

App. 1

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

CYNTHIA L. POLLICK,	:	No. 573 MAL 2022
Petitioner	:	Petition for Allowance
v.	:	of Appeal from the
	:	Order of the Superior
ANTHONY P.	:	Court
TROZZOLILLO,	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 23rd day of May, 2023, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 05/23/2023

Attest: /s/ Elizabeth E. Zisk
Chief Clerk
Supreme Court of Pennsylvania

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Received 12/9/2022 10:28:05 AM
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573 MAL 2022

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. _____ Docket 2022

CYNTHIA L. POLICK,
Petitioner

v.

ANTHONY P. TROZZOLILLO,
Respondent

PETITION FOR ALLOWANCE OF APPEAL

APPEAL FROM THE JUDGMENT OF THE
SUPERIOR COURT AT 991 MDA 2021, DATED
11/7/2022, AFFIRMING JUDGMENT DATED
7/20/2021, 20-FC-40119, COURT OF COMMON
PLEAS, LACKAWANNA COUNTY

/s/ Cynthia Lynn Pollick
Cynthia L. Pollick; J.D., LL.M., M.A. Pro Se
PO Box 724
Clarks Summit PA 18411
(570) 510-7630
Date: 12/5/22

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* * *

[17] Petitioner/Plaintiff-Wife waived¹ the issue of sealing by not citing to authority; however, there is no question that Petitioner/Plaintiff-Wife cited this Court's case in S.B. and discussed sealing in both her main and reply brief.

* * *

¹ Below is an excerpt from Petitioner's Superior Court Appellant Brief showing that she cited to caselaw in her main brief.

V. This divorce proceeding should never have been sealed since a complete sealing of a court proceeding is almost never required; and especially here since by the trial judge's own words it was a "blue collar" divorce and nothing contained within it was secretive

As noted by the Supreme Court in S.B., "[a]s further evidence that the gag order was narrowly crafted, we observe that the order applied only to Mother and her counsel. The trial court did not seal the record of the custody trial nor impose any prior restraints upon the press that precluded the dissemination of information relating to the custody trial." S.B. v. S.S. (In re S.S.), 243 A.3d 90, 111 (Pa. 2020)(emphasis added). Unlike the Court in S.B., here the trial court sealed the entire judicial record of what he considered a "blue collar divorce". (See Appendix "C").

(See Petitioner's Superior Court Appellant Brief pg. 39-41, 991 MDA 2021; Appendix "D" pg. 7, which stated that "[s]he cites no law to support her argument as to why the trial court should not have sealed the record in this case . . .").

J-A14019-22

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

CYNTHIA L. POLLICK
Appellant
v.

ANTHONY P.
TROZZOLILLO

Appellee

IN THE SUPERIOR
COURT OF
PENNSYLVANIA

No. 991 MDA 2021

Appeal from the Order Entered July 23, 2021
In the Court of Common Pleas of Lackawanna County
Civil Division at No: 20 DR 0205 2020-40119
PACSES 517300200

BEFORE: BENDER, P.J.E., STABILE, J., and STEVENS, P.J.E.*

MEMORANDUM BY

STABILE, J.

FILED: NOVEMBER 7, 2022

Appellant, Cynthia Pollick, appeals *pro se* from the July 23, 2021 orders resolving the equitable distribution of the parties' marital estate, denying her claim for an award of alimony, and imposing sanctions against her.² We affirm.

* Former Justice specially assigned to the Superior Court.

² The trial court entered a decree in divorce on July 23, 2021, thus rendering its equitable distribution and alimony order final and appealable. *See Busse v. Busse*, 921 A.2d 1248, 1253 n.2 (Pa. Super. 2007) (noting that orders regarding equitable distribution and alimony become final and appealable upon entry of a decree

The parties were married on January 7, 2017. Appellee, Anthony P. Trozzolillo, commenced this action with a divorce complaint filed on December 30, 2019. Appellant filed her own complaint in divorce on January 24, 2020, followed by a spousal support complaint on March 6, 2020. Both parties are practicing attorneys in Lackawanna County. On September 21, 2020, after all judges of the Lackawanna County Court of Common Pleas recused themselves, the Lackawanna County Court Administrator assigned Judge Emanual A. Bertin (hereinafter the trial court) to preside over this case.

