[J-28-2011] [M.O. – McCaffery, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

JUSTIN E. FOCHT,	:	No. 51 MAP 2010
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court at No. 357 MDA 2009 entered on
	:	12/17/2009 affirming/vacating and
v.	:	remanding the order of the Court of
	:	Common Pleas of Berks County, Civil
	:	Division, entered on 01/23/2009 at No. 04-
	:	1330
	:	
TRACY L. FOCHT,	:	
	:	
Appellant	:	ARGUED: April 13, 2011

CONCURRING OPINION

MR. JUSTICE SAYLOR **DECIDED: November 23, 2011**

I agree with the majority that a cause of action "accrues," for purposes of Section 3501(a)(8) of the Divorce Code, when the right to institute and maintain a lawsuit first arises. See Majority Opinion, slip op. at 5. I differ, however, with the majority to the extent it suggests that the meaning of that term is ascertained by employing the principle that words must be construed according to their common and approved usage. See id. at 4 (citing 1 Pa.C.S. §1903(a)). Rather, as "accrued" is a term of art, I would employ the latter principle contained in Section 1903(a) of the Statutory Construction Act -- that "technical words and phrases and such others as have acquired a peculiar

and appropriate meaning . . ., shall be construed according to such peculiar and appropriate meaning or definition." 1 Pa.C.S. §1903(a).[1]

I also do not support the majority's criticism of the Superior Court for adhering to the ruling in Pudlish v. Pudlish, 796 A.2d 346 (Pa. Super. 2002). See Majority Opinion, slip op. at 9-11. For one, it is well established that, when sitting as a panel, the Superior Court cannot overrule an earlier decision from that tribunal. See, e.g., Commonwealth v. Cooper, 710 A.2d 76, 79-80 (Pa. Super. 1998). Therefore, the intermediate court was required to follow the directives of Pudlish. Moreover, the Focht court criticized that decision, reasoning that it would be "willing to accept another interpretation of Drake if [it] were not bound by the Pudlish court's interpretation." Focht v. Focht, Nos. 336 & 357 MDA 2009, slip op. at 6 (Pa. Super. Dec. 17, 2009).

[1] While I recognize that the Court has not always limited the instances in which it invoked the common-and-approved-usage rule, I believe the better approach is to employ this principle sparingly, as it stands to reason that there are few words in the English language that have acquired a singular meaning. See generally Baker v. Ret. Bd. of Allegheny County, 374 Pa. 165, 171, 97 A.2d 231, 234 (1953) ("It is conceded that words can have a variety of interpretations, depending on context, circumstance, history and juxtaposition to other words, but there are a few words which are immune to mutation, and retain, regardless of rhetorical climate, only one meaning. 'Hereafter' is such a polestar in the sea of language.").