

01-466-CD
JAMES U. LUX -vs- GERALD E. ORT TRUCKING, INC. et al

Also on behalf of
Miller & Roberts

16

01-466-CD

COPY

March 15, 2005

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

Re: James U. Lux

Vs.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services,
Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie
Harvey Parker, and Pennsylvania Department of Transportation
No. 01-466-CD
Superior Court No. 250 WDA 2005

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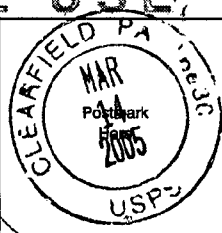
Please find enclosed Judge Paul E. Cherry's Order dated March 14, 2005. Please
attach to the appeal previously forwarded to your office. If you have any questions,
please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

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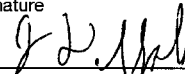
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William A. Shaw
Prothonotary/Clerk of Courts
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01-466-CD



Supreme Court of Pennsylvania

Western District

January 3, 2006

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: James U. Lux, Respondent

v.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services Inc., R
and F Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker,
and Pennsylvania Department of Transportation, Respondents
Superior Docket Number - 250 WDA 2005

Trial Court/Agency Dkt. Number: 01-466-CO

No. 698 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: December 30, 2005

Disposition:

Date:

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/dad

FILED ^{NO CC}
m/12987
JAN 05 2006 @

William A. Shaw
Prothonotary/Clerk of Courts



Supreme Court of Pennsylvania

Western District

July 13, 2006

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

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Pittsburgh, PA 15219
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Ms. Eleanor R. Valecko
Deputy Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297

RECEIVED
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7/24/06
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

RE: James U. Lux, Petitioner

v.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services Inc., R
and F Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker,
and Pennsylvania Department of Transportation, Respondents
Superior Docket Number - 250 WDA 2005

Trial Court/Agency Dkt. Number: 01-466-CD

No. 698 WAL 2005

Appeal Docket No.:

Date Petition for Allowance of Appeal Filed: December 30, 2005

Disposition: Order Denying Petition for Allowance of Appeal

Date: June 26, 2006

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/dad

Enclosure

FILED
JUL 20 2006
PITTSBURGH OFFICE OF
SUPERIOR COURT

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

JAMES U. LUX,

Petitioner

v.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, AND
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Respondents

: No. 698 WAL 2005

:
: Petition for Allowance of Appeal from the
: Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 26th day of June 2006, the Petition for Allowance of Appeal is
denied.

A True Copy Patricia Nicola

As of: June 26, 2006

Attest:

Chief Clerk

Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

JAMES U. LUX,

Petitioner

v.

GERALD E. ORT TRUCKING, INC., ORT
TRUCKING, INC., SIMON
TRANSPORTATION SERVICES, INC., R.
AND F. MILLER, INC., SAMUEL
THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, AND
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION,

Respondents

: No. 698 WAL 2005

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: Petition for Allowance of Appeal from the
: Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 26th day of June 2006, the Petition for Allowance of Appeal is
denied.

A True Copy Patricia Nicola

As of: June 26, 2006

Attest:

Chief Clerk

Supreme Court of Pennsylvania

FILED

JUL 21 2006

M/12:30/c (C.K.)
William A. Shaw

Prothonotary/Clerk of Courts

no C/c



Supreme Court of Pennsylvania

Western District

July 13, 2006

John A. Vaskov, Esq.
Deputy Prothonotary
Patricia A. Nicola
Chief Clerk

801 City-County Building
Pittsburgh, PA 15219
412-565-2816
www.aopc.org

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
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RE: James U. Lux, Petitioner
v.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services Inc., R
and F Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker,
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Disposition: Order Denying Petition for Allowance of Appeal

Date: June 26, 2006

Reargument/Reconsideration Disposition:

Reargument/Reconsideration

Disposition Date:

/dad

Enclosure

FILED

JUL 21 2006

William A. Shaw
Prothonotary/Clerk of Courts

The Superior Court of Pennsylvania
Sitting at Pittsburgh

6th floor Grant Building
Suite 600
Pittsburgh, Pennsylvania
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND**
under

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

**Record 2 Parts, Superior Court Judgment Order and Opinion
Supreme Court Data Sheet**

As remanded from said court in the following matter:
James U. Lux v Gerald E. Ort Trucking Inc., et al.
No. 250 WDA 2005

Court of Common Pleas-Civil Division-Clearfield County
NO. 01-466-CD

FILED

m10:59
JUL 24 2006

WAS
William A. Shaw
Prothonotary/Clerk of Courts

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded July 20, 2006

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

Eleanor K. Valecko

DEPUTY PROTHONOTARY

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DATE: 7/24/06

William A. Shaw
(Signature & Title)

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

FILED

JUL 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

William A. Shaw

William A. Shaw
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clerks Office, Clearfield, PA

J. A31008/05

2005 PA Super 400

JAMES U. LUX,

Appellant

v.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC., SIMON
TRANSPORTATION SERVICES INC., R. AND
F. MILLER, INC., SAMUEL THOMAS
KNIGHT, EDDIE C. ROBERTS, JAMIE
HARVEY PARKER, AND PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION ,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

FILED

m 10:59 AM
JUL 24 2006

WAS
William A. Shaw
Prothonotary/Clerk of Courts

No. 250 WDA 2005

Appeal from the Judgment January 14, 2005,
In the Court of Common Pleas of Clearfield County,
Civil Division at No. 01-466-CO.

BEFORE: ORIE MELVIN, McCAFFERY and POPOVICH, JJ.

OPINION BY POPOVICH, J.:

Filed: December 2, 2005

¶ 1 Appellant James U. Lux appeals from the judgment entered on January 14, 2005, marking the case settled and discontinued against Gerald E. Ort Trucking, Inc., Simon Transportation Services Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, and Pennsylvania Department of Transportation. On appeal, Appellant contends that the trial court erred in granting Appellee Jamie Harvey Parker's preliminary objections in the nature of a demurrer and dismissing Appellee from the case. Upon review, we affirm.

¶ 2 This case arises from two collisions that occurred on October 24, 2000, on Interstate Route 80 between the cities of DuBois and Clearfield. The first accident occurred when a truck driven by Eddie C. Roberts collided with a truck being driven by Appellee. Roberts had fallen asleep at the wheel while driving at an excessive speed. Appellee then fled the scene. Appellant, a DuBois police officer, was dispatched to the accident scene to assist with emergency services and provide assistance. A state police officer, who was securing the scene of the accident, then left upon learning that Appellee was at a nearby truck stop.

