

# Pennsylvania Court Dismisses Former Housing Authority Executive Director's Appeal in Originally 246-Article Case

By Amy Ginensky, Eli Segal, and Kaitlin Gurney

On January 12, 2015, the Pennsylvania Superior Court dismissed former Philadelphia Housing Authority (“PHA”) Executive Director Carl Greene’s appeal from the trial court’s grant of summary judgment in his lawsuit based on nearly a year of coverage by *The Philadelphia Inquirer* and *Philadelphia Daily News*. The trial court had granted summary judgment because of Greene’s failure to provide clear and convincing evidence of falsity or actual malice. The Superior Court, in contrast, dismissed his appeal—before any briefing—for an entirely non-substantive reason: Greene failed to order and pay for the transcript from a *Frye* hearing in the case.

## Trial Court Excludes Linguistics Expert and Grants Summary Judgment

In September 2011, Greene sued the owners of *The Philadelphia Inquirer* and the *Philadelphia Daily News* for defamation, false light invasion of privacy, and commercial disparagement based on 246 articles and editorials published between August 2010 and September 2011. The essence of his claims was that the newspapers’ year-long coverage of him—in the midst and aftermath of his suspension and termination by the PHA Board—was a contrived effort to increase readership and revenue based on the predetermined themes of corruption, misspending, sex, and deceit. Through pre-discovery motion practice, the number of publications at issue was cut to seventeen articles and editorials, published between November 1, 2010 and August 9, 2011.

In December 2013, after extensive discovery on a host of factual issues, the Defendants moved for summary judgment, arguing that Greene had failed to meet his falsity or actual malice burden as to any of the seventeen articles and editorials. Greene rooted his summary judgment response in large part on a linguistics expert report, pointing to the report repeatedly as evidence that Greene’s reading of the publications was reasonable and that the defendants acted with actual malice. On July 28, the Court

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held a full-day *Frye* hearing (Pennsylvania follows *Frye*, not *Daubert*) on the admissibility of the expert's testimony.

On August 1, just four days after the *Frye* hearing, Philadelphia Court of Common Pleas Judge Lisa M. Rau found the expert's report and testimony inadmissible and struck them from the record. Judge Rau issued an 18-page supporting opinion that explained that the expert was not qualified; his methodology was not reliable, scientific, or generally accepted; his testimony would not help a jury decide relevant issues; and his testimony would be unfairly prejudicial, confusing, and misleading. [\*Greene v. Phila. Media Network, Inc.\*](#), 2014 Phila. Ct. Com. Pl. LEXIS 236 (Pa. Com. Pl. Aug. 1, 2014).

That same day, after having excluded the expert's report and testimony, Judge Rau granted the defendants' summary judgment motion and dismissed Greene's claims as to all seventeen articles and editorials. In a footnote to her one-page summary judgment order—no opinion is required absent an appeal—she explained that Greene had “failed to provide the clear and convincing evidence of falsity or actual malice required to sustain his claims.”

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### **Greene's Short-Lived Appeal**

Greene appealed to the Pennsylvania Superior Court on September 3. The trial court, on September 9, 2014, directed him to comply with Pennsylvania Rule of Appellate Procedure 1911's mandate that the appellant request and pay for any transcripts required for the appeal—here, the *Frye* hearing transcript.

On November 19, 2014, the Superior Court ordered Greene to submit a statement within seven days as to whether he had complied with Rule 1911 and, if the answer was “yes,” to also submit copies of the transcript request and proof of payment. The Court made clear that failure to comply “will result in the dismissal of this appeal without further notice.”

Almost two months later, on January 12, 2015, the Superior Court followed through on its threat. The Court explained: “Appellant has not responded to this Court's Order of November 19, 2014, which directed Appellant to indicate whether he has complied with Pa.R.A.P. 1911(a), and to submit proof of compliance by November 26, 2014, or else risk dismissal of the appeal.” Thus, Greene's appeal was dismissed—before a briefing schedule was issued and before Judge Rau completed an opinion in support of her grant of summary judgment.

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And so, a hard-fought, three-plus-year lawsuit over a year's worth of newspaper coverage came to an anticlimactic end. While the case did not yield any new appellate authority, Judge Rau's opinion excluding Greene's linguistics expert remains on the books and should be a valuable tool for any media defendants—in Philadelphia or elsewhere—seeking to exclude similar experts in the future. In addition, in her opinion on the linguistics expert, Judge Rau provided a powerful explanation—sure to show up in media defendants' briefs for years to come—of just how important it is to our society for the press to be free to report on and criticize public officials:

The press must be permitted to write about public officials like Plaintiff Greene in order to keep the citizenry informed about the conduct of those serving in their government. Public officials in a democracy must be open to being evaluated by the press and the public they serve. Muzzling the press from criticizing public officials would threaten good government and ultimately threaten democracy's survival.

[Greene](#), 2014 Phila. Ct. Com. Pl. LEXIS 236, at \*12-13.

*Amy Ginensky, Michael Baughman, Kristin Jones, Raphael Cunniff, Eli Segal, and Kaitlin Gurney of Pepper Hamilton LLP represented defendants. Plaintiff was represented by Clifford E. Haines and Lauren Warner of Haines & Associates.*