

Franklin County Legal Journal

Vol. 35, No. 48

June 1, 2018

Pages 139 - 155

Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

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Franklin County Legal Journal

The Franklin County Legal Journal is published by the Franklin County Bar Association, 100 Lincoln Way East, Suite E, Chambersburg, PA 17201-2291. Subscriptions for the weekly advance sheets are \$35 per year.

Legal notices and all other materials must be received by noon on Monday of the week of publication. Send all materials to Executive Director, editor, at legaljournal@franklinbar.org or by mail to the above address.

POSTMASTER: Send address changes to the Franklin County Legal Journal, 100 Lincoln Way East, Suite E, Chambersburg, PA 17201-2291.

Wells Fargo Bank, NA, Plaintiff v. Ronald and Dwain Sheffler and Carol Sheffler, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action – No. 2016-2772

Holding: Petitioner’s *Petition to Set Aside Sheriff’s Sale of Real Property* is GRANTED.

- a. Where all the parties have appeared timely and have fully litigated the matter, the Court will disregard a procedural defect, pursuant to Pa. R.C.P. 126, as no party’s substantial interests are affected and the action is not prejudicial to any party.
- b. It is a customary practice during sheriff sales that the responsibility falls to the bidder to be seen and acknowledged by the auctioneer (i.e. the bidder must communicate their bid).
- c. It is a customary practice during sheriff sales that the auctioneer has discretion to reopen the bidding if a bid is made prior to the “hammer falling” but is “missed” by the auctioneer. However, only upon the verification of a missed bid does practice allow the auctioneer to exercise his discretion to reopen bidding.
- d. One of the main purposes of an auction is to obtain the best financial return for the owner, however that purpose does not surpass the customary practice of ensuring ones bid is seen and recognized prior to the fall of the hammer and announcement of “sold.”

HEADNOTES

1. Under Pa. R.C.P. 3132, upon petition of any party in interest before delivery of the personal property or of the sheriff’s deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.
2. In order to bring a petition under Pa. R.C.P. 3132, a party must have standing. Under the standing doctrine, an individual must show a legitimate controversy in which the individual has somehow been “aggrieved” by the matter he seeks to challenge. *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003); *see also City of Philadelphia v. Commonwealth of Pennsylvania*, 838 A.2d 566, 577 (Pa. 2003).
3. An individual can demonstrate that he is aggrieved if he can establish that he has a substantial, direct, and immediate interest in the outcome of the litigation in order to be deemed to have standing. An interest is ‘substantial’ if it is an interest in the resolution of the challenge which ‘surpasses the common interest of all citizens in procuring obedience to the law.’ Likewise, a ‘direct’ interest mandates a showing that the matter complained of ‘caused harm to the party’s interest,’ i.e., a causal connection between the harm and the violation of law. Finally, an interest is ‘immediate’ if the causal connection is not remote or speculative. *Pittsburgh Palisades Park, LLC v. Commonwealth*, 888 A.2d 655, 660 (Pa. 2005)(citations omitted).
4. A Court can effectively disregard a procedural defect, pursuant to Pa. R.C.P. 126.
5. The Auctioneering Licensing and Trading Assistant Act defines “auction” or “sale at auction” as “a method for the sale . . . of property . . . through the solicitation of offers, in the form of bids, in an effort to advance the amount of bids to obtain the highest or most favorable offer.” 63 Pa. Stat. Ann. § 734.2.
6. Auctions should be open to free and fair competition. *Pa. Co. for Ins. On Lives and Granting Annuities v. Broad Street*, 47 A.2d 281, 287 (Pa 1946). Adopting a different standard

would establish a rule that would work “against sheriff’s sales by keeping away competitive bidders; they would be deterred by the ease with which an unsuccessful bidder could take the property away from the successful bidder. *Id.*

7. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.” U.C.C. § 2-328, Sale by Auction.

8. A “bidder may retract his bid until the auctioneer’s announcement of completion of the sale. . .” *Id.* at § 2-328(3).

9. A petition to set aside a sheriff’s sale is grounded in equitable principles. *See M & T Mortg. Corp. v. Keesler*, 826 A.2d 877 (Pa. Super. 2003); *Kaib v. Smith*, 684 A.2d 630 (Pa. Super. 1996).

Appearances:

J. McDowell Sharpe, Esquire, *Attorney for Petitioner*

George A. Michak, Esquire, *Attorney for Respondent*

Thomas Song, Esquire, *Attorney for Plaintiff*

OPINION

Before Sponseller, J.

