

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 2033 C.D. 2012
 : Submitted: September 20, 2013
 William H. McMichael, III, :
 Appellant :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: October 21, 2013

William H. McMichael, III, (McMichael) appeals, *pro se*, the order of the Court of Common Pleas of Lancaster County (trial court) imposing \$600.00 in attorney's fees as a discovery sanction pursuant to Pa. R.C.P. No. 4019¹ and

¹ Pa. R.C.P. No. 4019(a)(1)(i) and (viii) provides that "[t]he court may, on motion, make an appropriate order if ... a party fails to service answer, sufficient answers or objections to written interrogatories under Rule 4005 ... [or] a party or person otherwise fails to make discovery or to obey an order of court respecting discovery." Pa. R.C.P. No. 4019(c)(5) states that "[t]he court, when acting under subdivision (a) of this rule, may make ... such order with regard to the failure to make discovery as is just." Finally, Pa. R.C.P. No. 4019(g)(1) states, in pertinent part:

(g)(1) Except as otherwise provided in these rules, if following the refusal, objection or failure of a party ... to comply with any provision of this chapter, the court, after opportunity for hearing, enters an order compelling compliance and the order is not obeyed, the court on a subsequent motion for sanctions may, if the motion is granted, require the party ... whose conduct necessitated the motions ... to pay to the moving party the reasonable expenses, including attorney's fees, incurred in obtaining the order of compliance and the order for sanctions, unless the court finds that

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directing McMichael to provide appropriate and meaningful responses to written interrogatories within ten days. We affirm.

On May 4, 2009, a civil judgment was entered in the trial court in favor of the Commonwealth and against McMichael in the amount of \$23,505.60 based on the fees, costs and fines imposed for McMichael's numerous violations of the City of Lancaster's Ordinances.² On April 24, 2009, the City's Solicitor sent

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the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

As this Court has recently explained:

[Pa. R.C.P. No. 4019] permits a trial court to order sanctions where a party fails to provide sufficient discovery. This Rule further permits a trial court to enter an "order with regard to the failure to make discovery as is just." A trial court has discretion whether to sanction a party for violating a discovery order and regarding how severe to sanction a party. Factors to be considered include the prejudice to the opposing party, whether the prejudice may be cured, the willfulness or bad faith of the party in violation and the number of violations.

Zauflik v. Pennsbury School District, ___ A.3d ___, ___ n.32 (Pa. Cmwlth., No. 1219 C.D. 2012, filed July 3, 2013), slip op. at 38 n.32 (citations omitted).

² Section 9728(b)(1) and (4) of the Sentencing Code provides, in pertinent part:

(b) Procedure.—

(1) The county clerk of courts shall, upon sentencing, transmit to the prothonotary certified copies of all judgments for ... fees, costs, fines and penalties which, in the aggregate, exceed \$1,000, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments

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Interrogatories in Aid of Execution to McMichael pursuant to Pa. R.C.P. Nos. 3117³ and 4005⁴ requesting a response within 30 days. After McMichael failed to respond, on May 30, 2009, the City's Solicitor sent McMichael a letter requesting a response by June 8, 2009. After McMichael again failed to respond, on August 3, 2009, the City's Solicitor presented a motion to compel McMichael to answer the interrogatories to the trial court's Discovery Motions' Court pursuant to Lancaster County Local Rule of Court 208.3(c). While McMichael was given proper notice of the hearing scheduled for August 3, 2009, on the motion, he did not appear. On August 3, 2009, the trial court issued an order directing McMichael

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are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.

* * *

(4) The total amount for which the person is liable pursuant to this section may be entered as a judgment upon the person or the property of the person sentenced ... regardless of whether the amount has been ordered to be paid in installments.

³ Pa. R.C.P. No. 3117(a) provides, in pertinent part:

(a) Plaintiff at any time after judgment, before or after the issuance of a writ of execution, may, for the purpose of discovery of assets of the defendant, take the testimony of any person, including a defendant ... upon oral examination or written interrogatories as provided by the rules relating to Depositions and Discovery....

⁴ Pa. R.C.P. No. 4005(a) and (c) provides, in pertinent part, that “[s]ubject to the limitations provided in Rule 4011, any party may serve upon any other party written interrogatories to be answered by the party served ... who shall furnish such information as is available to the party.... Interrogatories may relate to any matters which can be inquired into under Rules 4003.1 through 4003.5 inclusive....”

to answer the interrogatories within ten days or suffer sanctions which may include costs and attorney's fees and/or a finding of contempt of court and the issuance of a bench warrant.

On August 20, 2009, the City's Solicitor served McMichael with a Motion for Sanctions and to Compel Defendant's Answers to Interrogatories in Aid of Execution in which it sought \$500.00 in attorney's fees and answers to discovery within five days. The motion was presented to Discovery Motions' Court on August 31, 2009, and McMichael did not appear. On August 31, 2009, the trial court issued an order directing McMichael to respond to the discovery requests within seven days and stated that counsel may pursue sanctions against him if he refused to comply with the order.

On September 10, 2009, McMichael hand delivered a response to the interrogatories to the City's Solicitor, objecting to 18 of the 20 interrogatories. On September 18, 2009, the City's Solicitor served McMichael with a motion for sanctions alleging that McMichael's answers and objections violated the trial court's August 31, 2009 order because they were late and were not full and complete answers to the interrogatories. A hearing in Discovery Motions' Court was scheduled for September 28, 2009. Following hearing on September 28, 2009, the trial court issued an order granting the motion for sanctions and directing McMichael to pay \$600.00 as reasonable attorney's fees incurred while attempting to procure discovery responses from McMichael; and directing McMichael to

provide appropriate and meaningful responses to the interrogatories within ten days.⁵ McMichael filed the instant appeal of the trial court's order.⁶

In this appeal,⁷ McMichael claims⁸ that the trial court erred in imposing attorney's fees for his discovery violations because the judgment was

⁵ On September 14, 2009, McMichael sent the City's Solicitor "subpoenas" purporting to compel the appearance of attorneys and employees working on the City's behalf to appear for video depositions on October 16, 2009. On September 28, 2009, the City's Solicitor presented a motion for a protective order to quash the "subpoenas." The trial court granted the motion by orders entered on October 1, 2009, and October 12, 2009. McMichael did not appeal either order.

