

PHILADELPHIA COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

O.C. No. 1134 NP of 2006

In re: The Trustees of the Church of the Lord Jesus Christ
of the Apostolic Faith, Inc.

Control No. 066170

Control No. 066042

Control No. 067599

OPINION

Introduction

Kenneth Shelton has filed an appeal of two orders issued by this court on January 25, 2007 dismissing his petition to recuse an arbitrator, Edwin Naythons, who had been involved in arbitration regarding a more than decade long litigation before the Civil Trial Division of the Philadelphia Court of Common Pleas under the caption Anthonee Patterson v. Kenneth Shelton, July 1995, No. 2945. The motions Kenneth Shelton filed in Orphans' Court were inextricably linked to the litigation in the civil trial division. The agreement to submit that matter to arbitration had been memorialized by a January 10, 2006 order of a civil trial division judge. The initial April 26, 2006 Adjudication issued by the arbitrator had been confirmed by a July 10, 2006 order of a civil trial division judge under the July 1995, no. 2495 caption. The Final Adjudication the arbitrator released on October 3, 2006 stated that it was the "Final Action" required by Judge Dych's July 10, 2006 Order.¹ Nonetheless, Mr. Shelton came to the Orphans' Court seeking to recuse the arbitrator and vacate his Final Adjudication issued October 3, 2006 as well as all prior adjudications, orders and decrees subscribed within it.²

¹ 11/2/2006 Kenneth Shelton Petition, Exs. Y & Z (Final Adjudication at 1).

² See 8/16/2006 Kenneth Shelton Petition (Control No 067599); 11/2/2006 Kenneth Shelton Petition (Control No. 066042); 12/21/2006 Kenneth Shelton Petition at 1 (Control No. 066170).

Kenneth Shelton was not the only petitioner to seek a forum in Orphans' Court for review of the arbitration approved by judges in the civil trial division. This court denied the numerous petitions relating to the Patterson v. Shelton litigation and arbitration as attempts to forum shop; the petitioners were essentially making a collateral attempt to have a co-equal court overrule the orders of another co-equal court. More specifically, Kenneth Shelton's proposed recusal of the arbitrator and the request to vacate his orders raised issues that were too inextricably linked to the Patterson v. Shelton litigation to be addressed anew by Orphans' Court. The record presented by Mr. Shelton suggested that his request to recuse Arbitrator Naythons after he issued his Final Adjudication was moot. With the filing of that Final Adjudication, it appeared that Arbitrator Naythons had completed his "assignment," especially since the Final Adjudication stated that it was the "final action" required by Judge Dych's July 10, 2006 order. In his final December 21, 2006, petition seeking, inter alia, a hearing on the recusal petition, the appellant cited no additional actions by the arbitrator after the Final Arbitration was issued on October 3, 2006.

Nonetheless, this court agrees with certain arguments raised in appellant's statement of matters complained of that it was premature to characterize the recusal petition as moot; instead, it should simply have been transferred to the appropriate judge of the Civil Trial Division. That court would then review any petition to vacate or modify the arbitrator's award or adjudication according the relevant statutes. See 42 Pa.C.S. §§ 7341, 7342. There is, moreover, precedent suggesting that appeals of orders denying recusal motions should be quashed, since those rulings are interlocutory. See, e.g., Krieg v. Kreig, 1999 Pa. Super. 316, 743 A.2d 509 (1999); Hahalyak v. Intergra

Financial Corp., 451 Pa. Super. 171, 678 A.2d 819 (1996). Nonetheless, the following opinion sets forth the rationale for the January 25, 2007 orders that are the focus of Kenneth Shelton's appeal. The factual and procedural backgrounds to those orders are also relevant, though complex.

Factual and Procedural Background

Beginning August 3, 2006, an avalanche of petitions were filed in Orphans' Court seeking review of judicial and arbitrator decisions in litigation that had been pending before the civil trial division for more than 10 years under the caption Anthonee Patterson v. Kenneth Shelton, July 1995, No. 2945. That action brought by Anthonee Patterson against Kenneth and Eric Shelton involved, inter alia, the alleged misappropriation of the various funds and trusts belonging to the Church and the Church corporation.³ After years of litigation in the civil trial division, the parties agreed to resolve their dispute through arbitration. This arbitration agreement was submitted to a judge in the civil trial division and memorialized by order dated January 10, 2006 of Judge James Murray Lynn.⁴ Arbitrator Edwin Naythons subsequently issued several adjudications beginning with an April 26, 2006 Adjudication and concluding with a Final Adjudication dated July 25, 2006, but issued October 3, 2006. He also appointed a receiver, GlassRatner Management and Realty Advisers, LLC, by order dated May 5, 2006.⁵ After the initial April 26, 2006 Adjudication was issued by Arbitrator Naythons, Anthonee Patterson filed a petition to confirm the award, while other petitions to vacate it were filed with the civil trial division under the July 1995, No. 2945 caption. By order

³ See Complaint, Patterson v. Shelton, July 1995, No. 2945 ¶ 12, attached as Ex. A to Kenneth Shelton's 11/2/2006 Petition to Set Aside Final Adjudication.

