

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF
PENNSYLVANIA – MIDDLE DISTRICT

ANN M. ROGERS,
Appellee

)
)

v.

)
)

647 MDA 2021

ROBERT P.
BAUCHWITZ,
Appellant

)
)
)

**APPLICATION FOR RECONSIDERATION OF
ORIGINAL RECORD APPEAL QUASHING**

Procedural History and Facts

1. The above captioned appeal concerns the handling of evidence by a trial court in Dauphin County case 2017-cv-6699-dv, for which a final order was issued by decree on October 28, 2020.
2. Jurisdiction of the 1499 MDA 2020 appeal was originally established based on 42 Pa. C.S. § 742:

“The Superior Court shall have exclusive appellate jurisdiction of all appeals from final orders of the courts of common pleas,

regardless of the nature of the controversy or the amount involved, except such classes of appeals as are by any provision of this chapter within the exclusive jurisdiction of the Supreme Court or the Commonwealth Court. *42 Pa.C.S. § 742* 1976, July 9, P.L. 586, No. 142, § 2, effective June 27, 1978.

3. On March 4, 2021, the Superior Court remanded to the trial court the record of 1499 MDA 2020, with an order for the trial court to consider Husband's application for correction of a hearing transcript.

4. On March 22, 2021, the trial court issued an order for Husband to present to the trial court and the court reporter details of the mistakes alleged in the hearing transcript at issue.

5. On April 1, 2021, Husband filed a response to the trial court detailing flaws asserted in the hearing transcript at issue, as well as a letter from a National Court Reporters Association Registered Diplomate Reporter ("RDR") attesting to numerous errors and recommending a complete review of the transcript.

6. On April 19, 2021, the court reporter filed an errata sheet noticing sixteen errors, which was less than one-third of the likely errors specified by Husband and his potential expert witness.

7. On April 28, 2021, nine days after the court reporter's response,

while Husband was preparing a demand for hearing based on disputes of fact, the trial court issued an order taking the court reporter's errata as a complete and fully corrected accounting. By assuming that the sixteen mistakes conceded by the court reporter represented all the actual errors, the trial court then opined that such errors were not substantive.

8. The order of April 28, 2021 sent the trial court record back to the Superior Court.

9. On May 3, 2021, before having received the April 28, 2021 order in the mail, Appellant filed a Demand for Hearing on the original record (transcript errata) matter.

10. On May 6, 2021, the court issued an order denying the demand for hearing, which it took as a motion for reconsideration.

11. On May 25, 2021, a "Notice of Appeal re Correction of the Original Record" was filed by Appellant.

12. On June 1, 2021, Appellant filed an "Application To Stay Briefing Schedule Pending The Trial Court's Decision Regarding Economic Matters Relevant To Original Appeal". (1499 MDA 2020). One of the affected matters involved the remand of the original records issue. In particular, Appellant noted:

“In addition to requesting a stay of the briefing schedule, Husband also intends to move to consolidate the appeal of the correction of the original records matter with the existing appeal captioned above, ... (“multiple orders affecting an appellant entered substantially concurrently in civil matters ... shall be treated as a single matter for purposes of briefing and argument on appeal.” 210 Pa. Code § 2138.)” (Application to Stay Briefing Schedule of June 1, 2021, point 32).

13. The Application to Stay the Briefing Schedule was denied by the Superior Court on June 17, 2021.

Several of the unresolved issues with the record are substantive and material

14. By not staying the schedule for the underlying appeal, Appellant cannot directly incorporate any corrections to the evidence which still have not been commented upon by the court reporter.

15. Several unaddressed potential errors are material. For example, the master cited the hearing transcript as a basis for her earning capacity findings, and this was upheld by the trial court. (Master’s Report of March 13, 2020, p. 26, as quoted here in Exhibit A at point 2.)

16. As Appellant was not afforded the due process of an evidentiary hearing on the disputed facts of the transcript's remaining alleged flaws, he consequently felt compelled to dispute in his advance brief for 1499 MDA 2020 (filed July 2, 2021) some material claims involving the handling of evidence concerning earning capacity.¹ (See Exhibit A – Earning Capacity Documentation and Testimony from Appellant's Brief of July 2, 2021).

17. Many other issues with the hearing transcript remain uncorrected, and some go to credibility assessments. Notably, the master made claims against Appellant's credibility, seemingly influenced by the highly broken testimony of Appellant. (For example, see Exhibit A at point 3.)

18. By way of further example, in his Demand for Hearing of May 3, 2021, attached here as Exhibit B and referenced as if entered in full, Husband questioned whether it was likely that it was he who had stated that he had worked with the U.S.'s "IRS", rather than an "Irish" agency, as was the reality. (Demand for Hearing, point 19, quoting T.193 at the bottom of page 8.) A reasonable adjudicator of the evidence might

¹ Doing so with respect to earning capacity came at a cost to him of approximately 800 words, which otherwise would have been used for other relevant matters.

wonder at the odds that the witness, Appellant, so misidentified his own potential income source.²

19. A further issue asserted with the transcript that seemed to impact the master's credibility determinations, was also subsequently challenged in the Appellant's Brief of July 2, 2021 for other reasons. The seemingly obviously missing words were presented in the Demand for Hearing of May 3, 2021 (attached here as Exhibit B) at point 19, p. 10, quoting T. 197.

20. Importantly, the trial court did not take notice that the court reporter had not addressed most of the issues raised by Appellant, including several of the most obvious or material of those such as noted above. Instead the trial court concluded that because none of the problems that the court reporter *did* correct seemed "substantive", the request for hearing and further discovery was denied by order of April 28, 2021, and the remand thereby ended.³

21. Furthermore, whether the transcript is accurate goes to more

² While they may sound similar, there still seems to be enough difference in the sounds of "IRS" and "Irish" to make one wonder what sort of error-correction process, if any, occurred. "IRS" has three syllables, while "Irish" has only two.

