

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

WASHINGTON MUTUAL BANK, F.A.,	:	IN THE SUPERIOR COURT OF
SUCCESSOR IN INTEREST TO PNC	:	PENNSYLVANIA
MORTGAGE BANK OF AMERICA,	:	
	:	
Appellees	:	
	:	
v.	:	
	:	
LAURIE L. DURANEY,	:	
	:	
Appellant	:	No. 929 WDA 2012

Appeal from the Order May 9, 2012,
Court of Common Pleas, Allegheny County,
Civil Division at No. GD 05-032266

BEFORE: DONOHUE, SHOGAN and WECHT, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: March 12, 2013

Laurie L. Duraney (“Duraney”) appeals from the May 9, 2012 order of the Court of Common Pleas Allegheny County, denying her motion seeking the payment of her attorney’s fees from Washington Mutual Bank, F.A., (“Washington Mutual”)¹ pursuant to the Loan Interest and Protection Law (“Act 6”), 41 P.S. § 101 *et seq.*, and 42 Pa.C.S.A. § 2503. After careful review, we affirm.

A prior panel of this Court summarized the background of this case as follows:

On or about July 5, [1996], [Duraney] borrowed the principal sum of \$39,780.00 from [PNC], and as evidence thereof executed and delivered to [PNC]

¹ Washington Mutual is the assignee and successor in interest to PNC Mortgage Corp. of America (“PNC”).

their promissory note in the amount of \$39,780.00 on the same date. ([]the 'Promissory Note').

In order to secure the obligation under the Promissory Note, [Duraney] also executed a purchase money mortgage on the same date ([]the 'Mortgage') in said amount of \$39,780.00, describing and encumbering certain real property located at 206 Cherry Street, Whitaker, Pennsylvania 15120. The [M]ortgage was duly recorded in the Office of the Recorder of Deeds of Allegheny County on July 10, 1996 at Book 15878, Page 427.

[Duraney] subsequently defaulted under the [Promissory] Note and Mortgage by failing to make the required monthly payments of principal, interest and other collectible charges under the [Promissory] Note and Mortgage. Said payments were due on August 1, 2005.

Washington Mutual Bank, F.A., v. Laurie L. Duraney, 183 WDA 2007, *1-2 (Pa. Super. July 7, 2010) (unpublished memorandum) (footnote omitted) (quoting Trial Court Opinion, 03/16/07, at 1-2).

Due to Duraney's default, Washington Mutual filed a complaint in mortgage foreclosure on December 9, 2005. In response, Duraney filed an answer, new matter, and counterclaims on January 20, 2006. After further proceedings, on October 10, 2006, Washington Mutual filed a motion for summary judgment and a motion to dismiss Duraney's counterclaims. On November 6, 2006, Duraney filed a motion for summary judgment, based upon Washington Mutual's failure to comply with the notice requirements of Act 6 and the Homeowner's Emergency Assistance Act ("Act 91"), 35 P.S. § 101 *et seq.* These pre-complaint notice deficiencies were her principal

defense to the mortgage foreclosure complaint. On December 19, 2006, the trial court denied Duraney's motion for summary judgment, and on December 20, 2006, the trial court granted Washington Mutual's motion for summary judgment and dismissed Duraney's counterclaims with prejudice.

On January 18, 2007, Duraney filed a timely appeal to this Court. While the appeal was pending, Duraney declared bankruptcy and this Court dismissed her appeal without prejudice to file a petition for reinstatement upon the completion of the bankruptcy proceedings.