This is an apparent case of first impression for the Commonwealth and involves a challenge to the results of a sheriff sale occurring on March 10, 2017. The property in question, located at 1971 Ashley Drive, Chambersburg, Franklin County, Pennsylvania (“the property”), was exposed for sale by the Franklin County Sheriff, via public auction (“the auction”), pursuant to a judgment entered in favor of Wells Fargo Bank, N.A. against Dwain and Carol Sheffler. The auction was conducted by Marvin Gene Amsley (“Auctioneer”) and overseen by Sheriff’s Deputy Brian Cramer (“Sheriff”). During the auction, Ronald B. Martin (“Petitioner”) and another bidder, Matthew Hurley, engaged in competitive bidding on the property. There was a bidding sequence during which the Auctioneer recognized consecutive bids tendered, alternately, by Petitioner and Mr. Hurley. Petitioner made an advancing bid of \$101,500.00 and the Auctioneer seeing no other bidder, knocked the property down to Petitioner and announced the property as “sold to No. 85” (Petitioner).

Within seconds of the Auctioneer announcing the property as sold to Petitioner, Bernadette Dabler (“Respondent”) declared to the room that the Auctioneer missed her advancing bid of \$102,000.00. Although Auctioneer acknowledged he knocked the property down to Petitioner, he reopened the bidding over Petitioner’s protests. After the bidding was reopened to

accept Respondent’s bid in the amount of \$102,000.00 and seeing no other bids, the property was knocked down to Respondent—despite Petitioner’s continued protests.

On April 10, 2017, Petitioner filed a *Petition to Set Aside Sheriff Sale of Real Property* and on May 8, 2017, Respondent filed an *Answer* to the petition and a *Petition to Strike the Petition to Set Aside*. On May 10, 2017, the Sheriff’s Department informed the Court that they would not be filing an answer nor would they be intervening in the instant matter. On May 12, 2017, this Court ordered Petitioner to respond to the Respondent’s *Petition to Strike the Petition to Set Aside* and set a date in which to hear the petitions. The Court held a hearing on September 18, 2017, wherein Petitioner was represented by J. McDowell Sharpe, Esq., Respondent was represented by George A. Michak, Esq., and Plaintiff, Wells Fargo, NA, was represented by Thomas Song, Esq. The Court heard testimony from Marvin Amsley, Brian Cramer, Mari Over, Ronald Martin, Matthew Hurley, Bernadette Dabler, Bryce Pugh and Nevin Rentzel. Having reviewed the evidence presented and the law, the Court renders the following decision:

Discussion

Party in Interest

First and foremost, Respondent argues that Petitioner is not a party in interest pursuant to Rule 3132 of the Pennsylvania Rules of Civil Procedure¹, and should not be permitted to proceed under the Rule. Contrarily however, the Court finds Petitioner is a party in interest. The Rule provides that:

Upon petition of *any party in interest* before delivery of the personal property or of the sheriff’s deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.

Pa. R.C.P. 3132.

The keystone to a party “in interest,” is standing. Under the standing doctrine, an individual must show a legitimate controversy in which the individual has somehow been “aggrieved” by the matter he seeks to challenge. *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003); *see also City of Philadelphia v. Commonwealth of Pennsylvania*, 838 A.2d 566, 577 (Pa. 2003).

An individual can demonstrate that he is aggrieved if he can establish that he has a substantial, direct, and immediate interest in the outcome of the litigation in order to be

¹ Hereinafter “Pa. R.C.P.”

deemed to have standing. An interest is ‘substantial’ if it is an interest in the resolution of the challenge which ‘surpasses the common interest of all citizens in procuring obedience to the law.’ Likewise, a ‘direct’ interest mandates a showing that the matter complained of ‘caused harm to the party’s interest,’ i.e., a causal connection between the harm and the violation of law. Finally, an interest is ‘immediate’ if the causal connection is not remote or speculative.

Pittsburgh Palisades Park, LLC v. Commonwealth, 888 A.2d 655, 660 (Pa. 2005)(citations omitted).

In the instant matter, it is uncontested that Petitioner was the original successful bidding party upon whom the property was “knocked down.” The evidence revealed that it is at this moment of knocking down and the announcement of the sale that Petitioner became bound to the sale and was not longer permitted to retract his bid. (Transcript of Proceedings, September 18, 2017,² at 66). As the Auctioneer proceeded to reopen the bidding, under protest by Petitioner, and a subsequent bidder was *also* announced as the successful bidder, it is unquestionable to this Court that the Petitioner has a legally sufficient interest to contest the Auctioneer’s action of reopening the bidding and announcing a different purchaser of the property. Stated another way, this Court finds that Petitioner is an interested party and has standing to bring the current action, i.e. Petitioner has a substantial, direct, and immediate interest in the outcome of this case.

Lack of Intervenor

Further, Respondent contends that Petitioner did not intervene as a party pursuant to Pa. R.C.P. 2327 and 2328, respectively. While this Court agrees that Petitioner did not intervene as a party to this matter, this Court is effectively disregarding the procedural defect, pursuant to Pa. R.C.P. 126, as all the parties with interest in the present matter have appeared timely and have fully litigated the matter. Thus, no party’s substantial interests are affected by such action and this action is not prejudicial to any party.

