

# Lebanon County Legal Journal

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## *Public Notices*

### **DECEDENTS' ESTATES**

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## *Opinion*

**Konevitch v. Konevitch No. 2014-20241**

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**Jennifer Wentzel, Esq., Editor**

**DECEDENTS' ESTATES**

**NOTICE IS HEREBY GIVEN** that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

**FIRST PUBLICATION**

**ESTATE OF ERNESTINE A. FENNER**, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Larry A. Fenner, Executor  
c/o John E. Feather, Jr., Esquire  
Feather and Feather, P.C.  
22 West Main Street  
Annville, PA 17003  
ATTORNEY

**ESTATE OF JANE D. GURNEE**, late of 830 South Railroad Street of Palmyra Township, Lebanon County, Pennsylvania, deceased. Letters of Administration on the above estate having been granted to the undersigned, all persons indebted to the estate are requested to make payment, and those having claims to present the same, without delay, to the undersigned Administrator.

Elizabeth Darrach, Administrator  
c/o Lengert & Raiders LLC  
210 West Penn Avenue  
PO Box 223  
Robesonia, PA 19551

Attorney: Rich Raiders, Esquire  
Lengert & Raiders LLC  
210 West Penn Avenue  
PO Box 223  
Robesonia, PA 19551

**ESTATE OF WILLIAM F. LUDWIG**, late of Union Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Edward L. Ludwig, Executor  
126 South Center Street  
Fredericksburg, PA 17026

Bret M. Wiest, Esquire  
Buzgon Davis Law Offices  
P.O. Box 49  
525 South Eighth Street  
Lebanon, PA 17042

**ESTATE OF GLADYS A. SHERRID**, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

David C. Sherrid, Executor  
1639B Donegal Springs Rd.  
Mt. Joy, PA 17552  
Thomas S. Long, Attorney

**ESTATE OF LOIS I. STOUFFER**, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Debra L. Stouffer, Jack L. Stouffer and  
Tamela J. Fisher  
c/o Reilly Wolfson Law Office  
1601 Cornwall Road  
Lebanon, PA 17042

### **SECOND PUBLICATION**

**ESTATE OF BETTY L. HIRNEISEN**, late of Cornwall, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Mr. Jeffrey L. Hirneisen, Executor  
727 New Schaefferstown Rd.  
Bernville, PA 19506

Edward J. Coyle, Esquire  
Buzgon Davis Law Offices  
P.O. Box 49  
525 South Eighth Street  
Lebanon, PA 17042

**ESTATE OF CLARENCE R. REICHARD**, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Thomas D. Reichard, Executor  
James A. Reichard, Executor  
c/o Reilly Wolfson Law Office  
1601 Cornwall Road  
Lebanon, PA 17042

### **THIRD PUBLICATION**

**ESTATE OF E. PAUL COKELY, JR.**, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Doi Van Vo, Executor  
663 West Lincoln Avenue  
Myerstown, PA 17067  
Thomas S. Long, Attorney

**ESTATE OF KATHRYN J. KAYLOR**, late of Palmyra, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

J. Edward Kaylor, Executor  
c/o George W. Porter, Esq.  
909 E. Chocolate Ave.  
Hershey PA 17033

**ESTATE OF HAROLD L. KREISER,**  
late of Pine Grove, Schuylkill County,  
Pennsylvania, deceased. Letters  
Testamentary have been granted to the  
undersigned Executor.

Daniel H. Kreiser, Executor  
546 Suedberg Rd.  
Pine Grove, PA 17963

Bernerd A. Buzgon, Esquire  
Buzgon Davis Law Offices  
P.O. Box 49  
525 South Eighth Street  
Lebanon, PA 17042

**ESTATE OF JAMES L. SCHWARE,**  
late of the Township of Jackson,  
Lebanon County, PA, deceased. Letters  
Testamentary have been granted to the  
undersigned Executor.

Bonnie Staudt, Executor  
107 Huntzinger Road  
Wernersville PA 19565

William H. Sturm, Jr., Esq.  
Steiner & Sandoe, Attorneys



JOANNE WEISER KONEVITCH V. CHRISTOPHER G. KONEVITCH

NO. 2014-20241

*Civil Action-Family Law-Sanctions-Contempt-Marital Dissolution Agreement-Modification-Failure to Pay-Supervening Impracticability-Financial Inability to Pay*

Plaintiff Joanne Weiser Konevitch (“Wife”) filed a Motion for Sanctions alleging that Defendant Christopher G. Konevitch (“Husband”) failed to comply with an Order of Court that held him in contempt for failing to comply with the terms of the parties’ Marital Dissolution Agreement that was incorporated but not merged into their divorce decree in which he was required to pay Wife \$105,600.00 in monthly installments of \$1,100.00 for eight (8) years. In response, Husband asserted that his financial circumstances rendered it impossible for him to comply with making the monthly payments required by the parties’ Agreement.

