The Sheriff of Franklin County is directed to amend his schedule of distribution to award Marlin E. Gayman all proceeds of the mortgage foreclosure sale over and above the principal sum due on the original mortgage of the Cumberland Valley Savings and Loan Association, interest thereon, costs and proper counsel fees.

Exceptions are granted Cumberland Valley Savings and Loan Association.

COMMONWEALTH EX REL., REIDOUT v. SHAFFER, C.P. Franklin County Branch, F. R. 1978 - 457 - S

Petition to Vacate Judgment - Pa. RCP 2034(d) - Minor

1. The setting aside of a decree of judgment is descretionary with the Court.

2. A verdict of judgment entered against a minor before selection of a guardian is voidable only.

3. The test in determining whether the verdict of judgment should be vacated is whether the minor's interests are sufficiently protected, i.e., whether the case is adequately prepared, defended and tried so as to assure the minor's rights are sufficiently protected.

John F. Nelson, Assistant District Attorney, Counsel for the Commonwealth

Frederic G. Antoun, Jr., Esq., Counsel for Defendant

OPINION AND ORDER
PETITION TO APPOINT GUARDIAN AND TO VACATE VERDICT AND JUDGMENT

KELLER, J., May 2, 1979:

April J. Reidout signed her complaint for support against Stephon J. Shaffer on October 26, 1978. The complaint alleged that Nicholas D. Reidout, son of the plaintiff and defendant, was born December 20, 1977; is in the custody of the plaintiff; that the plaintiff has demanded the defendant to contribute to the support and maintenance of the child; and that the defendant has neglected and refused to provide proper support for the child; and that the plaintiff is receiving Public Assistnace bi-weekly in the amount of $41.00 for the said child. An order was signed November 21, 1978, setting December 13, 1978 at 1:30 o'clock P.M. for the date and time for hearing on the

matter. On December 13, 1978 counsel for defendant advised the Court that the defendant denied paternity and desired to have the matter tried by a jury, and on motion of counsel an order was entered continuing the case and placing it on the list for trial by jury on January 8, 1979, at 9:30 o'clock A.M. On January 5, 1979 on application of the defendant for blood tests, an order was entered directing the plaintiff, defendant and defendant's son, Nicholas D. Reidout, to appear on January 18, 1979 at the Carlisle Hospital, Carlisle, Pennsylvania and submit to blood testing and analysis and continuing the trial until the results of said blood tests are available.

The defendant waived trial by jury and on March 15, 1979. The Court heard the testimony of the plaintiff and the defendant's witnesses; observed the child, Nicholas Drew Reidout; heard the arguments of counsel, and concluded that the plaintiff had established by a preponderance of the evidence the paternity of the child, and that Stephon J. Shaffer, defendant, was the father of the child. Hearing was scheduled for March 28, 1979 at 1:30 P.M. on the issue of the appropriate amount of the order for support. On March 27, 1979 counsel for the defendant petitioned the Court alleging that the defendant was 17 years old of age at the time of trial, and would not reach majority until April 20, 1979, and that he was not represented by a guardian at the time of the trial, and therefore a guardian should be appointed and the verdict entered against the defendant in favor of April J. Reidout be vacated and a new trial ordered. On March 28, 1979 the matter was stayed pending further action of the Court on the defendant's petition, and counsel were directed to prepare and present to the Court briefs on the issues raised by the petition. Briefs have been received and the matter is ripe for disposition.

Preliminarily, it is appropriate that we note that we have reviewed our trial notes of the bench trial and can conclude without any reservation that the defendant was ably and capably represented by Frederic G. Antoun, Jr., Esq., throughout the preparation of the case and in the presentation of the defense.

Case law interpreting Pa. R.C.P. 2034(d) establishes that the setting aside of a decree of judgment is discretionary with the court, and that a verdict or judgment entered against a minor before selection of a guardian is voidable only. *Herron v. Piatone*, 95 Mont. Co. Reports 290 (1972); *Ohlweiler v. Ohlweiler*, 72 Pa. Super. 518 (1919); *Hamilton v. Moore*, 335 Pa. 433, 6 A. 2d 787 (1939).