Petition to Set the Sale Aside

As stated above, the law relating to auctions involving real property is scarce and the issue at hand is a matter of first impression. While this Court recognizes that the posted terms of the Franklin County Sheriff’s Sale are controlling to the specific auction in question, they are silent as to the specifics of this contested matter and offer no guidance to this Court. Thus,

² Hereinafter “Tr.”

this Court must seek assistance elsewhere.

At its most basic level, a sale at auction does create a binding agreement for the purpose of selling and buying various items, whether an item is a good, a service or real property. In fact, the Auctioneering Licensing and Trading Assistant Act defines “auction” or “sale at auction” as “a method for the sale . . . of property . . . through the solicitation of offers, in the form of bids, in an effort to advance the amount of bids to obtain the highest or most favorable offer.” 63 Pa. Stat. Ann. § 734.2. Thus, this Court finds that a sale at auction, and the act of soliciting advancing bids through an auction, is the formation of an agreement for the sale of goods or property through an auctioneer and implies both “sales” and “contracts.” Therefore, this Court has considered customary practice, usage of trade, the Uniform Commercial Code, and contract law as persuasive authority in reaching its decision.

Based on the testimony presented, it is clear to this Court that there are two controlling customary practices at issue in this case: (1) the bidders’ responsibility to be seen and acknowledged by the auctioneer, (the bidder must communicate their bid); and (2) the auctioneer’s discretion to reopen the bidding if a bid is made prior to the “hammer falling” but is “missed” by the auctioneer. The Court therefore finds that custom first sets the duty on the bidder to be seen and the bid communicated to the auctioneer. Then, only upon the verification of a missed bid does practice allow the auctioneer to exercise his discretion to reopen bidding. It simply does not follow that a bidder can remain silent and unseen by an auctioneer and still be able to object to the sale after it is announced in order to re-enter the competitive bidding in which they were not originally successful. The Pennsylvania Supreme Court has held that auctions should be open to free and fair competition. *Pa. Co. for Ins. On Lives and Granting Annuities v. Broad Street*, 47 A.2d 281, 287 (Pa 1946) (Determining the rights of a mortgage company to redeem the property after the fall of the hammer and did not discuss any bid disputes). Adopting a different standard would establish a rule that would work “against sheriff’s sales by keeping away competitive bidders; they would be deterred by the ease with which an unsuccessful bidder could take the property away from the successful bidder.” *Id.*

In the instant matter, it is clear that Respondent’s bids were not acknowledged by the Auctioneer prior to the subject property being knocked down to the Petitioner. The Auctioneer and the Sheriff both testified that they did not see Respondent bid at any point and the two witnesses who were among the pool of bidders, Bryce Pugh and Matthew Hurley acknowledged that Respondent’s bids were unsuccessful. Tr. at 35-36, 50, 55. Respondent testified, via a non-articulated gesture to the Court, that she was holding her

bidding paddle at chest level to bid in an effort to conceal her bidding to other bidders in the room who were sitting or standing behind her. Further, when the Auctioneer announced Petitioner's bid twice before knocking down the sale, Respondent purposefully did not wave her paddle higher, stand or otherwise verbally announce anything to ensure her bids were communicated to the Auctioneer. Witness Bryce Pugh who is Respondent's informal bidding "coach" and who accompanied the Respondent to the sale, testified to the importance of being seen and having to be demonstrative to ensure a bid is not missed.

Ultimately, the Respondent did not meet the custom of ensuring that her bid was communicated to the Auctioneer and therefore neither the Auctioneer nor the Sheriff actually saw the Respondent bid. The Auctioneer testified that the Sheriff "called his attention to the missed bid," but that he did not see the bid himself. The Sheriff testified that he did not actually see the Respondent bid, but was responding to her declaration of her missed bid after the hammer had fallen and the sale was announced. As a consequence, neither individual who was participating in the auction saw the "missed" bid nor verified that the bid was timely made. Thus, this case is distinguishable from cases published in sister jurisdictions cited by the Respondent. *See generally Hoffman v. Horton*, 186 S.E.2d 79 (Va. 1972)(A trustee informed the auctioneer of the missed bid); *Kline v. Fineberg*, 481 So.2d 108 (Fla. Dist. Ct. App. 1985)(Officiating clerk acknowledged the missed bid); *Callimanopulos v. Christie's Inc.*, 621 F. Supp.2d 127 (S.D.N.Y. 2009) (Auctioneer spotters' brought the missed bid to the Auctioneers attention and a videotape of the auction confirmed the timing of the bid). While this Court is of the opinion that one of the main purposes of an auction is to obtain the best financial return for the owner, that purpose does not surpass the customary practice of ensuring ones bid is seen and recognized prior to the fall of the hammer and announcement of "sold."

