NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MARY PERNATOZZI, EXECUTRIX OF THE ESTATE OF ANTOINETTE SECILIA, DECEASED Appellant v. JANSSEN PHARMACEUTICA, INC., A FOREIGN CORPORATION; ALZA CORPORATION, A FOREIGN CORPORATION; JOHNSON & JOHNSON, A FOREIGN CORPORATION; FRANCK'S E.P.S. PHARMACY v. CARDINAL HEALTH, INC.	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 300 WDA 2013

Appeal from the Order January 18, 2013
In the Court of Common Pleas of Washington County
Civil Division at No(s): 2006-1668

MARY PERNATOZZI, EXECUTRIX OF THE ESTATE OF ANTOINETTE SECILIA, DECEASED Appellant v. JANSSEN PHARMACEUTICA, INC., A FOREIGN CORPORATION; ALZA CORPORATION, A FOREIGN CORPORATION; JOHNSON & JOHNSON, A FOREIGN CORPORATION; AND FRANCK'S E.P.S. PHARMACY	IN THE SUPERIOR COURT OF PENNSYLVANIA

APPEAL OF: JANSSEN PHARMACEUTICA, INC., A FOREIGN CORPORATION; ALZA CORPORATION, A FOREIGN CORPORATION, AND JOHNSON & JOHNSON, A FOREIGN CORPORATION	No. 344 WDA 2013

Appeal from the Order September 10, 2012
In the Court of Common Pleas of Washington County
Civil Division at No(s): 2006-1668

BEFORE: GANTMAN, P.J., FORD ELLIOTT, P.J.E., and OLSON, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED JUNE 05, 2014**

Appellant, Mary Pernatozzi, Executrix of the Estate of Antoinette Secilia ("Decedent"), appeals from the order entered in the Washington County Court of Common Pleas, denying relief after reconsideration and reinstating summary judgment in favor of Appellees/Cross Appellants, Janssen Pharmaceutica, Inc., Alza Corporation, and Johnson and Johnson.[1] Appellees/Cross Appellants filed a cross appeal from this summary judgment. We affirm and quash the cross appeal.[2]

---

[1] Franck's E.P.S. Pharmacy ("Franck's"), an original defendant, filed a motion for summary judgment on March 3, 2012. In a separate order and opinion dated September 10, 2012, the court granted the motion and dismissed Franck's from this action. Neither Appellant nor Appellees/Cross Appellants have challenged this dismissal; therefore, Franck's is not involved in this appeal.

[2] The court dismissed Cardinal Health, Inc. from this action with prejudice on April 26, 2012. A review of the record reveals no appeal has been filed challenging this dismissal. Therefore, we grant Appellees/Cross Appellants' motion to strike Cardinal Health, Inc. from this appeal.

The trial court's opinion pursuant to Pa.R.A.P. 1925(a) set forth the relevant facts and procedural history of this appeal as follows:

> [D]ecedent, Antoinette Secilia…was a 49 year old woman at the time of her death on March 11, 2004. She had a complex medical history including diabetes, morbid obesity, neuropathy, COPD, hypertension, fatty liver disease, degenerative joint disease, and chronic back pain for which she underwent eight surgeries. She suffered from mental illnesses including schizoaffective disorder and major depression. Additionally, she struggled with drug and alcohol problems and had been hospitalized for many suicide threats and seven documented suicide attempts. Her paramour, Frank Shymatta, acknowledged that she was a very sick woman and described her health prior to her death as "poor at the best."
>
> In June of 2002, she started using Duragesic fentanyl transdermal patches to mitigate chronic back pain arising from a slip and fall injury. Fentanyl is a[n] opioid analgesic contained in a gel inside a reservoir in each patch. [Decedent's] doctors started her at 50 mcg/hr, but then increased her dose to 75 mcg/hr by October 2002. Dosage strengths correspond to the amount of fentanyl delivered from a patch through the skin and into the bloodstream every hour. In addition to Duragesic, [Decedent] was also using other pain medications including Elavil, Neurontin, and MS Contin.
>
> On March 11, 2004, Frank Shymatta found [Decedent] unresponsive in her bed. The Washington County Coroner, Timothy Warco, ordered an autopsy. Dr. Leon Rozin, a forensic pathologist, performed an autopsy on March 12, 2004. Dr. Rozin found one 75 mcg/hr Duragesic patch on [Decedent's] left shoulder and visually inspected it. The autopsy report made no reference to the patch being damaged. He did not report a leak or defect in the patch. Additionally, at the request of Coroner Warco, Pc Laboratory performed toxicology testing on specimens from [Decedent's] blood and urine and found that the only substance in the toxic range was morphine at 0.198 mcg/ml, nearly four times the therapeutic range of 0.01 to 0.05 mg/L. By contrast, both the Gas