The test in determining whether the verdict or judgment

should be vacated is whether the minor's interests were sufficiently protected, i.e., whether the case was adequately prepared, defended and tried so as to assure that the minor's rights were fully protected. *Hamilton v. Moore*, supra.; *Herron v. Piatone*, supra.; *Keystone Ins. Co. v. Winters*, 78 York Legal Record 208 (1965). In the case at bar the Court is well-satisfied that the minor's rights were fully protected and that the interests of all parties require that the verdict not be vacated.

We also observe that the appointment of a guardian at this point in time would serve no useful purpose. In *Hamilton*, the court appointed a guardian to investigate and report upon the minor's position. In the instant case, as in *Keystone*, the record is complete and adequately informs the court of the protections afforded to the defendant minor before and at the time of trial. At present, the defendant is no longer a minor and does not require the protection of a guardian ad litem and the vacating of the verdict will be denied.

ORDER OF COURT

NOW, this 2nd day of May, 1979, the Petition to Appoint Guardian and to Vacate Verdict and Judgment, is denied. The Domestic Relations Division of this Court will schedule this matter for hearing at the earliest convenient date, so that a determination can be made of the amount of support to be paid by the defendant. The first payment due on said order shall be April 30, 1979, notwithstanding the date of hearing.

Exceptions are granted the defendant.

GREENCASTLE-ANTRIM SCHOOL DISTRICT, ET AL. v. PETERSON, ET AL., C.P. Franklin County Branch, E.D. Vol. 7, Page 177

School Directors - Removal from Office - Insufficiency to State a Cause of Action

1. The removal of an officer, duly elected by the people, is highly penal in nature and can only be exercised if the power is clearly granted by statute.

2. Illegal acts of school directors can be restrained, but their discretionary acts cannot be controlled by the Courts.

Thomas A. Beckley, Esq., and *Bradley S. Gelder, Esq.*, Attorneys for the Plaintiffs

Jack M. Stover, Esq., *Jack M. Hartman, Esq.*, and *Frederic G. Antoun, Jr., Esq.*, Attorneys for Defendants

OPINION AND ORDER

EPPINGER, P.J., May 14, 1979:

Five directors of the Greencastle-Antrim School District brought this action in equity seeking removal of three other directors of the school district and reimbursement of certain legal fees. The defendant directors demurred to the Complaint; their demurrer is now before us.

The first issue here is whether equity has jurisdiction. Plaintiffs argue that, while there may be statutory and constitutional provisions permitting removal of school directors, these legal remedies are inadequate; therefore, they are properly in equity. The removal procedures are stated to be inadequate because the plaintiffs are seeking monetary damages as well as removal of the directors.

Plaintiffs say they cannot avail themselves of any of the statutory or constitutional removal procedures. The constitutional provisions permit removal of civil officers for misbehavior in office or conviction of any infamous crime (Art. VI, Sect. 7) and removal of elected civil officers by the Governor for reasonable cause on the address of two-thirds of the Senate (Art. VI, Sect. 7). One statutory provision permits removal of school directors for failure to organize or for refusing or neglecting to perform any duty imposed on them by the School Code when ten resident taxpayers in the district petition for their removal, Act of March 10, 1949, P.L. 30, art. III, Sect. 318 (24 P.S. Sect 3-318). The School Code authorizes school directors to declare another director's office vacant in some circumstances — e.g., if newly elected or appointed school director refuses or neglects to qualify as director or if a qualified school director refuses or neglects to attend two successive meetings (barring illness or necessary absence) or refuses or neglects to act in his official capacity at meetings. Act of March 10, 1949, *supra*, Sect. 319 (24 P.S. Sect. 3-319).

Defendants argue that the above removal procedures are exclusive. Plaintiffs believe that since they are unable to remove defendants under any of these provisions, they have no adequate remedy at law and are properly in equity.

Regardless of whether the plaintiffs are found to be properly in equity, the result of this case will be the same. The second issue, whether plaintiffs have stated a cause of action against defendants, is the determinative one.

Defendants' demurrer takes as true all well-pleaded facts in the complaint. In their complaint, the plaintiffs: (1) stated that