

App. 1

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

ANN L. MARTIN AND
JAMES L. MARTIN,

Petitioners

v.

ADRIENNE L. BAILEY,
DONALD A. BAILEY,
SHERI D. COOVER,
LAW OFFICES OF DONALD
A. BAILEY, AND ESTATE
OF LEAH L. PLACENIK,

Respondents

: No. 50 MAL 2017

: Petition for Allowance
: of Appeal from the
: Order of the Superior
: Court

ORDER

PER CURIAM

AND NOW, this 17th day of July, 2017, the Petition for Allowance of Appeal is **DENIED**.

**NON-PRECEDENTIAL DECISION -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

ANN L. MARTIN AND	:	IN THE SUPERIOR
JAMES L. MARTIN	:	COURT OF
	:	PENNSYLVANIA
v.	:	
ADRIENNE L. BAILEY,	:	
DONALD A. BAILEY,	:	
SHERI D. COOVER,	:	
LAW OFFICES OF DONALD	:	
A. BAILEY, AND ESTATE	:	
OF LEAH L. PLACENIK	:	No. 2049 MDA 2015
APPEAL OF:	:	
JAMES L. MARTIN	:	

Appeal from the Order Entered November 2, 2015,
in the Court of Common Pleas of Dauphin County
Civil Division at No. 2010-CV-04624-CV

BEFORE: FORD ELLIOTT, P.J.E., BENDER, P.J.E.,
AND STEVENS,* P.J.E.

MEMORANDUM BY FORD ELLIOTT, P.J.E.:
FILED OCTOBER 13, 2016

Ann L. Martin and James L. Martin appeal¹ from
the order entered November 2, 2015, dismissing their
complaint with prejudice. We affirm. The trial court
has summarized the history of this matter as follows:

* Former Justice specially assigned to the Superior Court.

¹ James L. Martin filed a notice of appeal on November 24,
2015. (Docket #73.) On December 2, 2015, Ann L. Martin joined
the appeal. (Docket #74.)

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This action was commenced by the filing of a Complaint on April 19, 2010. The case sounded in legal malpractice and alleged that Defendants Donald Bailey and Sheri Coover were negligent in their representation of Plaintiffs arising out of a lawsuit against The Honorable Samuel Kline and court reporter Lisa Merkel for allegedly tampering with a transcript in the Orphan's Court case of ***In Re: Estate of Josephine A. Martin*** (1997-588). Each of the Defendants filed Preliminary Objections to Plaintiffs' Complaint on or about May 19, 2010, alleging, among other things, that Plaintiff[s'] action was barred by the applicable statute of limitations. Plaintiffs filed Preliminary Objections to each of Defendants' Preliminary Objections on July 13, 2010, asserting that Defendants improperly raised the statute of limitations in their Preliminary Objections instead of in a New Matter.[Footnote 1]

[Footnote 1] None of the parties have ever filed a Certificate of Readiness certifying that Plaintiffs' Preliminary Objections to Defendants' Preliminary Objections or Defendants' individual Preliminary Objections to Plaintiffs' Complaint were ready to be decided by the Court, so these Preliminary Objections remain outstanding. As a result, none of the Defendants has filed an Answer to Plaintiffs' Complaint, and the pleadings are not yet closed.

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On September 17, 2012, as a result of two years of inactivity on the docket, this Court entered a purge Order requiring the filing of a statement of intention to proceed or the case would be dismissed. Plaintiffs filed a Statement of Intention to Proceed on October 26, 2012 and thereafter filed a joint status report on November 15, 2012. On December 19, 2012, counsel for Plaintiffs, Derek W. Cummings, sought leave to withdraw. A hearing was held on February 21, 2013, after which this Court entered an Order on April 19, 2013, permitting Attorney Cummings to withdraw as counsel for Plaintiffs. This Order also provided that Plaintiffs shall retain new counsel within thirty days of the date of the Order, and Attorney Cummings shall provide the Certificates of Merit sought by opposing counsel upon request.

On May 21, 2013, James L. Martin entered his appearance *pro se*. That entry of appearance was the last activity on the docket until May 29, 2015, at which time this Court entered another purge Order, requiring Plaintiffs to file a Statement of Intention to Proceed. Plaintiff James Martin filed his Statement of Intention to Proceed on July 21, 2015, and Plaintiff Ann Martin filed her Statement on July 24, 2015. Defendants Donald A. Bailey and Adrienne L. Bailey filed a Status Report on August 18, 2015, and Plaintiffs and Defendant Coover filed a Joint Status Report on August 20, 2015[.]

