Circuit Court for Montgomery County
Case No. 434226V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2235

September Term, 2017

YVETTE PHILLIPS

v.

MARYLAND DEPARTMENT OF HUMAN RESOURCES

Nazarian,
Friedman,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 26, 2019

Yvette Phillips worked for the Prince George's County Department of Social Services ("DSS") as a case manager for vulnerable adults. On May 14, 2015, she was terminated, with prejudice, after an internal investigation revealed that she had lied to her supervisor about visiting five of her clients, then falsified those clients' files to include detailed accounts of the visits that never occurred. She appealed her termination decision first to the Department of Human Services[1] ("DHS") Employee Relations Unit, then to the Office of Administrative Hearings, then to the Circuit Court for Montgomery County, and each upheld her termination.

Ms. Phillips contends in this Court that DHS failed to follow the steps laid out in Maryland Code (1993, 2015 Repl. Vol.), § 11-106 of the State Personnel and Pensions Article ("SP") before it terminated her. We disagree and affirm.

I. BACKGROUND

On April 14, 2015, Ms. Phillips did not report for work. Her supervisor, Georgina Irondi, became concerned for her safety when she was still absent without explanation at 11:30 that morning. Ms. Irondi left a voicemail for Ms. Phillips, but received no response until about 4:00 p.m. At that time, Ms. Phillips informed Ms. Irondi that she had gone straight from home that morning to conduct client home visits, and had been so busy visiting five different clients that she had been unable to return Ms. Irondi's call.

The following morning, Ms. Phillips called and reported that she would be late.

[1] At the time of filing, the Department of Human Services was called the Department of Human Resources.

When she arrived at the office, Ms. Irondi asked to meet with her to discuss her previous days' visits so she could complete Ms. Phillips's timesheet. Ms. Phillips said she visited five clients on April 14: LR, VS, MB, JK, and NL.[2] She discussed two of the visits with Ms. Irondi in some detail.

LR was an "extremely vulnerable" 92-year-old woman with severe dementia. In addition to her cognitive difficulties, LR had substantial hearing and vision loss and needed daily assistance to attend to her personal needs, including bathing, dressing, feeding, and administering medication. LR could barely walk and had fallen while alone in her home on several previous occasions. Ms. Irondi described LR as one of her team's highest-risk clients. At the time of Ms. Phillips's purported visit on April 14, DSS was in the process of securing guardianship of LR in order to move her to a facility with around-the-clock supervision. In the meantime, DSS secured daily in-home care for LR through an outside provider for four hours daily. The contracts ran for ten days at a time and Ms. Phillips was responsible for renewing them. She assured Ms. Irondi on April 14 that the in-home services were in place and that LR was doing well.

Ms. Phillips also discussed in detail her visit with client VS, a morbidly obese woman who lived alone in a building for seniors and disabled adults. Ms. Phillips reported that when she arrived, she found VS crawling on the floor partially dressed. Ms. Philips and Ms. Irondi discussed at length how best to handle the situation if it happened again.

[2] For confidentiality reasons, we refer to recipients of social services by initials only. Md. Code (2007, 2018 Cum. Supp.), § 1-201 of the Human Services Article.

And they discussed additional resources for VS, such as her mother, her property manager, or emergency medical services. Ms. Phillips did not report anything remarkable about her visits with her other three clients.

On April 16, 2015, Ms. Irondi received an angry phone call from LR's niece in Colorado. The niece complained that her aunt had been found wandering the halls of her apartment building wearing only an open bathrobe. She also reported that LR had not received any in-home services in over a week, directly contradicting Ms. Phillips's case update two days earlier. Ms. Irondi was concerned by the inconsistency and began to investigate.

Upon reviewing LR's file, Ms. Irondi noticed "an immediate red flag [] that [Ms.] Phillips had already done her monthly home visit with [LR] on 4/8." Case managers are required to visit every thirty days, and because of their heavy caseloads, extra visits ordinarily are not made unless there is a clinical reason for them. Ms. Irondi found it strange that Ms. Phillips conducted two visits in under a week when there was nothing in LR's file that indicated a need for a second visit so close in time to the first. Ms. Irondi dug further and discovered, based on invoices from LR's in-home care provider, that LR's in-home services had stopped on April 7, which meant that LR had been without any in-home support for ten days.