⁴ See Kenneth Shelton's 11/2/2006 Petition to Set Aside Final Adjudication, Ex. G.

⁵ See Kenneth Shelton's 11/2/2006 Petition to Set Aside Final Adjudication, Exs. L, M, N, O, R, P, Y & Z.

dated July 10, 2006, Judge Dych of the civil trial division issued a memorandum and order confirming the Arbitration Award. That order specifically denied the defendant's petition and supplemental petitions to vacate the award.⁶

Despite these rulings by judges in the civil trial division, in August 2006 various litigants began filing motions with Orphan's Court relating to the Patterson v. Shelton dispute under a new Orphans' Court caption.. The first of these petitions was filed by the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith ("General Assembly")⁷ which asked this court to exercise exclusive authority over all disputes relating to the administration and proper application of the property of the nonprofit corporation--the Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., to declare null and void all orders of the trial division relating to the Patterson v. Shelton civil action, to declare null and void all prior decisions of arbitrator Naythons acting pursuant to an agreement between Patterson and Shelton, and to direct the arbitrator to cease all further activities. As a basis for Orphans' Court jurisdiction over the arbitrator's adjudication and the Civil Trial Division's order, the petitioners asserted that the Trial Division lacked authority to confirm Arbitrator Naythons's decisions because the issues involved administration of property of a nonprofit corporation and because indispensable parties, the Attorney General, the Church corporation and the General Assembly, had not been joined.⁸

Without ruling on the merits of this initial petition for a citation and in the interest of giving all parties an opportunity to present their positions, this court by decree dated

⁶ See 8/3/2006 General Assembly of the Church of the Lord Jesus Christ Petition, ¶¶ 39-40, Ex. 5; 11/2/2006 Kenneth Shelton Petition, Ex. D (docket entries).

⁷ More specifically, this petition was sought by the General Assembly by church members Carlton Morrison, Diane Taylor, Andrew Scott and C. Katerline Williams, individually and as trustees ad litem

⁸ 8/3/2006 General Assembly of the Church of the Lord Jesus Christ Petition, ¶42.

August 28, 2006 issued the requested citation directed to Anthonee Patterson, Kenneth Shelton, The Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., Glassratner Management Realty Advisors, LLC and Thomas Corbett Attorney General for the Commonwealth of Pennsylvania to show cause why the petitioners' relief should not be granted.

After this initial petition was filed, this court was inundated with the following petitions:

A petition for the Recusal of Arbitrator Naythons filed August 16, 2006 by Kenneth Shelton under control number 67599

A petition to Place the Petition for Recusal of Arbitrator Naythons under Seal filed on August 17, 2006 by Kenneth Shelton under control number 67619

A petition for a Special Injunction to Stay Arbitrator Naythons' Final Adjudication filed by the General Assembly of the Church of the Lord Jesus Christ on October 10, 2006 under control number 068391

A petition to dismiss for lack of jurisdiction filed by Anthonee Patterson on October 13, 2006 under control number 068497

A motion to dismiss filed by Glassratner Management & Realty Advisors on October 16, 2006 under control number 068505

An Amended petition for a special injunction to stay Arbitrator Naythons' Final Adjudication and Decree filed by the General Assembly of the Church of the Lord Jesus Christ on October 25, 2006 under control number 068391

A Petition to Modify or Vacate the Final Arbitration Award filed by the General Assembly of the Church of the Lord Jesus Christ on November 2, 2006 under control number 068827

A Petition for a Citation to Show Cause why the Orphans' Court should not Vacate or Set aside the "Final Adjudication and Decree" issued October 3, 2006 by Arbitrator Edwin E. Naythons and All Prior Adjudications, Orders and Decrees subsumed therein filed by Kenneth Shelton on November 2, 2006 under control number 066042

A Petition to Vacate the Final Adjudication of Arbitrator Naythons filed by Individual Members of the Board of Trustees of the General Assembly of the

Church of the Lord Jesus Christ on November 2, 2006 under control number 066044

A Petition to Set Aside the Final Adjudication of Arbitrator Naythons filed by the Trustees of the General Assembly of the Church of the Lord Jesus Christ on November 3, 2006 under control number 066047

Preliminary Objections by the General Assembly of the Church of the Lord Jesus Christ to Respondents' Motion to Dismiss filed on November 6, 2006 under control number 068863

Amended Petition to set aside the Final Adjudication of Arbitrator Naythons filed by Individual Members of the Board of Trustees of the General Assembly of the Church of the Lord Jesus Christ on November 15, 2006 under control number 066044