After granting reinstatement of Duraney's appeal almost three years later, a prior panel of this Court affirmed in part, reversed in part, and remanded the case to the trial court for further proceedings. ***Washington Mutual Bank, F.A., v. Laurie L. Duraney***, 183 WDA 2007, (Pa. Super. July 7, 2010) (unpublished memorandum). Duraney's issues on appeal required this Court to determine whether genuine issues of material fact existed with respect to the propriety of Washington Mutual's Act 6 and Act 91 notices. ***Id.*** at 3-4. While affirming in all other respects, this Court reversed the trial court's order ruling against Duraney on her defense that Washington Mutual failed to comply with the notice requirements of Section 1680.403c(b)² of

² Section 1680.403c requires, in relevant part, a mortgagee to send pre-foreclosure notice to the debtor that complies with the following directives:

The agency shall prepare a notice which shall include all the information required by this subsection and by section 403 of [Act 6] [...] . This notice shall be in plain language and specifically state that the

Act 91. *Id.* at 6, 10. Thus, we agreed with Duraney and concluded that a genuine issue of material fact existed with respect to her Act 91 defense.

Id. at 9-10.

Regarding Duraney's claim that a genuine issue of material fact existed as to the sufficiency of the Act 6 notice³ provided by Washington

recipient of the notice may qualify for financial assistance under the Homeowner's Emergency Mortgage Assistance Program. ***This notice shall contain the telephone number and the address of a local consumer credit counseling agency.***
[...]

35 P.S. § 1680.403c(b)(1) (emphasis added).

³ Section 403 of Act 6, provides in relevant part:

(a) Before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation, commence any legal action including mortgage foreclosure to recover under such obligation, [...] , such person shall give the residential mortgage debtor notice of such intention at least thirty days in advance as provided in this section.

* * *

(c) The written notice shall clearly and conspicuously state:

* * *

(3) The right of the debtor to cure the default as provided in section 404 of this act and exactly ***what performance including what sum of money, if any, must be tendered to cure the default***[.]

41 P.S. § 403 (a) and (c)(3) (emphasis added).

Mutual, we rejected Duraney's contention. *Id.* at 12. Contrary to her position, our review of the record showed that the Act 6 notice informed Duraney of the amount she was required to pay in order to cure her default-\$1228.48, as required by Section 403(c)(3) of Act 6. *Id.* at 10-12.

Upon remand for consideration of the Act 91 defense, Duraney served Washington Mutual with interrogatories that included 169 questions. On December 21, 2011, the trial court⁴ granted Washington Mutual's request for a protective order, and ordered a reduction in the number of interrogatories to 25. Without serving a response to the interrogatories, on February 13, 2012 Washington Mutual filed a Praecipe to Settle and Discontinue the Mortgage Foreclosure Action without Prejudice. The next day, Duraney filed a Motion to Strike the Discontinuance or To Discontinue with Prejudice. Therein, Duraney first argued she was harmed by discontinuance of the suit without prejudice because, without a pending suit, she lost the opportunity for a hearing to establish (1) a factual record regarding her Act 91 defense and (2) a factual record to support her petition for attorney's fees pursuant to 42 Pa.C.S.A. § 2503. Motion to Strike, 2/14/2012, at ¶ 3-5. Duraney next argued that Washington Mutual's baseless foreclosure suit should be discontinued with prejudice to prevent it from filing a new suit at a later date. *Id.* at ¶ 8. Duraney contended that she was entitled to this relief

⁴ The proceedings on remand were conducted by Senior Judge Stanton Wettick. Summary judgment proceedings were conducted by Judge Michael Della Vecchia.

because Washington Mutual's conduct had been obdurate, vexatious and in bad faith. *Id.* at ¶ 7-8. By order dated March 10, 2012, the trial court denied Duraney's motion to strike stating that the "law permits the plaintiff to discontinue in order to send new pre-foreclosure notices and institute a new suit." Trial Court Order, 3/10/2012. Duraney did not appeal this ruling.

On March 12, 2012, Duraney filed a motion seeking an award of attorney's fees as provided by Section 503 of Act 6 and 42 Pa.C.S.A. § 2503(6), (7) and (9). Washington Mutual filed a response to Duraney's motion for attorney's fees. Without holding an evidentiary hearing, the trial court denied Duraney's motion for attorney's fees on May 9, 2012 concluding that the Superior Court's decision affirming the dismissal of Duraney's Act 6 defenses and counterclaims is the law of the case and precludes recovery of attorney's fees under Act 6. Trial Court Opinion, 5/10/2012, at 3. The trial court also denied Duraney's request for attorney's fees pursuant to Section 2503. The trial court determined that Washington Mutual's foreclosure action was not baseless, as the trial court granted summary judgment in Washington Mutual's favor and dismissed Duraney's counterclaims, a decision that was affirmed by the Superior Court except for the finding of a genuine issue of material fact regarding compliance with Act 91's notice requirements. *Id.* at 4. Lastly, the trial court found that "[Washington Mutual's] decision to discontinue does not constitute unreasonable inconvenience, vexation, harassment, expense, or burden." *Id.* at 5.