In this timely appeal, Appellant presents seven questions:

- I. Whether the trial court had jurisdiction while this case was on appeal to issue substantive orders?
- II. Whether the trial court erred in sanctioning a *pro se* litigant almost \$27,000 for filing a divorce and attempting to gather evidence on marital assets?
- III. Whether the trial court erred when it refused to allow Appellant to engage in discovery, including the use of subpoenas to

in divorce); ***appeal denied***, 934 A.2d 1275 (Pa. 2007). The trial court's imposition of sanctions against Appellant (essentially an award of counsel fees to Appellee also is properly before us. ***Holz v. Holz***, 850 A.2d 751, 760-61 (Pa. Super. 2004), ***appeal denied***, 871 A.2d 192 (Pa. 2005).

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evaluate marital assets when both parties sought discovery?

- IV. Whether the trial court erred when it sealed the entire judicial record, which included even the names of documents filed?
- V. Whether the trial court erred in its equitable distribution since without investigation it found only two marital assets, which were the parties' retirement pensions and both parties owned residences along with husband owning rental properties?
- VI. Whether the trial court should have allowed Appellant to receive alimony?
- VII. Whether the trial court must hold a hearing to determine if a party is entitled to a fault divorce based on indignities?

Appellant's Brief at 14.

We have reviewed the extensive record, the applicable law, the parties' briefs, and the trial court's opinions of July 20, 2021 (the trial court issued two opinions that day—one addressing its imposition of sanctions (hereinafter the "Sanctions Opinion") and the other addressing the substantive issues (hereinafter the "Substantive Opinion"))). We conclude that the trial court's opinions thoroughly and accurately address Appellants' arguments. Subject to the following observations, we reject Appellant's arguments based

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on the accurate recitation of facts and sound reasoning set forth in the trial court's opinions.

With her first issue, Appellant claims that the trial court lacked jurisdiction during much of the underlying proceedings because this matter was pending on appeal before this court and/or awaiting our Supreme Court's disposition of a petition for allowance of appeal. This argument arises from Appellant's appeals from various interlocutory orders. On December 2, 2020, the trial court entered an order expressly titled an "Interlocutory order and scheduling order for pre-trial conference in-court on the record." Order 12/2/20. Appellant nonetheless filed a notice of appeal from that order the next day. This Court granted Appellee's application to quash by order of January 7, 2021 (1537 MDA 2020). On February 12, 2021,² the trial court entered four interlocutory orders addressing scheduling and other ministerial matters. Appellant appealed from these orders on February 17, 2021, and this Court granted Appellee's application to quash by order of March 22, 2021 (239 MDA 2021).

Rule 1701 of the Pennsylvania Rules of Appellate Procedure governs the affect of an appeal:

(b) Authority of a trial court or other government unit after appeal.--After an appeal is taken or review of a quasijudicial

² The four orders in question were docketed on February 12, 2021. The trial court dated them February 11, 2021, and the time stamps on the original documents indicate that they were filed on February 11, 2021.

order is sought, the trial court or other government unit may:

[. . .]

(6) Proceed further in any matter in which a non-appealable interlocutory order has been entered, **notwithstanding the filing of a notice of appeal** or a petition for review of the order.

Pa.R.A.P. 1701(b)(6) (emphasis added). Pursuant to Rule 1701(b)(6), the trial court had jurisdiction to proceed notwithstanding Appellant's appeal from orders that were plainly not final or appealable. For this reason, and for the reason explained on pages 23-28 of the trial court's Substantive Opinion, Appellant's first argument lacks merit.

Appellant's second argument challenges the trial court's order of \$26,950.00 in sanctions pursuant to 42 Pa.C.S.A. § 2503(7) and (9).³ We review to determine

³ That section provides:

§ 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

whether the trial court abused its discretion. *Miller v. Nelson*, 768 A.2d 858, 861-62 (Pa. Super. 2001), *appeal denied*, 782 A.2d 547 (Pa. 2001). Where the record supports the trial court's finding that the conduct of the sanctioned party was obdurate or vexatious, we will not disturb the trial court's award. *In re Padezanin*, 937 A.2d 475, 483-84 (Pa. Super. 2007).