¶ 3 During the state police officer's absence, Samuel Knight, who was also driving a truck on Route 80, fell asleep at the wheel while traveling at an excessive speed. He collided with Appellant's rescue vehicle. Appellant and three volunteer firemen who were passengers in Appellant's vehicle were severely injured. As a result of the second accident, Appellant suffered severe injuries, including spinal cord damage that resulted in paralysis.

¶ 4 Appellant commenced suit against various parties of the first and second accidents, including Appellee. In the complaint, Appellant sets forth the following against Appellee:

28. Appellant alleges that Appellee was negligent:

- a. In operating his 1998 International Truck and attached cargo trailer without a driver's license;
- b. In operating his vehicle at a dangerously slow speed;
- c. In failing to display and utilize the proper safety warning apparatus upon his vehicle;

- d. In fleeing the scene of the first collision, without identifying himself, and in doing so spreading the field of collision debris across a greater area than that caused by the initial collision;
 - e. In fleeing the scene of the first collision, and causing law enforcement officials at the scene of the first collision to be required to leave the scene of the first collision in order to apprehend and arrest him, thus diverting them from activities in securing and safeguarding the scene of the first collision;
 - f. In failing to operate his vehicle in a safe and prudent manner considering the circumstances existent at the time of the first collision;
 - g. In operating his vehicle when he was not fit and competent to do so;
 - h. In driving in a careless and reckless fashion;
29. The negligence of Appellant was a substantial factor in causing the first and second collisions described above, and thus was a substantial factor in causing the serious injuries suffered by the Appellant.

Appellant's complaint, 4/3/01, at 8-9, ¶ 28-29.

¶ 5 On May 14, 2001, preliminary objections in the nature of a demurrer were filed by Roberts and R & F Miller, Inc., the owner of the truck he had driven. Appellee joined in these preliminary objections on August 10, 2001. On August 22, 2001, Roberts and R & F Miller's preliminary objections were dismissed. Appellee's preliminary objections were granted on October 1, 2001. Appellant filed a motion to reconsider, which was denied by the trial court on January 4, 2002. Appellant filed a motion with the trial court to certify the order granting the preliminary objections as an appealable interlocutory order pursuant to Pa.R.A.P. 1311. The trial court denied the motion.

J. A31008/05

¶ 6 Subsequently, Appellant's claims against the remaining defendants were settled or were discontinued. The trial court entered an order on January 14, 2005, stating that the matter of Appellee's preliminary objections was rendered final and appealable by the dismissal of all other parties from the action. Appellant filed an appeal on February 2, 2005. The trial court did not enter an order requiring the filing of a statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b); however, it previously had filed an opinion on October 1, 2001, stating its reasons for granting Appellee's preliminary objections. It also authored an opinion on January 4, 2002, denying Appellant's motion to reconsider its October 1, 2001 order.

¶ 7 Appellant presents two issues for our review:

1. Did the trial court err in granting [Appellee's] preliminary objections, and invade the province of the jury in determining factual issues, by ruling, as a matter of law, that the allegations of Parker's intentional and negligent acts were not a legal cause of the accident which resulted in the severe injuries and paralysis of [Appellant]?
2. Did the trial court err, in ruling as a matter of law, that [Appellant] did not state a cause of action in tort for [Appellee's] driving an eighteen wheeler semi-truck without a license, driving in a negligent manner, and intentionally fleeing the scene of a night time multi-truck interstate highway accident that Parker was involved in, causing the lone police trooper securing the accident scene to leave the scene to pursue and arrest Parker, thereby leaving the accident scene unsecured and permitting an emergency vehicle occupied by [Appellant] to be struck by another truck?

Appellant's brief, at 3.

¶ 8 Appellant claims the trial court erred in granting Appellee's preliminary objections in the nature of a demurrer. Preliminary objections in the nature of a demurrer test the legal sufficiency of the plaintiff's complaint. **Grose v. P&G Paper Prods. (In re Grose)**, 866 A.2d 437, 440 (Pa. Super. 2005) (citations omitted) (quotation marks omitted). The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. **Id.**, 866 A.2d at 440. Accepting all material averments as true, we must determine whether the complaint adequately states a claim for relief under any theory of law. **Id.**, 866 A.2d at 440.

¶ 9 On appeal, Appellant contends that his complaint states a claim for relief. He argues that Appellee was negligent in causing the first accident by driving his vehicle without a license at a dangerously slow speed and by failing to use his flashers. Appellant's brief, at 10. He states that this is a deviation from the standard of care expected under the circumstances and that this deviation proximately caused the actual harm suffered by Appellant. Appellant's brief, at 10.

¶ 10 Appellant alleges that Appellee's actions were a substantial factor in causing the second accident. He argues Appellee fled the scene of the first accident, which is a violation of the Pennsylvania "hit and run" statute. 75 Pa.C.S.A. §§ 3741-3755. Appellant's complaint, 4/3/01, at 8-9, ¶ 28. Appellant argues that Appellee did not substantially comply with the statute and, therefore, is negligent *per se*. Appellant's brief, at 13.

¶ 11 Appellant alleges that as a result of Appellee's flight, he caused the state police officer to leave the scene of the accident and, thereby, removed a layer of protection for Appellant. He contends that this resulted in a tangible and objective increase in the level of danger to which he was exposed. Appellant's brief, at 14.

¶ 12 Further, he alleges Appellee's flight resulted in a greater field of debris being spread over the Interstate, which lengthened the period of time required to clean up after the initial collision and, thus, increased the period of Appellant's exposure to harm. Appellant's brief, at 17.

¶ 13 When reviewing a trial court's order sustaining preliminary objections in the nature of a demurrer and dismissing a suit, our scope of review is plenary. **Donahue v. Federal Express Corp.**, 753 A.2d 238, 241 (Pa. Super. 2000). We apply the same standard employed by the trial court, *i.e.*, all material facts set forth in the complaint, as well as all inferences reasonably deducible therefrom, are admitted as true for the purposes of review. **DeMary v. Latrobe Printing & Publ'g Co.**, 762 A.2d 758, 761 (Pa. Super. 2000). Where affirmance of the trial court's order sustaining preliminary objections would result in the dismissal of an action, we may do so only when the case "is clear and free from doubt." **Donahue**, 753 A.2d at 241. To be "clear and free from doubt" that dismissal is appropriate, it must appear with certainty that the law would not permit recovery by the

J. A31008/05

plaintiff upon the facts averred. **Id.**, 753 A.2d at 241. Any doubt should be resolved by a refusal to sustain the objections. **Id.**, 753 A.2d at 241.

¶ 14 With respect to Appellant's first issue, that Appellee was negligent in causing the first accident by driving his vehicle without a license at a dangerously slow speed and failing to use his flashers, the relevant law on negligence is not disputed.

In trying to recover for an action in negligence, a party must prove four elements. They are:

1. A duty or obligation recognized by law.
2. A breach of the duty.
3. *Causal connection between the actor's breach of the duty and the resulting injury.*
4. Actual loss or damage suffered by complainant.