At this point, gravely concerned for LR's safety, Ms. Irondi contacted the property manager[3] for LR's apartment building who confirmed that "no one had been there from

[3] Ms. Irondi testified that LR's dementia was so advanced that it would have been fruitless

[DSS] and the in-home aide services had dropped . . . the previous week." Ms. Irondi reinstated LR's in-home care immediately.

After delving into LR's case, Ms. Irondi believed that Ms. Phillips had lied about her visit with LR on April 14 and was concerned that the same might be true for the other four clients Ms. Phillips claimed to have seen that day. And her suspicions turned out to be well-founded. In reviewing VS's file, Ms. Irondi noticed, again, that the timing of Ms. Phillips's visit seemed unusual—she had been to see VS on April 1, but documented no clinical reason for a second visit two weeks later. Furthermore, Ms. Phillips's case note for her April 1 visit with VS indicated that upon arrival, VS was not dressed and was crawling on the ground, just as she purportedly had been on April 14. Ms. Irondi tried to reach VS on the phone, but she didn't answer. Ms. Irondi then called Simone Reid, the property manager for VS's apartment building, who informed her that VS had been sick and hadn't been in the building all week. Ms. Irondi later discovered that VS had been a patient at Providence Hospital from April 12 to April 17. When Ms. Irondi asked Ms. Phillips about her alleged April 14 visit with VS a second time, Ms. Phillips repeated the same detailed story.[4]

Ms. Irondi's review of the other three client files raised more concerns. Each client had already had their monthly home visit before April 14, and none of their records

to attempt to clarify things with her directly.

[4] At her OAH hearing, Ms. Phillips changed her story to contradict both Ms. Irondi's findings and her own notes from the visit.

provided any explanation for a second visit in such a short period of time. JK's file indicated that Ms. Phillips had been there for a visit the day before. Ms. Irondi spoke to each of the three remaining clients directly, and all three confirmed her suspicion that the April 14 visits had not actually occurred. JK confirmed that Ms. Phillips had been there that week, but only once. NL told Ms. Irondi that someone had been in her home on April 15 "to wash her up," but that no one had been to see her on April 14. (DSS caseworkers do not, according to Ms. Irondi, bathe their clients under any circumstances.) Finally, MB[5] confirmed that Ms. Phillips had not been to see him "for a couple of weeks." Throughout her inquiry, Ms. Irondi documented her conversations and findings pertaining to each client thoroughly.

After investigating the purported April 14 visits and conferring with her supervisor, Ms. Irondi made a disciplinary referral to Deon Carter, DSS's Human Resources Manager. Mr. Carter reviewed Ms. Phillips's client files in light of the information gathered by Ms. Irondi and concluded that Ms. Phillips likely had falsified them with detailed accounts of visits that never occurred.

Mr. Carter met with Ms. Phillips on May 4, 2015 for a mitigation conference. He told Ms. Phillips that she was entitled to bring a representative to the meeting, and he reviewed with her the possible disciplinary outcomes in her case. Ms. Phillips, who had attended a mitigation conference in the past, did not bring a representative. She told Mr. Carter that she had conducted home visits with five clients on April 14 and offered no

[5] The transcript of the OAH proceedings incorrectly refers to MB as NB.

evidence to refute Ms. Irondi's findings. In her defense, she stated only that some of her clients had dementia and may not remember that she had been to visit them that day.[6] At the end of the conference, Mr. Carter showed his notes to Ms. Phillips and offered her an opportunity to review and correct them. She made no corrections, but refused to sign the document.

Following the mitigation conference, Mr. Carter recommended that Ms. Phillips be terminated:

> [P]roviding falsified documents [] is misleading not only to the supervisor, but it places our clients in jeopardy as far as their health and well being. If any of these clients had any detrimental health factors going on or they had passed away in their home and we had no knowledge, or if something worse occurred, documentation that would have been provided . . . would reflect that there was actually a visit and a client was, to the contrary, actually in good health or in reasonable health. So by providing false documentation, it presents a detriment not only to the client, but then also could bring the State into disrepute . . . .