This Court has also considered the Uniformed Commercial Code,³ however this Court does not find the Code persuasive. The U.C.C. § 2-328 articulates that "[w]here a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling." U.C.C. § 2-328, Sale by Auction. The U.C.C. further articulates that a "bidder *may retract* his bid until the auctioneer's announcement of completion of the sale. . ." *Id.* at § 2-328(3)(emphasis added). Thus, the U.C.C. allows for the reopening of bidding after the hammer falls, but *prior to the bidder being bound* by the sale. Here, the Petitioner was bound by the sale the moment the property was knocked down and the sale was announced, as acknowledged by the Auctioneer and ratified by Respondent's

³ Hereinafter "U.C.C."

own auctioneer expert witness, Nevin Rentzel. Tr. at 13, 66.

Ultimately, a petition to set aside a sheriff's sale is grounded in equitable principles. *See M & T Mortg. Corp. v. Keesler*, 826 A.2d 877 (Pa. Super. 2003); *Kaib v. Smith*, 684 A.2d 630 (Pa. Super. 1996). Courts have set aside sheriff's sales "where the validity of the sale proceedings is challenged, a deficiency pertaining to the notice of the sale exists, or where misconduct occurs in the bidding process." *Irwin Union Nat. Bank & Tr. Co. v. Famous*, 4 A.3d 1099, 1102 (Pa. Super. 2010)(citing *Blue Ball National Bank v. Balmer*, 810 A.2d 164, 167 (Pa. Super. 2002)). As such, this Court finds that the Respondent did not meet the customary practice of ensuring her bid was communicated to the Auctioneer. The Court further finds that the Auctioneer should not have reopened the bidding after knocking down the property and announcing the sale, thereby binding the Petitioner. Therefore, the Court finds that misconduct has occurred in the bidding process. The Court accordingly finds that the Petitioner has shown just and proper cause to set aside the sale. *See generally Merrill Lynch Mortg. Capital v. Steele*, 859 A.2d 788 (Pa. Super. 2004).

Conclusion

In light of the foregoing discussion, the Court will grant Petitioner's Petition to Set Aside Sheriff Sale of Real Property and dismisses Respondent's Petition to Strike the Petition to Set Aside. An Order consistent with this Opinion is attached.

ORDER OF COURT

NOW THIS 20th day of October 2017, following a hearing, the briefs of each party, and pursuant to the attached Opinion,

IT IS HEREBY ORDERED that Petitioner Ronald Martin's *Petition to Set Aside Sheriff's Sale of Real Property* is hereby **GRANTED**. It is **IT IS FURTHER ORDERED** that Respondent's *Petition to Strike Petition to Set Aside* is **DISMISSED**.

ACCORDINGLY, IT IS HEREBY FURTHER ORDERED that Ronald Martin is the successful purchaser at the Sheriff's Sale dated March 10, 2017, for the real property at 1971 Ashley Drive, Chambersburg, Franklin County, Pennsylvania, in the amount of \$101,500.00.

Pursuant to the requirements of Pa. R.C.P. 236(a)(2)(b) and (d), the Prothonotary shall immediately give written notice of the entry of this Order, including a copy of this Order, to each party's attorney of record, or

if unrepresented, to each party; and shall note in the docket the giving of such notice and the time and manner thereof.

Wells Fargo Bank, NA, Plaintiff v. Ronald and Dwain Sheffler and Carol Sheffler, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Civil Action – No. 2016-2772

HEADNOTES

1. An issue is waived when not timely raised. *Commonwealth v. Thompson*, 778 A.2d 1215, 1223 (Pa. Super. 2001).
2. Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances. Pa. R.C.P. 3132; *see also Irwin Union Nat. Bank & Tr. Co. v. Famous*, 4 A.3d 1099, 1102 (Pa. Super. 2010). Pursuant to a plain reading of the rule, a court may set aside the sale and (1) order a resale OR (2) enter any other order which may be just and proper under the circumstances.
3. A customary practice is the articulation of that which is usual and regular within a certain profession. *See generally Adams v. Pittsburgh Ins. Co.*, 76 Pa. 411, 411 (1874).
4. It is long recognized law of this Commonwealth that the reviewing court will give the trial court deference on the issues of credibility and weight of the evidence as the trial court "has had the opportunity to observe the proceedings and the demeanor of the witnesses." *A.J.B. v. M.P.B.*, 945 A.2d 744, 747 (Pa. Super. 2008)(citing *Dranko v. Dranko*, 824 A.2d 1215, 1219 (Pa. Super. 2003)).
5. Pursuant to the Pennsylvania Rules of Appellate Procedure 1925(a), a trial court is specifically prescribed to set forth an "opinion of the reasons for the order." Pa.R.A.P. 1925(a).
6. The opinion is intended to address the alleged errors on appeal, so the appellate court may have the benefit of the trial court's analysis on the exact issue raised on appeal. *See Richards v. Ameriprise Fin., Inc.*, 265 WDA 2015, 2016 WL 5076073, at *1 (Pa. Super. Ct. July 19, 2016); *see also Com. v. Lord*, 719 A.2d 306, 308 (Pa. 1998)("The absence of a trial court opinion poses a substantial impediment to meaningful and effective appellate review").