The amount of the sanctions award is based on testimony from Appellee's counsel, deemed credible by the trial court, to the effect that Appellant's dilatory, obdurate, and vexatious conduct considerably increased Appellee's counsel fees. In addition to the two frivolous appeals mentioned above, Appellant filed dozens of subpoenas demanding that Appellee produce items with no obvious relevance to this proceeding. Also, Appellant consistently failed to produce tax records and other documentation pertinent to an equitable distribution. We discern no abuse of discretion in the trial court's award, and we affirm the imposition of sanctions on the basis of the Sanctions Opinion. In addition, the trial court references numerous instances of Appellant's misconduct on pages 22 through 33 of the Substantive Opinion.

Appellant's third argument—regarding the trial court's denial of various discovery requests—lacks merit. Appellant correctly notes that Pa.R.C.P. 1930.5(b) provides for discovery without leave of court

matter or otherwise was arbitrary, vexatious or in bad faith.

42 Pa.C.S.A. § 2503(7), (9).

in alimony and equitable distribution proceedings. But Appellant's argument ignores her own consistent failure to provide pertinent discovery, as referenced on pages 4-5, 8-10, 15-18, and 31-33 of the Substantive Opinion. Appellant further ignores the detailed list of subpoenas that she served on Appellee—which the trial court quashed at Appellee's request—as set forth on pages 4-8 of the trial court's Sanctions Opinion. The trial court described Appellant's conduct as "outrageous" and "disrespectful of, and to, the court system." Sanctions Opinion, 7/20/21, at 2. Likewise, the court wrote in a section of its Substantive Opinion titled "Wife's Abusive Discovery Requests" that "Wife's outrageous discovery requests were meant to harass Husband and to run up his legal fees, with which she was successful." Substantive Opinion, 7/20/21, at 30. Appellant's third argument lacks merit for the reasons explained in the portions of the Sanctions and Substantive Opinions referenced above.

Appellant's fourth argument challenges the trial court's decision to seal the record in this matter. She cites no law to support her argument as to why the trial court should not have sealed the record in this case, in violation of Pa.R.A.P. 2119(b). She has therefore waived this argument. *Estate of Haiko v. McGinley*, 799 A.2d 155, 161 (Pa. Super. 2002). At any rate, Rule 223 of the Pennsylvania Rules of Civil Procedure permits a trial court to exclude the public from civil proceedings in the interest of "public good, order or morals." Pa.R.C.P. 223(4). This Court has held that divorce proceedings can be closed, pursuant to Rule

223(4) for good cause. *Katz v. Katz*, 514 A.2d 1374 (Pa. Super. 1986), *appeal denied*, 527 A.2d 542 (Pa. 1987). The findings in the Sanctions Opinion establish that Appellant repeatedly attached Appellee's private financial information to her filings without attaching a confidential information form, per the Public Access Policy of the Unified Judicial System, thus making that information a matter of public record. Sanctions Opinion, 7/20/21, at 4-5. We discern no error in the trial court's decision to seal the record.

Appellant's fifth argument challenges the trial court's valuation of the marital estate for purposes of equitable distribution.

A trial court has broad discretion when fashioning an award of equitable distribution. Our standard of review when assessing the propriety of an order effectuating the equitable distribution of marital property is whether the trial court abused its discretion by a misapplication of the law or failure to follow proper legal procedure. We do not lightly find an abuse of discretion, which requires a showing of clear and convincing evidence. This Court will not find an "abuse of discretion" unless the law has been overridden or misapplied or the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will, as shown by the evidence in the certified record. In determining the propriety of an equitable distribution award, courts must consider the distribution scheme as a whole. We measure the circumstances of the case against the

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objective of effectuating economic justice between the parties and achieving a just determination of their property rights.

Moreover, it is within the province of the trial court to weigh the evidence and decide credibility and this Court will not reverse those determinations so long as they are supported by the evidence.

Carney v. Carney, 167 A.3d 127, 131 (Pa. Super. 2017). The trial court analyzed the factors set forth in 23 Pa.C.S.A. § 3502(a) at pages three through 13 of the Substantive Opinion, and explains its conclusion at pages 16 through 20. We reject Appellant's argument for the reasons given in the Substantive Opinion.