Mr. Carter sent his findings to then-Director Gloria Brown, who had the final authority to make the termination decision. And in light of the severity of Ms. Phillips's actions, Ms. Brown decided to terminate her with prejudice because "she could not have a clear conscience permitting Ms. Phillips to work for any [] sister social work service agencies here in the State of Maryland." As a result, Ms. Phillips is not permitted to seek employment with the State of Maryland for the rest of her life. The termination took effect

[6] LR suffers from severe dementia. The other four clients Ms. Phillips claimed to have visited on April 14 don't.

on May 14, 2015, and Ms. Phillips was informed in writing of the reasons for her termination and her rights to appeal, as required by SP § 11-106(a)(5).

On June 1, 2015, Ms. Phillips appealed her termination to the DHS Employee Relations Unit, which held a disciplinary appeal conference on July 29, 2015. On August 11, 2015, the Employee Relations Unit issued a written decision that upheld Ms. Phillips's termination. On August 18, 2015, Ms. Phillips filed an appeal with the Department of Budget and Management, which transferred the case to the Office of Administrative Hearings ("OAH").

Ms. Phillips filed a motion for summary decision on May 10, 2017. OAH held a hearing on Ms. Phillips's motion and a hearing on the merits on May 18, 2017. On June 20, 2017, OAH issued a ruling denying Ms. Phillips's motion[7] and upholding her termination. Ms. Phillips sought review in the Circuit Court for Montgomery County, which likewise affirmed, and she appeals. We supply additional facts below as needed.

II. DISCUSSION

Ms. Phillips raises entirely procedural objections to her termination[8] that distill to

[7] Ms. Phillips's motion asserted there was no dispute of material fact in her case, then proceeded to dispute virtually every one of DSS's claims.

[8] Ms. Phillips listed five Questions Presented in her brief:

> 1. Whether the Circuit Court erred by affirming the Administrative Law Judge's ("ALJ") decision to ignore the legal foundation of Title 11 ("Eleven") of the State Personnel and Pensions Article, which mandates that the appointing authority, in order, (1) conduct an investigation, (2) meet with the employee, and (3) consider mitigating circumstances before termination.

two arguments. She claims *first* that DHS failed to follow the procedures set forth in SP § 11-106, which violated the *Accardi* doctrine, and *second*, that DHS violated her fundamental right to due process. We take them in reverse order and disagree on both counts.

A. DSS Did Not Violate Ms. Phillips's Due Process Rights.

We can dispose *first*, and quickly, of Ms. Phillips's due process argument. The Due Process Clause provides that no one shall be deprived of "life, liberty or property without

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2. Whether the court in *Danaher v. Department of Labor Licensing and Regulation*, 148 Md. App. 139 (2002), made specifically clear that the State Personnel and Pensions section 11-106 dictates what actions must be taken between the date of discovery and the date of termination.
3. Whether the Maryland Department of Human Resources violated the *Accardi* doctrine by failing to follow its own procedures or rules under Title 11 of the State Personnel and Pensions Article.
4. Whether the Maryland Department of Human Resources violated the petitioners fundamental right to due process.
5. Whether the Circuit Court erred by adopting the ALJ's conclusion that the Maryland Department of Human Resources had substantial evidence to conclude that the Respondent systematically investigated the allegations of misconduct against the petitioner and substantiated its own claims of misconduct against the petitioner.

DSS framed the Questions Presented as follows:

1. Was there substantial evidence to support the ALJ's finding that the Department followed the procedural requirements of Title 11 of the State Personnel and Pensions Article?
2. Has Ms. Phillips failed to demonstrate a due process violation where she was afforded her first and second tier administrative appellate rights?

due process of law." U.S. Const. Amend. XIV. Article 24 of the Maryland Declaration of Rights provides similarly "[t]hat no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." "It is the function of due process to protect interests in life, liberty, and property from deprivation or infringement by government without appropriate procedural safeguards." *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 141–42 (2002) (internal quotations omitted). In the administrative context, due process requires that "agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to the parties appearing before them." *Id.* (cleaned up).