This timely appeal follows in which Duraney raises the following issues for our review:

I. The trial court erred in denying Duraney's [m]otion for attorney fees and costs as provided by statute under 41 P.S. § 406 and § 503 ('Act 6'), where Duraney became the prevailing party in the mortgage foreclosure Action when the bank voluntarily discontinued its in rem mortgage foreclosure suit.

II. Duraney must be awarded attorney fees and costs under 42 Pa.C.S.[A.] § 2503 for [Washington Mutual's] dilatory, obdurate and vexations conduct during the pendency of its foreclosure suit, and because [Washington Mutual's] conduct in commencing the suit was arbitrary, vexatious and in bad faith.

[III]. The [t]rial [c]ourt abused its discretion in failing to establish an evidentiary record, yet concluding that the Bank's decision to prosecute its baseless case for [six] years before discontinuing does not constitute unreasonable inconvenience, vexation, harassment, expense, or burden, such that [Duraney] is not entitled to attorney fees under 42 [Pa.C.S.A.] § 2503, when there was no factual basis for such conclusions. These baseless conclusory findings were prejudicial to Duraney.

[IV]. The [t]rial [c]ourt erred in allowing [Washington Mutual] to discontinue its suit, without an evidentiary hearing, thus depriving [Duraney] of the opportunity to establish a full factual record as to [Washington Mutual's] dilatory, vexatious, obdurate or bad faith conduct.

Appellant's Brief at 11, 18, 23, 25.⁵

⁵ Appellant's two issues as presented in the Statement of Questions Involved section of her brief are broad. We have used Duraney's argument

We review the trial court's decision regarding attorneys' fees as follows:

Generally, where the award of attorneys' fees is authorized by statute, an appellate court reviews the propriety of the amount awarded by the trial court under an abuse of discretion standard. We will not find an abuse of discretion in the award of counsel fees 'merely because [we] might have reached a different conclusion.' Rather, we require a showing of manifest unreasonableness, partiality, prejudice, bias, ill-will, or such lack of support in the law or record for the award to be clearly erroneous.

Samuel-Bassett v. Kia Motors Am., Inc., ___ Pa. ___, ___, 34 A.3d 1, 51 (2011), *cert. denied*, 133 S. Ct. 51 (2012) (internal citation omitted). To the extent the resolution of the issues on appeal require us to interpret the language of a statute, the provisions of the Statutory Construction Act, 1 Pa.C.S.A. 1501 *et seq.*, guide our review.⁶ ***Beneficial Consumer Discount Co. v. Vukmam***, 37 A.3d 596, 601 (Pa. Super. 2012), *appeal granted*, ___ Pa. ___, 55 A.3d 100 (2012).

Under the Statutory Construction Act, the object of all statutory construction is to ascertain and effectuate the General Assembly's intention. 1 Pa.C.S.[A.] § 1921(a). When the words of a statute are clear and free from all ambiguity, the letter of the statute is not to be disregarded under the

headings in place of the statement of questions presented, and we have reordered Duraney's claims for the ease of disposition.

⁶ Furthermore, statutory interpretation is a question of law over which our standard of review is *de novo* and our scope of review is plenary. ***Beneficial Consumer Discount Co.***, 37 A.3d at 601 n.2.

pretext of pursuing its spirit. 1 Pa.C.S.[A.] § 1921(b).

Id. at 601-02.