⁶ On November 26, 2012, the City's Solicitor filed a motion to quash McMichael's appeal because it does not involve a final order; an interlocutory order appealed as of right; an interlocutory order appealed by permission or a collateral order. However, on December 12, 2012, this Court issued an order denying the motion stating, in pertinent part:

[I]t appearing that judgment in this matter was entered in favor of appellee on May 4, 2012, and it further appearing that the instant appeal is from a September 28, 2012 order directing appellant to pay \$600.00 in attorney's fees as a sanction for failure to comply with appellee's Interrogatories in Aid of Execution, the motion to quash is denied because the order imposing attorney's fees is an appealable order. *Miller Elec. Co. v. Deweese*, 589 Pa. 167, 907 A.2d 1051 (2006); *Darlington, McKeon, Schuckers & Brown*, Pennsylvania Appellate Practice §§301:26 and 312:12:1. The issues on appeal are limited to the imposition of attorney's fees and do not include the merits of the underlying action, as to which no timely appeal was filed.

⁷ As this Court has explained:

Because a trial court has discretion over whether to impose a sanction and its severity [under Pa. R.C.P. No. 4019], this Court "will not disturb such a sanction absent an abuse of that discretion." "An abuse of discretion is not merely an error in judgment. It requires a showing of manifest unreasonableness,

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improperly entered because he was making the required payments on the fees, costs and fines imposed in the criminal matter and the trial court denied his attempts to obtain discovery. However, as noted in our prior order, “[t]he issues on appeal are limited to the imposition of attorney’s fees and do not include the merits of the underlying action, as to which no timely appeal was filed.” Likewise, there was no timely appeal of the trial court’s October 1, 2009 and October 12, 2009 orders quashing McMichael’s “subpoenas.” Because those orders are not at issue in this appeal, they will not be considered by this Court as a basis for disturbing the trial court’s order at issue herein.⁹

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partiality, ill-will, or such lack of support as to be clearly erroneous.” A party challenging a trial court’s discretionary judgment “on appeal bears a heavy burden.”

Zauflik, ___ A.3d at ___, slip op. at 39 (citations omitted).

⁸ In the interest of clarity, we have consolidated and reordered the issues that can be gleaned from the Statement of Questions Involved and Argument portions of McMichael’s *pro se* appellate brief. According to Pa. R.A.P. 2116(a) and 2119(a) and (e), a party must raise issues in the Statement of Questions Involved section of his brief and discuss the issues in the Argument section; otherwise, those issues are waived. *Oliver v. Unemployment Compensation Board of Review*, 5 A.3d 432, 440 (Pa. Cmwlth. 2010).

⁹ We will also not consider McMichael’s reference to a recent unrelated appeal in which he was a party challenging the certification of the parcel of property as “blighted” under Section 12.1(e) of the Urban Redevelopment Law, Act of May 24, 1945, P.L. 991, added by the Act of June 23, 1978, P.L. 556, *as amended*, 35 P.S. §1712.1, and Section 40.H of the Code of the City of Lancaster, LANCASTER CODE, ARTICLE X, §22-40.H. *See Smucker v. Lancaster City Planning Commission*, ___ A.3d ___ (Pa. Cmwlth., No. 1690 C.D. 2012, filed August 2, 2013).

McMichael next argues that the trial court erred in imposing the instant attorney's fees in the absence of an express statutory authorization, a clear agreement of the parties, or some other established exception because he was making the required payments on the fees, costs and fines imposed in the criminal matter. However, as outlined above, Pa. R.C.P. 4019 specifically empowered the trial court to impose the instant attorney's fees based on McMichael's failure to respond to the April 24, 2012 and June 8, 2012 requests to answer the interrogatories, or to comply with the trial court's August 3, 2009 and August 31, 2009 orders directing McMichael to answer the interrogatories or suffer sanctions. As a result, the trial court's exercise of discretion in imposing the instant attorney's fees will not be disturbed because McMichael has failed to demonstrate the requisite "manifest unreasonableness, partiality, ill-will, or such lack of support as to be clearly erroneous."

Finally, McMichael claims that the trial court erred in conducting Discovery Motions' Court without transcription. However, McMichael does not allege how he is prejudiced by the absence of a transcript or how transcription of the hearing on the motion for sanctions is relevant to any claims that he is raising in the instant appeal. In the absence of such argument, his allegation of error in this regard is without merit. *See, e.g., Commonwealth v. Sepulveda*, ___ Pa. ___, ___, 55 A.3d 1108, 1149 (2012) ("The U.S. Supreme Court has recognized that adequate and effective appellate review is impossible without a trial transcript or adequate substitute and has held that the States must provide trial records to indigent inmates. This Court has similarly concluded that a criminal defendant is entitled to 'a full transcript or other equivalent picture of the trial proceedings' in

order to engage in meaningful appellate review. However, in order to ‘establish entitlement to relief based on the incompleteness of the trial record, [appellant] must first make some potentially meritorious challenge which cannot be adequately reviewed due to the deficiency in the transcript.’”) (citations omitted).

Accordingly, the trial court’s order is affirmed.

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ORDER

AND NOW, this 21st day of October, 2013, the order of the Court of
Common Pleas of Lancaster County, dated September 28, 2012, is affirmed.