Reilly v. Tiergarten, Inc., 633 A.2d 208, 210 (Pa. Super. 1993) (emphasis added).

It is beyond question that the mere existence of negligence and the occurrence of injury are insufficient to impose liability upon anyone as there remains to be proved the link of causation. Furthermore, our Supreme Court has stated that ". . . even when it is established that the defendant breached some duty of care owed the plaintiff, it is incumbent on a plaintiff to establish a causal connection between defendant's conduct, and it must be shown to have been the proximate cause of plaintiff's injury."

Taylor v. Jackson, 643 A.2d 771, 775 (Pa. Super. 1994) (citations omitted).

¶ 15 "Proximate causation is defined as a wrongful act which was a substantial factor in bringing about the plaintiff's harm." **Dudley v. USX Corp.**, 606 A.2d 916, 923 (Pa. Super. 1992) (citations omitted). Proximate cause does not exist where the causal chain of events resulting in plaintiff's injury is so remote as to appear highly extraordinary that the conduct could have brought about the harm. **Id.**, 606 A.2d at 923. At issue here is whether or not Appellee's negligence was a "substantial factor" in bringing about Appellant's injuries to satisfy the element of causation.

In order to establish causation, the plaintiff must prove that the breach was "both the proximate and actual cause of the injury." Proximate cause is a question of law to be determined by the court before the issue of actual cause may be put to the jury. A determination of legal causation, essentially regards "whether the negligence, if any, was so remote that as a matter of law, [the actor] cannot be held legally responsible for [the] harm which subsequently occurred." Therefore, the court must determine whether the injury would have been foreseen by an ordinary person as the natural and probable outcome of the act complained of.

Reilly, 633 A.2d at 210 (citations omitted).

¶ 16 The substantial factor test for determining whether a party's negligence was the proximate or legal cause of another's injury is set forth in **Wisniewski v. Great Atlantic & Pacific Tea Co.**, 323 A.2d 744, 748 (Pa. Super. 1974):

This test provides that the actor's negligent conduct is a legal cause of harm to another if:

- (a) his conduct is a substantial factor in bringing about the harm, and

- (b) there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in harm.

Wisniewski, 323 A.2d 744, 748 (Pa. Super. 1974) (*citing* RESTATEMENT (SECOND) OF TORTS, § 431 (1965)).

¶ 17 The method for determining whether negligent conduct is a substantial factor in producing the injury is set forth in **Willard v. Interpool, Ltd.**, 758 A.2d 684, 688 (Pa. Super. 2000):

The following considerations are in themselves or in combination with one another important in determining whether the actor's conduct is a substantial factor in bringing about harm to another:

- (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it;
- (b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible;
- (c) lapse of time.

Willard, 758 A.2d 684, 688 (Pa. Super. 2000) (*citing* RESTATEMENT (SECOND) OF TORTS § 433 (1965)).

¶ 18 After considering these factors, the trial court determined that while Appellee's operation of the vehicle may have breached a statutory duty, it was not a substantial factor in causing harm to the Appellant. **Lux v.**

Gerald E. Ort Trucking Inc., 56 D. & C.4th 375, 378-79 (Clearfield Cty. 2002).

¶ 19 Appellee's conduct was not a substantial factor in causing harm to Appellant. His failure to use his flashers, driving his vehicle without a license, and fleeing the scene were not the proximate causes of the first accident. It was the negligence of Roberts, who fell asleep at the wheel and then wrecked into Appellee, that was the cause of the first accident. "Proximate cause does not exist where the causal chain of events resulting in plaintiff's injury is so remote as to appear highly extraordinary that the conduct could have brought about the harm." **Dudley v. USX Corp.**, 606 A.2d 916, 923 (Pa. Super. 1992). Proximate cause does not exist between Appellee's conduct (failing to use his flashers, driving his vehicle without a license, and fleeing the scene of the first accident), and Appellant's injury. It appears highly extraordinary that Appellee fleeing from the scene could have caused Knight, who also fell asleep at the wheel, to collide with Appellant's vehicle and ultimately result in Appellant's injuries.

¶ 20 Second, Appellant contends that Appellee's actions were a substantial factor in causing the second accident. He alleges that Appellee was negligent *per se* when he fled the scene of the initial collision. Although this argument has not been fully developed, we will briefly address it here.

¶ 21 Even if we accept the fact that Appellee was negligent *per se* by violating Pennsylvania's "hit and run" statute, 75 Pa.C.S.A. §§ 3741-3755,

Appellant would still have to prove the element of causation. The concept of negligence *per se* establishes both duty and the required breach of duty where an individual violates an applicable statute, ordinance or regulation designed to prevent a public harm. **Cabiroy v. Scipione**, 767 A.2d 1078, 1079 (Pa. Super. 2001). A plaintiff, however, having proven negligence *per se*, cannot recover unless it can be proven that such negligence was the proximate cause of the injury. **Id.**, 767 A.2d at 1079. As discussed above, Appellant has not proven that Appellee's flight from the first accident was the proximate cause of Appellant's injuries. Therefore, we dismiss Appellant's negligence *per se* argument.

¶ 22 Third, Appellant claims that when Appellee fled the scene, he removed all police protection and spread debris across a greater area of the road. He contends this increased Appellant's exposure to harm. Appellants brief, at 17. However, his conduct is not a substantial factor in causing the second collision which resulted in Appellant's injury. In fact, Appellant states that Knight drove his truck "without braking and at a high rate of speed...through an area of safety cones and brightly burning emergency flares placed on the highway, over and on to the closed right hand lane, and directly and violently collided with Appellant's vehicle." Appellant's complaint, 4/03/01, at 4.

¶ 23 The second collision was caused by Knight falling asleep at the wheel. This does not amount to Appellee's conduct (failing to use his flashers,


driving his vehicle without a license, and fleeing the scene of the first accident) constituting a substantial factor in the second collision. **Willard**, 758 A.2d 684, 688 (Pa. Super. 2000).

¶ 24 Therefore, we conclude that the actions of Appellee are too remote to be considered the proximate cause of Appellant's injury. Thus, the element of causation has not been satisfied. **Reilly v. Tiergarten, Inc.**, 633 A.2d 208, 210 (Pa. Super. 1993). Appellant has no cause of action in negligence against Appellee. We find no error in the trial court's failure to submit the issue of actual cause to the jury after having found no proximate cause. **Id.**, 633 A.2d at 210.

¶ 25 For the aforementioned reasons, we find that the trial court did not abuse its discretion or commit an error of law in granting Appellee's preliminary objections in the nature of a demurrer. **Donahue v. Federal Express Corp.**, 753 A.2d 238, 241 (Pa. Super. 2000).