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In response to the status reports, and in accordance with the bench orders issued at the February 21, 2013 Hearing, on August 20, 2015, this Court entered a Case Management Order wherein we entered a Rule to Show Cause why this case should not be dismissed for Plaintiffs' failure to comply with Rules of Court in the following particulars: a) why Plaintiffs did not file an Amended Complaint; b) why Plaintiff James L. Martin filed a partial summary judgment, declared "moot" by Judge Clark, while he was represented by an attorney; c) why Adrienne L. Bailey, "Estate of Leah Placenick" and "Law Offices of Donald A. Bailey" should not be dismissed from this case; and d) why all claims of Ann L. Martin should not be dismissed from this case particularly explaining if she is represented by Attorney Chad J. Julius. The Rule was returnable by September 30, 2015, and Defendants were given until October 15, 2015 to respond if they so desired.

On September 30, 2015, Plaintiff James L. Martin filed an Answer to this Court's August 20, 2015 Rule to Show Cause.[Footnote 2] In response to why he did not file an Amended Complaint, Plaintiff asserted that the parties abandoned the re-pleading trigger, and the pleading deficiencies may be remedied with the filing of proofs, briefing as required, and moving to conform the pleadings to the proofs. Plaintiff also cited to other reasons as evident from the Motions for Summary Judgment. Plaintiff did not cite to any case law that supports his statement that pleading deficiencies

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may be remedied with the filing of proofs and moving to conform the pleadings to the proofs. Plaintiff did not provide a sufficient legal or factual explanation as to why he did not file an Amended Complaint, as required by this Court's August 20, 2015 Order, and his Complaint was dismissed with prejudice, by Order dated October 30, 2015.

[Footnote 2] Plaintiff Ann L. Martin failed to file a response to this Court's Rule to Show Cause. As such, her claims are properly dismissed for failure to comply with an Order of Court.

Trial court opinion, 1/22/16 at 1-3.

This timely appeal followed. Appellants complied with Pa.R.A.P. 1925(b), and the trial court filed a Rule 1925(a) opinion.

As described above, appellants did not file a meaningful response to the trial court's show cause order, including why they failed to file an amended complaint. Appellants failed to provide any legal or factual authority as to why the case should not be dismissed. Appellants' cause of action was clearly barred by the applicable statute of limitations.²

² All of appellants' allegations relate to the defendants' representation during the years 2003-2005. (*See* plaintiffs' complaint, 4/19/10 at 5-12; docket #2.) Appellants filed their complaint on April 19, 2010, well outside the statute of limitations for a legal malpractice action. *See Wachovia Bank, N.A. v. Ferretti*, 935 A.2d 565, 570-571 (Pa.Super. 2007) (an action for legal

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Regarding their motion for recusal,³ at the time the motion was filed, the Honorable Bruce F. Bratton was the civil calendar judge, and the case had not yet been assigned. Judge Bratton simply directed the parties to file a status report. Judge Bratton denied the motion on August 5, 2015, stating that, "Judge Bratton issued orders relating to termination of the case due to inactivity in his capacity as civil calendar judge and has not been assigned this case." (Order, 8/5/15 at 1; docket #49.) Judge Bratton refused to entertain the motion at that time. (*Id.*) Subsequently, after Judge Bratton was assigned the case and issued the Rule to Show Cause, appellants did not renew their motion to recuse. As such, the matter could be deemed waived.

At any rate, even assuming that Judge Bratton should have stepped aside because he represented appellants in the underlying case, this court will not remand for assignment to a different judge where appellants failed to comply with the August 20, 2015 Rule to Show Cause. Judge Bratton properly dismissed

malpractice may be brought in either contract or tort; the two-year limitations period applies to the negligence claim and the four-year limitations period applies to the breach of contract claim); 42 Pa.C.S.A. §§ 5524(3), 5525.

³ "Recusal is required whenever there is substantial doubt as to a jurist's ability to preside impartially." *Commonwealth v. Tainan*, 734 A.2d 886, 889 (Pa.Super. 1999) (citation omitted). The burden is on the party moving for recusal; there is a presumption that a judge has acted properly, bound by the oaths of his office and faithful to the requirements of an unprejudiced, unbiased judiciary. *Id.*

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appellants' complaint with prejudice and any remand would be superfluous.