> [Chromatography]/Mass [Spectrometry] and a subsequent immunoassay test revealed fentanyl levels within the therapeutic range. Nevertheless, Dr. Rozin [testified] that [D]ecedent died due to "combined drug toxicity: morphine and fentanyl." Additionally, Coroner Warco testified that while he could have listed the cause of death as "suicide" he instead classified it as an "accident" out of respect for [Decedent's] family.
>
> On March 9, 2006[, Appellant] commenced a civil action for [Decedent's] alleged wrongful death by filing a Praecipe for Writ of Summons against [Appellees/Cross Appellants and Franck's]. [Appellant] was then ruled to file a Complaint and thereafter did so on February 7, 2008. [Appellant] filed an Amended Complaint on October 14, 2008. In her sixteen count Amended Complaint, [Appellant pled] wrongful death and survival actions against [Franck's] sounding in strict liability (Counts Four and Eight) and negligence (Counts Twelve and Sixteen) arising out of [D]ecedent's use of an allegedly defective Duragesic C11 75 MCG/hr patch ("patch") containing Fentanyl, a narcotic analgesic. [Appellant] also filed wrongful death and survival actions sounding in strict liability and negligence as to [Appellees/Cross Appellants]. [Appellant] alleged that the patch worn by [Decedent] at the time of her death was designed and manufactured by [Appellee/Cross Appellant] ALZA Corporation, marketed and distributed by [Appellee/Cross Appellant] Janssen Pharmaceutica, Inc., [Appellee/Cross Appellant] Johnson & Johnson, and Cardinal Health, Inc., and dispensed by Franck's. Specifically, [Appellant] contended that at least one of the patches dispensed by Franck's to [Decedent] had at least one "seal breach defect." [Appellant] alleged that [Decedent's] use of an allegedly defective patch caused her to die on March 11, 2004.
>
> This case followed a long and tortured path on its way to the [summary judgment] Motions presently before the [c]ourt. Discovery was extended on five different occasions and numerous protective orders were filed and argued before the [c]ourt. Additionally, on July 23, 2009[,] Judge Mark Mascara appointed Howard Messer, Esquire, to serve as a Discovery Master to "hear and rule upon *all* discovery disputes between the parties." On

September 17, 2009[, Appellant] filed a Motion in Limine as to Pc Lab's Post Mortem Toxicology results. Judge Mascara scheduled a hearing on same for October 30, 2009. The [c]ourt held the hearing on [Appellant's] Motion and continued it until January 12, 2010. Thereafter, the hearing on [Appellant's] Motion was cancelled and rather was converted into a hearing on [Appellant's] Motions for "Contempt, Adverse Inference, and Despoliation." [Appellant] alleged a conspiracy on the part of [Appellees/Cross Appellants, Franck's and Cardinal Health, Inc.] to destroy evidence, defraud the [c]ourt, and deny [Appellant] access to evidence she averred was necessary to prove her case. [Appellant] accused Pc Laboratory of engaging in quasi criminal activity to "hide the truth" as to what happened to [Decedent]. That hearing was set for March 30-31, 2010. That hearing was continued again until the end of May 2010. On April 7, 2010[,] Judge Mascara ordered that, with a few exceptions, all further discovery disputes were to be heard by Master Messer. Judge Mascara also ordered that all counsel behave professionally. Nevertheless, discovery continued in a contentious manner. On June 3, 2010[, Appellant] filed a Motion to Amend and to Discontinue the Hearings as to the Motion in Limine/Spoliation.

After the case was transferred to President Judge O'Dell Seneca, further hearings were scheduled on [Appellant's] Motion in Limine and to find Spoliation on November 10, 2010[,] before Master Messer. On September 29, 2010[,] [Appellees/Cross Appellants and Cardinal Health, Inc.] presented a Motion asking the [c]ourt, rather than the Master, to preside over the hearing on [Appellant's] Motion in Limine. That Motion was denied. Thereafter, [Appellant] withdrew all of her motions without prejudice.

