

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cory A. Hoffman, as Administrator of the Estate of Trisha Lyn Hoffman, and in his own right	:	
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	:	
v.	:	No. 1162 C.D. 2024
	:	Argued: September 11, 2025
Norfolk Southern Railway Company and Pennsylvania Fish and Boat Commission	:	
	:	
	:	
Appeal of: The Patriot News/ PennLive	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge (P.)
HONORABLE MATTHEW S. WOLF, Judge

OPINION BY

PRESIDENT JUDGE COHN JUBELIRER

FILED: August 17, 2026

The Patriot News/PennLive (Patriot News)¹ appeals from the Order of the Court of Common Pleas of Dauphin County (common pleas) entered on June 25, 2024, denying Patriot News' Motion to Intervene and Unseal (Motion). The Motion requested that common pleas unseal a Petition for Approval of Wrongful Death and Survival Action under Seal (Petition for Approval) and accompanying documents relating to two settlement agreements (together, Settlement Agreements) between Cory A. Hoffman (Hoffman), as Administrator of the Estate of Trisha Lyn Hoffman (Decedent) and in his own right, and Norfolk Southern Railway Company (Norfolk Southern) and the Pennsylvania Fish and Boat Commission (PFBC),² respectively.

¹ Patriot News is a digital news platform with general digital circulation providing news coverage in Pennsylvania and its neighboring regions.

² The PFBC is an independent administrative commission. Section 301(a) of the Fish and Boat Code, 30 Pa.C.S. § 301(a).

Common pleas' initial order sealing the Settlement Agreements was not appealed and went unchallenged until Patriot News' Motion. Because we clarify the shifting burdens of proof relevant to a motion seeking to open an unappealed order sealing court records, and it is not clear from the record that the parties understood their respective burdens, including evidentiary burdens, we vacate and remand for further proceedings consistent with this opinion.

I. BACKGROUND

A. Common Pleas' Proceedings

The relevant facts of this case are not contested.³ This case stems from a tragic accident where, on September 5, 2016, a vehicle driven by Decedent, Hoffman's wife and the mother of their then three-month-old child (Child), was struck by a train operated by Norfolk Southern resulting in her death. The accident occurred while Decedent was leaving a boat launch owned by the PFBC in Halifax Township, Pennsylvania. (Common Pleas' Opinion (Op.) at 2.)⁴ The PFBC closed the boat launch, and it remains closed. Patriot News published several articles between 2016 and 2017 related to Decedent's death, the accident, and the safety of the railroad crossing and boat launch. (*Id.* at 3.)

Following this accident, Hoffman filed negligence claims against Norfolk Southern and the PFBC, and extensive litigation ensued between the parties for over five years. (*Id.*) Motions for summary judgment, motions in limine, responses and briefs were filed on the public docket, and oral arguments were heard in open court. Before trial commenced, Hoffman reached a settlement with Norfolk Southern and

³ See, e.g., *Real Pro Enters., LP v. New Hanover Township* (Pa. Cmwlth., No. 1347 C.D. 2021, filed Oct. 4, 2024), slip op at 1 n.2 (noting that the relevant facts were not in dispute and deriving the background from the trial court's opinion and original record).

⁴ Common Pleas' Opinion begins on page 319a of the Reproduced Recorded.

the PFBC. However, because the minor child was included in the Settlement Agreements, in accordance with Rule 2206(a) of the Pennsylvania Rules of Civil Procedure, common pleas had to approve the Settlement Agreements as being “fair and equitable” before they could be executed. Pa.R.Civ.P. 2206(a). The Settlement Agreements thus were filed with common pleas for approval.

Therefore, on November 14, 2022, Hoffman filed on the record a Joint Petition to File Under Seal the Petition for Approval of Wrongful Death and Survival Action (Petition to Seal). (Common Pleas’ Op. at 4.) Hoffman sought to file the Settlement Agreements and accompanying documents under seal contending that members of the community appeared to blame Decedent, Hoffman, and Child for the accident and closure of the boat launch, and because the Settlement Agreements required Hoffman to take steps to maintain the confidentiality of the Settlement Agreements. The Petition to Seal was granted by the Honorable John F. Cherry, the common pleas’ judge overseeing the proceedings at the time, in a two-sentence order, in which no findings supporting closure were made.⁵ (*Id.*; Reproduced Record (R.R.) at 101a.) On November 22, 2022, Hoffman filed the Petition for Approval and accompanying documents, which were approved by Judge Cherry and sealed. (Common Pleas’ Op. at 4.)

The case was then marked discontinued and ended on March 20, 2023. (*Id.* at 5.) The Petition for Approval and accompanying documents remain under seal pursuant to common pleas’ sealing orders. (*Id.* at 4.)