Appearances:

J. McDowell Sharpe, Esquire, *Attorney for Petitioner*

George A. Michak, Esquire, *Attorney for Respondent*

Thomas Song, Esquire, *Attorney for Plaintiff*

Statement pursuant to Pa.R.A.P. 1925(a)

Before Sponseller, J.

This case is a matter of first impression wherein Barkdoll Martin, LLC (“Petitioner”) petitioned to have the March 10, 2017 sheriff’s sale set aside, or alternatively, reinstate him as the declared purchaser of the property opposed to Bernadette Dabler (“Appellant”). On October 20, 2017, we issued an Order and Opinion granting the petition in favor of Petitioner, reinstating his originally declared winning bid at the auction. Appellant now appeals that decision.

FACTUAL HISTORY

As previously stated, this case involves a challenge to the result of a sheriff’s sale occurring on March 10, 2017. The property in question, located at 1971 Ashley Drive, Chambersburg, Franklin County, Pennsylvania (“the property”), was exposed for sale by the Franklin County Sheriff, via public auction (“the auction”), pursuant to a judgment entered in favor of Wells Fargo Bank, N.A. (“Appellee”) against Dwain and Carol Sheffler, the above captioned parties. The auction was conducted by Marvin Gene Amsley (“Auctioneer”) and overseen by Sheriff’s Deputy Brian Cramer (“Sheriff”). During the auction, Ronald B. Martin (a/k/a Barkdoll Martin, LLC/ Petitioner) and another bidder, Matthew Hurley, engaged in competitive bidding on the property. There was a bidding sequence during which the Auctioneer recognized consecutive advancing bids tendered, alternately, by Petitioner and Mr. Hurley. Petitioner made an advancing bid of \$101,500.00 and the Auctioneer seeing no other bidder, knocked the property down to Petitioner and announced the property as “sold to No. 85” (Petitioner).

Within seconds of the Auctioneer announcing the property as sold to Petitioner, Bernadette Dabler (“Appellant”) declared to the room that the Auctioneer missed her advancing bid of \$102,000.00. Although Auctioneer acknowledged he knocked the property down to Petitioner, he reopened the bidding over Petitioner’s protests. After the bidding was reopened to accept Appellant’s bid in the amount of \$102,000.00 and seeing no other bids, the property was knocked down to Appellant—despite Petitioner’s continued protests.

PROCEDURAL HISTORY

For the sake of brevity, this Court will limit its recitation of the procedural history to the portion of the record which concerns the present appeal. The auction for the property in question occurred on March 10, 2017. On April 10, 2017, Petitioner filed a *Petition to Set Aside Sheriff Sale of Real Property* and on May 8, 2017, Appellant filed an *Answer* to the petition and a *Petition to Strike the Petition to Set Aside*. On May 10,

2017, the Sheriff's Department informed the Court that it would not be filing an answer nor would it be intervening in the instant matter. On May 12, 2017, this Court ordered Petitioner to respond to the Appellant's *Petition to Strike the Petition to Set Aside* and set a date in which to hear the petitions. The Court held a hearing on September 18, 2017, wherein Petitioner was represented by J. McDowell Sharpe, Esq., Appellant was represented by George A. Michak, Esq., and Plaintiff/Appellee, Wells Fargo, NA, was represented by Thomas Song, Esq. The Court heard testimony from Marvin Amsley, Brian Cramer, Mari Over, Ronald Martin, Matthew Hurley, Bernadette Dabler, Bryce Pugh and Nevin Rentzel. At the conclusion of the hearing, this Court directed the parties to brief the matters. The briefs were received from Appellant and Petitioner on October 2, 2017, and October 5, 2017, respectively. This Court rendered an Opinion and Order of Court on October 20, 2017.

Subsequently, on November 6, 2017, Appellant filed a post-trial motion¹. On November 22, 2017, Appellant filed a *Notice of Appeal* before this Court could rule on the post-trial motion. On December 7, 2017, Petitioner filed a *Motion to Enforce October 20, 2017 Order* and Appellant filed a response and an *Application for Stay/Supersedeas Pending the Appeal*. On December 12, 2017, this Court granted the Application for Stay/Supersedeas and in effect, denied the motion to enforce the order. On December 19, 2017, Appellant filed a Concise Statement of Errors Complained of on Appeal. On December 20, 2017, Petitioner filed a *Motion to Reconsider* the stay, which this Court subsequently denied and directed the parties to seek relief in your Honorable Court. On January 12, 2018 your Honorable Court remanded the matter back to this Court to resolve the outstanding post-trial motions and for a final entry of judgment. On January 16, 2018, this Court denied Appellant's post-trial motions and on January 23, 2018, Petitioner praeciped for entry of judgment.