A petition filed by Kenneth Shelton for a hearing on his petition to Recuse Arbitrator Naythons and his Petition to Vacate or Set Aside Arbitrator Naythons' Final Adjudication issued on October 3, 2006 and all prior adjudications, orders and decree subsumed therein filed on December 21, 2006 under control number 066170

Kenneth Shelton on August 16, 2006 filed a petition with Orphans' Court (under control number 067599) to recuse Arbitrator Naythons in the matter “styled Anthonee Patterson v. Kenneth Shelton Arbitration.” He stated that Orphans' Court should exercise jurisdiction over this arbitration—despite its genesis in the civil trial division—because of the involvement of the assets of a nonprofit corporation.⁹ Petitioner noted that he had previously asked Naythons to recuse himself by letters dated August 4 and August 9, 2006, but that request had been refused. Arbitrator Naythons had, however, “agreed not to take any further action in the Arbitration pending the filing and disposition of this Petition for Recusal.”¹⁰

Kenneth Shelton's August recusal petition noted that Naythons had issued an Adjudication on April 26, 2006 and intended “to complete the Arbitration and issue a

⁹ 8/16/2006 Kenneth Shelton Petition at 1.

¹⁰ 8/16/2006 Kenneth Shelton Petition at 2.

Final Decree and Adjudication if this Petition is not granted.”¹¹ As the reasons for recusing Naythons, Kenneth Shelton focused a letter dated June 5, 2006 by Fincourt Shelton, counsel for Anthonee Patterson, warning of threats against Arbitrator Naythons that had been posted on an Internet blog. Although this letter was addressed to ADR Options, Kenneth Shelton characterized it as an “ex parte communication to Arbitrator Naythons.”¹² Nonetheless, Arbitrator Naythons did not notify opposing counsel of this letter until a meeting on August 3, 2006.¹³ At that meeting, Arbitrator Naythons warned that he had notified the proper federal authorities of these threats; he also allegedly accused Kenneth Shelton’s supporters of making the threats. Arbitrator Naythons stated that he would not be intimidated and refused to recuse himself.¹⁴

Before this court ruled on Kenneth Shelton’s recusal motion, Arbitrator Naythons on October 3, 2006 issued a Final Adjudication that was dated July 25, 2006.¹⁵ Kenneth Shelton responded by filing a petition on November 2, 2006 to vacate the Final Adjudication.¹⁶ That petition seeking to vacate the Final Adjudication relied in large measure on the same arguments Kenneth Shelton set forth in his petition to recuse Naythons as arbitrator. In particular, it asserted that the Final Adjudication should be set aside due to Naythons’ “misconduct, dishonesty, fraud and bias” in terms of misrepresentation of facts to this court concerning the recusal motion, the alleged ex parte

¹¹ 8/16/2006 Kenneth Shelton Petition at ¶ 3 (emphasis added).

¹² 8/16/2006 Kenneth Shelton Petition at ¶ 5.

¹³ 8/16/2006 Kenneth Shelton Petition at ¶ 6.

¹⁴ 8/16/2006 Kenneth Shelton Petition at ¶¶ 6-13.

¹⁵ 11/2/2006 Kenneth Shelton Petition at ¶ 42 & Exs. Y & Z.

¹⁶ See 11.2/2006 Kenneth Shelton Petition. It appears that Kenneth Shelton also filed a Petition to Vacate the Final Adjudication with the Civil Trial Division, but under 2 captions due to the pendency of appeals. See 12/21/2006 Kenneth Shelton Petition at 1, n.1 After noting that he had filed the Petition in Orphans’ Court seeking a hearing on his petitions to recuse the arbitrator and vacate the Final Adjudication, Shelton attaches the following footnote: “The petition filed in Anthonee Patterson v. Kenneth Shelton, July Term 1995, No. 2945 is substantially the same as the petition filed in Kenneth Shelton v. Anthonee Patterson, October 2006, No. 4665. A petition was filed in the latter action because the former action is pending on appeal.”

communications with Naythons by counsel for Anthonee Patterson concerning threats on internet blogs, and the claim that the Final Adjudication had been backdated to eliminate the suggestion that it had been affected by those threats.¹⁷ In addition, Shelton asserted that the arbitrator had acted beyond his authority and subject matter. A month after filing this Petition, Kenneth Shelton filed a subsequent petition on December 21, 2006 for a hearing on the petition to recuse Arbitrator Naythons as well as on the petition to vacate “the Final Adjudication” and “all prior adjudications, orders and decrees subsumed therein.”¹⁸

By orders dated January 25, 2007, this court denied these three petitions to recuse Arbitrator Naythons and vacate the Final Adjudication and all of his orders. Kenneth Shelton filed an appeal of those January 25, 2007 orders as well as a concise statement of matters complained of pursuant to Pa.R.A.P. 1925(b). Because the reasons for denying these petitions are based on the record as a whole, it must be briefly outlined.