In her brief, Duraney first attacks the trial court's refusal to award her attorney's fees pursuant to Section 503 of Act 6.⁷ Section 503(a) provides:

§ 503. Reasonable attorney's fees recoverable

(a) If a borrower or debtor, including but not limited to a residential mortgage debtor, ***prevails in an action arising under this act***, he shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his behalf in connection with the prosecution of such action, together with a reasonable amount for attorney's fee.

41 P.S. § 503(a) (emphasis added). The foundation for Duraney's claim for attorney's fees under Section 503 is that she became a prevailing party when Washington Mutual voluntarily discontinued its suit. Appellant's Brief at 15, 17. For the reasons that follow, we disagree with Duraney's

⁷ Duraney's brief and argument also state that she is entitled to attorney's fees based upon Washington Mutual's alleged violation of Section 406 of Act 6. In summary, Section 406(2) allows a residential mortgage lender to charge attorney's fees to the mortgage debtor in a foreclosure action. To the best we can discern, Duraney claims that Washington Mutual violated Act 6 by claiming attorney's fees in its complaint in mortgage foreclosure because the mortgage foreclosure action was subsequently discontinued without prejudice. ***See*** Appellant's Brief at 14, 16. We find that this nebulous claim is waived for lack of development. ***Irwin Union Nat. Bank & Trust Co. v. Famous***, 4 A.3d 1099, 1103 (Pa. Super. 2010) (stating that this court may find issues on appeal waived where briefing defects inhibit meaningful appellate review of the claims raised).

contention and conclude that Duraney is not a prevailing party for the purposes of the award of attorney's fees under Act 6.

Duraney correctly notes that this Court has held that a party prevails pursuant to Section 503 of Act 6 if the party succeeds in substantially obtaining the relief sought. In support of this proposition, Duraney calls our attention to *Clark v. Gardner*, 503 A.2d 8, 10 (Pa. Super. 1986); *First Nat. Bank of Allentown v. Koneski*, 573 A.2d 591, 594 (Pa. Super. 1990); and *Beckett v. Laux*, 577 A.2d 1341, 1348 (Pa. Super. 1990). Appellant's Brief at 15. We note with displeasure that Duraney does nothing more than provide the citations to and bald holdings of these cases. She offers no analysis of the facts of these somewhat complicated cases or why these cases are analogous to, or control the outcome in the case at bar. This Court could find waiver of Duraney's Act 6 argument that she obtained substantially the relief she sought when the foreclosure action was dismissed. It is axiomatic that it is not the function of this Court to develop and present argument on behalf of an Appellant. Here, we will not find waiver but instead offer the core explanation as to why the cases cited by Duraney are not supportive of her position and why the trial court was correct in its conclusion that the absence of an Act 6 violation defeats an award of attorney's fees.

Clark, *First National Bank of Allentown* and *Beckett* each involve a creditor who violated Section 407(a) of Act 6. Section 407(a) prohibits a

creditor from levying, executing or garnishing based solely upon a confession of judgment. Section 407(a) requires a creditor to obtain a judgment by filing a complaint as provided by the appropriate Rules of Civil Procedure. Once the direct action on the complaint proceeds to judgment, that judgment merges with the confessed judgment. The purpose of this section is to protect residential real estate owners from arbitrary and capricious actions of creditors by confession of judgment. *Beckett*, 577 A.2d at 1345. The procedure assures that debtors have the opportunity to assert all potential claims and defenses. *Id.* at 1347. The creditors in *Clark*, *First National Bank of Allentown* and *Beckett* violated Act 6 by attempting to enforce a confessed judgment without instituting an original action. The creditors attempts at execution were thwarted by the debtors who defended by asserting the prohibition set forth in Section 407(a). The creditors were all found to have violated Act 6. As a result, the debtors in these cases were awarded attorney's fees under Section 503 of Act 6.⁸ Simply stated, the creditors in these cases were successful in their Act 6 defense.