Appellant filed her second Notice of Appeal on January 25, 2018, and pursuant to this Court's directive regarding a concise statement of issues complained of on appeal, Appellant filed her Concise Statement on February 15, 2018. A subsequent *Motion to Enforce the October 20, 2017 Order* was filed by Petitioner on January 25, 2018. To date, this Court has not acted upon Petitioner's motion to enforce.

The Court will now respond to Appellant's claims of error in this Opinion and Order of Court pursuant to Pa.R.A.P. 1925(a).

ISSUES RAISED

¹ A facsimile of the motion was received on November 2, 2017.

Appellant raises the following issues in her Concise Statement:²

1. The Trial Court erred as a matter of law or abused its discretion by holding that a bidder's responsibility to obtain the auctioneer's attention when tendering a bid is a customary auction practice in this Commonwealth that swallows up the auctioneer's discretion to reopen the bidding for the purpose of recognizing a missed bid that was tendered prior to the fall of the hammer but unnoticed by the auctioneer;

2. The Trial Court erred as a matter of law or abused its discretion by holding that an auctioneer's discretion to reopen the bidding for the purpose of recognizing a missed bid that was tendered prior to the fall of the hammer, but unnoticed by the auctioneer, must be exercised prior to the original high bidder "being bound by the sale;"

3. The Trial Court erred as a matter of law or abused its discretion by holding that, in order for an auctioneer to reopen the bidding for the purpose of recognizing a missed bid that was tendered prior to the fall of the hammer but that went unnoticed by the auctioneer, the auctioneer must either have seen the overlooked bid or verified the overlooked bid with a third party;

4. The Trial Court erred as a matter of law or abused its discretion by holding that the Property was "knocked down" to Petitioner;

5. The Trial Court erred as a matter of law or abused its discretion by holding that Petitioner possess an interest in the Property that is recognizable as a matter of law or equity;

6. The Trial Court erred as a matter of law or abused its discretion by holding that Petitioner is a party in interest in this matter;

7. The Trial Court erred as a matter of law by granting relief, in its Order, to a non-party to these proceedings;

8. The Trial Court erred as a matter of law or abused by holding that a petition to set aside sheriff's sale under Pa. R.C.P. 3132 is the proper procedural vehicle in this case;

9. The Trial Court erred as a matter of law or abused by permitting Petitioner to prosecute its claims without a proper and necessary intervention pursuant to Pa.R.C.P. 2337 and 2328;

10. The Trial Court erred as a matter of law or abused its discretion by granting relief to Petitioner without, first, setting aside the Sheriff's Sale under Pa. R.C.P 3132;

11. The Trial Court erred as a matter of law or abused its discretion

² Concise Statement of Errors Complained of on Appeal, 2/15/2018.

by overruling Appellant's objections to Petitioner's cross-examination questions directed to Appellant's expert witness, Nevin Rentzel, calling on the witness to speculate as to a hypothetical bidder's reaction to an auctioneer giving fair warning that bidding was about to close;

12. The Trial Court erred as a matter of law or abused its discretion by overruling Appellant's objections to Petitioner's cross-examination questions directed to Appellant's expert witness, Nevin Rentzel, calling on the witness to opine on questions of law;

13. The Trial Court erred as a matter of law or abused its discretion by concluding that the auctioneer's reopening of the bidding for the purpose of recognizing Appellant's overlooked bid was inconsistent with customary practices in this Commonwealth when Appellant's expert witness, Nevin Rentzel, testified that such action was wholly consistent with customary practices in this Commonwealth;

14. The Trial Court erred as a matter of law or abused its discretion with its erroneous interpretation of the rule articulated section 2328(b) of the Uniform Commercial Code as adopted in this Commonwealth (13 Pa.C.S. § 2328(b));

15. The Trial Court erred as a matter of a law or abused its discretion by holding that Section 2328(b) of the Uniform Commercial Code as adopted in this Commonwealth (13 Pa.C.S. § 2328(b)) is not persuasive in this case;

16. The Trial Court erred as a matter of law or abused its discretion by failing to apply an abuse of discretion standard to the reopening of the bidding by the auctioneer;

17. The Trial Court's factual determinations are against the weight of the evidence;

18. The Trial Court erred as a matter of law or abused its discretion by failing to give any weight to the credible testimony of Bryce Pugh and Matthew Hurley that Appellant's advancing, but overlooked, \$102,000 bid was tendered prior to the fall of the hammer on Petitioner's \$101,500 bid;

19. The Trial Court erred as a matter of law or abused its discretion by misinterpreting and misapplying persuasive jurisprudence from sister states;

20. The Trial Court erred as a matter of law or abused its discretion by ignoring the legal effect of the fact that Appellant's advancing, but overlooked, bid was tendered prior to the fall of the hammer on Petitioner's bid;

21. The Trial Court erred as a matter of law or abused its discretion by holding that “misconduct . . . occurred in the bidding process.”
22. The Trial Court erred as a matter of law or abused its discretion by denying Dabler’s post-trial motions;
23. The Trial Court erred as a matter of law or abused its discretion because, in its initial 1925(a) Opinion, the Trial Court improperly revisited and revised the rationale for its disposition of this matter as set forth in its October 23, 2017 Opinion and Order;
24. The Trial Court’s initial 1925(a) Opinion is not supported by the weight of the evidence.