⁵ While both the Petition to Seal and the order granting that petition were arguably subject to the sealing order, they do not contain any financial or confidential information and appear, unredacted, in the Reproduced Record at pages 90a to 102a.

Patriot News sought access to the Settlement Agreement with the PFBC via the Right-to-Know Law⁶ (RTKL) in May 2023, which the PFBC denied on June 2, 2023, based on common pleas' sealing of the Settlement Agreements. On October 23, 2023, approximately one year after the initial sealing order was entered, Patriot News filed the Motion, seeking to intervene in the matter and requesting common pleas to unseal the Petition for Approval and accompanying documents. (*Id.*) Hoffman and Norfolk Southern opposed the Motion, and the PFBC did not participate. (*Id.*) On February 21, 2024, the case was reassigned to the Honorable Andrew H. Dowling. (R.R. at 303a.) On February 26, 2024, Judge Dowling held a hearing on the Motion, where counsel for the parties presented oral argument. (*Id.* at 304a-14a.) Hoffman was present at the hearing but did not testify. (*Id.*) Neither party presented evidence at the hearing, with Hoffman's counsel indicating he could not produce evidence of the original comments from the community blaming Decedent, Hoffman, and Child because Patriot News no longer had the comments online. (*Id.* at 312a.)

B. Common Pleas' Opinion

On June 25, 2024, common pleas denied the Motion. In its accompanying memorandum opinion, common pleas first considered whether Patriot News had demonstrated good cause to modify Judge Cherry's order originally placing the Settlement Agreements under seal. (Common Pleas' Op. at 5 (citing *In re Est. of duPont (duPont II)*, 2 A.3d 516, 525 (Pa. 2010)).)⁷ Common pleas reasoned that,

⁶ Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101-67.3104.

⁷ Initially, common pleas noted that Patriot News was not required to formally intervene to petition for the unsealing of the settlement agreements because the judicial proceedings had concluded. (Common Pleas' Op. at 4-5 (citing *Milton Hershey Sch. v. Pa. Hum. Rels. Comm'n*, 226 A.3d 117, 123 (Pa. Cmwlth. 2020)).)

under *duPont II*, a request to open sealed records is a distinct issue from whether records should be sealed in the first place. (*Id.*) Specifically, common pleas determined that Patriot News did not demonstrate the requisite “good cause” to open the sealed Settlement Agreements based on the asserted interest of public safety. (*Id.*) Common pleas noted that most of the documents filed in the litigation remain publicly available, including the parties’ claims, expert reports reflecting their opinions as to which entities bore responsibility for the accident, public hearings held by the PFBC, and the applicable regulations. (*Id.* at 5-6.) Common pleas found that the only documents Patriot News cannot access are the sealed Settlement Agreements, and no evidence was presented by Patriot News that unsealing these documents “would shed additional light on the safety of the subject railroad crossing, the subject boat launch, or the closure of the subject boat launch,” because “[t]he [s]ettlement [d]ocuments contain nothing regarding public safety or information as to the specific crossing.” (*Id.* at 6.)

Common pleas next considered whether unsealing the Settlement Agreements would allow Patriot News to enlighten the public as to the attribution of fault and liability between the parties. (*Id.*) Common pleas noted that typical settlement agreements contain language denying liability and all that the instant Settlement Agreements do is “set forth the allegations that were made, which are available in the publicly filed pleadings, the history of the case, which is also available in the publicly filed pleadings, [and] the total settlement amount and the proposed distribution of said settlement.” (*Id.*) Therefore, common pleas determined that because the only information in the Settlement Agreements that is not part of publicly available documents is “purely financial information” and how the same will be distributed, Patriot News did not establish how disclosure would be useful to

the public. Instead, common pleas noted that the public's interest in the sealed information was based on curiosity, which is not a permissible basis for opening sealed records. (*Id.* at 6-7 (citing *Katz v. Katz*, 514 A.2d 1374, 1377 (Pa. Super. 1986))).⁸

Common pleas also considered Patriot News' claim that the RTKL is applicable to the instant case and determined that the propriety of a trial court decision sealing documents is distinct from the public access requirements of the RTKL and the issue of Patriot News' RTKL request was not properly before common pleas. (*Id.* at 7 (citing Section 101 of the RTKL, 65 P.S. § 67.101).) Specifically, common pleas reasoned that the Motion did not constitute a request for judicial review of the PFBC's denial of Patriot News' request made under the RTKL because Patriot News was notified of the proper appeal procedures and did not appeal the PFBC's denial of disclosure to the OOR. (*Id.* at 8 (citing *Kyziridis v. Off. of Northampton Cnty. Dist. Att'y*, 308 A.3d 908, 912 (Pa. Cmwlth. 2024)).) As to Patriot News' claims that the settlement agreements utilized taxpayer funds and the use of taxpayer funds outweighs the parties' privacy interests, common pleas noted that Norfolk Southern is not a public entity and while the PFBC is a public entity, it is subject to a statutory cap for recoverable damages and any public funds related to the settlement between Hoffman and the PFBC is statutorily limited.⁹ (*Id.* at 7.)

