

Rule 311. Interlocutory Appeals as of Right.

(a) General Rule. An appeal may be taken as of right and without reference to Pa. R.A.P. 341(c) from:

(1) *Affecting judgments.* An order refusing to open, vacate or strike off a judgment. If orders opening, vacating or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

(2) *Attachments, etc.* An order confirming, modifying or dissolving or refusing to confirm, modify or dissolve an attachment, custodianship, receivership or similar matter affecting the possession or control of property, except for orders pursuant to Section[s] 3323(f) [and] or 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f) and 3505(a).

(3) *Change of criminal venue or venire.* An order changing venue or venire in a criminal proceeding.

(4) *Injunctions.* An order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction [granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except for injunctions pursuant to] unless the order was entered:

(i) pursuant to Section[s] 3323(f) [and] or 3505(a) of the Divorce Code, 23 Pa. C.S. §§ 3323(f) and 3505(a).; or

(ii) after a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

[A decree nisi granting or denying an injunction is not appealable as of right under this rule, unless the decree nisi (i) grants an injunction effective upon the entry of a decree nisi or (ii) dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi.]

(5) *Peremptory judgment in mandamus.* An order granting peremptory judgment in mandamus.

(6) *New trials.* An order in a civil action or proceeding awarding a new trial, or an order in a criminal proceeding awarding a new trial where the defendant claims that the proper

disposition of the matter would be an absolute discharge or where the Commonwealth claims that the lower court committed an error of law.

- (7) *Partition*. An order directing partition.
- (8) *Estate and Trust Matters*. An order determining the validity of a will or trust.
- (9) *Other Cases*. An order which is made appealable by statute or general rule.

* * * * *

Official Note: Authority -- This rule implements 42 Pa.C.S. § 5105(c) (interlocutory appeals), which provides:

* * * * *

Paragraph (a)(4) (injunctions) – The 1987 amendment to paragraph (a)(4) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. *Fried v. Fried*, 509 Pa. 89, 501 A.2d 211 (1985); *O'Brien v. O'Brien*, 359 Pa. Super. 594, 519 A.2d 511 (1987).

The 1996 amendment to paragraph (a)(4) reconciled two conflicting lines of cases by adopting the position that generally an appeal may not be taken from a decree nisi granting or denying a permanent injunction. [*Humphreys v. Cain*, 84 Pa.Cmwlth. 222, 474 A.2d 353 (1984). To the extent that *Agra Enterprises, Inc. v. Brunozzi*, 302 Pa. Super. 166, 170, 448 A.2d 579, 581 (1982); *Martin Industrial Supply Corp. v. Riffert*, 366 Pa. Super. 89, 91, 530 A.2d 906, 907 (1987); *Bolus v. Ryder Truck Rental, Inc.*, 258 Pa. Super. 387, 388, 517 A.2d 995, 996 (1986); *Commonwealth ex. rel. Lewis v. Allouwill Realty Corp.*, 330 Pa. Super. 32, 35, 478 A.2d 1334, 1336 (1984); and *Neshaminy Constructors, Inc. v. Philadelphia, Pennsylvania Building and Construction Trades Council, AFL-CIO*, 303 Pa. Super. 420, 422 n.1, 449 A.2d 1389, 1390 n.1 (1982) permit an immediate appeal from a decree nisi granting or denying prospective injunctive relief, they are overruled.

The 1996 amendment to paragraph (a)(4) simultaneously recognized two exceptions to the non-appealability of a decree nisi; these exceptions, identified as phrases (a)(4)(i) and (ii), permit an appeal from a decree nisi if the order has the immediate effect of changing the status quo. Thus, if the decree nisi grants or denies permanent injunctive relief to become effective when the decree nisi is made final, no appeal is possible. If, however, the decree nisi provides for permanent injunctive relief upon entry of the decree nisi, or strikes a previously granted preliminary injunction upon entry of the decree nisi, the decree nisi is appealable pursuant to phrase (a)(4)(i) or (ii).]

The 2009 amendment to the rule conformed the rule to the 2003 amendments to the Pennsylvania Rules of Civil Procedure abolishing actions in equity and thus eliminating the decree nisi. Because decrees nisi were in general not appealable to the extent they were

not effective immediately upon entry, this principle has been expressly incorporated into the body of the rule as applicable to any injunction.

* * * * *