¶ 26 Affirmed.

Judgment Entered:


Deputy Prothonotary

DATE: December 2, 2005

FILED

JUL 24 2006

William A. Shaw
Prothonotary/Clerk of Courts

No. 01-466-CD
JAMES U. LUX

JEFFREY R. OWEN, ESQ.,
Cooper Owen & Renner, P.C.,
1600 Benedum-Trees Bldg.,
223 Fourth Ave., PGH 15222-
1713

vs.

GERALD E. ORT TRUCKING, INC.,
ORT TRUCKING, INC.,

Disc. SIMON TRANSPORTATION SERVICES, INC.,

R. AND F. MILLER, INC.,

SAMUEL THOMAS KNIGHT,

EDDIE C. ROBERTS,

JAMIE HARVEY PARKER, and

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION

MICHAEL F. NERONE, ESQ., Suite *and John T. Pion, Ste 400*
400, Two PPG Place, PGH, 15222 *Two PPG Place, P.H.S.B., 15222*

NANCY L. HEILMAN, ESQ., 15th
Floor, 11 Stanwix St., PGH 15222-1319 *Disc*

EDWARD A. YURCON, ESQ., 1300
Gulf Tower, PGH 15219

MICHAEL F. NERONE, ESQ. *John Ron*

EDWARD A. YURCON, ESQ.

500 S. Ohio St., Humansville
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Robert A. Seifert

JOHN R. BENTY, ESQ., Sr., Dep.
Atty. Genl., Tort Lit. Unit, Manor
Complex, 564 Forbes Ave., PGH
15219 412-565-3539

COPY

March 14, 2005

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

Re: James U. Lux

Vs.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services,
Inc., R. and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie
Harvey Parker, and Pennsylvania Department of Transportation
No. 01-466-CD
Superior Court No. 250 WDA 2005

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your
office.

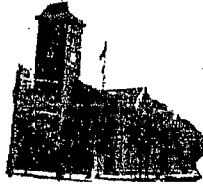
Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

CLEARFIELD COUNTY
OFFICE OF THE PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW
PROTHONOTARY/
CLERK OF COURTS

DAVID S. AMMERMAN
SOLICITOR



JACKI KENDRICK
DEPUTY PROTHONOTARY

BONNIE HUDSON
ADMINISTRATIVE ASSISTANT

P.O. Box 549, Clearfield, PA 16830
Phone: (814) 765-2641 Ext. 1330 Fax: (814) 765-7659

COPY

John K. Reilly, Jr., Sr. Judge, S.P.
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Jeffrey R. Owen, Esq.
1600 Benedum-Trees Bldg.
223 Fourth Ave.
Pittsburgh, PA 15222

Michael F. Nerone, Esq.
John T. Pion, Esq.
Ste. 400, Two PPG Place
Pittsburgh, PA 15222

John R. Benty, Esq.
Manor Complex
564 Forbes Ave.
Pittsburgh, PA 15219

Edward A. Yurcon, Esq.
1300 Gulf Tower
Pittsburgh, PA 15219

Robert A. Seiferth
33 W. 3rd Street, Ste. 200
Williamsport, PA 17701

James U. Lux
Vs.

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R.
and F. Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker, and
Pennsylvania Department of Transportation

Court No. 01-466-CD; Superior Court No. 250 WDA 2005

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior
Court of Pennsylvania on March 14, 2005.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Civil Other

Date		Judge
04/03/2001	Filing: Civil Complaint Paid by: Jeffrey R. Owen, Esquire Receipt number: 1823002 Dated: 04/03/2001 Amount: \$80.00 (Check) Three Certified Copies to Attorney	No Judge
04/06/2001	Sheriff Return NOW April 4, 2001, served the within Complaint on PA. Dept. of Transportation, Defendant at Employment, was handed a true attested copy of the original complaint and made known the true and attested copy of original complaint. So Answers, Sheriff Hawkins, s/ Marilyn Hamm.	No Judge
04/19/2001	Praeipce for Appearance, on behalf of Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel Thomas Knight, by John T. Pion, Esq. and Michael F. Nerone, Esq. s/Michael F. Nerone, Esq. Certificate of Service no cc	No Judge
05/07/2001	Praeipce For Appearance, on behalf of R & F Miller, Inc. and Eddie C. Roberts. filed by s/Edward A. Yurcon, Esq. Cert of Svc no cc	No Judge
	Affidavit of Service, Complaint in Civil Action, upon Defendants of Record. s/Jeffrey R. Owen, Esquire no cc	No Judge
05/11/2001	Praeipce For Appearance, on behalf of Pennsylvania Department of Transportation. filed by s/John R. Benty, Esq. no cc Cert of Svc	No Judge
05/14/2001	Preliminary Objections in the Nature of a Demurrer. filed by s/Edward A. Yurcon, Esq. no cc	No Judge
	Entry of Appearance, on behalf of Simon Transportation Services, Inc. s/Nancy L. Heilman, Esq. Cert of Svc no cc	No Judge
	Answer and New Matter, Filed on behalf of Simon Trucking. s/Nancy L. Heilman, Esq. Verification, s/Mark E. Wilkey Cert of Svc no cc	No Judge
05/16/2001	Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Knight's Answer to Complaint, New Matter and New Matter Pursuant to Pa. R.Civ. P. 2252(D) filed by s/Michael F. Nerone, Esq. Verification, s/Samuel Knight Cert of Svc no cc	No Judge
05/21/2001	Preliminary Objections. filed by s/John R. Benty, Esq. Cert of Svc 1 cc atty Benty	No Judge
07/26/2001	Miscellaneous Payment: Copy Fee Paid by: Marshall, Dennehey, Warner, Coleman & Goggin Receipt number: 1828913 Dated: 07/26/2001 Amount: \$.25 (Cash)	John K. Reilly Jr.
07/31/2001	Entry of Appearance, on behalf of Defendant, Jamie Harvey Parker. s/Robert A. Seiferth, Esq. 1 cc to atty	John K. Reilly Jr.
08/10/2001	Preliminary Objections of Defendant Jamie Harvey Parker. Filed by s/Robert A. Seiferth, Esq. Cert of Svc 1 cc w/o Rule	John K. Reilly Jr.
08/15/2001	ORDER, NOW, this 14th day of August, 2001, re: P.O.'s are sustained to the extent that Plaintiff shall be limited in his allegations of proof in paragraphs 38(a,b and g), etc. by the Court, s/JKR,JR.,P.J. 1 cc atty Benty, J. Owen, M. Nesare, N. Heilman, E. Yuscon and R. Seifesth	John K. Reilly Jr.
08/22/2001	Opinion and Order, filed. Cert. to Atty's Seiferth, Yurcon, Heilman, Bendtley, Nerone, Owen and copy to Mikesell NOW, this 21st day of August, 2001, it is the ORDER of this Court that all Defendants Preliminary Objections are hereby DISMISSED.	John K. Reilly Jr.
09/14/2001	Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
09/21/2001	ORDER, NOW, this 20th day of Sept. 2001, re:Rule is issued upon the parties, Returnable 15th day of Oct. 2001, at 9:30 a.m. by the Court, s/JKR,JR., P.J. 5 cc Atty Yurcon	John K. Reilly Jr.
09/28/2001	Affidavit of Service, Order of Court of Sept. 20, 2001. upon Parties of Record. by s/Edward A. Yurcon, Esq. Cert of Svc no cc	John K. Reilly Jr.