Kenneth Shelton was not alone in objecting to Arbitrator Naythons’ Final Adjudication. The General Assembly of the Church of the Lord Jesus Christ (the “General Assembly”) on October 10, 2006 filed a Petition seeking a Special Injunction to Stay this Final Adjudication. In response, this court held a hearing on October 16, 2006. During that hearing, counsel for the General Assembly emphasized that there had been an agreement between counsel for Kenneth Shelton and counsel for Arbitrator Naythons that the arbitrator would not issue his Final Adjudication until the motion to recuse him had

¹⁷ 11/2/2006 Kenneth Shelton Petition, at 1-2, ¶23, ¶34-48

¹⁸ 12/ 21/2006 Kenneth Shelton Petition at 1.

been decided.¹⁹ When asked why the petitioners had sought relief from the Orphans' Court rather than joining in appeals that had been filed concerning decisions by the civil trial division relating to the Patterson v. Shelton litigation, he conceded that "the church corporation, perhaps the individual petitioners and the Attorney General all would have standing to intervene in that their rights are overwhelmingly affected by everything that is spun out of this Patterson v. Shelton case."²⁰ Nonetheless, he argued that this court should assert jurisdiction due to the failure to join an indispensable party in the civil trial division litigation. He thus emphasized that if an indispensable party—in this case the Attorney General—is not present, then "[e]verything that happened gets wiped clean."²¹ Finally, the General Assembly's counsel argued that it was necessary for some court to assess the implications of the arbitrator's Final Adjudication, issued on October 3, 2006, but dated July 25, 2006, because, he contended, it had been backdated.²²

Counsel for appellant, Kenneth Shelton, emphasized that the matters on appeal to the Commonwealth Court did not encompass the arbitrator's "Final Adjudication" issued on October 3 but instead focused on the April 26 adjudication.²³ In response to questioning, Kenneth Shelton's counsel conceded "in principle" that it was necessary to obtain approval of the Final Adjudication by the appropriate judge of the court of common pleas before it would be enforceable, and that there would be the right to appeal thereafter, but he argued that the Orphans' Court was the appropriate forum to consider

¹⁹ In re: The Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith, O.C. No. 1134 NP. of 2006, 10/16/2006 Hearing (hereinafter "N.T.") at 6 (Denis Lawlor, Esq.) See also Memorandum and Order dated October 3, 2006 by Edwin Naythons, attached as Ex.Y, 11/2/2006 Kenneth Shelton Petition.

²⁰ 10/16/2006 N.T. at 10 (Denis Lawlor, Esq.).

²¹ 10/16/2006 N.T. at 13 (Denis Lawlor, Esq.).

²² 10/16/2006 N.T. at 14 (Denis Lawlor, Esq.).

²³ 10/16/2006 N.T. at 24-25 (Andre Denis, Esq.).

staying enforcement of the Final Adjudication.²⁴ In support of this assertion, he emphasized that Orphans' Court had jurisdiction over the property of nonprofit corporations like the entities in this matter.²⁵

The petitioners' indispensable party argument was rebutted by Lawrence Barth, as Attorney General. He agreed with the petitioners that the Attorney General was an indispensable party, yet after considering the litigation, had decided not to take a position as to it:

I believe with Mr. Lawlor that the Attorney General is an indispensable party. However, it's up to the Attorney General to decide what position, if any, he wants to take in this case. We determined early on that this was a religious doctrinal dispute; that there were charitable interests, arguably, on both sides; that it was an internal conflict with all factions very, very well-represented. Consequently, we determined there was no need for active Attorney General involvement....²⁶

The attorney general explained that while an indispensable party should receive notice of an action, "I don't think that we have to be forced to take a position."²⁷ More emphatically, he stated: "I think it's wrong for one faction or another in this particular case to assert our power for us when we have consciously and intelligently come to a conclusion that we won't want to assert it."²⁸ In any event, he suggested that his office had been monitoring the action and had "a boxful of pleadings in more courts than I can count."²⁹

In response to these arguments against enforcement of Arbitrator Naythons' Final Adjudication, Anthonee Patterson's attorney subsequently confirmed his intent to obtain

²⁴ 10/16/2006 N.T. at 25-26 (Andre Denis, Esq.).

²⁵ 10/16/2006 N.T. at 29 (Andre Denis, Esq.).

²⁶ 10/16/2006 N.T. at 58 (Lawrence Barth, Esq.).

²⁷ 10/16/2006 N.T. at 60 (Lawrence Barth, Esq.).

²⁸ 10/16/2006 N.T. at 62 (Lawrence Barth, Esq.).