The case was then transferred to this [c]ourt. The [c]ourt held a pre-trial conference and promulgated a case management order setting forth deadlines for dispositive motions and a trial date for October 2012. On March 9, 2012[, Appellant] presented a Motion to Resume the Hearing to Exclude Pc Laboratory's Post Mortem Toxicology Report, Fentanyl Immunoassay, and Dr. Leon Rozin's Autopsy Report. [Appellant] also presented Pa.R.C.P. 4019 Motions for Sanctions reprising her contentions that

> [Appellees/Cross Appellants, Franck's and Cardinal Health, Inc.] had engaged in intentional spoliation of the Duragesic patch removed from [Decedent's] body, her blood specimen, and to fabricate the fentanyl immunoassay to defraud the [c]ourt. [Appellees/Cross Appellants and Franck's] filed Motions for Summary Judgment. While [Appellees/Cross Appellants, Franck's and Cardinal Health, Inc.] strenuously objected to revisiting [Appellant's] allegations of spoliation and fraud, the [c]ourt scheduled hearings regarding same to ensure [Appellant] was given a fair opportunity to develop her serious allegations.
>
> The [c]ourt held evidentiary hearings on [Appellant's] Motions on April 26 and May 30, 2012. At the [May 30, 2012] hearing, [Appellees/Cross Appellants] made an oral Motion seeking a finding of spoliation against [Appellant] for failing to preserve evidence allegedly vital to her case. The [c]ourt also heard argument on [Appellees/Cross Appellants'] Motion for Summary Judgment and [Appellees/Cross Appellants'] Motions to Exclude ([Appellant's] expert witnesses) Frederick Fochtman, Ph.D. and Kris Dahl, Ph.D. at that time. [Appellant] and [Appellees/Cross Appellants] submitted Proposed Findings of Fact and Conclusions of Law relating to the evidentiary hearings.
>
> This [c]ourt denied the parties' cross Spoliation Motions and [Appellant's] Motion in Limine by Opinion and Order dated September 10, 2012. The [c]ourt also granted summary judgment in favor of [Appellees/Cross Appellants] and dismissed the case with prejudice. [Appellees/Cross Appellants'] remaining Motions were disposed of as moot. [Appellant] filed a Motion for Reconsideration of the September 10, 2012 Order on October 9, 2012. The [c]ourt vacated the September 10, 2012 Order pending reconsideration and heard argument on [Appellant's] Motion on October 25, 2012. On January 18, 2013[,] the [c]ourt denied [Appellant's] Motion and left the September 10, 2012 Order undisturbed. …

(Trial Court's Rule 1925(a) Opinion, filed May 3, 2013, at 2-6) (footnotes and internal citations to the record omitted). Appellant timely filed a notice

of appeal on February 11, 2013. On February 19, 2013, Appellees/Cross Appellants filed a notice of cross appeal from the September 10, 2012 order, which denied their motion for summary judgment based on the theory of spoliation. The court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied on March 5, 2013. Appellees/Cross Appellants filed a Rule 1925(b) statement on March 7, 2013.

At docket number 300 WDA 2013, Appellant raises the following issue for our review:

> WHETHER THE [TRIAL] COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF [APPELLEES/CROSS APPELLANTS] JANSSEN PHARMACEUTICA, INC., ALZA CORPORATION AND JOHNSON & JOHNSON WHERE A SUBSTANTIAL QUESTION OF MATERIAL FACT EXISTS AS TO WHETHER THE DURAGESIC FENTANYL PATCH IN QUESTION WAS DEFECTIVE IN THAT IT LEAKED AN EXCESSIVE AMOUNT OF FENTANYL ONTO DECEDENT CAUSING HER TO OVERDOSE ON THE DRUG?

(Appellant's Brief at 10).

At docket number 344 WDA 2013, Appellees/Cross Appellants raise the following issue for our review:

> AS TO THE CROSS-APPEAL, WHETHER THE TRIAL COURT SHOULD HAVE GRANTED SUMMARY JUDGMENT TO [APPELLEES/CROSS APPELLANTS] DUE TO [APPELLANT'S] SPOLIATION OF MATERIAL EVIDENCE WHERE [APPELLANT] HAD A DUTY AND MULTIPLE OPPORTUNITIES TO PRESERVE DECEDENT'S BLOOD SAMPLE AND THE ALLEGEDLY DEFECTIVE DURAGESIC PATCH, BUT REPEATEDLY FAILED TO SATISFY THAT DUTY?

(Appellees/Cross Appellants' Brief at 3).

