

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL**

TIGER D. RAVEN-MELCHIZ,

Claimant,

v.

BENNIE R. HEARST PETTWAY,

Respondent.

v.

HOF I REO 5 INC.,

Intervenor.

April Term 2024

No. M0024

Commerce Program

2318 EDA 2024

2518 EDA 2024<sup>1</sup>

FILED

JUDICIAL RECORDS  
1st J. DISTRICT  
2024 NOV 12 PM 4:37

**OPINION**

**Fletman, J.**

**November 12, 2024**

At issue in these appeals is this Court's order dated and docketed August 1, 2024 (the "August 1 Order"), which required service of a petition to intervene, supplementation of the petition and a response, and scheduled a hearing on the petition. Because the August 1 Order is not an appealable order, and because the appellant failed to file a statement of errors complained of on appeal under Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure, the trial court respectfully requests that the Superior Court quash the appeals, or in the alternative dismiss them.

OPFLD-Raven-Melchiz El Vs Hearst Pettway [VKS]



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<sup>1</sup> The Superior Court docket identifies these appeals as "Related" with "Similar Issue (s)". The appeals, however, are duplicative because they are filed by the same party, Bennie R. Hearst Pettway, complaining about the same order dated August 1, 2024.

## BACKGROUND

Respondent Bennie R. Hearst Pettway was the alleged owner of property located at 1542 Haines Street f/k/a 1540 Haines Street in Philadelphia, PA (the "Property"). (Mechanic's Lien Claim, Dkt. at 4/12/24). Claimant Tiger D. Raven-Melchiz alleges that since April 12, 2022, he provided services at the Property as a contractor and property manager and is owed \$210,963.00 for work performed at the Property. *Id.* Pettway did not pay the balance allegedly owed and on April 12, 2024, Raven-Melchiz filed a mechanic's lien claim against the Property for \$210,963.00. *Id.*

On July 18, 2024, HOF I REO 5, Inc. ("HOF I"), filed a petition to intervene to challenge the validity of the mechanic's lien. (Petition to Intervene, Dkt. at 7/18/24). HOF I alleged that the Court should permit its intervention because it is the correct owner of the Property by virtue of a deed from the Sheriff of Philadelphia dated March 17, 2023, and filed with the Recorder of Deeds on March 22, 2023. *Id.* at ¶ 1.

On August 1, 2024, upon consideration of the petition to intervene and as required by Rule 2328 of the Pennsylvania Rules of Civil Procedure, the Court ordered HOF I to supplement its petition with a copy of the pleading it would file if it were permitted to intervene. (Order, Dkt. at 8/1/24). The order required HOF I to serve a copy of the petition upon Raven- Melchiz and Pettway and to file proof of service. *Id.* The order further required Raven-Melchiz and Pettway to file a response to the petition by August 23, 2024, and ordered the parties to appear for a hearing on the petition on September 4, 2024, at 11:00 a.m. in Courtroom 630 City Hall, Philadelphia, PA. *Id.* On August 2, 2024, HOF I filed a praecipe to supplement attaching preliminary objections to its petition to intervene. (Praecipe, Dkt. at 8/2/24).

On August 26, 2024, Raven-Melchiz and Pettway each filed objections to the petition to intervene. (Objections, Dkt. at 8/26/24). On August 29, 2024, Raven-Melchiz and Pettway also respectively filed a motion to strike the praecipe attaching preliminary objections to the petition filed by HOF I. (Motion to Strike, Dkt. at 8/29/24) The Court denied the motions to strike on September 25, 2024. (Order, Dkt. at 9/25/24)

On September 3, 2024, Pettway appealed this Court's August 1 Order. (Notice of Appeal, Dkt. at 9/3/24)<sup>2</sup>

On September 4, 2024, the Court held the scheduled hearing on the petition to intervene. HOF I appeared at the hearing but neither Raven-Melchiz nor Pettway appeared. The Court granted the petition to intervene and HOF I was added to the case. (Order, Dkt. at 9/4/24)

On September 9, 2024, the Court issued an order for Pettway to file a statement of matters complained of on appeal under Rule 1925 of Pennsylvania Rules of Appellate Procedure. (Order, Dkt. at 9/9/24). The statement of matters complained of on appeal was due on October 10, 2024; Pettway to date has filed no statement of matters complained of on appeal.

On September 24, 2024, Pettway filed a second notice of appeal once again appealing this Court's August 1 Order. (Notice of Appeal, Dkt. at 9/24/24). On October 16, 2024, the Court again issued an order requiring Pettway to file a concise statement of matters on appeal. (Order, Dkt. at 10/16/24) The statement was due November 6, 2024, and to date has not been filed.

The appeals in this matter should be quashed. Alternatively, the appeals should be dismissed as they are from a non-appealable order.

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<sup>2</sup> Raven-Melchiz did not appeal the August 1 Order.

## DISCUSSION

### **I. The appeals should be quashed.**

#### **A. The August 1, 2024, order is not an appealable order.**

Appeals may be taken as of right from any final order. A final order is one that disposes of all claims and of all parties. Pa. R.A.P. 341(a)-(b). In addition, appeals may be taken as of right from certain types of non-final interlocutory orders. Pa. R.A.P. 31.1 If not otherwise allowed as of right, an appeal from an interlocutory order may be taken by permission. Pa. R.A.P. 312. The lower court can help facilitate immediate appellate review of an interlocutory order by including specific language in an order and may in its discretion permit an appeal to be taken from such interlocutory order. 42 PA. CONS. STAT. § 702(b) (West, Westlaw through 2024 Act 96). When the court does not include this language *sua sponte*, a party seeking immediate appellate review may ask the trial court “for an amendment of an interlocutory order to set forth expressly ... the statement specified in 42 Pa. C.S. 702(b).” Pa. R.A.P. 1311(b).