⁸ "In general, Superior Court decisions are not binding on this Court, but they offer persuasive precedent where they address analogous issues." *Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018).

⁹ While common pleas cited Section 8553(b) of the act commonly known as the Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8553(b), which relates to tort actions against local government entities, as the basis for the statutory cap, Section 8528 of the Sovereign Immunity Act, 42 Pa.C.S. § 8528, cited by Hoffman imposes the statutory cap on the tort damages a Commonwealth agency may pay.

Finally, common pleas considered whether there had been good cause for sealing the Settlement Agreements in the first place and for them to remain sealed. Common pleas noted that there exists a common law right to access judicial records, but this right is not absolute, and courts retain supervisory power to manage their own files and records. (*Id.* at 8-9 (citing *In re 2014 Allegheny Cnty. Investigating Grand Jury (Grand Jury)*, 223 A.3d 214, 220 (Pa. 2019); *R.W. v. Hampe*, 626 A.2d 1218, 1220 (Pa. Super. 1993)).) Moreover, citing Pennsylvania Rule of Civil Procedure 223(4), Pa.R.Civ.P. 223(4),¹⁰ common pleas had “the authority to exclude the public or persons not interested from the proceedings.” (*Id.* at 10.)

Common pleas then reviewed the two methods under which to analyze requests for closure of judicial proceedings or records arising under the common law and the First Amendment to the United States Constitution, U.S. CONST. amend. I. (*Id.* at 9 (citing *In re M.B.*, 819 A.2d 59, 63 n.2 (Pa. Super. 2003)).)¹¹ Under the common law approach, the trial court must “balance the harm to the party seeking closure with the importance of disclosure to the public,” and the moving party bears the burden of showing that their secrecy outweighs the presumption of openness.

¹⁰ Pennsylvania Rule of Civil Procedure 223(4), in relevant part, provides:

Subject to the requirements of due process of law and of the constitutional rights of the parties, the court may make and enforce rules and orders . . . [r]egulating or excluding the public or persons not interested in the proceedings whenever the court deems such regulation or exclusion to be in the interest of the public good, order or morals.

Pa.R.Civ.P. 223(4).

¹¹ The First Amendment provides, in part, that “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” U.S. CONST. amend. I. “[T]he First Amendment right [of access speaks to] accessing the judicial proceedings and the ‘information’ contained therein.” *Commonwealth v. Long*, 922 A.2d 892, 897 n.6 (Pa. 2007).

(*Id.* (citing *In re M.B.*, 819 A.2d at 63 n.2).) Under the constitutional analysis, the party moving for closure must show that “closure serves an important governmental interest, and there is no less restrictive way to serve that interest.” (*Id.* (quoting *In re M.B.*, 819 A.2d at 63 n.2).) Moreover, “[t]he Constitutional law approach is generally applied in cases where the press or another interested party is seeking access to the proceedings.” (*Id.* (citing *PA ChildCare, LLC v. Flood*, 887 A.2d 309 (Pa. Super. 2005); *Zdrok v. Zdrok*, 829 A.2d 697, 699-700 (Pa. Super. 2003)).) In order to rebut the presumption of openness, “a party must demonstrate good cause which exists where closure is ‘necessary in order to prevent a clearly defined and serious injury to the party seeking closure’” and “[g]eneral concerns for harassment or invasion of privacy’ are not sufficient to support closure.” (*Id.* at 12 (alterations omitted) (first quoting *R.W.*, 626 A.2d at 1221; and then quoting *Commonwealth v. Long*, 922 A.2d 892, 906 (Pa. 2007)).)

Common pleas acknowledged Patriot News’ assertions that it has a constitutional right to access the sealed Settlement Agreements based on what is referred to as the “experience and logic test,” which was first adopted to preliminarily determine if the right to access attaches. (*Id.* at 11 (citing *Grand Jury*, 223 A.3d at 222).) However, common pleas did not engage in that analysis because it concluded that there was no dispute that the Settlement Agreements were only sealed because of common pleas’ order sealing the documents. Thus, common pleas determined that the general presumption of openness applied, and it was unnecessary to apply the experience and logic test to determine the openness of the documents. (*Id.* at 11-12.)