1. When a marital settlement agreement has been incorporated but not merged into a divorce decree, principals of contract law govern the agreement unless the agreement provides otherwise.
2. The terms of a marital settlement agreement cannot be modified by the court in the absence of a specific provision in the agreement providing for judicial modification.
3. Section 261 of the Restatement (Second) of Contracts provides that where a party’s performance under a contract is made impracticable without his fault by the occurrence of an event, the nonoccurrence of which was a basic assumption upon which the contract was made, the party’s duty to render that performance is discharged unless language or circumstances indicate to the contrary.
4. Comment b to Section 261 states that the financial inability of one of the parties to complete obligations under a contract will not affect a discharge under that Section, and there must be the occurrence of a supervening event for discharge under that Section, the nonoccurrence of which was a basic assumption upon which both parties based the contract.
5. The theory of legal impossibility or impracticability is based upon an objective standard and will not apply if the performance remains practicable and merely is beyond a party’s capacity to render it.
6. Under the existing law in Pennsylvania, a party generally assumes the risk of his or her own inability to perform contractual duties.
7. In *Luber v. Luber*, 614 A.2d 771 (Pa.Super. 1992), the Pennsylvania Superior Court recognized that in order prevail under the theory of legal impracticability, a party must

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establish that the act contemplated under the contract, payment of a cash settlement, is incapable of being performed rather than the fact that he or she is incapable of performing it.

8. Husband's claim of personal inability to pay does not rise to the level of legal impossibility that would excuse his monthly payment of his obligations under the Agreement, as he assumed the risk of inability to pay at the time when he entered into the Agreement, and the Court has no authority to modify or to re-write the Agreement.

L.C.C.C.P. No. 2014-20241, Opinion by John C. Tylwalk, President Judge, June 28, 2017.

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY

PENNSYLVANIA

CIVIL DIVISION – FAMILY NO. 2014-20241

JOANNE WEISER KONEVITCH

v.

CHRISTOPHER G. KONEVITCH

APPEARANCES:

COLLEEN GALLO, ESQUIRE

FOR JOANNE WEISER KONEVITCH

REILLY WOLFSON

ANDREW BARBIN, ESQUIRE

FOR CHRISTOPHER G. KONEVITCH

ANDREW W. BARBIN, P.C.

**JOANNE WEISER KONEVITCH V. CHRISTOPHER G. KONEVITCH**

**NO. 2014-20241**

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ORDER OF COURT

AND NOW, this 28th day of June, 2017, upon consideration of the Petition for Sanctions filed by Plaintiff Joanne Weiser Konevitch, consideration of the transcripts of the parties' support proceeding, No. 2014-50241, submitted for our consideration, and after hearing conducted on May 8, 2017, the Court finds that Defendant Christopher G. Konevitch has failed to comply with the parties' Marital Dissolution Agreement and is, therefore, in contempt of the Order of Court of December 10, 2015. Accordingly, Defendant is remanded to the Lebanon County Correctional Facility for a period of six (6) months, commencing thirty (30) days from the date of this Order. This sentence shall be suspended and Defendant may purge himself of this Contempt by performance of the following:

1. Pay to Plaintiff the sum of \$7,700.00 for missed payments accruing from December 2016 to the date of this Order, as well as Wife's counsel fees in the amount of \$350.00 to be paid to Reilly Wolfson no later than thirty (30) days from the date of this Order.
2. Defendant shall make all further payments required under the parties' Marital Dissolution Agreement to Plaintiff no later than the 10th day of each month thereafter until the total sum has been paid in full.
3. In the event that Defendant misses any additional payments pursuant to Paragraph 15 of the parties' Marital Dissolution Agreement, the remaining amount due shall be accelerated with the balance due effective immediately.

BY THE COURT:

JOHN C. TYLWALK, P.J.



**JOANNE WEISER KONEVITCH V. CHRISTOPHER G. KONEVITCH**

**NO. 2014-20241**

OPINION, TYLWALK, P.J., JUNE 28, 2017.

The parties are before us on the Motion for Sanctions filed by Plaintiff Joanne Weiser Konevitch (“Wife”) charging Defendant Christopher G. Konevitch (“Husband”) with contempt of an Order entered on December 15, 2015 in which Husband was held in contempt for failing to comply with the terms of the parties’ Marital Dissolution Agreement (“Agreement”).<sup>1</sup> As part of the Agreement, Husband was to pay Wife the sum of \$105,600.00 in monthly installments of \$1,100.00 for a period of eight years. (See Agreement, Para. 15) After Wife filed a Petition for Contempt on October 2, 2015 for Husband’s failure to make the required payments, we conducted a hearing and issued an Order on December 10, 2015 in which we found Husband in contempt. In our Order, we directed that Husband would be incarcerated for a period of six months, but allowed him to purge himself by making the required payments and to pay Wife’s counsel fees and costs. That Order also provided that, in the event that Husband failed to comply with those conditions, we would entertain a motion for enforcement of the Order for his incarceration.