Due process encompasses a wide range of substantive and procedural rights. Ms. Phillips's due process argument asserts only, in a single paragraph, that she "was not afforded the right to properly understand the charges against her, confront witnesses that made adverse statements against her at the time of her 'meeting' with Carter, and properly respond to those allegations against her." A court ordinarily "will not decide a constitutional issue when a case can properly be disposed of on a non-constitutional ground." *McCarter v. State*, 363 Md. 705, 712 (2001) (cleaned up). But she doesn't contend that the procedures defined in the State Personnel and Pensions Article fail due process scrutiny—her constitutional theory tracks her statutory theory. And as we explain next, Ms. Phillips received the process she was due under the governing statutes, which provided her ample notice of the charges against her, and had a full opportunity to respond, not only

during the investigative process, but now through three levels of review.

B. The ALJ Properly Affirmed Ms. Phillips's Termination.

In reviewing an administrative agency action, our role is "precisely the same as that of the circuit court." *B&S Marketing Enterprises, LLC v. Consumer Protection Div.*, 153 Md. App. 130, 150 (2003) (*quoting Dep't of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283 (1994)). We do not "evaluate the findings of fact and conclusions of law made by the circuit court," but those of the administrative agency itself. *Id.* at 151 (internal citations omitted.) Our review is both narrow and highly deferential. *Maryland-Nat. Capital Park and Planning Comm'n v. Greater Baden-Aquasco Citizens Ass'n*, 412 Md. 73, 83 (2009). We will affirm an agency's factual findings provided there is "substantial evidence" to support them. *Kim v. Maryland State Bd. of Physicians*, 196 Md. App. 362, 370 (2010). That standard is met if "after reviewing the evidence in the light most favorable to the agency, [we] find [] a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Miller v. City of Annapolis Historic Pres. Comm'n*, 200 Md. App. 612, 632 (2011). Administrative credibility findings have "almost conclusive force," and this Court "may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved." *Kim*, 196 Md. App. at 370; *Mueller v. People's Counsel for Baltimore Cty.*, 177 Md. App. 43, 82–83 (2007). And although we review questions of law *de novo*, the "agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Bd. of Physicians Quality Assur. v. Banks*, 354 Md. 59, 69 (1999).

The guidelines for investigating and imposing disciplinary measures for state employees are outlined in SP § 11-106. The statute lists five steps the agency must take before imposing discipline:

> Before taking any disciplinary action related to employee misconduct, an appointing authority shall:
>
> (1) investigate the alleged misconduct;
>
> (2) meet with the employee;
>
> (3) consider any mitigating circumstances;
>
> (4) determine the appropriate disciplinary action, if any, to be imposed;
>
> (5) and give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.

Ms. Phillips contends that DSS failed to follow these statutory requirements and, as a result, violated the *Accardi* doctrine, which stands for the general principle that administrative agencies must follow their own rules and regulations.[9] Although federal in origin, our courts have applied *Accardi* to Maryland state agency decisions, including personnel decisions. *Danaher v. Dep't of Labor, Licensing & Regulation*, 148 Md. App. 139, 174 (2002) ("an agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so its action cannot stand and courts will strike it down.") (*quoting Smith v. State*, 140 Md. App. 445 (2001)). Ms. Phillips complains *first* that because Mr. Carter did not conduct the investigation himself, his findings were invalid, and *second*, that he didn't properly follow the

[9] The doctrine is named for the U.S. Supreme Court's decision in *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

procedures outlined in SP § 11-106 before recommending Ms. Phillips's termination. We disagree with both contentions.