Applying the above-referenced balancing framework, common pleas determined that Hoffman and Norfolk Southern had satisfied their burden of

establishing good cause to seal the Settlement Agreements because they included sealed financial information related to Child, the privacy rights of a minor constitute an important government interest, and the financial information at issue is private information. (*Id.* at 12.) Moreover, common pleas stated that the only reason the Settlement Agreements and documents were filed with the court was because Pennsylvania Rule of Civil Procedure 2206, Pa.R.Civ.P. 2206,¹² requires court approval of settlements involving minors in wrongful death and survival actions. (*Id.* at 13-14.) Common pleas determined that it would be inconsistent with Rule 2206's mandate "to require the [s]ettlement [d]ocuments to be opened to the public when the only reason they were filed was to provide protection for . . . [C]hild." (*Id.*)

In addition, common pleas determined that Hoffman set forth sufficient factual information to show that he experienced harassment resulting from the

¹² Rule 2206, in relevant part, provides:

(a) No action for wrongful death in which a minor or an incapacitated person has an interest shall be discontinued nor shall the interest of a minor or an incapacitated person in any such action or in a judgment for damages recovered therein be compromised or settled until the court, upon petition of any party in interest, shall allow the discontinuance or approve the compromise or settlement as being fair and equitable.

(b)(1) When as the result of a verdict, judgment, compromise, settlement or otherwise it has been determined that a sum of money is due the plaintiff in an action for wrongful death, the court, upon petition of any party in interest, shall make an order designating the persons entitled to share in the damages recovered and the proportionate share of the net proceeds to which each is entitled. If a share shall be payable to a minor or incapacitated person, the court shall designate as the person to receive such share a guardian of the estate of the minor or incapacitated person, qualified to receive the fund, if there is one or one is to be appointed. The share to be received by the guardian of the estate may include a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments or a trust as described in subdivision (b)(4)(iii) of this [R]ule.

Pa.R.Civ.P. 2206(a)-(b)(1).

accident, closure of the boat launch, and lawsuit and was seeking to keep the Settlement Agreements private to not subject himself or Child to any further harassment. (*Id.* at 12-13.) Common pleas rejected Patriot News’ claim that Hoffman was seeking to avoid mere embarrassment, reasoning that

this is not a case where a [p]laintiff generally alleges that [they] might experience harassment if the public discovers the amount that [they] received from a settlement. Rather, this is a case where a widower, who has been diagnosed with Post Traumatic Stress Disorder after watching his wife perish in front of him, and his seven-year-old [Child], who lost [their] mother only a few months after [they were] born, have already experienced harassment and blame from the public as a result of this case and may experience intensified harassment if the [s]ettlement [d]ocuments are made public. Based on these facts, protecting [Hoffman] and . . . [C]hild from further harassment and protecting the little privacy that they have in this case serves the compelling government interests of protecting minor children, protecting privacy interests, and protecting citizens of this Commonwealth from harm.

(*Id.* at 13.) Common pleas determined that “[t]hese facts also greatly outweigh any presumption of openness.” (*Id.*) Common pleas further stated that in addition to protecting Hoffman and Child’s privacy, the Settlement Agreements were conditioned on confidentiality, and while not determinative on its own, “[i]t is axiomatic that courts have a policy in encouraging fair and amicable settlements of civil cases.” (*Id.*) In sum, common pleas concluded that “the relief was narrowly tailored to serve the interest of protecting . . . [Child] and preventing purely financial information from being released to the public while still providing the public with the information that it needs to determine the safety of the subject boat launch and train crossing.” (*Id.* at 14.) Patriot News then timely appealed.¹³

¹³ Patriot News initially filed this appeal with the Superior Court. The appeal was then transferred to this Court because of the inclusion of the PFBC, a Commonwealth agency, as a party. The PFBC, although a party, is not participating in this appeal.

II. DISCUSSION

Patriot News raises three issues which we have summarized: (1) whether common pleas erred by improperly imposing a burden on Patriot News to modify Judge Cherry's initial sealing order and by finding that Hoffman and Norfolk Southern met their burden of proving that the records should remain sealed; (2) whether it was error for common pleas to seal and maintain the seal of the Settlement Agreements where they contain payment of taxpayer funds despite the RTKL presumption of disclosure; and (3) whether common pleas erred in failing to address whether there was a constitutional right to access. Patriot News' first two issues raise questions about who bears the burden of proof in these types of cases, what the burden or burdens should be, and whether the parties here understood their respective burdens in these proceedings. In short, Patriot News appears to contend it was not required to make any showing (or present any evidence) before common pleas was obligated to determine whether the seal should be maintained and that Hoffman and Norfolk Southern always retained the burden of maintaining that seal.