²⁹ 10/16/2006 N. T. at 62 (Lawrence Barth, Esq.).

court confirmation of Arbitrator Naythons' Final Adjudication, ostensibly by a judge in the civil trial division.³⁰ In fact, on November 16, 2006 Anthonee Patterson filed a motion to confirm the Final Adjudication and enter judgment under the July 1995, No. 2945 caption, while motions to intervene and stay in that action were filed by the General Assembly of the Lord Jesus Christ. After the intervention petition was denied by Judge DiVito on November 17, 2006, an appeal was filed.³¹ Kenneth Shelton also filed a petition to vacate the Final Adjudication under another caption, Shelton v. Patterson, October 2006, No. 4665.³²

After the October 16th hearing, this court issued two decrees on November 6, 2006, dismissing the petition by The General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith by its Church Members to exercise exclusive authority over all disputes relating to the administration of property of the nonprofit corporation named the Trustees of the Lord Jesus Christ³³ as well as their petition to Stay Arbitrator Naythons' Final Adjudication. These petitions were dismissed for several reasons. First, the arbitration was intimately related to the Patterson v. Shelton litigation pending more than 10 years in the civil trial division. Not only was the arbitration procedure based on an agreement to arbitrate among the "parties" that was memorialized by the January 10, 2006 order of Judge James Lynn, but Naythons' initial April 26, 2006 Adjudication was confirmed by Judge Dych of the civil trial division by order dated July 10, 2006 after he

³⁰ 10/16/2006 N.T. at 42 (Fincourt Shelton, Esq.).

³¹ See docket entries for Patterson v. Shelton, July 1995, No. 2945.

³² See docket entries for Shelton v. Patterson, October 2006, No. 4665; see also 12/21/2006 Kenneth Shelton Memorandum at 1, n.1.

³³ This petition filed at control number 067451 also requested this court to declare null and void all orders of the trial division captioned Patterson v. Shelton, July 1995, No.2945, to declare null and void all prior decisions of Arbitrator Edwin Naythons, and to order the arbitrator and receiver to cease all activities.

had also considered petitions to vacate that arbitration award.³⁴ Moreover, that July order was subsequently appealed under the Patterson v. Shelton, July 1995, No. 2945 caption.³⁵

The petitions that were subsequently filed in Orphans' Court to recuse Arbitrator Naythons and vacate his Final Adjudication and all prior orders should have been addressed in the first instance to the appropriate judge of the civil trial division in light of its long involvement with the Patterson v. Shelton dispute. By seeking review by a different judge from the Orphans' Court Division, the petitions, in essence, were forum shopping in an effort to have a judge of coordinate jurisdiction overrule the decisions of a co-equal judge despite precedent to the contrary. Yamulla Trucking & Excavating Co., Inc. v. Justofin, 2001 Pa. Super. 72, 771 A.2d 782, 784 (1992) ("Judges of coordinate jurisdictions sitting in the same court and in the same case should not overrule the decisions of each other"). As the Yomulla court observed, "this rule is not a matter of jurisdiction *per se*. Rather it is a rule of sound jurisprudence based on the policy of fostering finality of pre-trial applications so that judicial economy and efficiency can be maintained." Id., 771 A.2d at 784 (citations omitted). Certainly, in the instant case, the interests of judicial economy and coherence are best served if the complex issues raised by the arbitration adjudication are considered within a single forum in which the dispute has played out for more than ten years rather than raising inextricably related issues in the new forum of Orphans' Court. The Final Adjudication, for instance, expands on the conclusions of the April 26, 2006 Adjudication that had been confirmed by July 10, 2006 order of Judge Dych. Kenneth Shelton's petition to recuse the arbitrator implicates issues raised in his petition to vacate the Final Adjudication. Procedurally, the recusal petition

³⁴ 7/10/2006 Memorandum and Order of Judge Dych, attached as Ex. 5 to 8/3/2006 General Assembly of the Church of the Lord Jesus Christ Petition.

³⁵ 11/2/2006 Kenneth Shelton Petition, Ex. D.

also raises issues as to the scope of the arbitrator's authority that necessitate analysis of the parties' agreement to arbitrate which, in turn, had been approved by order dated January 10, 2006 by Judge Lynn of the civil trial division.

Moreover, the appeals pending on the issues raised by petitioners concerning the validity of all orders and adjudications by Arbitrator Naythons prior to his Final Adjudication precluded additional action by this court on those issues.. Pa.R.A.P. 1701. In addition, the premise for seeking Orphans' Court review-- the argument that an indispensable party had not been joined-- should have been raised, in the first instance, before the appropriate judge of the civil trial division. As a practical matter, however, the record before this court did not support this failure to join an indispensable party argument because the attorney general had testified that as an indispensable party, he had elected not to take a position as to either side of the controversy.³⁶

Finally, the Petitioners' argument that Orphans' Court had sole authority over the issues raised throughout the 1995 Civil Trial Division litigation because they involved the administration of a nonprofit corporation's assets was without merit. Section 711 of the PEF code provides for mandatory jurisdiction as to nonprofit corporations, but only under the following circumstances:

NONPROFIT CORPORATIONS. The administration and proper application of funds awarded by an orphans' court or orphans' court division to a nonprofit corporation heretofore or hereafter organized under the laws of the Commonwealth of Pennsylvania for a charitable purpose at the direction of the orphans' court or orphans' court division at the direction of the settlor or testator of a trust or estate, jurisdiction of which is exercised through the orphans' court division except as the administrative, presiding or president judge of such division disclaims the exercise of future jurisdiction thereof.
20 Pa.C.S. § 771(21).