Civil Other

Date		Judge
10/01/2001	OPINION AND ORDER, NOW, this 1st day of October, 2001, it is the ORDER of this Court that Defendant Jamie Harvey Parker's Preliminary Objections are hereby GRANTED. by the Court, s/JKR,JR., P.J. 1 cc Atty Owen, Nerone, Heilman, Yurcon, Seiferth, and John Benty	John K. Reilly Jr.
10/26/2001	Plaintiff's Motion to Reconsider, filed by s/Jeffrey R. Owen, Esq. No CC	John K. Reilly Jr.
10/30/2001	ORDER, AND NOW, this 29th day of Oct. 2001, a Rule is issued upon the parties, returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 2 cc Atty Owen	John K. Reilly Jr.
11/02/2001	Petition For Interpleader. Filed by s/John T. Pion, Esq. Cert. of Svc. no cc	John K. Reilly Jr.
11/05/2001	Preliminary Order of Court, And Now, to-wit, this 5th day of Nov. 2001, Rule to Show Cause is hereby issued to show cause why the Petition for Interpleader should not be granted. Rule Returnable Dec. 7, 2001, at 9:00 a.m. before the Honorable Judge Riley. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
11/09/2001	Motion to Join in Plaintiff's Motion to Reconsider, filed by s/Michael F. Nerone, Esq. No CC	John K. Reilly Jr.
11/13/2001	ORDER, NOW, this 13th day of Nov. 2001, re: Rule issued upon parties to appear and Show Cause why the Motion should not be granted. Rule Returnable the 7th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Nerone	John K. Reilly Jr.
12/04/2001	Answer to Petition for Interpleader. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
01/04/2002	OPINION AND ORDER, NOW, this 4th day of January, 2002, it is the ORDER of this Court that Plaintiff's Motion to Reconsider, as joined in by Defendants Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DISMISSED. by the Court, s/JKR,JR.,P.J. 3 cc to Atty Nerone, Heilman, Yucon, Seiferth, Beaty and D. Mikesell	John K. Reilly Jr.
01/14/2002	OPINION AND ORDER, NOW, this 9th day of Jan. 2002, it is the ORDER of this Court that the Petition for Interpleader filed by and on behalf of Petitioners Gerald E. Ort Trucking, Inc., Ort Trucking Inc. and Samuel Thomas Knight, is hereby DENIED. by the Court, s/JKR,JR.,P.J. 1 cc Atty Owen, Atty Nerone, Atty Pion, Nancy L. Heilman, Edward Yuscon, R. Seiferth, J. Bentry and D. Mikesell.	John K. Reilly Jr.
01/24/2002	Notification of Bankruptcy, on behalf of EDDIE C. ROBERTS. Filed by s/Edward A. Yurcon, Esq. no cc	John K. Reilly Jr.
02/01/2002	Motion to Certify Interlocutory Order for Appeal. Filed by s/Jeffrey R. Owen, Esq. Cert of Svc no cc	John K. Reilly Jr.
	Filing: Appeal to High Court Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$45.00 (Check)	John K. Reilly Jr.
	Filing: Miscellaneous Civil Filing Paid by: Nerone, Michael F. Esq (attorney for Knight, Samuel Thomas) Receipt number: 1837618 Dated: 02/01/2002 Amount: \$.50 (Check)	John K. Reilly Jr.
	Notice of Appeal, filed on behalf of Defendants, Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. Filed by s/Michael F. Nerone, Esq. Certificate of Service Proof of Service 1 cc Sup. Crt. w/\$55.00 check	John K. Reilly Jr.
02/07/2002	Appeal Docket Sheet. Docket Number: 222 WDA 2002	John K. Reilly Jr.
02/28/2002	Order, NOW, this 28th day of February, 2002, upon consideration of Motion to Certify Interlocutory Order for Appeal, it is the ORDER of this Court that said Motion be and is hereby DENIED. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Attorney Owen	John K. Reilly Jr.

Date: 03/14/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:27 AM

ROA Report

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Case: 2001-00466-CD

Current Judge: Paul E. Cherry

Civil Other

Date		Judge
03/13/2002	Suggestion of Bankruptcy of Simon Transportation Services, Inc. Filed by s/Nancy L. Heilman, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/18/2002	ORDER, NOW, this 18th day of March 2002. re: Motion to Reconsider is DENIED, and Motion to Certify Interlocutory Appeal by Permission is DENIED. by the Court, s/JKR, JR., P.J. 1 cc to Atty Owen, Benty, Heilman, 2 cc to Atty Yurcon, and 3 cc Atty Herone	John K. Reilly Jr.
03/25/2002	Motion To Amend Interlocutory Order. Filed by s/Edward A. Yurcon, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/27/2002	ORDER, NOW, this 27th day of March, 2002, re: Motion to Amend Interlocutory Order is DENIED. by the Court, s/JKR, JR., P.J.	John K. Reilly Jr.
04/03/2002	Certified Mail Receipt, filed. #7099 3400 0016 7880 5720	John K. Reilly Jr.
04/08/2002	Domestic Return Receipt. Filed #7099 3400 0016 7880 5720 no cc	John K. Reilly Jr.
06/10/2002	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc	John K. Reilly Jr.
	Answer, New Matter and New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc	John K. Reilly Jr.
06/17/2002	Reply to New Matter Pursuant to Rule 2252(d) Filed by s/Michael F. Nerone, Esq. Cert. of Svc. Verification s/Michael F. Nerone no cc	John K. Reilly Jr.
06/19/2002	Preliminary Objections of Defendant Jamie Harvey Parker to New Matter Pursuant to Pa. r. Civ.P. 2252(d) of Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. No Cert. Copies.	John K. Reilly Jr.
06/21/2002	RULE TO SHOW CAUSE, AND NOW, this 21st day of June, 2002, issued upon Defendants, GERALD E. ORT, TRUCKING, INC., ORT TRUCKING, INC. and SAMUEL THOMAS KNIGHT, returnable the 5th day of Sept., 2002, at 9:00 a.m. by the Court, s/JKR, JR., P.J. 2 cc Atty Seiferth	John K. Reilly Jr.
	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon no cc	John K. Reilly Jr.
	Answer, New Matter and New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon No cc	John K. Reilly Jr.
07/01/2002	Reply to New Matter Pursuant to Rule 2252(d). Filed by s/Michael F. Nerone, Esq. Certificate of Service no cc	John K. Reilly Jr.
10/16/2002	ORDER, AND NOW, this 16th day of October, 2002, re: Preliminary Objections are GRANTED. by the Court, s/JKR, JR., P.J. cc to: Benty, Heilman, Owen, Yurcon, Seiferth, and Nerone	John K. Reilly Jr.
12/02/2002	"ORDER, AND NOW, this 15th day of October, 2002, this Court hereby SUA SPONTE DISMISSED the above-captioned appeal, as the matter has been settled, rendering the issue raised in the appeal moot. See In Re Cain, 590. A.2d 291 (Pa. 1991) (providing that an appellate court will not decide moot questions) PER CURIAM"	John K. Reilly Jr.
	Certificate of Contents of Remanded Record and Notice of Remand under Pennsylvania Rules of Appellate Procedure 2571 and 2572. Filed.	John K. Reilly Jr.
12/17/2002	Certificate of Service, Rule to File Complaint upon Plaintiff; GREGORY M. KRUK, ESQ. no cc	John K. Reilly Jr.