DISCUSSION

As many of Appellant’s claimed instances of error are repetitive or at least involve substantively similar analyses, for the sake of clarity and to avoid repetition of its own, this Court will discuss such similar/repetitive cited errors together.

ISSUES 1-4

The Court notes that the crux of each of the first four issues raised by Appellant mirror the issues raised in the petitions and responses thereto, as well as the issues addressed during the hearing. This is a matter of first impression and this Court has reviewed its Opinion and Order of October 20, 2017 on these very issues, and therefore, rests on that analysis.

ISSUE 5-9

Appellant’s arguments in issues 5-9 center on the procedural posture pertaining to this controversy. Appellant cites a list of reasons purporting to support her contention that a Petition to Set Aside a Sheriff’s Sale was improper and/or incorrectly utilized. At the hearing conducted on September 18, 2017, Appellant conceded that a person who claims an ownership interest in the property at question may bring a Petition to Set Aside a Sheriff Sale and as such, this Court finds that any argument beyond whether or not Petitioner has an ownership interest in the property is waived. Transcript of Proceedings, September 18, 2017³, pp.4-5; *see also Commonwealth v. Thompson*, 778 A.2d 1215, 1223 (Pa. Super. 2001)(A issue is waived when it is unclear what exactly is being challenged). Ultimately this Court found that Petitioner had an ownership interest in the property, and thus may bring a petition to set aside the sale. This Court has reviewed the its Opinion of

³ Hereinafter “Transcript”

October 20, 2017, dealing with the issue of Petitioner’s interest in property, and we stand by that analysis.

ISSUE 10

Next, Appellant argues that a Petition to Set Aside a Sheriff’s Sale requires that the sale must be set aside prior to any other action by the court. This Court concurs with this argument. A Petition to set aside a sale also allows for the court “set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.” Pa. R.C.P. 3132; *See also Irwin Union Nat. Bank & Tr. Co. v. Famous*, 4 A.3d 1099, 1102 (Pa. Super. 2010). Pursuant to a plain reading of the rule, a court may set aside the sale and (1) order a resale OR (2) enter any other order which may be just and proper under the circumstances. In the instant matter, this Court set aside the sale as to Appellant and awarded the ‘sale’ to the original declared purchaser, Petitioner. Therefore, this Court is unsure what precisely Appellant is challenging and further finds that any other articulation of the argument is therefore waived.

ISSUE 11

Appellant next claims this Court erred by allowing Appellant’s expert in auctioneering practices, Nevin Rentzel, to respond to cross examination questions regarding a hypothetical bidder’s reaction. This Court finds this articulation of error inaccurate and misleading. This Court finds that the auctioneering expert was not asked to speculate to a bidder’s reaction, but was rather asked to describe the customary practice of what a bidder should or should not do at a particular moment in time under hypothetical circumstances. In the instant matter, the expert was called upon by the Appellant to testify as to *customary auction practices*. A customary practice is just that – the articulation of that which is usual and regular within a certain profession. *See generally Adams v. Pittsburgh Ins. Co.*, 76 Pa. 411, 411 (1874). Any argument that the expert should not be able to articulate the customary practice during hypothetical situations, and posed to assist the trier of fact discern the customary practice, is without merit.

ISSUE 12

Next, Appellant argues that this Court erred by permitting the expert to opine on a question of law over Appellant’s objection. This argument is factually inaccurate. This Court did not overrule Appellant’s objection on this point, but rather sustained Appellant’s objection and did not permit such questioning. Transcript, pp. 67. For this reason, this issue is without

merit.

ISSUE 13

Appellant argues that this Court erred by finding more than one customary practice involving auctions applicable in this Commonwealth. This Court also finds this argument meritless. Despite Appellant's argument that her expert witness testified that reopening such bids was consistent with customary practices, her expert witness also testified that "it's up to the bidder to be seen" and therefore, supports our findings of the fact regarding customary auction practices. Transcript, pp.67. In regard to this Court's findings on customary auction practices based on the evidence and testimony presented during the hearing, this Court stands by its analysis of these issues in its Opinion of October 20, 2017.

ISSUE 14-15; 19

Appellant's arguments in issues 14-15 and 19 center around this Court's interpretation of persuasive authority from the Uniform Commercial Code⁴ and from sister states.⁵ Appellant argues that we misapplied this authority and/or held the authority as unpersuasive. This argument is also without merit. This Court ultimately found that the facts involved in the instant controversy distinguished the present matter from the cited cases and statutes; this Court did not find them "unpersuasive." This is a matter of first impression and this Court has reviewed its Opinion and Order of October 20, 2017, on these very issues, and we rest on that analysis.