Next, Appellant argues the trial court erred in denying her an award of alimony.

Our standard of review regarding questions pertaining to the award of alimony is whether the trial court abused its discretion. We previously have explained that [t]he purpose of alimony is not to reward one party and to punish the other, but rather to ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment, are met. Alimony "is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor's ability to pay. Moreover, [a]limony following a divorce is a *secondary remedy* and is available only where economic justice and the reasonable needs of the parties

cannot be achieved by way of an equitable distribution award and development of an appropriate employable skill.

Teodorski v. Teodorski, 857 A.2d 194, 200 (Pa. Super. 2004) (quotation marks omitted).

The trial court described Appellant's alimony claim as a "sham." Substantive Opinion, 7/20/21, at 20. She earns six figures, has no children, and greater future earning capacity than Appellee. ***Id.*** Further, Appellant failed to document her needs by providing a list of expenses. ***Id.*** at 15, 20. The trial court thoroughly and accurately addresses the factors set forth under 23 Pa.C.S.A. § 3701 at pages 14-16 of the Substantive Opinion, and explains its conclusion on pages 20-21. We reject Appellant's argument for the reasons explained in the trial court's Substantive Opinion.

Finally, Appellant claims the trial court erred in not holding a hearing to address her allegation that a fault-based divorce was warranted because of indignities. The trial court did not address this argument. Indignities can be grounds for a fault-based divorce under 23 Pa.C.S.A. § 3301(a)(6). We observe, however, that Appellant fails to support her argument with citation to pertinent authority, resulting in waiver. Pa.R.A.P. 2119(b); ***Estate of Haiko***. Furthermore, Appellant's second amended complaint in divorce included claims for a no-fault divorce under § 3301(c) and (d) (mutual consent and irretrievable breakdown, respectively). Appellant's Second Amended Complaint

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in Divorce, 2/7/20, at Count I, ¶¶ 12-17. That being the case, § 3301(e) provides as follows:

(e) No hearing required in certain cases.--If grounds for divorce alleged in the complaint or counterclaim are established under subsection (c) or (d), the court shall grant a divorce without requiring a hearing on any other grounds.

23 Pa.C.S.A. § 3301(e). The trial court found an irretrievable breakdown and therefore granted a divorce without requiring a hearing on indignities, exactly in accord with § 3301(e).

For the foregoing reasons, and those expressed in the trial court's Substantive and Sanctions Opinions, we affirm the order. We direct that a copy of the trial court's July 20, 2021 opinions, titled "Memorandum Opinion Re: Equitable Distribution and Alimony, Issued Simultaneously With Divorce Decree", and "Memorandum Opinion and Order Re: Husband's Omnibus Petition For Sanctions Pursuant to 42 Pa.C.S.A. § 2503(7) and (9)" be filed along with this memorandum.

Order affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn

Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/07/2022

CYNTHIA L. POLLICK	:	IN THE COURT OF
Plaintiff	:	COMMON PLEAS OF
vs.	:	LACKAWANNA
	:	COUNTY
ANTHONY P.	:	CIVIL ACTION-LAW
TROZZOLILLO	:	DIVORCE
Defendant	:	
	:	2020-FC-40119

CYNTHIA L. POLLICK	:	IN THE COURT OF
Plaintiff	:	COMMON PLEAS OF
vs.	:	LACKAWANNA
	:	COUNTY
ANTHONY P.	:	(Domestic Relations
TROZZOLILLO	:	Section)
Defendant	:	Docket Number:
	:	20 DR 00205
	:	PACSES Case Number:
	:	517300200

ORDER

AND NOW, this 10 day of March, 2021, [after oral argument in open court this date,] upon consideration of Husband's Petition to Seal Record (filed February 5, 2020), and based upon the Supreme Court of Pennsylvania's mandate, effective January 6, 2018, that divorce matters shall not be available online to the public, and only minimally available in the court house, pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, it is hereby ORDERED

and DECREED that Husband's Petition to Seal Record is GRANTED.