A. General Legal Principles

In *Milton Hershey School v. Pennsylvania Human Relations Commission*, this Court summarized the general legal principles applicable to public access of judicial records, stating:

There is no dispute that “[o]ur courts have recognized a constitutional right of public access to judicial proceedings” under both the United States and Pennsylvania Constitutions, as well as an independent common law basis for such access. *P[A] ChildCare, LLC*, 887 A.2d at 312 (internal quotations and citations omitted). Thus, there is a “mandate for open and public judicial proceedings in both the criminal and civil settings.” *Id.* The right to open and public judicial proceedings includes “a general right to inspect and copy public records and documents, including judicial records and documents.”

[*Commonwealth v. Fenstermaker*, 530 A.2d [414,] 418 [(Pa. 1987)] (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 602 . . . (1978)). These rights are “not absolute, as the public may . . . be excluded from such proceedings or records to protect public or private interests.” *duPont [II]*, 2 A.3d at 519 (internal quotations and citations omitted); *see also Fenstermaker*, 530 A.2d at 420 (stating “the common law right to inspect documents . . . has not been held to be absolute,” but there is a presumption of openness). Pennsylvania courts have “recognized in many contexts that our courts have an inherent power to control access to their records and proceedings and may deny access when appropriate—for example, to protect the privacy rights of individuals.” *In re M.B.*, 819 A.2d at 62. Importantly, “general concerns for harassment or invasion of privacy” are not sufficient to support closure. *Long*, . . . 922 A.2d [at] 906

226 A.3d 117, 126-27 (Pa. Cmwlth. 2020) (alterations added).¹⁴

In resolving questions of public access to judicial records, this Court has set forth the constitutional and common law analyses and the respective burdens related thereto, as follows:

We begin by “highlighting that a request to seal or unseal judicial records is a matter committed to the discretion of the . . . court” whose records are at issue. *duPont [II]*, 2 A.3d at 521 (citing [*Commonwealth v. Upshur*, 924 A.2d [642,] 651 [(Pa. 2007)]]. In reviewing public access to judicial records, there are two methods of analysis: a constitutional analysis and a common law analysis. *In re M.B.*, 819 A.2d at 62 n.2. “[T]here is [an] overlap between the common law and the constitutional inquiries, since both rights of access seek to foster the fairness and the appearance of fairness of the . . . justice system.” *Long*, 922 A.2d at 897. The inquiry begins with a presumption of openness. In addressing **the constitutional right of access**, courts have “adopted the ‘**experience and logic**’ test.” *Id.* at 900-01. The experience test “considers whether there has been a ‘tradition of accessibility,’” and the

¹⁴ Pursuant to Pennsylvania Rule of Appellate Procedure 126(c)(2), “single-judge opinions, even if reported, shall be cited only for persuasive value and not as binding precedent.” Pa.R.A.P. 126(c)(2). Likewise, Section 414(b) of this Court’s Internal Operating Procedures provides that “a single-[j]udge opinion of this Court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.” 210 Pa. Code § 69.414(b). Here, we cite *Milton Hershey School* for its outline of the applicable law in these matters.

logic test considers “whether public access plays a significant positive role in the functioning of the particular process in question.” *Id.* at 900 (quoting [*Press-Enter. Co. v. Sup. Ct. of Cal.*, 478 U.S. 1, 8 (1986) (*Press-Enterprise II*)]). “In conducting the ‘logic’ inquiry, [the court] must balance two competing concerns – the value of openness . . . that enhances the fairness and perception of fairness in the . . . justice system versus the . . . privacy concerns” involved. *Id.* at 903. “If the right asserted is grounded in both experience and logic, then a right of access to the proceedings in question exists.” *Id.* It is then the burden of the party seeking closure to “rebut the presumption of openness by showing that closure serves an important governmental interest and there is no less restrictive way to serve that interest.” *In re M.B.*, 819 A.2d at 63 n.2.

The **common law approach** requires “the party seeking closure [to] show that [the] interest in secrecy outweighs the presumption of openness.” *Id.* “Where the presumption of openness attached to a public judicial document is outweighed by circumstances warranting closure of the document to public inspection, access to the document may be denied.” *Fenstermaker*, 530 A.2d at 420. Thus, under the common law approach, “the public may be ‘excluded, temporarily or permanently, from court proceedings or the records of court proceedings to protect private as well as public interests[, including]: . . . the privacy and reputations [of innocent parties]’” *Katz*, 514 A.2d at 1377 (quoting *In re Nat’l Broad. Co.*, 653 F.2d 609, 613 (D.C. Cir. 1981)) (first alteration added).