Order affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn
Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/13/2016

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JAMES L. MARTIN and	:	IN THE COURT OF
ANN L. MARTIN,	:	COMMON PLEAS,
	:	DAUPHIN COUNTY,
Plaintiffs	:	PENNSYLVANIA
	:	
v.	:	NO. 2010-CV-4624
DONALD BAILEY, SHERI	:	
COOVER ADRIENNE L.	:	
BAILEY, LAW OFFICES	:	
OF DONALD BAILEY, and	:	
ESTATE OF LEAH L.	:	
PLACENIK,	:	
	:	
Defendants	:	CIVIL ACTION

ORDER

(Filed Nov. 2, 2015)

AND NOW, this 30th day of October, 2015, on August 20, 2015, this Court issued a Rule upon Plaintiffs to show cause why their complaint should not be dismissed for their failure to comply with Rules of Court. Although Plaintiffs filed a response, they did not provide any legal or factual authority as to why this case should not be dismissed. Therefore, it is hereby **ORDERED** that Plaintiffs' Complaint is **DISMISSED** with prejudice. The Prothonotary is directed to mark the above-captioned matter as **CLOSED**.

It is further **ORDERED** that the Petitions for Judgment of Non Pros and Dismissal of Case with Prejudice that were filed by Defendants Coover and Donald and Adrienne Bailey and the Motion for

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Summary Judgment that was filed by Plaintiffs are hereby DISMISSED as MOOT in light of this Court's Order.

BY THE COURT:

/s/ Bruce F. Bratton, J.
Bruce F. Bratton, J.

Distribution:

The Hon. Bruce F. Bratton

James Martin, 805 W. 21st Street, Wilmington, DE
19802

Sheri D. Coover, Esq., 1133 Pheasant Drive, Carlisle,
PA 17013

Chad J. Julius, Esq., 8150 Derry Street, Harrisburg,
PA 17111

Ann L. Martin, 2 Shady Lane, Annville, PA
17003-9300

Donald Bailey, 4015 N. 2nd Street, Harrisburg, PA
17110

Adrienne Bailey, 4015 N. 2nd Street, Harrisburg, PA
17110

App. 11

ANN L. MARTIN and	:	IN THE COURT OF
JAMES L. MARTIN,	:	COMMON PLEAS
Plaintiffs	:	DAUPHIN COUNTY,
	:	PENNSYLVANIA
v.	:	
ADRIENNE L. and	:	NO. 2010 CV 4624-CV
DONALD A. BAILEY,	:	
SHERI D. COOVER,	:	
LAW OFFICES OF DONALD	:	
A. BAILEY and ESTATE	:	
OF LEAH L. PLACENIK,	:	CIVIL ACTION –
Defendants	:	LAW

ORDER

(Filed Aug. 5, 2015)

AND NOW, this 4th day of August, 2015, Plaintiff James L. Martin's Motion to Recuse and to Disqualify Judge Bruce F. Bratton filed July 31, 2015 will not be entertained. Judge Bratton issued orders relating to termination of the case due to inactivity in his capacity as civil calendar judge and has not been assigned this case.

BY THE COURT:

/s/ Bruce F. Bratton
Bruce F. Bratton,
Civil Calendar Judge

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Distribution:

James L. Martin, 805 West 21st Street, Wilmington,
DE 19802

Ann L. Martin, 805 West 21st Street, Wilmington,
DE 19802

Chad J. Julius, Esquire, 8150 Derry Street,
Harrisburg, PA 17111

Donald A. Bailey, 4311 North 6th Street, Harrisburg,
PA 17110

Sheri D. Coover, Esquire, 1133 Pheasant Drive North,
Carlisle, PA 17013

App. 13

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

ANN L. MARTIN AND : No. 2049 MDA 2015
JAMES L. MARTIN :

v. :

ADRIENNE L. BAILEY, :
DONALD A. BAILEY, :
SHERI D. COOVER, :
LAW OFFICES OF DONALD :
A. BAILEY, AND ESTATE :
OF LEAH L. PLACENIK :

APPEAL OF: :
JAMES L. MARTIN :

ORDER

(Filed Dec. 21, 2016)

IT IS HEREBY ORDERED:

THAT the application filed October 24, 2016, requesting reconsideration/reargument of the decision dated October 13, 2016, is DENIED.

PER CURIAM

App. 14

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

ANN L. MARTIN AND	:	No. 50 MAL 2017
JAMES L. MARTIN,	:	
	:	Application for
Petitioners	:	Reconsideration
	:	
v.	:	
	:	
ADRIENNE L. BAILEY,	:	
DONALD A. BAILEY,	:	
SHERI D. COOVER,	:	
LAW OFFICES OF DONALD	:	
A. BAILEY, AND ESTATE	:	
OF LEAH L. PLACENIK,	:	
	:	
Respondents	:	

ORDER

PER CURIAM

AND NOW, this 23rd day of August, 2017, the Application for Reconsideration is denied.