1. Mr. Carter relied appropriately on Ms. Irondi's preliminary investigation.

Ms. Phillips's quarrel with Mr. Carter stems from her view that the procedures in SP § 11-106 must be carried out by, and only by, the agency's appointing authority. The "appointing authority" is defined in SP § 1-101(b) as "an individual or a unit of government that has the power to make appointments and terminate employment." The appointing authority herself typically is the agency head or a very senior official; for DSS, Ms. Brown is the Appointing Authority. Appointing authorities are, however, allowed to delegate their authority to perform personnel functions, and Mr. Carter, in his capacity as Human Resources Manager, is her delegate. Ms. Phillips does not dispute that Mr. Carter had properly been delegated to conduct her investigation—she claims that he was not permitted to rely on Ms. Irondi's preliminary inquiry into Ms. Phillips's conduct on April 14, and instead had to perform the entire investigation himself.

She's mistaken.[10] "It is quite clear from reading [SP] § 11-106 that there is no

[10] Ms. Phillips supported this contention in her brief *only* with citation to an unreported opinion of this Court. This raises two serious problems. *First*, unreported opinions are "neither precedent within the rule of stare decisis nor persuasive authority," and they may not be cited in any Maryland Court. Md. Rule 1-104. We could strike the brief for that reason alone, although we haven't and, because we are reaching the merits, won't do so this time.

Second, the case doesn't support the proposition for which she cites it. The parenthetical to the cite in her brief describes the case as "holding, although the appointing authority could delegate his or her authority to act, such delegation must be in writing and there was no evidence of a writing." In fact, the opinion states (with citation to reported authority) the basic proposition that "'[i]n the absence of evidence to the contrary, administrative

requirement that the appointing authority *personally* conduct an investigation of alleged misconduct." *Ford v. Dep't of Public Safety and Corr. Servs.*, 149 Md. App. 488, 499 (2003) (emphasis added). An appointing authority is permitted to rely on the relevant information gathered for him by reliable sources. *Id.*; *see also McClellan v. Dep't of Public Safety and Corr. Servs.*, 166 Md. App. 1, 24 (2005) ("An appointing authority may acquire knowledge of misconduct of an employee directly . . . or indirectly, through imputation of the knowledge of an agent"). Indeed, as a supervisor, Ms. Irondi was obligated to ensure that her case managers appropriately attend to their clients, to follow up on their work and, where appropriate, make disciplinary referrals. From there, as a matter of law and common sense, Mr. Carter was entitled to rely on the information Ms. Irondi provided after her preliminary investigation into Ms. Phillips's alleged misconduct.

2. DSS properly executed the procedures outlined in SP § 11-106.

Ms. Phillips claims next that Mr. Carter failed to carry out the procedures outlined in SP § 11-106 in three ways. She argues *first* that the substance of the investigation itself was lacking, *second*, that Mr. Carter neglected to consider mitigating circumstances before recommending termination, and *third*, that Mr. Carter improperly continued his investigation after meeting with Ms. Phillips for her mitigation conference.

officers will be presumed to have properly performed their duties,'" (*citing Foley v. K. Hovanian at Kent Island, LLC*, 410 Md. 128, 163 (2009) (*quoting Johnstown Coal & Coke Co. v. Dishong*, 198 Md. 467, 474 (1951)), then explains that the supervisor had testified that he had been designated, that the employee had never questioned his authority, and, critically, that the *employee* had never provided any evidence that the delegation had not been made in writing. The citation leaves a distinct misimpression that a failure by the supervisor to produce a written delegation undermines the validity of the investigation.

She relies solely on this Court's decision in *Danaher v. Department of Labor*, in which we found the appointing authority's execution of the SP § 11-106 procedures inadequate to support terminating an employee with prejudice. 148 Md. App. at 139. But unlike in this case, the appointing authority in *Danaher* never even tried to follow SP § 11-106. The supervisor conducted no investigation at all—the employee was terminated the same day he was informed of allegations that he sexually harassed a number of his female coworkers. There was "no indication in the record [] of an attempt by the Employer to verify or corroborate" those allegations. *Id.* at 167. The appointing authority never met with the employee or gave him a meaningful opportunity to respond to the accusations, as required under SP § 11-106(a)(2), and neglected to consider any mitigating circumstances before taking disciplinary action, as required under SP § 11-106(a)(3).

