fact to determine whether they are supported by the record, that our standard of review for questions of law is *de novo*, and that our scope of review for questions of law is plenary. (***See*** Appellants' Brief, at 4; Appellee's Brief, at 2).

se litigant, we note that appellant is not entitled to any particular advantage because she lacks legal training." ***O'Neill v. Checker Motors Corp.***, 567 A.2d 680, 682 (Pa. Super. 1989) (citation omitted).

"Accordingly, a *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of the Court. This Court may quash or dismiss an appeal if an appellant fails to conform with the requirements set forth in the Pennsylvania Rules of Appellate Procedure." ***Commonwealth v. Lyons***, 833 A.2d 245, 252 (Pa. Super. 2003), *appeal denied*, 879 A.2d 782 (Pa. 2005) (citations omitted).

Nevertheless, in their brief Appellants continually ignore proper standards of argument. For example, Appellants patently disregard the requirements of Pa.R.A.P. 2117, Statement of the Case. (***See*** Appellants' Brief, at 7-24). First, Appellants fail to present a **brief** procedural history of the case, (Pa.R.A.P. 2117(a)(1)), a **brief** statement of prior determinations with reference to the place of reporting, (***see*** Pa.R.A.P. 2117(a)(2)), a "closely **condensed** chronological statement . . . with an appropriate **reference in each instance** to the place in the record where the evidence substantiating the fact relied on may be found." Pa.R.A.P. 2117(a)(4) (all emphases added). Notably, here, the statement is improperly and repeatedly argumentative, violating Pa.R.A.P. 2117(b).

Similarly, Appellants' "Summary" of the Argument runs almost five pages. (***See*** Appellants' Brief, at 25-29); ***see also*** Pa.R.A.P. 2118, **Note**

("Although the page limit on the summary of the argument was eliminated in 2013, verbosity continues to be discouraged. The appellate courts strongly disfavor a summary that is not concise."). Continual disregard of our Rules of Appellate Procedure, at minimum, interferes with and often inhibits meaningful appellate review.

Appellants only sporadically and inconsistently reference the place in the record where the issues addressed were raised with the trial court, or preserved, in violation of Pa.R.A.P. 2117(c), and Pa.R.A.P. 2119(e). (***See*** Appellants' Brief, at 30-58). This is inadequate to enable meaningful appellate review. Issues not properly preserved and referenced are waived. ***See J.J. DeLuca Co., Inc. v. Toll Naval Associates***, 56 A.3d 402, 411 (Pa. Super. 2012) ("We shall not develop an argument for [the appellant], nor shall we scour the record to find evidence to support an argument; consequently, we deem this issue waived.") (quoting ***Commonwealth v. Beshore****,* 916 A.2d 1128, 1140 (Pa. Super. 2007), *appeal denied sub nom.* ***Commonwealth v. Imes****,* 603 Pa. 680, 982 A.2d 509 (2009)); ***see also*** Pa.R.A.P. 2119(a), (b). We could quash Appellants' appeal for any or all of these reasons. ***See Branch Banking and Trust v. Gesiorski*** 904 A.2d 939, 943 (Pa. Super. 2006) (quashing appeal due to numerous defects in appellants' brief, preventing meaningful review). However, in view of the already protracted history of this convoluted case,

and in the interest of judicial economy, to the extent possible, we shall review Appellants' claims on the merits.

Appellants first argue that Judge Bernstein's order directing payment to Appellee violated the coordinate jurisdiction rule. (***See*** Appellants' Brief, at 30-40). We disagree.

> The salient case on the coordinate jurisdiction rule is ***Commonwealth v. Starr****,* 541 Pa. 564, 664 A.2d 1326 (1995). It states the rule as follows: "[J]udges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions." ***Id.*** at 1331. "Departure . . . is allowed only in exceptional circumstances such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed." ***Id.*** at 1332. The rule serves "not only to promote the goal of judicial economy" but also "(1) to protect the settled expectations of the parties; (2) to insure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end." ***Id.*** at 1331. It is manifest that a judge may not lightly overrule the prior decision of another judge of the same court. In some circumstances, however, application of the rule can "thwart the very purpose the rule was intended to serve, *i.e.,* that judicial economy and efficiency be maintained." ***Salerno v. Philadelphia Newspapers, Inc.****,* 377 Pa. Super. 83, 546 A.2d 1168, 1170 (1988). Thus we said in ***Starr*** that departure from the rule of coordinate jurisdiction is allowed "where the prior holding was clearly erroneous and would create a manifest injustice if followed." 664 A.2d at 1332. Applying the rule of coordinate jurisdiction too rigidly, therefore, can undermine the purposes which justify the rule.

Ryan v. Berman, 813 A.2d 792, 795 (Pa. 2002).

Here, it is undisputed that both Appellants signed the settlement release, which included the express obligation to pay prior counsel. "The

law of Pennsylvania is quite clear that a judgment creditor may execute on entireties property to enforce his judgment if **both** spouses are joint debtors." ***Klebach v. Mellon Bank, N.A.***, 565 A.2d 448, 450 (Pa. Super. 1989) (citations omitted) (emphasis in original). Therefore, the preceding trial court judge, Judge Quiñones Alejandro, erred in concluding that the settlement proceeds were "unavailable to satisfy any claims of a creditor of one of the tenants." (Order and Opinion, 12/07/11, at 2).

Judge Quiñones Alejandro cited ***Patwardhan v. Brabant***, 439 A.2d 784 (Pa. Super. 1982), without further explanation, in support of her conclusion. (***See id.***). We are at a loss to discern the relevance of that decision in this case, particularly in view of the holding in ***Patwardhan*** that the wife was an indispensable party who should have been joined in the claim in that case. ***See Patwardhan***, ***supra*** at 785. Here, both spouses **were** joined as parties.