ISSUE 16

Appellant argues in issue 16 that this Court erred by failing to apply an abuse of discretion standard to the reopening of the bidding by the auctioneer. This is the first time this Court is hearing this argument and as such, this Court finds that this action constitutes a waiver of the issue. In the alternative, this argument is without merit. This Court found that the Auctioneer abused its discretion when reopening the bidding process.

ISSUE 17-18, 20-21-20

In the next four issues, 17, 18, 20 and 21, Appellant argues that this Court erred in determining which party was more credible and argues that this Court made factual determinations against the weight of the evidence.

⁴ Adopted in this Commonwealth pursuant to 13 Pa.C.S. § 2328.

⁵ This Court notes that these statutes and cases were cited in Appellant's and Petitioner's Briefs.

This argument is also without merit. It is long recognized law of this Commonwealth that the reviewing court will give the trial court deference on the issues of credibility and weight of the evidence as the trial court “has had the opportunity to observe the proceedings and the demeanor of the witnesses.” *A.J.B. v. M.P.B.*, 945 A.2d 744, 747 (Pa. Super. 2008)(citing *Dranko v. Dranko*, 824 A.2d 1215, 1219, (Pa. Super. 2003). In the instant matter, Bryce Pugh (Appellant’s informal auction coach) and Matthew Hurley (an unsuccessful bidder who was engaged in competitive bidding with Petitioner), both acknowledged that Appellant’s bids were unsuccessful. Transcript, pp. 35-36, 50, 55. Further, Mr. Pugh, Appellant’s own coach, testified that one needs to be demonstrative to ensure a bid is not missed. Transcript, pp. 53-55. Based, at least in part, on Mr. Pugh’s relationship to Appellant and his role as her “coach” during the auction at issue, this Court did not find his testimony as to whether Appellant timely bid or made herself seen as a bidder particularly convincing, especially when weighed against the evidence to the contrary. In regard to Matthew Hurley’s testimony, he stated that he was positioned directly behind Appellant and therefore this Court found that he could not have seen her bid. In corroboration with this observation, Appellant testified that she purposefully kept her bidding paddle at chest level in order to conceal her bids from those seated behind her in the room. In light of Appellant’s admission to this furtive bidding practice, coupled with the fact that the Auctioneer and Sheriff never saw her place any bids, this Court cannot conclude that the evidence supports her contention that she actively participated in this auction, or at least did so in a manner that conforms to customary auction practices.⁶ In primary importance to this factual analysis, however is the fact that this Court found that neither the Auctioneer nor the Sheriff saw her alleged missed bid, and therefore the Appellant’s bids, if they were in fact made, were never acknowledged by those responsible for the auction until after its conclusion. As such, this Court disagrees with Appellant’s claims of error in this regard and urges this Honorable Court to reject Appellant’s claims on these cited errors.

ISSUE 22

In issue 22, Appellant argues that this Court erred in denying her post-trial motions. For all the reasons cited in this appeal, this issue is without merit.

ISSUE 23-24

In the last two issues, 23 and 24, Appellant argues that this Court

⁶ Customary auction practices such as “it’s up to the bidder to be seen” by the auctioneer as suggested by Appellant’s own expert witness as well as her friend and coach. See Transcript, pp. 53-55, 67.

erred by revisiting and revising our first 1925(a) Opinion dated December 29, 2017. Alternatively, Appellant argues that the 1925(a) Opinion dated December 29, 2017 is not supported by the weight of the evidence. These issues are wholly without merit and completely ignore the purpose of the 1925(a) Opinion.

Pursuant to the Pennsylvania Rules of Appellate Procedure 1925(a), a trial court is specifically prescribed to set forth an “opinion of the reasons for the order.” Pa.R.A.P. 1925(a). The opinion is intended to address the alleged errors on appeal, so the appellate court may have the benefit of the trial court’s analysis on the exact issue raised on appeal. See *Richards v. Ameriprise Fin., Inc.*, 265 WDA 2015, 2016 WL 5076073, at *1 (Pa. Super. Ct. July 19, 2016); see also *Com. v. Lord*, 719 A.2d 306, 308 (Pa. 1998)(“The absence of a trial court opinion poses a substantial impediment to meaningful and effective appellate review”). Any contention that this Court issued a new opinion on the issue(s) is meritless as this Court merely addressed the issues on appeal and provided the appellate court with this Court’s reasoning for the Opinion and Order of Court at issue in this appeal.

CONCLUSION

In light of the foregoing discussion, it is respectfully submitted that no error or abuse of discretion was committed by this Court during the proceeding. The record in this matter will be transmitted to the Commonwealth Court.

ORDER OF COURT

AND NOW THIS 2nd DAY OF March, 2018, pursuant to Pa. R.A.P. 1931(c),

IT IS HEREBY ORDERED THAT the Prothonotary of Franklin County shall promptly transmit to the Prothonotary of the Commonwealth Court the record in this matter along with the attached Opinion *sur* Pa. R.A.P. 1925(a).