

IN RE: CIVIL LITIGATION MATTERS IN : IN THE COURT OF COMMON PLEAS
 LACKAWANNA COUNTY : OF LACKAWANNA COUNTY
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 : CIVIL ACTION - LAW
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 : NO. 2020 CV
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MAURI B. KELLY
 LACKAWANNA COUNTY
 2020 APR 13 P 2:29
 CLERK OF JUDICIAL
 RECORDS CIVIL DIVISION

ORDER

Pursuant to Pennsylvania Rule of Judicial Administration 1952(A) and its declaration of a statewide judicial emergency on March 16, 2020, due to the health crisis created by COVID-19, the Supreme Court of Pennsylvania issued an Order on March 18, 2020, declaring that court facilities in all judicial districts in this Commonwealth “SHALL BE CLOSED TO THE PUBLIC as to non-essential functions through at least April 3, 2020.” In re General Statewide Judicial Emergency, Nos. 531 and 532 Judicial Administration Docket at p. 4 (Pa. Mar. 18, 2020). Although the Order suspended all jury and non-jury trials through April 3, 2020, which trials are to “be scheduled for a date in the future by the courts,” the “Specific Directives” set forth in the Order “allow for in-person court proceedings” in emergency matters involving “essential functions” of the courts. Id. at pp. 5-7. In the context of civil litigation, the Supreme Court identified those “essential functions” as including “[e]mergency equity civil matters (injunctions and stays),” “[a]ny pleading or motion relating to public health concerns and involving immediate and irreparable harm,” and “[a]ny other function deemed by a President Judge to be essential consistent with constitutional requirements.” Id. at p. 6. It further ordered that “[h]earings on essential functions SHALL BE HELD in courtrooms designated by the individual courts of common pleas to minimize person-to-person contact.” Id. at p. 7 (emphasis in original).

The Order of March 18, 2020, also stated that “any in-person pretrial conference, case management conference, status conference, diversionary program, discovery motions

practice, motions practice, or other hearing, whether civil or criminal, is hereby postponed until a future date to be set forth by the courts.” Id. However, the Supreme Court expressly directed that “[t]o the extent that such matters may be handled through advanced communication technology consistent with constitutional limitations, **THEY MAY AND SHOULD PROCEED.**” Id. (emphasis in original). It further declared that “[w]henver possible,” the trial courts “are to consider deciding matters on the papers.” Id. at p. 5.

Subsequent to March 18, 2020, and consistent with the “Specific Directives” of the Supreme Court, status conferences and oral arguments in civil litigation matters have been conducted by telephone conference in those instances where the parties have not agreed to submit the matters on briefs, and pretrial conferences and hearings have been handled via Zoom videoconference with a court reporter transcribing the proceeding, where necessary. Any motions that would normally be presented in Motion Court or Discovery Motion Court have been “electronically submitted to the Court Administrator’s Officer in care of Jeff McLane at mclanej@lackawannacounty.org in PDF format” pursuant to the Order issued on March 19, 2020, in In re Temporary Motion Practice in Lackawanna County, No. 2020-CV-1, Barrasse, P.J. (Lacka. Co. Mar. 19, 2020). Case dispositive motions governed by Lacka. Co. R.C.P. 1028(c), 1034, and 1035.2 continue to be accepted for filing by the Civil Division of the Clerk of Judicial Records Office and thereafter assigned to judges by the Court Administrator’s Office. In medical professional liability actions, protracted cases, and class actions that have been assigned to specific judges pursuant to Lacka. Co. R.C.P. 214.2 or 1703, discovery motions, motions *in limine*, and other pre-trial motions continue to be accepted and decided by the assigned judges in accordance with Lacka. Co. R.C.P. 214.2, 1703, and 4000.1(a).

On April 1, 2020, the Supreme Court issued a “Second Supplemental Order” which extended the general closure of the courts to the public through April 30, 2020, subject to the earlier “Specific Directives” set forth in the Order of March 18, 2020. In re General Statewide Judicial Emergency, Nos. 531 and 532 Judicial Administration Docket at p. 1 (Pa. Apr. 1, 2020). With respect to the Courts of Common Pleas, the Supreme Court again stated that “any in-person hearings pertaining to essential functions SHALL BE HELD in courtrooms designated by the individual courts of common pleas to minimize person-to-person contact.” Id. at p. 4 (emphasis in original). It extended its ban on “any in-person” conferences, arguments, and hearings in non-essential matters, but again directed “that, to the extent that such matters could be handled through advanced communication technology consistent with constitutional limitations, they may and should proceed.” Id. at pp. 4-5. To that end, the Second Supplemental Order distinctly declares:

The Court NOW CLARIFIES that it expects that non-essential matters can continue to move forward, within the sound discretion of President Judges, so long as judicial personnel, attorneys, and other individuals can and do act in conformity with orders and guidance issued by the executive branch. Here again, the Court continues to specifically AUTHORIZE AND ENCOURAGE use of advanced communication technology, subject only to constitutional limitations.

Id. at p. 5 (emphasis in original). That Order further provides that “[a]dvanced communication technology includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail.” Id. at p. 4.

In accordance with the foregoing expectation by the Supreme Court “that non-essential matters can continue to move forward, within the sound discretion of President Judges,” it is hereby ORDERED and DECREED on this 13th day of April, 2020, that:

1. All legal papers in civil litigation matters may continue to be filed and docketed by hand-delivery to the Civil Division of the Clerk of Judicial Records Office, 1st Floor, Lackawanna County Government Center, 123 Wyoming Avenue, Scranton, PA 18503, or by mail to that same address.

2. To the extent practicable, parties shall engage in all forms of discovery, including depositions, consistent with applicable scheduling orders and the Pennsylvania Rules of Civil Procedure. No party shall use the current COVID-19 health crisis for advantage in the discovery process or as a reason for refusing to conduct or participate in any discovery, except as provided in paragraph 4 below.

3. Depositions should, to the extent practicable, be conducted remotely through telephone, videoconference, or similar advanced communication technology. Court reporters need not be present in the same location as witnesses or counsel, consistent with Governor Tom Wolf's order dated March 21, 2020.

4. Depositions of and required appearances by physicians, nurses, or other health care professionals who are substantially involved in responding to the COVID-19 public health emergency are suspended during the course of the declared statewide judicial emergency.

~~BY THE COURT:~~



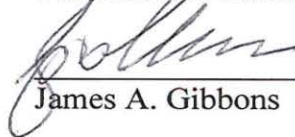
Michael J. Barrasse

P.J.



Terrence R. Nealon

J.



James A. Gibbons

J.