³⁶ 10/16/2006 N.T. at 58-63.

Instead, each division of a court of common pleas is vested with the full jurisdiction of the whole court under 42 Pa.C.S. § 952(“In a court of common pleas having two or more divisions each division of the court is vested with the full jurisdiction of the whole court, but the business of the court may be allocated among the divisions of the court by or pursuant to general rules”). Pennsylvania Rule 2156 of Judicial Administration invoked by the petitioners merely provides for allocation or “distribution of business” among the various divisions of a court of Common Pleas and does not establish exclusive jurisdiction. See Pa.R.J.A. 2156. Petitioners cited no authority to support a contrary conclusion. Local Philadelphia Orphans’ Court Rule 1.2.N. specifically provides for concurrent jurisdiction if “any other Division of the Common Pleas has previously assumed jurisdiction over any matter over which it has concurrent jurisdiction with the Orphans’ Court Division, jurisdiction will not be entertained by this Division except upon written order of the President Judge of the Court of Common Pleas.” Phila. O.C. Rule 1.2.N. Petitioners provided no such written order to transfer this more than a decade old litigation to Orphans’ Court. In fact, by order dated May 3, 2005 President Judge Massiah-Jackson had refused to transfer the Patterson v. Shelton, July 1995, No. 2945 litigation to Orphans’ Court.³⁷ For these reasons and in the interest of judicial economy, petitioners were directed to seek any further relief to the appropriate Civil Trial Division judge. No appeals were taken from these decrees.

In response to the various petitions regarding Patterson v. Shelton dispute filed with Orphans’ Courts both before and after these November 6, 2006 decrees, this court issued eight orders on January 25, 2007. The only appeal is by Kenneth Shelton, who

³⁷ See 10/16/2006 GlassRatner Management & Realty Motion to Dismiss, Ex. 2. This petition and memorandum of Glassratner provide the clearest and most comprehensive history of the Patterson v. Shelton litigation in the Court of Common Pleas and federal court as well as the arbitration.

filed an appeal from the following two orders which denied his petition to recuse arbitrator Naythons and his request to vacate or set aside the Final Adjudication issued on October 3, 2006 as well as all prior adjudications, orders and decrees.

The first order under appeal by Kenneth Shelton provides:

AND NOW, this 25th day of January 2007, upon consideration of the Petition filed by Kenneth Shelton to Recuse Arbitrator Edwin E . Naythons in the arbitration of Anthonee Patterson v. Kenneth Shelton, July Term 1995, No. 2945, it is hereby ORDERED that this petition is DISMISSED AS MOOT because of the conclusion of the arbitration and for the other reasons set forth in the decrees dated November 6, 2006.

The second order under appeal by Kenneth Shelton provides:

AND NOW, this 25th day of January 2007, upon consideration of the Motion filed by Kenneth Shelton for a Hearing on his Petition for a Citation to Show Cause Why the Orphans' Court Should Not Recuse an Arbitrator and Petition to Vacate or Set Aside the Final Adjudication that was issued on October 3, 2006 by Arbitrator Naythons as well as all prior adjudications, orders, and decrees, it is hereby ORDERED that the Recusal Petition is Denied as Moot since the arbitration at issue has been concluded and appeals thereof are currently pending. The motion to vacate or set aside the Final Adjudication that was issued on October 3, 2006 is DENIED due to the pendency of similar petitions before the co-equal Civil Trial Division at Patterson v. Shelton, July 1995, No. 2945, the prolonged litigation of this matter with rulings by co-equal judges in the civil trial division, the pending appeals and the reasons set forth in the Decrees dated November 6, 2006.

Kenneth Shelton thereafter filed a concise statement of issues complained of on appeal under Pa.R.A.P. 1925(b) that raised seven issues concerning the denial of the petition to recuse Arbitrator Naythons. The focus of five of these issues is an objection to the characterization of the recusal motion as moot. Each of the issues posed are intricate, and require a separate response. While there is a basis in the record for considering the recusal motion moot, this court agrees that it would have been preferable not to characterize the petition to recuse as moot but instead to have it transferred to the appropriate judge in the civil trial division under the July 1995, No. 2945 caption.

Nonetheless, it was appropriate to defer consideration over the recusal motion because it was so closely related to the petition to vacate the Final Adjudication and all prior orders and adjudications of arbitrator Naythons. In fact, the issues raised in the recusal motion are still alive and relevant to any consideration of the Final Adjudication.