Date: 03/14/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:27 AM

ROA Report

Page 4 of 4

Case: 2001-00466-CD

Current Judge: Paul E. Cherry

Civil Other

Date		Judge
01/13/2003	Stipulation filed on behalf of Defendants Gerald Ort Trucking, Ort Trucking Inc. and Samuel T. Knight. Defendants R & F. Miller, Inc. and Eddie C. Roberts do hereby waive, release, discharge and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity asserted against Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight and these Defendants hereby wave, release, discharge, and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity which have been asserted against R&F Miller, Inc. and Eddie C. Roberts. No cc.	John K. Reilly Jr.
02/24/2003	Amended Answer and New Matter. filed by s/Edward A. Yurcon, Esquire Verification s/Eddie C. Roberts s/Linda Long Certificate of Service no cc	John K. Reilly Jr.
09/20/2004	Praeipce to Place at Issue, filed by s/Jeffrey R. Owen, Esq. No CC	John K. Reilly Jr.
12/27/2004	Answer and New Matter filed on behalf of Def. Pa. Dept. of Transportation. Filed by s/ John R. Benty, Sr. Deputy Attorney General. no CC	Paul E. Cherry
01/10/2005	Amended New Matter, filed by s/ Michael F. Nerone, Esquire. No CC	Paul E. Cherry
	Reply to New Matter Pursuant to Rule 2252(d), filed by s/ Michael F. Nerone, Esquire. No CC	Paul E. Cherry
	Verification to Answer and New Matter and New Matter Under Pa.R.C.P. 2252(d). Filed by s/ John R. Benty, Sr. Deputy Attorney General. No CC	Paul E. Cherry
01/14/2005	Praeipce to Discontinue Action against Simon Transportation Services, Inc. (Simon Claims), filed by s/ Michael F. Nerone, Esquire, Edward A. Yurcon, Esquire, and John R. Benty, Esquire.	Paul E. Cherry
	Order, AND NOW, this 14th day of Jan., 2005, it is hereby ORDERED that the Order of Court of Oct. 1, 2001, sustaining Defendant Parker's Preliminary Objection, the certificaion for appeal of which was denies by the Court, is by this Order, rendered final and appealable. Judgment shall be entered in favor of defendant Parker and against Plaintiff. IT IS SO ORDERED: /s/ Paul E. Cherry, Judge	Paul E. Cherry
01/18/2005	Second Amended Answer and New Matter, filed by s/ Edward A. Yurcon, Esquire. No CC	Paul E. Cherry
	Reply To PA. R.C.P. 2252 (d) New Matter of Pennsylvania Department of Transporation, filed by s/ Edward A. Yurcon, Esquire. No CC	Paul E. Cherry
02/02/2005	Filing: Appeal to High Court Paid by: Owen, Jeffrey R. Esq (attorney for Lux, James U.) Receipt number: 1894943 Dated: 02/02/2005 Amount: \$45.00 (Check) 1 Cert. w/check to to Superior Court and 2 caert. to Atty.	Paul E. Cherry
02/03/2005	Order, NOW, this 3rd day of Feb., 2005, this Court having been served with Notice of Appeal in the above captioned matter, this Court notes that it will not be filing any further Order and Opinion but would include, by reference, its Opinion and Order of August 21, 2001, in the Opinion and Order appealed from. BY THE COURT: /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: J. Owen; Nerone; Pion; Yurcon; Seiferth; and Benty	Paul E. Cherry
02/11/2005	Appeal Docket Sheet, Pa. Superior Court Docket Number 250 WDA 2005, filed.	Paul E. Cherry
03/14/2005	Case transferred to Superior Court March 14, 2005.	Paul E. Cherry

Date: 03/09/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:09 AM

ROA Report

Page 2 of 2

Case: 2001-00466-CD

Current Judge: Paul E. Cherry

Civil Other

Date	Selected Items	Judge
09/20/2004	53 Praecipe to Place at Issue, filed by s/Jeffrey R. Owen, Esq. No CC 3	John K. Reilly Jr.
12/27/2004	54 Answer and New Matter filed on behalf of Def. Pa. Dept. of Transportation, Filed by s/ John R. Benty, Sr. Deputy Attorney General. no CC 13	Paul E. Cherry
01/10/2005	55 Amended New Matter, filed by s/ Michael F. Nerone, Esquire. No CC 10	Paul E. Cherry
	56 Reply to New Matter Pursuant to Rule 2252(d), filed by s/ Michael F. Nerone, Esquire. No CC 5	Paul E. Cherry
	57 Verification to Answer and New Matter and New Matter Under Pa. R.C.P. 2252(d). Filed by s/ John R. Benty, Sr. Deputy Attorney General. No CC 3	Paul E. Cherry
01/14/2005	58 Praecipe to Discontinue Action against Simon Transportation Services, Inc. (Simon Claims), filed by s/ Michael F. Nerone, Esquire, Edward A. Yurcon, Esquire, and John R. Benty, Esquire. 3	Paul E. Cherry
	59 Order, AND NOW, this 14th day of Jan., 2005, it is hereby ORDERED that the Order of Court of Oct. 1, 2001, sustaining Defendant Parker's Preliminary Objection, the certificaion for appeal of which was denies by the Court, is by this Order, rendered final and appealable. Judgment shall be entered in favor of defendant Parker and against Plaintiff. IT IS SO ORDERED: /s/ Paul E. Cherry, Judge 2	Paul E. Cherry
01/18/2005	60 Second Amended Answer and New Matter, filed by s/ Edward A. Yurcon, Esquire. No CC 21	Paul E. Cherry
	61 Reply To PA. R.C.P. 2252 (d) New Matter of Pennsylvania Department of Transporation, filed by s/ Edward A. Yurcon, Esquire. No CC 22	Paul E. Cherry
02/02/2005	62 Filing: Appeal to High Court Paid by: Owen, Jeffrey R. Esq (attorney for Lux, James U.) Receipt number: 1894943 Dated: 02/02/2005 Amount: \$45.00 (Check) 1 Cert. w/check to to Superior Court and 2 caert. to Atty. 12	Paul E. Cherry
02/03/2005	63 Order, NOW, this 3rd day of Feb., 2005, this Court having been served with Notice of Appeal in the above captioned matter, this Court notes that it will not be filing any further Order and Opinion but would include, by reference, its Opinion and Order of August 21, 2001, in the Opinion and Order appealed from. BY THE COURT: /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: J. Owen; Nerone; Pion; Yurcon; Seiferth; and Benty 1	Paul E. Cherry
02/11/2005	64 Appeal Docket Sheet, Pa. Superior Court Docket Number 250 WDA 2005, filed. 5	Paul E. Cherry