Id. at 127-28 (alterations added). The Court further explained:

Access to judicial records may be limited by other principles as well, such as statutory or regulatory provisions or court rules. For example, access to “files and records of the court in a proceeding under” the Juvenile Act is limited, and those materials are disclosable to the public under only very limited circumstances. Section 6307 of the Juvenile Act, 42 Pa.[.]C.S. § 6307. Similarly, . . . [courts are] bound by the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania (Public Access Policy) adopted by the Pennsylvania Supreme Court. The Public Access Policy recognizes the importance of the public’s access to the courts, but also acknowledges that court filings may contain “extensive amounts of personal data concerning individuals’ finances, unique identifiers, medical history, and so on” and the need for courts to consider “issues regarding the need for

openness and transparency and the concern for personal privacy and security.” *Explanatory Report of the Public Access Policy* at 1-2.[□] Sections 7 and 8 of the Public Access Policy address how to file “Confidential Information” and “Confidential Documents” with the Court, as such information and documents are not subject to access by the public. Notably, both sections reflect that they are “not applicable to cases that are sealed,” meaning that none of the relevant redactions or special filing of forms apply to sealed cases as those cases are not accessible to the public. See Section 7.0(A) and *Commentary*, and Section 8.0(A) and *Commentary* of the *Public Access Policy*.

In applying these principles, the Court is mindful that access to court records is to

assure the public that justice is done even-handedly and fairly; to discourage perjury and the misconduct of participants, to prevent decisions based on secret bias or partiality; to prevent individuals from feeling that the law should be taken into the hands of private citizens; to satisfy the natural desire to see justice done; to provide for community catharsis; to promote public confidence in government and assurance that the system of judicial remedy does in fact work; to promote the stability of government by allowing access to its workings, thus assuring citizens that government and the courts are worthy of their continued loyalty and support; to promote an understanding of our system of government and courts.

Fenstermaker, 530 A.2d at 417.

Id. at 128-29 (brackets added).

B. Burden Shifting

Patriot News argues that common pleas erred in imposing any burden on it to prove a reason to modify Judge Cherry’s initial sealing order and the burden of proof always rested with Hoffman and Norfolk Southern to establish the ongoing need to maintain the seal. Patriot News reasons that because, in the initial sealing order, Judge Cherry did not make any findings supporting that order, the cases imposing the burden of proof on the proponent of sealing the record, *see Long*, 922 A.2d 892;

In re M.B., 819 A.2d 59, require that Hoffman and Norfolk Southern bore the only burden of proof in this matter. (Patriot News’ Reply Brief (Br.) at 6.) Patriot News asserts that *duPont II* is inapplicable and should not have been relied upon here to require it to justify the unsealing. (Patriot News’ Br. at 19, 25; Patriot News’ Reply Br. at 16.) In contrast, common pleas, Hoffman, and Norfolk Southern rely on *duPont II* to hold that Patriot News, as the proponent of unsealing, bore the burden of establishing good cause to unseal the Petition for Approval and both Settlement Agreements before common pleas had to rebalance the interests. Moreover, it appears that Hoffman and Norfolk Southern believed they bore no evidentiary burden **to maintain** the seal with updated reasons for doing so by not presenting evidence at the hearing.

Before us is a request to unseal documents that are subject to a previously issued sealing order. In *duPont II*, our Supreme Court addressed non-party requests to unseal documents, distinguishing between the initial request to seal records and instances where a non-litigant later petitions to unseal such records. The Supreme Court explained that “[w]here a judicial record has been impounded and there is no claim that such action was improper, a qualitatively different circumstance pertains” to later attempts to unseal the impounded records. *duPont II*, 2 A.3d at 524. Following an extensive analysis, our Supreme Court reasoned that there is no “authority tending to support the concept that a constitutional presumption of openness attaches to the record of proceedings in a case . . . where a sealing order has been entered and remains unchallenged.” *Id.* at 525. Thus, our Supreme Court held that **the moving party “bore the burden to ‘demonstrate good cause’ to modify the [initial] order placing the [subject] documents under seal.”** *Id.* (emphasis added). *duPont II* involved the sealing of records in incapacity

proceedings under Section 5511(a) of the Probate, Estates and Fiduciaries Code (PEF Code), 20 Pa.C.S. § 5511(a), which statutorily allows for the closure of the proceedings and records to the public given the inherent nature of those proceedings. The import of the nature of those proceedings was at the forefront of the Supreme Court's analysis in *duPont II*.¹⁵