Appellant argues summary judgment was erroneously entered in favor of Appellees/Cross Appellants. Appellant contends there was a genuine issue of material fact as to whether the patch leaked a fatal dose of fentanyl into Decedent. Appellant asserts her experts, Dr. Kris Noel Dahl, Ph.D., Dr. Frederick W. Fochtman, Ph.D., and Dr. Cyril H. Wecht, M.D., J.D., believe within a reasonable degree of scientific or medical certainty, that the patch was defective and leaked a fatal dose of fentanyl into Decedent. Appellant claims the court failed to view the evidence in a light most favorable to Appellant as the non-moving party. Appellant alleges the court improperly weighed the evidence and accepted as true the opinion and toxicology report of Appellees/Cross Appellants' expert, Dr. Maureen Reitman, Sc.D., which stated there was a therapeutic level of fentanyl in Decedent's blood when she died. Appellant avers it was for a jury to determine whether to accept Dr. Reitman's findings as true or to accept the opinions of Appellant's experts that the welt on Decedent's shoulder indicated a fentanyl overdose. Appellant maintains the court erred when it granted summary judgment because, when the record is viewed in the light most favorable to Appellant and all doubts as to the existence of an issue of material fact are resolved in her favor, questions of fact remain whether the patch was defective and leaked a fatal amount of fentanyl into Decedent. Appellant concludes this Court should reverse the summary judgment in favor of Appellees/Cross Appellants and remand for a trial. We disagree.

Initially, we observe:

> "Our scope of review of an order granting summary judgment is plenary." ***Harber Philadelphia Center City Office Ltd. v. LPCI Ltd. Partnership***, 764 A.2d 1100, 1103 (Pa.Super. 2000), *appeal denied*, 566 Pa. 664, 782 A.2d 546 (2001). "[W]e apply the same standard as the trial court, reviewing all the evidence of record to determine whether there exists a genuine issue of material fact." ***Id.*** "We view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to a judgment as a matter of law will summary judgment be entered." ***Caro v. Glah***, 867 A.2d 531, 533 (Pa.Super. 2004) (citing ***Pappas v. Asbel***, 564 Pa. 407, 418, 768 A.2d 1089, 1095 (2001), *cert. denied*, 536 U.S. 938, 122 S.Ct. 2618, 153 L.Ed.2d 802 (2002)).
>
> Motions for summary judgment necessarily and directly implicate the plaintiff's proof of the elements of [his] cause of action. ***Grandelli v. Methodist Hosp.***, 777 A.2d 1138, 1145 n.7 (Pa.Super. 2001). Summary judgment is proper "if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Pa.R.C.P. 1035.2. Thus, a record that supports summary judgment will either (1) show the material facts are undisputed or (2) contain insufficient evidence of facts to make out a *prima facie* cause of action or defense and, therefore, there is no issue to be submitted to the jury. ***Grandelli, supra*** at 1143 (citing Pa.R.C.P. 1035.2 Note*)*. "Upon appellate review, we are not bound by the trial court's conclusions of law, but may reach our own conclusions." ***Grandelli, supra*** at 1144. The appellate Court may disturb the trial court's order only upon an error of law or an abuse of discretion. ***Caro, supra***.
>
> > Judicial discretion requires action in conformity with law on facts and circumstances before the trial court

> after hearing and consideration. Consequently, the court abuses its discretion if, in resolving the issue for decision, it misapplies the law or exercises its discretion in a manner lacking reason. Similarly, the trial court abuses its discretion if it does not follow legal procedure.
>
> ***Miller v. Sacred Heart Hosp.***, 753 A.2d 829, 832 (Pa.Super. 2000) (internal citations omitted). "Where the discretion exercised by the trial court is challenged on appeal, the party bringing the challenge bears a heavy burden." ***Paden v. Baker Concrete Constr., Inc.***, 540 Pa. 409, [412,] 658 A.2d 341, 343 (1995) (citation omitted).
>
> [I]t is not sufficient to persuade the appellate court that it might have reached a different conclusion if…charged with the duty imposed on the court below; it is necessary to go further and show an abuse of the discretionary power. An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused. ***Id.*** (internal quotations and citations omitted).
>
> ***Bartlett v. Bradford Publishing, Inc.,*** 885 A.2d 562, 566 (Pa.Super. 2005).

Lineberger v. Wyeth, 894 A.2d 141, 145-46 (Pa.Super. 2006).