In her Motion for Sanctions, Wife alleges that Husband had given her checks in the amount of \$1,100.00 on December 8, 2016 and January 6, 2017, both of which were returned for insufficient funds. We conducted a hearing on the Motion for Sanctions on May 8, 2017. At the hearing, Husband testified to the effect that his current financial condition has rendered it impossible for him to meet this obligation. The parties agreed that we should review transcripts from the parties’ child support hearings in rendering a decision on Wife’s Motion for Sanctions. The transcripts from the support proceeding have been lodged, we have reviewed the parties’ testimony and documentary evidence from those proceedings, and Wife’s Motion is now ripe for disposition.

The support testimony indicates that Husband voluntarily quit his employment sometime during 2012. During the support hearings, Husband painted a dismal picture of his current financial position. Wife’s testimony countered with representations of Husband’s continued deceit as to his true financial circumstances. She explained that during the marriage Husband had substantial stock accounts, at times worth over one million dollars, which he did not disclose to Wife. Wife also described Husband’s practice of keeping large sums of cash hidden at the homes of his parents and friends without Wife’s knowledge. It is her position that he likewise presented inaccurate information at the support hearings in order to lower his child support obligation for the parties’ three minor children.

<sup>1</sup> The Agreement was executed on November 18, 2014 and was later incorporate by reference into the Final Decree of Divorce dated January 25, 2015.

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At the hearing before us, Husband also downplayed his economic position, claiming that he received little income from his self-employment with several businesses. As a result, he claims that he is unable to pay the \$1,100.00 per month in accordance with the parties' Agreement. Husband further admitted that he has failed to seek "regular" employment despite this downturn in his finances.

Regardless of whether or not Husband's current financial situation is as unfortunate as he claims, he is not entitled to relief from his obligations under the Agreement on that basis. When a marital settlement agreement has been incorporated but not merged into the divorce decree, principles of contract law govern the marital settlement agreement unless the agreement provides otherwise. *Stamerro v. Stamerro*, 889 A.2d 1251 (Pa. Super. 2005). The terms of a marital settlement agreement cannot be modified by a court in the absence of specific provision in the agreement providing for judicial modification. *Id.*

In *Luber v. Luber*, 614 A.2d 771 (Pa. Super. 1992), appeal denied 631 A.2d 1008 (Pa. 1993), the parties had entered a marital settlement agreement under which the husband was to make a cash payment to the wife. Husband claimed that he was unable to obtain financing necessary for him to meet his obligations under the agreement and argued that his performance should be excused due to legal impossibility. In finding no merit to the husband's argument, the court looked to Section 261 of the Restatement (Second) of Contracts:

§261. Discharge by Supervening Impracticability

Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event, the nonoccurrence of which was a basic assumption on which the contract was made, the party's duty to render that performance is discharged, unless language or circumstances indicate to the contrary.

Restatement (Second) of Contracts, §261. The court reasoned:

... Husband's assertions betray a misunderstanding of the concept of legal impossibility or impracticability. Comment b to § 261 indicates that in order for a discharge to occur under this theory there must be the occurrence of a supervening event, the nonoccurrence of which was a basic assumption on which both parties based their contractual agreement. Comment b to § 261 also states that the financial inability of one of the parties to complete obligations under the contract will not effect a discharge under this Section. The theory of legal impossibility or impracticability is based on an objective standard and will not apply

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if a performance remains practicable and is merely beyond a particular party's capacity to render it. § 261 of the Restatement (Second) of Contracts, comment e; *Dorn v. Stanhope Steel, Inc.*, 368 Pa.Super. 557, 534 A.2d 798 (1987), appeal denied, 518 Pa. 656, 544 A.2d 1342 (1988). In order to prevail under the theory of legal impracticability, Husband must establish that the act contemplated under the contract, payment of the cash settlement, is incapable of being performed, rather than the fact he is incapable of performing it. *Craig Coal*, at 300, 513 A.2d at 439.

Here, Husband does not assert that performance itself under the present contract is impossible but merely states that, due to other financial obligations, he is unable to perform. Husband provides us with no authority under which his assertion of financial inability to perform, without more, would constitute a basis for discharging his duties under the present contract, nor has our independent research revealed any. Under the existing law of this Commonwealth, a party generally assumes the risk of his own inability to perform his contractual duties. *Dorn*, at 588, 534 A.2d at 813; Restatement (Second) of Contracts § 261, comment e. As Husband's assertion merely indicates a personal inability to perform his duties under the contract, it does not rise to the level of legal impossibility or impracticability. We, therefore, are unable to grant the relief Husband requests under this theory.

*Luber*, 614 A.2d at 774.

This reasoning is applicable to the instant matter. The Agreement in this case was incorporated but not merged into the parties' divorce decree. Husband argues only that his downward turn in financial circumstances has rendered him incapable of fulfilling his contractual duty of making monthly payments to Wife, not that the performance of this obligation is incapable of being performed. His claim of personal inability does not rise to the level of a legal impossibility which would excuse his monthly payment obligations under the Agreement. Husband assumed the risk of his inability to pay these monthly amounts when he entered the Agreement and we have no authority to modify or rewrite those terms.

For these reasons, we will grant Wife's Motion for Sanctions.