We later examined *duPont II* in *Milton Hershey School*, a case involving complaints made to the Pennsylvania Human Relations Commission and records relating to students at the private school, observing:

In *duPont [II]*, the Supreme Court emphasized that, in determining whether to grant public access to a sealed record, **its analysis was guided by the nature of the underlying proceedings**, there, incapacity and guardianship proceedings, in which **“the common-law presumption of openness ha[d] been substantially curtailed through legislative enactment”** 2 A.3d at 522. See Section 5511(a) of the [PEF] Code, 20 [Pa.C.S.] § 5511(a) (which allows for the closure of incapacity proceedings to the public). In this context, the Supreme Court rejected the idea that the burden forever remained on the party who sought to seal or to retain the seal on the record because “[s]uch an approach would be, at best, inflexible” and “at odds with the concept that the constitutional mandate is not absolute.” *duPont [II]*, 2 A.3d at 524-25. Rather, the Court permitted flexibility “in view of the courts’ supervisory powers over their records.” *Id.* at 525. For these reasons, the Supreme Court held that **neither the common law nor**

¹⁵ In *In re Estate of duPont*, 966 A.2d 636 (Pa. Super. 2009) (*duPont I*), which was affirmed by our Supreme Court in *duPont II*, the Superior Court found the reasoning of the United States Court of Appeals for the Third Circuit (Third Circuit) in *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994), a case involving a sealed settlement agreement with a local government entity, persuasive in determining whether good cause exists. The Superior Court explained:

The Third Circuit held that a party seeking to modify an order of confidentiality or sealed settlement agreement must come forward with a reason to modify the order, and once this is done, the court should balance the interests, including reliance by the original parties to the order, to determine whether good cause still exists for the order.

duPont I, 966 A.2d at 639. In *duPont II*, our Supreme Court did not disturb this reasoning in affirming the Superior Court's order.

constitutional law requires a court to place the burden of demonstrating the need for continued confidentiality whenever a non-litigant seeks access to the record in an incapacity proceeding. *Id.* at 521, 525. Rather, in that context, **the burden lies on the individual seeking public access to the records to “demonstrate good cause” to modify the order sealing the matter**, an approach that respects a court’s prior order, while also providing a means through which the public can seek to access those records. *Id.* at 525.

Milton Hershey School, 226 A.3d at 127 (emphasis added). However, *Milton Hershey School* also recognized the differing nature of the proceedings in that case and those in *duPont II*, observing that it was unclear that *duPont II*’s discussion of the burden of proof would apply in situations where the openness of the proceedings was not substantially curtailed by statute. With that observation, the Court in *Milton Hershey School* explained that if the *duPont II* standard applied, the party seeking to unseal the judicial records there had come forward with good cause to modify the initial sealing order and this Court then proceeded to balance the interests.

Similar to *duPont II*, the proceedings here, a civil tort action, involve a situation where the right to access may be curtailed by the civil rules reflecting the importance of **protecting minors’ best interests**, similar to how the right to access was substantially curtailed by statute in *duPont II*. For example, the Norfolk Southern Settlement Agreement, a settlement agreement between private parties, was filed with common pleas only because the interests of a minor were involved, and Rule 2206 and Pennsylvania Rule of Civil Procedure 2039, Pa.R.Civ.P. 2039,¹⁶ require court approval of settlements involving minors. In *Estate of Murray by York Bank and Trust Co. v. Love*, a wrongful death action involving minor children, the Superior Court held that “[t]he purpose of [] [R]ule [2206] is to ensure that a minor’s

¹⁶ Pennsylvania Rule of Civil Procedure 2039(a) states that “[n]o action to which a minor is a party shall be compromised, settled or discontinued except after approval by the court pursuant to a petition presented by the guardian of the minor.” Pa.R.Civ.P. 2039(a).

interest is protected and that any settlement entered into for the benefit of the minor is fair and equitable” and that “Rule 2039 was adopted to ensure that **the interests of minor litigants are protected above all other conflicting interests.**” 602 A.2d 366, 369 (Pa. Super. 1992) (emphasis added). Moreover, in *Storms v. O’Malley*, the Superior Court stated that “Rule[2039’s] primary purpose is to ‘prevent settlements which are unfair to minors, and to ensure that the minor receive[s] the benefit of the money awarded[.]’” and “[i]n considering whether to approve the settlement of a minor’s claim, the court focuses on the **best interests of the minor.**” 779 A.2d 548, 556 (Pa. Super. 2001) (citation omitted). In other words, Rules 2206 and 2039 focus on protecting the interests of minors, similar to the statutory protections permitting closure of proceedings in the best interests of incapacitated individuals examined in *duPont II*. It was on this basis, at least partially, that Hoffman sought the sealing of the documents in the first instance. (Hoffman’s Br. at 4-6; Common Pleas’ Op. at 1.)