⁸ In *Clark* and *First National Bank of Allentown*, this Court also found that the debtors were entitled to attorney's fees pursuant to Section 407(b) of Act 6 which provides: "Any debtor who prevails in any action to remove, suspend or enforce a judgment entered by confession shall be entitled to recover reasonable attorney's fees and costs as determined by the Court." Since Section 503(c) prohibits duplicate recovery of fees under Sections 503, 407 or 504, it is curious that this Court proceeded to an analysis of Section 503 since the award of attorney's fees under Section 407(b) deals specifically with the violation of Section 407(a).

In contrast, in the case before us, this Court's previous ruling established conclusively that Duraney did not prevail in her defense arising under Act 6. We specifically found that there was no genuine issue of material fact with respect to Duraney's Act 6 defense because the Act 6 notice clearly informed Duraney of the amount she was required to pay in order to cure her default. **See *Washington Mutual Bank, F.A., v. Laurie L. Duraney***, 183 WDA 2007, (Pa. Super. July 7, 2010) (unpublished memorandum) at 10-12. Pursuant to established case law, this prior ruling, finding no Act 6 violation, forecloses Duraney's claim for attorney's fees as a prevailing party in an action arising under Act 6.

Duraney also asserts that the trial court erred by relying on this Court's July 7, 2010 affirmance of the trial court's decision granting summary judgment as a bar to her claim for attorney's fees under Act 6 because Washington Mutual's voluntary discontinuance of the mortgage foreclosure suit rendered the affirmance of the grant of summary judgment a legal nullity. Appellant's Brief at 11-12. Duraney extrapolates this novel conclusion from ***Williams Studio Div. of Photography by Tallas, Inc. v. Nationwide Mut. Fire Ins. Co.***, 550 A.2d 1333, 1335 (Pa. Super. 1988), *appeal denied*, 527 Pa. 588 (1990), where this Court held that the initiation of a suit that is later dismissed without prejudice by a voluntary nonsuit does not toll the statute of limitations because the voluntary nonsuit has the effect of treating the original complaint as if it never existed. This Court's

affirmance of summary judgment against Duraney is in no way analogous to the plaintiff's *sua sponte* decision to discontinue its lawsuit in the ***Nationwide Mut. Fire Ins. Co.*** case. An affirmed grant of summary judgment does not evaporate upon dismissal of the case. The court's findings and legal conclusions are dispositive of the positions of the parties in the decided case even though it is dismissed.

We accordingly find that the trial court did not err in concluding that Duraney was not entitled to attorney's fees as provided by Section 503 of Act 6.⁹

In her brief, Duraney's second and third issues challenge the trial court's denial of her claim for attorney's fees based on 42 Pa.C.S.A. § 2503 (7) and (9). In relevant part, Section 2503 states:

⁹ In the trial court, Duraney also pursued attorney's fees arising out of the purported violation of Act 6 based upon 42 Pa.C.S.A. § 2503(6) which provides for the award of reasonable counsel fees as taxable costs to: "Any participant who is awarded counsel fees as a sanction against another participant for violation of any general rule which expressly prescribes the award of counsel fees as a sanction for dilatory, obdurate or vexatious conduct during the pendency of any matter." In her appellate brief, Duraney references her Section 2503(6) claim in the context of her argument regarding attorney's fees under Act 6 presumably arguing that the violation of Act 6 is a violation of "any general rule" as set forth in Section 2503(6). Appellant's Brief at 14. Duraney fails to articulate and develop her claim of error with respect to her request for attorney's fees under Section 2503(6). We therefore find it waived. **See** Pa.R.A.P. 2101; Pa.R.A.P. 2119. Even if not waived, we would find no relief is due. The trial court found that Duraney was not entitled to relief on this claim because "there was no violation of Act 6, and Act 91 does not contain any provision for counsel fees" (Trial Court Opinion, 5/10/2012, at 3 n.2), and we find no error in this conclusion.

§ 2503. Right of participants to receive counsel fees

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

* * *

(7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.

* * *

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.