Civil Other

Date	Selected Items	Judge
03/27/2002	36 ORDER, NOW, this 27th day of March, 2002, re: Motion to Amend Interlocutory Order is DENIED. by the Court, s/JKR, JR., P.J.	John K. Reilly Jr.
04/03/2002	37 Certified Mail Receipt, filed. #7099 3400 0016 7880 5720 1	John K. Reilly Jr.
04/08/2002	38 Domestic Return Receipt. Filed #7099 3400 0016 7880 5720 no cc 1	John K. Reilly Jr.
06/10/2002	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc 6	John K. Reilly Jr.
	40 Answer, New Matter and New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc 12	John K. Reilly Jr.
06/17/2002	41 Reply to New Matter Pursuant to Rule 2252(d) Filed by s/Michael F. Nerone, Esq. Cert. of Svc. Verification s/Michael F. Nerone no cc 4	John K. Reilly Jr.
06/19/2002	42 Preliminary Objections of Defendant Jamie Harvey Parker to New Matter Pursuant to Pa. r. Civ.P. 2252(d) of Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. No Cert. Copies. 5	John K. Reilly Jr.
06/21/2002	43 RULE TO SHOW CAUSE, AND NOW, this 21st day of June, 2002, issued upon Defendants, GERALD E. ORT, TRUCKING, INC., ORT TRUCKING, INC. and SAMUEL THOMAS KNIGHT, returnable the 5th day of Sept., 2002, at 9:00 a.m. by the Court, s/JKR, JR., P.J. 2 cc Atty Seiferth 1	John K. Reilly Jr.
	44 Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon no cc 6	John K. Reilly Jr.
	45 Answer, New Matter and New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon No cc 12	John K. Reilly Jr.
07/01/2002	46 Reply to New Matter Pursuant to Rule 2252(d). Filed by s/Michael F. Nerone, Esq. Certificate of Service no cc 3	John K. Reilly Jr.
10/16/2002	47 ORDER, AND NOW, this 16th day of October, 2002, re: Preliminary Objections are GRANTED. by the Court, s/JKR, JR., P.J. cc to: Benty, Heilman, Owen, Yurcon, Seiferth, and Nerone 1	John K. Reilly Jr.
12/02/2002	48 "ORDER, AND NOW, this 15th day of October, 2002, this Court hereby SUA SPONTE DISMISSED the above-captioned appeal, as the matter has been settled, rendering the issue raised in the appeal moot. See In Re Cain, 590. A.2d 291 (Pa. 1991) (providing that an appellate court will not decide moot questions) PER CURIAM" 1	John K. Reilly Jr.
	49 Certificate of Contents of Remanded Record and Notice of Remand under Pennsylvania Rules of Appellate Procedure 2571 and 2572. Filed. 8	John K. Reilly Jr.
12/17/2002	50 Certificate of Service, Rule to File Complaint upon Plaintiff, GREGORY M. KRUK, ESQ. no cc 3	John K. Reilly Jr.
01/13/2003	51 Stipulation filed on behalf of Defendants Gerald Ort Trucking, Ort Trucking Inc. and Samuel T. Knight. Defendants R & F. Miller, Inc. and Eddie C. Roberts do hereby waive, release, discharge and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity asserted against Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight and these Defendants hereby wave, release, discharge, and dismiss with prejudice any and all cross-claims, claims for contribution and claims for indemnity which have been asserted against R&F Miller, Inc. and Eddie C. Roberts. No cc. 3	John K. Reilly Jr.
02/24/2003	62 Amended Answer And New Matter. filed by s/Edward A. Yurcon, Esquire Verification s/Eddie C. Roberts s/Linda Long Certificate of Service no cc 2	John K. Reilly Jr.
08/21/2003	X Miscellaneous Payment: Misc Fee Paid by: Lux, James U. Receipt number: 1865021 Dated: 8/21/2003 Amount: \$5.00 (Check)	John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 01-466-CD

JAMES U. LUX

VS.

**GERALD E. ORT TRUCKING, INC., ORT TRUCKING, INC.,
SIMON TRANSPORTATION SERVICES, INC., R. AND F.
MILLER, INC., SMAUEL THOMAS KNIGHT, EDDIE C. ROBERTS,
JAMIE HARVEY PARKER, AND PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION**