While this matter is unlike *duPont II* because Patriot News challenges Judge Cherry’s **initial** order sealing the records as having been improperly entered, that order is a **final, unappealed order**. Under general principles of respecting such orders and the time limits on modifying judicial orders, it would be inappropriate to revisit and modify that order without requiring Patriot News, as the moving party, to show good cause for doing so.

In *duPont II*, the Supreme Court examined a request to unseal records from an incapacity proceeding by an appellant who claimed to be a beneficiary of a trust of the incapacitated person. The High Court noted that the appellant “was not a party to the underlying proceeding . . . and he possessed no evidence that the record contains documentation relevant to the trust fund he alleges was created for him.” *duPont II*, 2 A.3d at 521. In upholding the denial of the request by the orphans’

court and then the Superior Court, the Supreme Court rejected the appellant's argument that "the proponent of confidentiality would **always** bear the burden of demonstrating a need for continued privacy after the initial order sealing the record was entered." *Id.* at 523 (emphasis added). Rather, the Supreme Court "conclude[d] that requiring the burden automatically to **shift** to the proponent of confidentiality in the **post-sealing timeframe**, as [the a]ppellant advocate[d], would be inconsistent with [the] legislative intent" underpinning Section 5511(a) of the PEF Code. *Id.* at 524 (emphasis added). The Supreme Court focused on the flexibility a court has in their discretion and whether the passage of time alone had, in some way, caused the burden to **shift back to the proponent of the seal where a non-party seeks access to sealed documents**. *Id.* at 524-25. The Supreme Court, therefore, determined that **where no evidence had been presented showing that the privacy interests underlying the initial sealing had changed**, the non-party seeking access "bore the burden to '**demonstrate good cause**' to **modify the [] order** placing the [] documents under seal." *Id.* at 525 (emphasis added).

The *duPont II* Court clearly envisioned a shifting burden analysis in situations when a non-party seeks access to an already sealed record. Under *duPont II*, if a non-party seeks to modify a sealing order to obtain access to a record sealed by court order, the non-party bears the burden to present evidence showing that the privacy interests underlying the initial sealing had changed or to "demonstrate good cause" to modify the existing order sealing the record. *Id.* If the non-party does so, the burden then shifts to the proponent of the seal to establish that the seal should be maintained. To meet this burden, the proponent of the seal must produce evidence relevant to the current situation and show that the passage of time has not yet

rendered the initial seal unnecessary. This shifting burden is consistent with our Supreme Court's holding in *duPont II*, once the non-party has met its initial burden.

Here, the parties do not appear to have understood their respective burdens. This is reflected in the complete lack of evidence presented by the parties during the hearing. Neither party presented any evidence demonstrating, respectively, that the privacy interests had changed or good cause (Patriot News), or evidence supporting the maintenance of the seal (Hoffman/Norfolk Southern). At one point during the hearing, Hoffman's counsel discussed evidence that supported the seal, but stated that he was unable to present that evidence because Patriot News had deleted comments from its website years earlier. (R.R. at 309a, 312a.) Common pleas acknowledged that Patriot News had not presented evidence demonstrating good cause, while also treating Hoffman's counsel's statements, regarding available evidence or lack thereof, as evidence. Therefore, given the confusion regarding the respective burdens of proof, a remand to common pleas is necessary for there to be a hearing in which the parties can present evidence supporting their respective burdens.

III. CONCLUSION

In sum, because we clarify the applicable burden of proof and pertinent burden shifting analysis where a non-party challenges a final, unappealed order sealing settlement agreements involving a minor, we vacate common pleas' Order and remand this matter for common pleas to have a hearing and apply the applicable burdens in accordance with the standards discussed in this opinion.

/s/ Renée Cohn Jubelirer
RENÉE COHN JUBELIRER, President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Cory A. Hoffman, as Administrator
of the Estate of Trisha Lyn Hoffman,
and in his own right

V.

No. 1162 C.D. 2024

Norfolk Southern Railway Company
and Pennsylvania Fish and Boat
Commission

Appeal of: The Patriot News/
PennLive

ORDER

NOW, August 17, 2026, the Order of the Court of Common Pleas of Dauphin County, entered on June 25, 2024, is **VACATED**, and this matter is **REMANDED** for further proceedings consistent with the accompanying opinion.

Jurisdiction relinquished.

/s/ *Renée Cohn Jubelirer*

RENÉE COHN JUBELIRER, President Judge