42 Pa.C.S.A. § 2503(7) and (9). "Generally speaking, 'obdurate' conduct may be defined in this context as 'stubbornly persistent in wrongdoing.'" ***In re Estate of Burger***, 852 A.2d 385, 391 (Pa. Super. 2004) (citation omitted), *aff'd other grounds*, 587 Pa. 164, 898 A.2d 547 (2006). Dilatory conduct occurs "where the record demonstrates that counsel displayed a lack of diligence that delayed proceedings unnecessarily and caused additional legal work." ***Id.*** (citation omitted). Our Supreme Court has defined arbitrary, vexatious and bad faith conduct as follows:

An opponent's conduct has been deemed to be 'arbitrary' within the meaning of the statute if such conduct is based on random or convenient selection or choice rather than on reason or nature. An opponent also can be deemed to have brought suit 'vexatiously' if he filed the suit without sufficient

grounds in either law or in fact and if the suit served the sole purpose of causing annoyance. Finally, an opponent can be charged with filing a lawsuit in 'bad faith' if he filed the suit for purposes of fraud, dishonesty, or corruption.

Thunberg v. Strause, 545 Pa. 607, 615, 682 A.2d 295, 299 (1996)
(internal citations omitted).

Duraney contends that the trial court erred in several respects by failing to award attorney's fees pursuant to Section 2503. Duraney argues that she is entitled to attorney's fees based on Washington Mutual's conduct because it was dilatory, arbitrary, vexatious, and in bad faith. Appellant's Brief at 18-23. However, the foundation for Duraney's arguments is her belief that Washington Mutual failed to comply with the notice requirements of Act 91, and therefore, Washington Mutual's foreclosure action had no basis in law or fact. ***See id.*** at 20-23. Assuming, *arguendo*, that Washington Mutual failed to provide Duraney with proper Act 91 notice, we cannot conclude, as does Duraney, that this procedural defect means Washington Mutual's underlying foreclosure action has no basis in law or fact. First, in this Court's prior ruling, we determined that Washington Mutual's notice was compliant with Act 6 because it informed Duraney that she was "required to pay \$1228.48 to cure her default," and Duraney did "not dispute that this notice contained a sum of money that she was required to tender to cure the default." ***Washington Mutual Bank, F.A., v. Laurie L. Duraney***, 183 WDA 2007, *10, 12 (Pa. Super. July 7, 2010)

(unpublished memorandum). Thus, there was no dispute regarding whether Duraney was in default; nor does Duraney contend in this appeal that she was not in default on her mortgage or that Washington Mutual had no reason to institute foreclosure proceedings. Instead, Duraney incorrectly equates defective Act 91 notice with a baseless case.

Moreover, Duraney fails to cite or direct this Court to supporting case law for the proposition that the award of attorney's fees is appropriate pursuant to Section 2503(7) or (9) based on a pre-complaint procedural defect. We, like the trial court, are not aware of any precedent to establish that a procedural defect such as the alleged failure to give pre-suit notification presented in this case, gives rise to a claim for attorney's fees under Section 2503(7) and/or (9). Therefore, the failure of Duraney to cite to authority alone would not result in waiver. However, Duraney does not offer any argument or analogy to other cases to support her factual propositions. While we could find waiver, we avoid that result. Even if a procedural defect could support an attorney's fees award, the history of this case precludes a finding that there was a clear violation of Act 91 so as to give rise to a finding of obdurate, vexatious or bad faith conduct because contrary to Duraney's predicate argument, Washington Mutual was under no obligation to accept Duraney's view that the Act 91 notice was defective.

Summary judgment was rendered in favor of Washington Mutual on the Act 91 issue in the trial court. This Court reversed because there was a

genuine issue of material fact on the issue. On this point, it is important to note that this Court did not reverse and enter judgment for Duraney. Such a finding might have offered some support for Duraney's robust assertion of a knowing Act 91 violation that persisted for six years of litigation. Again, on the record in this case, there is no support for Duraney's position. For the same reason, we find that it was not error for the trial court to decide the fee award without an evidentiary hearing. While an evidentiary hearing is required when issues of fact must be resolved to determine if there is a basis for an award of attorney's fees, *In re Estate of Burger*, 852 A.2d at 391, for the reasons stated, a hearing would be superfluous since the record in this case supports the trial court's ruling. Washington Mutual's conduct in litigating the Act 91 issue was not obdurate, vexatious or in bad faith.