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	04/03/01	Civil Complaint	17
02	04/06/01	Sheriff Return	01
03	04/19/01	Praecipe for Appearance on behalf of Gerald E. Ort Trucking, Ort Trucking, Inc. and Samuel Thomas Knight, but John T. Pion, Esq. and Michael F. Nerone, Esq.	03
04	05/07/01	Praecipe for Appearance, on behalf of R and F Miller, Inc. and Eddie C. Roberts by Edward A. Yurcon, Esq.	03
05	05/07/01	Affidavit of Service, Complaint in Civil Action	06
06	05/11/01	Praecipe for Appearance, on behalf of Pennsylvania Dept. of Transportation by John R. Benty, Esq.	03
07	05/14/01	Preliminary Objections in the Nature of a Demurrer	26
08	05/14/01	Entry of Appearance on behalf of Simon Transportation Services, Inc. by Nancy L. Heilman, Esq.	03
09	05/14/01	Answer and New Matter	82
10	05/16/01	Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Knight's Answer to Complaint, New Matter and New Matter pursuant to Pa.R.Civ.P. 2252(d)	16
11	05/21/01	Preliminary Objections	06
12	07/31/01	Entry of Appearance on behalf of Defendant Jamie Harvey Parker by Robert A. Seiferth	01
13	08/10/01	Preliminary Objections of Defendant Jamie Harvey Parker	04
14	08/15/01	Order, Re: Preliminary Objections	01
15	08/22/01	Opinion and Order	07
16	09/14/01	Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission	09
17	09/20/01	Order, Re: Motion to Reconsider/Motion to Certify Interlocutory Appeal by Permission	01
18	09/28/01	Affidavit of Service, Order of Court of Sept. 20, 2001	04
19	10/01/01	Opinion and Order, Preliminary Objections	03
20	10/26/01	Plaintiff's Motion to Reconsider	10
21	10/30/01	Order, Re: Rule Returnable	01
22	11/02/01	Petition for Interpleader with Preliminary Order of Court filed 11/05/01	35
23	11/09/01	Motion to Join in Plaintiff's Motion to Reconsider	03
24	11/13/01	Order, Re: Rule Returnable	01
25	12/04/01	Answer to Petition for Interpleader	05
26	01/04/02	Opinion and Order, Re: Motion to Reconsider	05
27	01/14/02	Opinion and Order, Re: Petition for Interpleader	06
28	01/24/02	Notification of Bankruptcy on behalf of Eddie C. Roberts	35
29	02/01/02	Motion to Certify Interlocutory Order for Appeal	05
30	02/01/02	Appeal to High Court	12
31	02/07/02	Appeal Docket Sheet	05



Superior Court of Pennsylvania

Western District

February 5, 2002

David A. Szewczak, Esq.
Prothonotary

Eleanor R. Valecko
Deputy Prothonotary

330 Grant Street
Pittsburgh, PA 15219

412-565-7592
www.superior.court.state.pa.us

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 222 WDA 2002

James U. Lux

v

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon Transportation Services, Inc., R&F
Miller, Inc., Samuel Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker and
Pennsylvania Department of Transportation
Appeal of: Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel Thomas Knight

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

SMC

Date: 09/03/2002

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 11:23 AM

ROA Report

Page 3 of 3

Case: 2001-00466-CD

Current Judge: John K. Reilly Jr.

Civil Other

Date		Judge
02/07/2002	Appeal Docket Sheet. Docket Number: 222 WDA 2002	John K. Reilly Jr.
02/28/2002	Order, NOW, this 28th day of February, 2002, upon consideration of Motion to Certify Interlocutory Order for Appeal, it is the ORDER of this Court that said Motion be and is hereby DENIED. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Attorney Owen	John K. Reilly Jr.
03/13/2002	Suggestion of Bankruptcy of Simon Transportation Services, Inc. Filed by s/Nancy L. Heilman, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/18/2002	ORDER, NOW, this 18th day of March 2002. re: Motion to Reconsider is DENIED, and Motion to Certify Interlocutory Appeal by Permission is DENIED. by the Court, s/JKR, JR., P.J. 1 cc to Atty Owen, Benty, Heilman, 2 cc to Atty Yurcon, and 3 cc Atty Herone	John K. Reilly Jr.
03/25/2002	Motion To Amend Interlocutory Order. Filed by s/Edward A. Yurcon, Esq. Certificate of Service no cc	John K. Reilly Jr.
03/27/2002	ORDER, NOW, this 27th day of March, 2002, re: Motion to Amend Interlocutory Order is DENIED. by the Court, s/JKR, JR., P.J.	John K. Reilly Jr.
04/03/2002	Certified Mail Receipt, filed. #7099 3400 0016 7880 5720	John K. Reilly Jr. ✓
04/08/2002	Domestic Return Receipt. Filed #7099 3400 0016 7880 5720 no cc	John K. Reilly Jr. ✓
06/10/2002	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc	John K. Reilly Jr. ✓
	Answer, New Matter and New Matter Pursuant to Rule 2252(d). Filed by s/Edward A. Yurcon, Esq. Verified Statement s/Linda Long s/Eddie Roberts Certificate of Service no cc	John K. Reilly Jr. ✓
06/17/2002	Reply to New Matter Pursuant to Rule 2252(d) Filed by s/Michael F. Nerone, Esq. Cert. of Svc. Verification s/Michael F. Nerone no cc	John K. Reilly Jr. ✓
06/19/2002	Preliminary Objections of Defendant Jamie Harvey Parker to New Matter Pursuant to Pa. r. Civ.P. 2252(d) of Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc. and Samuel Thomas Knight. No Cert. Copies.	John K. Reilly Jr. ✓
06/21/2002	RULE TO SHOW CAUSE, AND NOW, this 21st day of June, 2002, issued upon Defendants, GERALD E. ORT, TRUCKING, INC., ORT TRUCKING, INC. and SAMUEL THOMAS KNIGHT, returnable the 5th day of Sept., 2002, at 9:00 a.m. by the Court, s/JKR, JR., P.J. 2 cc Atty Seiferth	John K. Reilly Jr. ✓
	Response to Defendants Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., and Samuel T. Knight's New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon no cc	John K. Reilly Jr. ✓
	Answer, New Matter and New Matter Pursuant to Rule 2252 (d), filed by Atty. Yurcon No cc	John K. Reilly Jr. ✓
07/01/2002	Reply to New Matter Pursuant to Rule 2252(d). Filed by s/Michael F. Nerone, Esq. Certificate of Service no cc	John K. Reilly Jr. ✓

WILLIAM A. SHAW

PROTHONOTARY
AND
CLERK OF COURT

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

P.O. Box 549
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(814) 765-2641 Ext. 1330
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COPY

April 3, 2002

Superior Court of Pennsylvania
Office of the Prothonotary
1015 Grant Building
Pittsburgh, PA 15219

RE: James U. Lux

vs

Gerald E. Ort Trucking, Inc., Ort Trucking, Inc., Simon
Transportation Services, Inc., R & F Miller, Inc., Samuel
Thomas Knight, Eddie C. Roberts, Jamie Harvey Parker, and
Pennsylvania Department of Transportation

No. 01-466-CD

Superior Court No. 222 WDA 2002

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed
to your office.

Sincerely,

William A. Shaw
Prothonotary

WILLIAM A. SHAW

**PROTHONOTARY
AND
CLERK OF COURT**

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



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Vs.

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Pennsylvania Department of Transportation

Court No. 01-466-CD; Superior Court No. 222 WDA 2002

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court
of Pennsylvania on April 3, 2002.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

WILLIAM A. SHAW

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WILLIAM A. SHAW

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Sincerely,

A handwritten signature in cursive script, appearing to read "William A. Shaw".

William A. Shaw
Prothonotary/Clerk of Courts