In this case, the law offers Pettway no mechanism to appeal from the August 1 Order, and she failed to adhere to the steps necessary to ask this Court for appellate review. The August 1 Order was neither a final order nor an order that gave grounds for an interlocutory appeal as of right. The order did not include the language specified in 42 PA. CONS. STAT. § 702(b) (West, Westlaw through 2024 Act 96), and Pettway never petitioned the trial court for inclusion of that language. Accordingly, the appeals should be quashed.

#### **B. Statements of Matters Complained of on Appeal were not filed.**

The Superior Court also should quash the appeals because Pettway did not file concise statements of matters complained of on appeal.

Under Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure, appellants must timely file and serve the trial judge a “concise statement of the errors complained of on appeal.” Pa.R.A.P. 1925(b). Failure to timely file and serve a concise statement of the errors constitutes a waiver of the appeal. Pa.R.A.P. 1925(b)(3)(iv). Unrepresented litigants receive no special benefit and must comply with Rule 1925(b). *S.S. v. T.J.*, 212 A.3d 1026, 1032 (Pa. Super. 2019) (holding that unrepresented appellant waived issues for appeal by filing a 1925(b) statement that was neither sufficiently specific nor concise).

On September 9, 2024, and October 16, 2024, respectively, the Court entered orders directing Pettway to file and serve 1925(b) Statements within 21 days of the docketing of the orders. (Court Orders, Dkt. at 9/9/24 and 10/16/24). This would have required Pettway to file and serve the respective 1925 (b) Statements by October 10, 2024, and November 6, 2024. To date, Pettway has neither filed nor served 1925 (b) Statements. Since Pettway has not filed or served a 1925 (b) statement, she has not preserved any issues for appeal and the appeal should be dismissed.

**C. The Appeal filed on September 24, 2024, is untimely.**

In addition, the appeal filed on September 24, 2024, is untimely. The Rules of Appellate Procedure require a party to file a notice of appeal or request permission to file an appeal within 30 days from the date of entry of an order. Pa. R.A.P. 903. The appeal of this Court’s August 1 Order, filed on September 24, 2024, was filed 54 days after entry of the order from which the appeal was taken. Consequently, the appeal is untimely and should be quashed.

**II. Even if not quashed, the appeals should be dismissed because the order appealed from is a non-appealable interlocutory order.**

Even if the Superior Court does not quash the appeals, it should dismiss them because the August 1 Order is interlocutory and therefore not immediately appealable. The Superior Court

has “exclusive appellate jurisdiction of all appeals from final orders of the courts of common pleas.” 42 PA. CONS. STAT. § 742 (West, Westlaw through 2024 Act 96). Parties can appeal only “(1) a final order or an order certified by the trial court as a final order (Pa. R. A. P. 341); (2) an interlocutory order as of right (Pa. R. A. P. 311); (3) an interlocutory order by permission (Pa. R. A. P. 312, 1311; 42 PA. CONS. STAT. § 702(b) (West, Westlaw through 2024 Act 96); or (4) a collateral order (Pa. R. A. P. 313).” *Barak v. Karolizki*, 196 A.3d 208, 215 (Pa. Super. 2018). Final orders dispose of all claims and of all the parties. Pa. R. A. P. 341(b)(1). Interlocutory orders do not dispose of all claims and all parties. *Barak* 196 A.3d at 215 (emphasizing that interlocutory orders unlike final orders do not end a case).

In this case, the August 1 Order required HOF I to serve Pettway with the petition to intervene, ordered Pettway to respond to the petition, ordered HOF I to supplement its filing with the pleading to be filed if permitted to intervene,<sup>3</sup> and scheduled a hearing on the petition.<sup>4</sup> The August 1 Order does not “dispose of all claims and of all the parties.” It is not among the type of interlocutory orders listed in Rule 311, where an appeal may be taken as of right. It does not include a certification that the case involves controlling questions of law for which there is a “substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter.” 42 PA. CONS. STAT. § 702(b) (West,

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<sup>3</sup> Rule 2328 (a) of the Pennsylvania Rules of Civil Procedure requires a petitioner seeking intervention to “attach to the petition a copy of any pleading which the petitioner will file in an action if permitted to intervene....” Pa.R.Civ.P. 2328(a). HOF I’s petition attached no pleading. Consequently, in the August 1 Order required that HOF I comply with Rule 2328.

<sup>4</sup> A petition to intervene requires a hearing to give petitioners the opportunity to establish that they come within one of the four categories of persons who are entitled to intervene under Pa. R. Civ. P. 2327.

Westlaw through 2024 Act 96). Therefore, the Court's August 1 Order is interlocutory, not subject to appellate review, and the appeal should be dismissed.

**CONCLUSION**

For the foregoing reasons, the trial court respectfully requests that the Superior Court quash the appeals, or in the alternative dismiss them.

**Date: 11/12/24**

**BY THE COURT:**

  
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ABBE F. FLETMAN, J.