

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

North Coventry Township	:	
	:	
v.	:	No. 1214 C.D. 2010
	:	Submitted: November 19, 2010
Josephine M. Tripodi,	:	
Appellant	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JOHNNY J. BUTLER, Judge**

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE BROBSON**

FILED: March 24, 2011

Josephine M. Tripodi (Appellant) appeals from the May 20, 2010, order of the Court of Common Pleas of Chester County (trial court), which sustained a motion to quash filed by North Coventry Township (Township) and dismissed Appellant’s motion for reconsideration of the trial court’s sanctions order dated August 26, 2009. We now affirm the trial court’s order.

In November 2007, the Township filed a complaint against Appellant as owner of Kline Place Apartments (the Property) for her non-compliance with the Township’s property maintenance, plumbing, and electrical codes as they relate to the Property. (Reproduced Record (R.R.) 24a.) Thereafter, in February 2008, the Township sought a preliminary injunction to preclude Appellant’s use of the Property due to Appellant’s continued violations of the Township’s codes. (*Id.* at 36a.) After a hearing on the Township’s preliminary injunction request, the trial court issued an order on April 25, 2008, requiring Appellant’s compliance of an in-

court agreement reached between Appellant and the Township. (*Id.* at 177a.) The in-court agreement established that the Property would be inspected and that a work schedule would be created for correction of the Property's code violations. (*Id.* at 179a.)

On October 8, 2008, the Township filed a petition for contempt against Appellant for her failure to comply with the trial court's April 25, 2008 order. (*Id.* at 43a.) Thereafter, the Township filed two additional contempt petitions. (*Id.* at 55a, 65a.) As a result of Appellant's repeated non-compliance with the trial court's orders, by order dated June 12, 2009, the trial court appointed a Master with specified authority to oversee the necessary repairs, improvements, renovation, and maintenance to bring the Property into compliance with the pertinent Township codes. (*Id.* at 209a.)

On June 26, 2009, the Township filed yet another contempt petition against Appellant for Appellant's failure to cooperate with the court-appointed Master and for not allowing for inspections of the Property, as required by the April 25, 2008 in-court agreement. (*Id.* at 98a.) The trial court held a hearing on the Township's contempt petitions and issued an order on August 26, 2009, finding Appellant was in contempt of the trial court's April 25, 2008, February 26, 2009, and June 12, 2009 orders. (Supplemental Reproduced Record (S.R.R.) at 381b.) Further, the trial court found that Appellant's Property constituted a public nuisance and was unsafe for human habitation. (*Id.* at 391b.) The trial court concluded that its prior orders regarding the Property could only be enforced by the sale of the Property in a reasonable commercial manner conditioned upon the buyer remediating the Property and bringing the Property into compliance with the Township's codes or by demolishing the structures. (*Id.*) Finally, the trial court

ordered Appellant to pay \$12,411.96 for attorney fees and costs incurred by the Township. (*Id.* at 392b.) The trial court also ordered Appellant to pay \$34,170.00 to the Township for the Master's fees, costs, and expenses. (*Id.*)

On September 14, 2009, Appellant filed two timely motions for reconsideration of the trial court's August 26, 2009 order. (*Id.* at 114a, 115a.) The trial court, however, did not rule on the motions. On March 9, 2010, Appellant filed another motion for reconsideration of the trial court's August 26, 2009 order. This time, however, Appellant simultaneously filed a praecipe for determination.¹ (*Id.* at 120a-123a.) On March 25, 2010, the Township filed a motion to quash Appellant's motion for reconsideration. (*Id.* at 124a.)

The trial court held a hearing and, on May 20, 2010, issued an order sustaining the Township's motion to quash and dismissing Appellant's motion for reconsideration. (*Id.* at 260a.) The trial court determined that while Appellant's September 14, 2009 motions for reconsideration were timely filed, Appellant did not provide the trial court with the necessary required notice—i.e., a praecipe for determination—pursuant to the Chester County Rule of Civil Procedure 206.6. (*Id.* at 265a.) The trial court concluded that it did not receive notice of Appellant's motions for reconsideration until Appellant filed her praecipe for determination on March 9, 2010, six (6) months after the entry of August 26, 2009 order. (*Id.*) The

¹ Rule 206.6 of the Chester County Rules of Civil Procedure requires, in pertinent part:

To have any matter submitted to the Court for a decision, a party shall file with the Prothonotary a Praecipe for Determination. Immediately after filing same with the Prothonotary, each party shall serve upon all other counsel and unrepresented parties a copy of the Praecipe for Determination as well as any other documents filed therewith.

trial court concluded that it no longer had jurisdiction to reconsider the August 26, 2009 order because more than thirty (30) days had elapsed since entry of the order. The trial court also noted that Appellant did not appeal the order within thirty (30) days of its entry and that Appellant could not rely upon the mere filing of her reconsideration motion to toll the appeal period or extend the trial court's jurisdiction.² Appellant appeals the trial court's May 20, 2010 order to this Court. (*Id.*)

On appeal,³ Appellant argues that the trial court abused its discretion and committed an error of law by sustaining the Township's motion to quash and dismissing Appellant's motion for reconsideration. Specifically, Appellant contends that because her motion for reconsideration attempted to bring new facts and law to the trial court's attention, including extensive repairs and modifications