Instantly, the court initially explained its decision in favor of Appellees/Cross Appellants as follows:

> Here, all of [Appellant's] claims stem from an alleged defect in the Duragesic patch worn by [D]ecedent at the time of her death. It is well settled that to establish a *prima facie* case of strict product liability against a manufacturer, a [p]laintiff must demonstrate that "(1) the product was defective; (2) the defect was the proximate cause of the plaintiff's injuries; and (3) the defect existed at the time it left the manufacturer's control." ***Woodin v.***

J.C. Penney Co., Inc., 629 A.2d 974 (Pa.Super. 1993). The central question of such a claim is whether…there is a defect in the product. ***Donoughe v. Lincoln Electric Co.***, 936 A.2d 52, 61 (Pa.Super. 2007). In addition, the [p]laintiff must present expert testimony to demonstrate the existence of a defect where, as here, the subject matter is beyond the knowledge or expertise of the average layperson. ***Hamil v. Bashline***, 392 A.2d 1280, 1285 (Pa. 1978).

In support of her claims of a defect in the patch, [Appellant] presented the expert opinions of Dr. Kris Dahl and Dr. Frederick Fochtman. Dr. Dahl, who never examined the patch in question and has never inspected a fentanyl patch of any kind, opined that micro-defects *might* exist in the patch. Dr. Fochtman, who is neither a medical doctor nor a forensic pathologist, opined that an alleged area of edema (raised skin) on [D]ecedent's left shoulder constitutes a "fentanyl welt" and is circumstantial evidence of an excessive dose of fentanyl. [Appellant] contends that these opinions create a material issue of fact as to whether [Decedent's] Duragesic patch was defective.

[Appellees/Cross Appellants] filed Motions in Limine to exclude this expert testimony. [Appellees/Cross Appellants] contend that neither of [Appellant's] experts is qualified to offer those opinions as required by Pennsylvania Rule of Evidence 702. However, the [c]ourt need not conduct a lengthy analysis of the admissibility of this proffered testimony, because even when considering it in the light most favorable to [Appellant], it fails to create an issue of material fact and summary judgment in favor of [Appellees/Cross Appellants] is proper.

Dr. Dahl admitted that she lacked "hard facts" of a defect in the patch. She failed to offer an opinion to a reasonable degree of scientific certainty that the patch was defective in either her deposition or her expert report. Nor did she ever actually inspect the patch with a light microscope, which in her opinion "would be a necessary means to determine the patch's integrity." Additionally, even if [Decedent] had a fentanyl welt as Dr. Fochtman opines, the evidence establishes that [Decedent] had a therapeutic

> level of fentanyl in her blood. Therefore, if the welt did exist, it is not evidence of a fentanyl overdose.
>
> Consequently, even when viewing all the evidence in the light most favorable to the nonmoving party, [Appellant] has failed to create an issue of material fact….

(Trial Court Opinion, filed September 10, 2012, at 17-19) (internal citations to the record omitted).

Moreover, in the court's January 18, 2013 opinion, after considering and denying Appellant's motion to vacate and reconsider the September 10, 2012 order, the court further supported its decision to grant Appellees/Cross Appellants' motion for summary judgment:

> The [c]ourt notes that it specifically considered and rejected Dr. Fochtman's April 4, 2012 report as creating a material issue of fact. Indeed, the [c]ourt incorporates by reference all of its analysis and conclusions contained in its Omnibus Opinion and Order as if fully set forth herein. Additionally, the [c]ourt did consider Dr. Wecht's report of April 6, 2012, but did not specifically cite to it in its Opinion as his conclusions were similarly insufficient to create a genuine issue of material fact as to a defect in the fentanyl patch. At best, both experts opine that the alleged area of edema on [Decedent's] shoulder is indicative of a fentanyl welt[,] which is then circumstantial evidence that the patch was defective and delivered an overdose of fentanyl.
>
> However, [Appellant] ignores the fact that she has never had an expert examine the patch, despite having access to it. Dr. Reitman, the only expert to examine the patch found that it had a complete seal and was free from defects. [Appellant's] expert, Dr. Kris Dahl, who only observed screen captures of Dr. Reitman's inspection admitted that she did not "have any absolute hard facts that there was a breach [in the seal of the patch]." She also opined that examining the patch in-person using a light microscope "would be a necessary means to

> determine the patch's integrity." Ultimately, Dr. Dahl does not offer an opinion to a reasonable degree of scientific certainty that the patch was defective in her deposition or expert report.
>
> It is axiomatic that to establish a *prima facie* case of strict product liability, the threshold inquiry is whether there is a defect in the product. [***See Donoughe, supra***]. Here, where the product is extant and readily available, [Appellant] had to establish by expert testimony the existence of a defect in the patch. However, despite the long and contentious discovery process, [Appellant] never had an expert inspect the patch. Rather, she relies upon the alleged fentanyl welt, which can manifest at therapeutic levels, to infer the possibility of a genuine issue of material fact as to defect. This is simply not enough to survive summary judgment when all of the available objective evidence demonstrates that the patch was free of defects and that the decedent had a therapeutic level of fentanyl in her blood.