In stark contrast, Mr. Carter completed each of the procedural steps in SP § 11-106(a). Although § 11-106(a)(1) "does not detail how the Employer [is] to conduct the required investigation," we have found that an investigation is sufficient if it inquires into the matter carefully and systematically, *Danaher*, 148 Md. App. at 169, and Mr. Carter's investigation met that standard easily. He relied, and reasonably so, on Ms. Irondi's thoroughly documented preliminary investigation, and he took further investigative steps of his own before drawing any conclusions. He conducted his own review of Ms. Phillips's client files, and he gave Ms. Phillips the opportunity to refute the allegations against her. Based on everything he saw, Mr. Carter reached independently the same conclusion as Ms. Irondi—that Ms. Phillips "intentionally mislead[sic] her supervisor and falsified

documentation to support her claim," that her conduct demonstrated "dishonesty, deceit, and misrepresentation of the truth," and that Ms. Phillips had "willfully engaged in fraudulent activity."

Mr. Carter then met with Ms. Phillips, as required by SP § 11-106(a)(2). He informed her that the meeting was a mitigation conference and that they would discuss the allegations and provide her the opportunity to refute the claims or offer mitigating information. At the conference, Ms. Phillips "was adamant that she actually visited the clients," and offered nothing to refute or explain the results of Ms. Irondi's investigation except to suggest that her clients' dementia may be to blame for any inconsistencies. After the conference, she gave Mr. Carter copies of her contact notes for the visits in question, which Mr. Carter found were "written to certainly appear as if someone did actually make the visit."

Ms. Phillips complains that it was not appropriate for Mr. Carter to review those notes *after* the mitigation conference because "[i]f [Mr.] Carter possessed the information at the time of their 'meeting,' it would have given [her] 'a meaningful opportunity to respond to the accusations.'" This makes no sense: Ms. Phillips was aware of the content of those notes at the time of the mitigation conference *because she wrote them and provided them to Mr. Carter*. There was nothing preventing Ms. Phillips from responding to the content of those notes during her mitigation conference. And because she had a fair opportunity to respond to the allegations against her with knowledge of what those notes contained, Mr. Carter's review of the notes after the meeting raises no concerns either under

the language of SP § 11-106 or under basic principles of fairness. *Coleman*, 369 Md. at 142.

Finally, Mr. Carter did not fail to "consider any mitigating circumstances," as SP § 11-106(a)(3) requires. Mitigating information does not "constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability." *Maryland Reception, Diagnostic & Classification Ctr. v. Watson*, 144 Md. App. 684, 695 (2002) (*quoting Black's Law Dictionary* 903 (5th ed. 1979)). As the statutory language implies ("an appointing authority shall consider *any* mitigation circumstances" SP § 11-106(a)(3) (emphasis added)), the appointing authority can only consider mitigating circumstances when there *are* mitigating circumstances to consider. And at her meeting with Mr. Carter, Ms. Phillips didn't offer any. To the contrary, Ms. Phillips remained steadfast in her claim that she had visited her five clients on April 14, a story that neither Ms. Irondi nor Mr. Carter nor Ms. Brown found credible. The only mitigating information available to Mr. Carter was contained Ms. Phillips's personnel file and recent performance evaluations, and he reviewed them. His decision to recommend termination in light of Ms. Phillips's decade-long employment with DSS reflected the severity of Ms. Phillips indiscretions rather than any procedural failures.

The statute requires appointing authorities to investigate alleged employee misconduct fully before taking any disciplinary action in order "to prevent an appointing authority from imposing discipline on the basis of an unsubstantiated accusation." *Watson*,

144 Md. App. at 691. That is not remotely what happened here. Mr. Carter reviewed the facts fully before making his recommendation to Ms. Brown. Ms. Phillips had every opportunity to respond to the allegations and was unable to offer anything in her defense beyond doubling down on her demonstrably false claims that she visited her clients on April 14, 2015. Even now, she clings to a story that the ALJ found, and we agree, strains credulity. The ALJ's factual findings were supported by substantial evidence, and there were no errors in DSS's application of SP § 11-106.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.