The record likewise is dispositive of Duraney's claim that Washington Mutual's ultimate discontinuance of this case evidences dilatory conduct and thus, an evidentiary hearing was not required. The only time frame that requires analysis is the period between the date of this Court's remand for proceedings on the Act 91 notice issue (July 7, 2010) and the date of the voluntary discontinuance by Washington Mutual (February 13, 2012). The scope of the analysis is driven by the fact that prior to remand, Washington Mutual had been successful on the Act 91 issue.

The docket and filings in the trial court shows that the first activity on remand was the return of the record to the trial court on August 11, 2010.

On August 11, 2011, one year later, Duraney served Washington Mutual with 169 interrogatories. On October 3, 2011, after receiving Duraney's motion to compel discovery, the trial court ordered Washington Mutual to respond to Duraney's interrogatories.

However, because of the alleged voluminous and burdensome nature of Duraney's interrogatories, Washington Mutual sought a protective order and filed a brief in support thereof on November 3, 2011. On November 22, 2011, Duraney filed a response to Washington Mutual's request for a protective order. On December 21, 2011, the trial court granted Washington Mutual's request and vacated its order compelling Washington Mutual to respond to Duraney's interrogatories, but it also directed Duraney to reserve Washington Mutual with no more than 25 interrogatories and ordered Washington Mutual to respond to Duraney's interrogatories within 30 days of service. Duraney mailed the revised interrogatories to Washington Mutual on January 6, 2012, and on February 13, 2012, Washington Mutual filed a praecipe to settle and discontinue without prejudice.

As described above, the record demonstrates that after remand, Duraney waited for one year before attempting to establish facts in support of her defense. The remaining six months until Washington Mutual filed its discontinuance was spent on a scope of discovery dispute. In our view, this conduct does not demonstrate that Washington Mutual displayed a lack of diligence that delayed proceedings unnecessarily and caused additional legal

work." *In re Estate of Burger*, 852 A.2d at 391 (citation omitted). Under these circumstances, we cannot conclude that the trial court abused its discretion in refusing to award attorney's fees based upon alleged dilatory conduct. *See Strause*, 545 Pa. at 614-15, 682 A.2d at 299 (citations omitted) (stating our standard for reviewing the trial court's findings regarding Section 2503 is deferential, and we will not disturb those findings on appeal where they are supported by the record).

In her final claim, Duraney attempts to challenge the trial court's denial of her petition to strike Washington Mutual's voluntary discontinuance of the suit. Appellant's Brief at 23-24, 26. However, Duraney has waived any and all challenges to the trial court's March 10, 2012 order denying her petition to strike because she did not file a notice of appeal from this order of the trial court.

When a suit is voluntarily discontinued, it has the effect of a final judgment. *Miller Elec. Co. v. DeWeese*, 589 Pa. 167, 172, 907 A.2d 1051, 1054 (2006). As a result, Duraney could have filed a notice of appeal from the denial of her petition to strike the voluntary discontinuance. *Marra v. Smithkline Beecham Corp.*, 789 A.2d 704, (Pa. Super. 2001), *appeal denied*, 572 Pa. 743, 815 A.2d 1043 (2003) (deciding an appeal from an order denying appellant's petition to strike a voluntary discontinuance). Instead, Duraney filed a petition seeking attorney's fees pursuant to Section 2503, which is a matter that is related but ancillary to the underlying matter.

Old Forge School Dist. v. Highmark, Inc., 592 Pa. 307, 317, 924 A.2d 1205, 1211 (2007) (finding that when an appeal is taken from the underlying final order, the trial court may still entertain a motion for attorney's fees filed after the notice of appeal because it is a separate matter). Thus, because the denial of Duraney's petition to strike the voluntary discontinuance and the denial of her request for attorney's fees were two separate appealable orders, Duraney waived her challenges to the order denying her petition to strike the voluntary discontinuance by failing to file a notice of appeal therefrom.

Order affirmed.