(Trial Court Opinion, filed January 18, 2013, at 2-3) (internal citations to the record omitted). The record supports the court's decision. Therefore, we conclude the court properly granted Appellees/Cross Appellants' motion for summary judgment. Accordingly, we affirm.

On cross appeal, Appellees/Cross Appellants argue their motion for summary judgment regarding Appellant's spoliation of evidence should have been granted because Appellant failed to obtain possession of or to preserve Decedent's blood sample. Appellees/Cross Appellants allege Appellant's failure to comply with obligations to preserve the blood sample deprived Appellees/Cross Appellants of the ability to retest the sample to demonstrate the accuracy and reliability of the toxicology data and to respond to Appellant's attack on the evidence. Appellees/Cross Appellants contend the

court abused its discretion in denying Appellees/Cross Appellant's spoliation motion after the court previously determined summary judgment was the appropriate sanction for Appellant's failure to preserve the evidence. Appellees/Cross Appellants maintain the court should also have granted, in the alternative, their motion for summary judgment as a sanction for Appellant's spoliation. Appellees/Cross Appellants conclude this Court should reverse the trial court's decision denying their summary judgment motion on spoliation. We disagree.

As a preliminary matter, we observe that Rule 501 of the Pennsylvania Rules of Appellate Procedure provides:

> **Rule 501. Any Aggrieved Party May Appeal**
>
> Except where the right of appeal is enlarged by statute, any party who is aggrieved by an appealable order, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom.
>
> *Note:* Whether or not a party is aggrieved by the action below is a substantive question determined by the effect of the action on the party, etc.

Pa.R.A.P. 501. "A party is 'aggrieved' when the party has been adversely affected by the decision from which the appeal is taken. A prevailing party is not 'aggrieved' and therefore, does not have standing to appeal an order that has been entered in his or her favor." ***Ratti v. Wheeling Pittsburgh Steel Corp.***, 758 A.2d 695, 700 (Pa.Super. 2000) (citations omitted). Furthermore, Rule 511 of the Pennsylvania Rules of Appellate Procedure provides:

> **Rule 511. Cross Appeals**
>
> The timely filing of an appeal shall extend the time for any other party to cross appeal as set forth in Rules 903(b) (cross appeals), 1113(b) (cross petitions for allowance of appeal) and 1512(a)(2) (cross petitions for review). The discontinuance of an appeal by a party shall not affect the right of appeal of any other party regardless of whether the parties are adverse.

Pa.R.A.P. 511. "An appellee should not be required to file a cross appeal because the Court below ruled against it on an issue, **as long as the judgment granted appellee the relief it sought**." ***Pittsburgh Const. Co. v. Griffith***, 834 A.2d 572, 588 (Pa.Super. 2003) (quoting Pa.R.A.P. 511 *note*) (emphasis in original).

Here, the court denied the cross motions on spoliation of evidence. Nevertheless, the court ultimately granted Appellees/Cross Appellants' motion for summary judgment. Because the court granted Appellees/Cross Appellants the complete relief they had sought, they cannot be deemed "aggrieved." ***See id.***; ***Ratti, supra***. Therefore, as the prevailing parties in this action, Appellees/Cross Appellants do not have standing to appeal the court's September 10, 2012 order entered in their favor. ***See Ratti, supra***. Accordingly, we quash Appellees/Cross Appellants cross appeal.[3] ***See id.*** (quashing appellant's cross appeal where appellant was prevailing party in

---

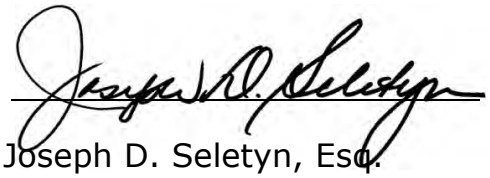
[3] Due to our disposition of Appellees/Cross Appellants' cross appeal, we deny as moot Appellant's motion to dismiss the cross appeal.

trial court and, therefore, not aggrieved party within meaning of Pa.R.A.P. 501).

Order affirmed. Cross Appeal quashed.

*JUDGE OLSON CONCURS IN THE RESULT.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/5/2014