Each of the seven issues raised by Kenneth Shelton will be separately addressed:

Issue 1: Did the Orphans' Court err by denying Appellant's recusal petition as moot when Arbitrator Naythons has not recused himself and still remains an arbitrator of record, or in the alternative, because Appellant's recusal petition falls within one or more of the mootness exceptions in Lutz v. Tanglewood Lakes Community Assoc., Inc., 866 A.2d 471 (Pa.Com. 2005)?

Kenneth Shelton in his initial August 16, 2006 petition seeking recusal of Arbitrator Naythons indicated that the arbitration would be "completed" when the arbitrator issued his Final Adjudication.³⁸ The Recusal petition emphasized, for instance, that Kenneth Shelton's counsel and counsel for Arbitrator Naythons had agreed that the Arbitrator would not issue his Final Adjudication until a court ruled on the recusal petition.³⁹ As Kenneth Shelton emphasized, "[t]hrough his counsel Arbitrator Naythons also agreed not to take any further action in the Arbitration pending the filing and disposition of this petition for Recusal."⁴⁰ The recusal petition contemplated that the final act of the arbitrator would be the filing of the Final Adjudication, as it stated in its third paragraph: "On April 26, 2006, Arbitrator Naythons issued an Adjudication. Since that time through the present Arbitrator Naythons has continued to act as Arbitrator and intends to complete the Arbitration and issue a Final Decree and Adjudication if this

³⁸ 8/16/2006 Kenneth Shelton Petition ¶ 3.

³⁹ 8/16/2006 Kenneth Shelton Petition at 1-2. In addition, testimony at the October 2006 hearing suggested that Kenneth Shelton's counsel and Arbitrator Naythons' counsel had agreed that the Final Adjudication would not be issued until after the recusal petition was decided. 10/16/2006 N.T. at 6 (Denis Lawlor, Esq.).

⁴⁰ 8/16/2006 Kenneth Shelton Petition at 1-2

petition (for recusal) is not granted.”⁴¹ Nonetheless, Arbitrator Naythons issued his Final Adjudication on October 3, 2006—months before the recusal petition was denied. There is, moreover, no assertion that Arbitrator Naythons took any other actions regarding the Patterson v. Shelton arbitration after issuing that Final Adjudication.

Consequently, this court concluded—based on Mr. Shelton’s own recusal petition-- that with the filing of the Final Adjudication, Arbitrator Naython’s responsibilities as Arbitrator were over so that any effort to recuse him was moot. If, however, this court had ventured to consider the merits of the recusal motion after Arbitrator Naythons issued his Final Adjudication, any analysis as to recusal of Arbitrator Naythons would of necessity address issues that Kenneth Shelton had raised as grounds for vacating the Final Adjudication and all prior adjudications and orders of the arbitrator, some of which had been approved by a co-equal judge of the civil trial division. That review, therefore, properly should be accorded by the civil trial division as the chosen forum of the underlying litigation, that had approved the arbitration, and that had affirmed the initial April 26, 2006 adjudication.

For these reasons, the decision to deny the petition to recuse as moot was based on the factual record, and not on the general principles of mootness set forth in Lutz v. Tanglwood Lakes Comm. Assoc., 866 A.2d 471, 473 (Pa. Comm. 2005), under which a case is dismissed as moot where there is no actual case or controversy unless the conduct complained of is capable of repetition yet likely to avoid review or the issues involved are of great public importance. The issues involved in the underlying Patterson v. Shelton dispute concerning alleged misappropriation of Church and Church corporate funds is of great public importance, and merits careful review by the appropriate forum.

⁴¹ 8/16/2006 Kenneth Shelton Petition, ¶3 (emphasis added).

Issue 2: Did the Orphans' Court err when it determined in its Decree that the arbitration at issue has been concluded and appeals thereof are currently pending when the arbitrator did not issue a final award on all issues, and the appeals pending do not address Appellant's petition for recusal?

The January 25, 2007 orders were cast solely in terms of the "Final Adjudication" presented to it in the various petitions. It made no determination as to whether the arbitrator had issued "a final award on all issues." For the reasons previously stated, this court concluded—perhaps improvidently-- that with the issuance of the Final Adjudication, Arbitrator Naythons had completed his arbitration. Any petition to confirm or vacate that Final Adjudication should have been presented to a judge in the civil trial division, and not as a new matter before the Orphans' Court Division. Similarly, a petition to recuse the arbitrator should have been submitted to the appropriate judge of the civil trial division for the previously stated reasons. The petition to recuse the arbitrator and the petition to vacate the Final Adjudication raise similar issues, as demonstrated in Kenneth Shelton's November 2, 2006 Petition to Vacate the Final Adjudication. Mr. Shelton concedes that he had filed similar petitions with the civil trial division under two captions.⁴² Logically, the petition to recuse should also have been

⁴² In his 12/21/2006 Memorandum in Support of Kenneth Shelton's Motion for Hearing, he states: Petitioner respectfully requests a hearing on his Petition for Citation to Show Cause Why the Orphans' Court Should Not Recuse an Arbitrator and Petition to Vacate or Set Aside the Final Adjudication that was issued on October 3, 2006 by Arbitrator Edwin E. Naythons and all prior adjudications, orders and decrees subsumed therein.