Furthermore, the prior trial judge's reliance on the Divorce Code (***see*** Order and Opinion, 12/07/11, at 2) is both legally inappropriate and factually irrelevant, as Appellants are at pains to emphasize that they "have consistently asserted . . . that they . . . have been and remain married." (Appellants' Brief, at 24). Judge Bernstein properly ruled on the motion for reconsideration. He did not violate the rule of coordinate jurisdiction. Appellants' first claim is without merit.

In their second claim, Appellants argue that the trial court erred in finding that Appellee had ever met the requirements for an attorney's lien. (***See id.*** at 40-46). They argue that Appellee has "unclean hands." (***Id.*** at 44). Their argument is waived, and would merit no relief.

Appellants argue that Appellee inappropriately claimed an attorney's lien, an equitable remedy. For support, Appellants rely on ***Recht v. Urban Redevelopment Authority of City of Clairton***, 168 A.2d 134 (Pa. 1961). (***See*** Appellants' Brief, at 41-43).[7] Their reliance is misplaced.

Appellants appear to assert, but fail to develop an argument, that an alternative claim of an equitable remedy precludes a claim under a contract. (***See id.*** at 40-46). Those are not the facts in ***Recht***. ***Recht*** addressed whether an attorney with no contractual claim to a fee was entitled to be paid out of a charging lien. ***See Recht***, ***supra*** at 140. The ***Recht*** Court decided he did not, in part because he still had a right to a fee. ("Indeed, it does not appear that the right of [the] Attorney . . . to collect his fee has been in any wise jeopardized."). ***Id.*** ***Recht*** does not apply. This claim lacks merit.

Furthermore, Appellants utterly fail to offer any reference in the record or other support for their bald assertion that Appellee has unclean hands. (***See*** Appellants' Brief, at 44). Additionally, they fail to develop an argument

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[7] Appellants consistently misspell and mis-cite ***Recht***. (***See e.g.***, Appellants' Brief, at iii, 8, 18, 41).

in support of their claim. (***See id.***). Therefore, this argument is waived. ***See*** Pa.R.A.P. 2117(c), Pa.R.A.P. 2119(a), (b), (e); ***see also J.J. DeLuca***, ***supra*** at 411. Similarly,

> In an appellate brief, parties must provide an argument as to each question, which should include a discussion and citation of pertinent authorities. Pa.R.A.P. 2119(a). This Court is neither obliged, nor even particularly equipped, to develop an argument for a party. To do so places the Court in the conflicting roles of advocate and neutral arbiter. When an appellant fails to develop his issue in an argument and fails to cite any legal authority, the issue is waived.

In re S.T.S., Jr., 76 A.3d 24, 42 (Pa. Super. 2013) (case citations omitted). "Moreover, mere issue spotting without analysis or legal citation to support an assertion precludes our appellate review of a matter." ***Id.*** (citations and internal quotation marks omitted).

Finally, on this claim, as previously noted, Appellants argue they are "self-employed seniors" fighting a "multi-million dollar business" for an amount which "is a mere fraction of its revenues and profits that are **likely** in millions of dollars." (***Id.*** at 45) (emphasis added).

First, Appellants offer no evidence whatsoever to establish that their statements are accurate. Secondly, even if we were to assume them to be true for the sake of argument, they are nevertheless outside the certified record. "The law of Pennsylvania is well settled that matters which are not of record cannot be considered on appeal." ***Commonwealth v. Preston***, 904 A.2d 1, 6 (Pa. Super. 2006), *appeal denied*, 916 A.2d 632 (Pa. 2007) (citations omitted).

Third, we reject on its face the argument that this Court could or should decide appeals based on the financial status of the litigants, rather than on the law. This Court is an intermediate appellate court of error correction. It is not the role of this Court to play Robin Hood. ***See Fischer v. Sanford***, 12 Pa. Super. 435 (Pa. Super. 1899) (rejecting "Robin Hood monstrosities which . . . give the plaintiff a handsome sum, simply because he complains, or because he needs the money, and they think the defendant can spare it").

"It has often been said that 'Justice is blind,' meaning thereby that Justice is absolutely fair [to] everyone, and is not subject to any outside or improper influence whatsoever." ***Commonwealth ex rel. Smith v. Myers***, 261 A.2d 550, 565 (Pa. 1970) (Bell, C.J. dissenting). Appellants' second claim is waived and would not merit relief.

In their third issue, Appellants assert that the trial court did not have the legal authority to adjudicate Appellee's claims. (***See*** Appellants' Brief, at 46-51). This assertion merits no relief.

Appellants offer no pertinent authority in support of the claim. Instead, they merely rehash their claim in reliance on ***Recht***. (***See id.*** at 47, 50). Appellants' third claim is waived, and, for the reasons already noted, would not merit relief.

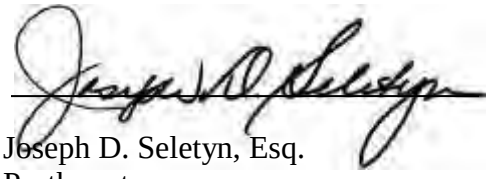
Fourth, Appellants challenge Appellee's standing. (***See*** Appellants' Brief, at 51-55). Appellants fail to reference where this claim was raised

with the trial court. Accordingly, the fourth claim is waived. ***See*** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").

Finally, we note that our reasoning differs from that of the trial court. However, "[this Court] may affirm the trial court's order on any valid basis." ***Dietz v. Chase Home Fin., LLC***, 41 A.3d 882, 890 n. 7 (Pa. Super. 2012) (citation omitted).

Order affirmed.

Judgment Entered.



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Prothonotary

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