Specifically, §10.0 of *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* provides that the following information **shall not be** remotely accessible by the public: Case records in family court actions as defined in Pa.R.C.P. No. 1931(a), except for dockets, court orders and opinions. Rule 1931(a)(1) applies to divorce actions; thus, this means that everything in a divorce case, other than court orders and opinions, **shall not be available online.**

In addition, §9.0 of this same Policy also provides that divorce matters **shall only be minimally available at a court facility.** Under this Policy, Confidential Information as defined in §7.0 and Confidential Documents as defined in §8.0 (pertaining to, among other things, financial information) is minimally available at the court house.

Since the Supreme Court of Pennsylvania clearly intended to limit the disclosure of case records in family court actions, there is good cause to SEAL this record.

Moreover, Husband is not a public figure. Wife has no legitimate reason to broadcast the details of this soured marital relationship. Access to this case record will "not further a legitimate interest or otherwise serve some useful public purpose."

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Therefore, the case records in this family court action shall be sealed.

As for Husband's Motion for a Protective Order, Second Motion for a Protective Order, and Motion to Designate Financial information in Wife's Motion to Compel as a Confidential Document Not Publicly Accessible Pursuant to Public Access Policy of the Unified Judicial System of Pennsylvania (all three Motions having been filed on April 17, 2020), it is hereby ORDERED and DECREED that they are also GRANTED.

Accordingly, it is further ORDERED and DECREED that all information procured, produced, provided and/or exchanged in the course of this litigation and in any and all other litigation involving Husband and Wife, is hereby deemed "Confidential Information". This includes, but is not limited to, the 401k statement Husband already provided to Wife in discovery.

Confidential Information shall not be revealed, discussed or disclosed in any manner, or in any form, to any person, entity or judicial tribunal other than the parties, their counsel, or their experts.

Confidential Information shall not be disclosed or used for any purpose other than as it relates to this lawsuit, unless otherwise authorized by law or directed to do so by valid court order.

Confidential Information shall be used solely for this litigation and not for any other purpose.

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Copies of Confidential Information shall not be filed with the Court.

Within thirty (30) days after the conclusion of this litigation and any and all other litigation between the parties, all Confidential Information, and all copies thereof, shall be returned to the party who produced it. All notes, tabulations, analyses, studies and compilations derived therefrom shall be destroyed.

A copy of this Order shall be placed in the docket for any and all litigation between the parties.

/s/ [Illegible]

Emanuel A. Bertin, S.J.
Appointed Visiting Judge

**Lackawanna County Clerk/Judicial Records
Civil Case Detail Report**

13451704192022 **Page 1**
PYSPRT **4/19/2022**

Case No.....2020-40119 POLLICK CYNTHIA L
(vs) TROZZOLILLO ANTHONY P

Reference No.....

Case Type.....FAM-DIVORCE

Judgment.....\$26,950.00

Judge Assigned.....

Disposed Desc.....GRANTED

Filed.....1/24/2020

Time.....9:03

Execution Date.....3/22/2022

Jury Trial.....

Disposed Date.....7/20/2021

Higher Crt 1.....

Higher Crt 2.....

-----**Case Comments**-----

++ GENERAL INDEX ++

Indexed Party

POLLICK CYNTHIA L

CLARKS SUMMIT, PA 18411

TROZZOLILLO ANTHONY P

Attorney Info

PLAINTIFF

DEFENDANT

++ JUDGEMENT INDEX ++

<u>Indexed</u>	<u>Party</u>	<u>Amount</u>	<u>Date</u>	<u>Description</u>
	POLLICK CYNTHIA L	\$26,950.00	7/26/2021	JUDGEMENT
	M&T BANK GARNISHEE DEFENDANT			
	POLLICK CYNTHIA L	\$26,950.00	3/22/2022	WRIT OF EXECUTION
	M&T BANK GARNISHEE		3/22/2022	WRIT OF EXECUTION
	POLLICK CYNTHIA L	\$2,080.00	4/14/2022	JUDGEMENT
	POLLICK CYNTHIA L	\$1,220.00	4/14/2022	JUDGEMENT

++ DOCKET ENTRIES ++

<u>Date</u>	<u>Entry Text</u>
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1/27/2020	Entry Blocked from Public Viewing Image Blocked from Public Viewing

2/05/2020	Entry Blocked from Public Viewing Image Blocked from Public Viewing

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2/05/2020 Entry Blocked from Public Viewing
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