This sentence was followed by the following footnote "1:"

The petition filed in Anthonee Patterson v. Kenneth Shelton, July Term 1995, No. 2954 is substantially the same as the petition filed in Kenneth Shelton v. Anthonee Patterson, October Term, 2006, No. 4665. A petition was filed in the latter action because the former action is pending on appeal. There is currently a motion before this court to consolidate these two actions.⁴²

This sentence, and its attendant footnote, are far from clear. They suggest, however, that identical motions had been simultaneously filed under two captions in the civil trial division—as well as in Orphans' Court—because of a pending appeal. They raise the specter of a frantic tapping of judicial resources to raise the same claims before different courts, under different captions, despite appeals that should have been allowed to run their course to reach an ultimate determination of the vital issues raised before the civil trial division in more than 10 years of litigation before it.

filed with the Civil Trial Division. In addition, the procedural issues raised in the petition to recuse Arbitrator Naythons as to whether he exceeded the scope of his authority implicates the January 10, 2006 order of Judge Lynn memorializing the parties' arbitration agreement.

Issue 3: Did the Orphans' Court err by not conducting a hearing before it dismissed Appellant's recusal petition as moot because the Court had factual issues to resolve before it could determine mootness?

The recusal petition should have been denied because it was directly related to the Patterson v. Shelton litigation pending before the civil trial division for the reasons set forth above. The record suggested that the petition to recuse arbitrator Naython was moot after he had issued the Final Adjudication. Any hearing on matters related to the Patterson v. Shelton litigation and arbitration should be considered by the appropriate judge of the civil trial division.

Issue 4: Once the arbitrator agreed to take no further action until a petition to recuse him was filed and decided, was it error for the Orphans' Court to dismiss Appellant's recusal petition as moot and consider the arbitration concluded after the arbitrator later attempted to void his agreement by issuing a Memorandum and Order and a "Final Adjudication and Decree"?

This issue mischaracterizes the chronology on record. The arbitrator had agreed not to release his Final Adjudication until the recusal petition was decided.⁴³ He nonetheless issued his Final Adjudication on October 3, 2007. The petition to recuse was not denied until months later by order dated January 25, 2007.

Issue 5: Did the Orphans' Court err when it relied on the reasons in its November 6, 2006 Decrees as grounds for dismissal of Appellant's recusal petition because Appellant's recusal petition does not request the Orphans' Court to overrule a decision of a co-equal judge or seek relief in violation of Pa.R.A.P. 1701?

⁴³ 8/16
/2006 Kenneth Shelton Petition at 2.

The November 6, 2006 decrees set forth the general rationale for why this court elected not to exercise jurisdiction over matters related to the Patterson v. Shelton litigation, whether it be the recusal petition or the petition to vacate the Final Adjudication. These petitions are intimately related to each other and to the April 26, 2006 Adjudication approved by the July 10, 2006 order of Judge Dych. As Kenneth Shelton admitted in his December 21, 2006 petition, he had filed petitions to vacate the Final Adjudication both in Orphans' Court and in the civil trial division--under two captions. The November 2, 2006 Petition to Vacate the Final Adjudication that Kenneth Shelton filed in Orphans' Court raised issues previously set forth in the August 16, 2006 recusal petition. The Final Adjudication issued by Arbitrator Naythons essentially expands on his earlier April 26, 2006 Adjudication that was approved by order dated July 10, 2006 of Judge Dych, which is on appeal.

Issue 6: Because the Orphans' Court declined jurisdiction, was it error for the Court to issue a substantive Order dismissing the pending recusal motion as moot?

In retrospect, the recusal petition should not have been denied as moot, but should have been transferred to the appropriate judge of the civil trial division.

Issue 7: Was it error for the Orphans' Court not to exercise its inherent jurisdiction to decide Appellant's recusal petition after Appellant presented evidence that the arbitrator intentionally made false material statements in the arbitrator's answer filed in Orphans' Court to undermine Appellant's recusal petition?

For the reasons set forth in this opinion and in the November 6, 2006 decrees, this court properly refused to exercise jurisdiction over the recusal petition because of that petition's inextricable relationship to the Patterson v. Shelton litigation pending before the Civil Trial Division. Kenneth Shelton consented to litigate the dispute with Anthonee

Patterson in this selected forum since 1995. He cannot select a different--but coequal--forum in 2006 because of an unfavorable result. To allow him to do so would not only be an affront to judicial economy, but it could lead to a chaos of conflicting decisions by coequal courts. Kenneth Shelton should file his recusal petition with the appropriate civil trial division judge, and if he is dissatisfied with the ruling, file an appeal to an appellate court.

BY THE COURT:

Date: _____

John W. Herron, J.