³ Appellant asserts that such selective handling of the evidence would be improper in most if not all modern fields of endeavor, and cannot represent reasonable discretion.

than a debate over what is topically “substantive” or material. As Appellant also noted in his Demand for Hearing of May 3, 2021, if the court reporter’s transcript is found to be accurate and verbatim, then:

“If some or many of Court Reporter Artz’s implied claims are correct, namely that she has largely correctly transcribed Husband’s testimony, then such testimony itself becomes evidence in consideration of Husband’s capacity to communicate in a comprehensible and grammatically sufficient manner to obtain various types of relevant, high-earning employment”.

22. Therefore, Appellant believes there were many important reasons specific to the appeal presented in 647 MDA 2021 to obtain a credible review of the hearing transcript remanded to the trial court.

Practical matters now arising and proposed solution

23. Despite what Appellant argues is technical jurisdiction of the Superior Court over the trial court on this matter for which a final order exists, nevertheless, the question arises as to its practical import now that an appeal brief has been filed by Appellant.⁴

⁴ The on-going litigation associated with this case largely has to do with termination of Appellant’s APL, which would be appealed separately, whether or not information derived from that litigation is relevant to the 1499 MDA 2020 appeal (See

24. First, it remains to be seen what is cited from the hearing transcript in the Appellee’s brief. Thus, the disputed facts remain active in so far as the primary appeal, 1499 MDA 2020, is concerned.

25. Second, as a matter of oversight of the trial courts more generally, Appellant notes that, regardless of what further disputed issues are raised related to the transcript in 1499 MDA 2020, the same issues have importance in their own right. It might be argued that such matters are at least as important to litigants and others in the public at large as the outcome of a divorce.

26. More specifically, litigants in Pennsylvania, including Appellant, have an expectation of accurate, verbatim transcripts of the record proceedings. For example:

“It is the policy of the [Commonwealth of Pennsylvania] Unified Judicial System to ensure” ... “complete and verbatim notes of testimony and transcripts are integral to the official record of court proceedings”. (“Transcript means a certified, written, verbatim record of a proceeding.”) 201 Pa. Code § 4001

“Court reporting personnel who take the notes, record or

Appellant’s Application to Stay the Briefing Schedule of June 1, 2021 at point 28).

transcribe a proceeding shall certify that the transcript of proceedings is true and correct". 201 Pa. Code § 4013

27. The proper forum to address a trial court's handling of evidence under the law is with an appeals court, in this case, the Superior Court.

28. Appellant believes that this evidentiary matter can still be expeditiously resolved by attention to the original notes and audio of the court reporter. These materials should be available for review:

"Notes of testimony of court proceedings, stenographic notes, tapes, rough draft transcripts or other media used by court reporting personnel to record or monitor a proceeding in or for a court as well as any transcriptions thereof are the exclusive property of the judicial district." 201 Pa. Code § 4015.

"(A) Each judicial district shall make provision for the archiving, storage and retention of transcribed and untranscribed notes of testimony, rough draft transcripts, reporter and recorder log notes, tapes, other electronic or digital audio files, and any hardware, software, tools or dictionaries necessary for proper transcription.

(B) Notes of testimony and other materials specified in subdivision (A) shall be retained in compliance with the Record

Retention and Disposition Schedule with Guidelines adopted by the Supreme Court.

Comment: Each judicial district is responsible for the preservation of the transcript production materials listed in Rule 4016(A) in a form that **guarantees** their **accuracy, authenticity, and accessibility**. These materials must be protected from loss arising from personnel turnover in the court, environmental hazards, or unsecured access.” 201 Pa. Code § 4016.

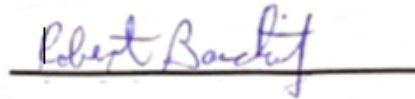
29. Therefore, Appellant included with his Demand for Hearing of May 3, 2021, subpoenas to the Dauphin County Clerks office for copies of relevant records. (See Demand for Hearing, Exhibit B, p. 13 *et seq.*)

30. Consequently, even if no further controversial issues are raised with respect to the transcript as it might apply to Appellant’s brief already filed in 1499 MDA 2020, Appellant nevertheless asks that the Superior Court take jurisdiction and allow resolution of the evidentiary matters arising from the original record by remanding the matter to the trial court under 647 MDA 2021, with instructions ordering the execution of the subpoenas attached to Appellant’s Demand for Hearing of May 3, 2021.

31. Finally, Appellant wishes to reemphasize the point made in his

response of June 24, 2021 to the show cause rule: if the Superior Court does not allow an appeal as to the transcription errors, then those issues could very well escape any appellate review.

Date: 7/14/21

A handwritten signature in blue ink that reads "Robert Bauchwitz". The signature is written in a cursive style and is positioned above a solid black horizontal line.

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CERTIFICATION OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 7/14/21

/s/ Robert Bauchwitz

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Robert P. Bauchwitz :
Appellant :

PROOF OF SERVICE

I hereby certify that this 14th day of July, 2021, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: James R. Demmel
Service Method: eService
Email: jdemmel@demmellawoffice.com
Service Date: 7/14/2021
Address: 1544 Bridge Street
New Cumberland, PA 17070
Phone: (71-7) -695-0705
Representing: Appellee Ann M. Rogers

/s/ Robert P. Bauchwitz

(Signature of Person Serving)

Person Serving: Bauchwitz, Robert P.
Attorney Registration No:
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Address: 23 Harlech Drive
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Pro Se: Appellant Bauchwitz, Robert P.