² We note that the trial court's order dated August 26, 2009, is a final order. Rule 341(b) of the Pennsylvania Rules of Appellate Procedure defines a final order as follows: "A final order is any order that: (1) disposes of all claims and of all parties; or (2) is expressly defined as a final order by statute; or (3) is entered as a final order pursuant to subdivision (c) of this rule." "[W]hen a party is found in contempt, sanctions must be imposed for the trial court's order to be considered final and appealable." *Borough of Slatington v. Ziegler*, 890 A.2d 8, 11 (Pa. Cmwlth. 2005), *appeal denied*, 589 Pa. 741, 909 A.2d 1291 (2006). Sanctions may consist of an award of attorneys' fees or costs. *Id.* "[F]or a contempt order to be properly appealable, it is only necessary that the order impose sanctions and that no further court order be required before the sanctions take effect." *Foulk v. Foulk*, 789 A.2d 254, 257 (Pa. Super. 2001). Here, the effect of the order was to grant the relief sought by Township's petitions for contempt, which included the imposition of sanctions for contempt and entry of judgment against Appellant. (R.R. at 264a.) Therefore, because the trial court's August 26, 2009 order imposed sanctions upon Appellant, the order was final and appealable.

³ "Our scope of review of a decision by a court of common pleas is limited to a determination of whether the court abused its discretion or committed an error of law or whether constitutional rights were violated." *Barron v. City of Philadelphia*, 754 A.2d 738, 739 (Pa. Cmwlth.), *appeal denied*, 563 Pa. 691, 760 A.2d 856 (2000).

performed on the Property before the May 14, 2010 hearing, there was sufficient evidence to require the trial court to reconsider its decision. We disagree.

In this case, Appellant did not appeal the trial court’s August 26, 2009 order; instead, she chose to file her motions for reconsideration on September 14, 2009. (*Id.* at 114a, 115a.) Where, as here, an appellant seeks a trial court’s reconsideration of an order and the appellant has not filed a notice of appeal, the matter is governed by Section 5505 of the Judicial Code. 42 Pa. C.S. § 5505. Section 5505 of the Judicial Code provides, in pertinent part: “Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order *within 30 days after its entry*, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.” 42 Pa. C.S. § 5505 (emphasis added). In *Fulton v. Bedford County Tax Claim Bureau*, 942 A.2d 240, 242 n.3 (Pa. Cmwlth. 2008), we explained:

Under this section, a trial court has broad discretion to modify or rescind an order, and its power may be exercised on the court’s own motion or invoked pursuant to a party’s motion to reconsideration. “[T]he trial court may consider a motion for reconsideration only if the motion for reconsideration is filed within thirty days of the entry of the disputed order.” Unless the court enters an order granting reconsideration with the 30-day period, the power to grant reconsideration is lost.

(Citations omitted.)⁴ Similarly, in *City of Philadelphia Police Department v. Civil Service Commission*, 702 A.2d 878, 880 (Pa. Cmwlth. 1997), we explained:

⁴ Generally, judgments regularly entered in adverse proceedings cannot be opened or vacated after they have become final. *Lowrey v. East Pikeland Twp.*, 599 A.2d 271, 274 (Pa. Cmwlth. 1991). In *Fulton*, we noted that “[a]fter expiration of the 30-day period, however, the court may only open or vacate an order upon a showing of extrinsic fraud, lack of subject matter jurisdiction, a fatal defect on the face of the record or some other evidence of ‘extraordinary **(Footnote continued on next page...)**’”

A tribunal loses jurisdiction to change an order once it becomes final; otherwise, nothing would ever be settled. Absent a specific rule or statute, the only exception is to correct obvious technical mistakes (e.g., wrong dates) but no substantive changes can be made.

What makes this case different is that a Motion for Reconsideration was filed within the time for appeal but was not acted upon until well after the appeal period had expired. Even though it was filed during that period, it does not, absent an authorizing statute or regulation, allow a tribunal to reconsider its order once the appeal period has passed.

This holding is consistent with the practice embodied in Pennsylvania Rule of Appellate Procedure 1701(b)(3) that provides, after an order becomes final, i.e., after the period for appeal has expired, neither courts nor state administrative agencies have jurisdiction to consider a Motion for Reconsideration.

Moreover, the notes to Rule 1701 of the Pennsylvania Rules of Appellate Procedure explain that although a party may petition the court for reconsideration, the simultaneous filing of a notice of appeal is necessary to preserve appellate rights in the event that the either the trial court fails to grant the petition expressly within thirty (30) days or it denies the petition. Pa. R.A.P. 1701 note. The mere filing of a petition for reconsideration of a court order does not

(Continued...)

cause justifying intervention by the court.” *Fulton*, 942 A.2d at 242, n.3 (citing *Stockton v. Stockton*, 698 A.2d 1334, 1337 (Pa. Super. 1997)). “Such circumstances have customarily entailed an oversight or act by the court, or failure of the judicial process, which operates to deny the losing party knowledge of entry of final judgment and commencement of the running of the appeal period.” *DeMarco v. Borough of East McKeesport*, 556 A.2d 977, 979 (Pa. Cmwlth. 1989), *appeal denied*, 525 Pa. 614, 577 A.2d 545 (1990). We note, however, that the trial court was not presented with a petition to open or vacate its judgment.

operate to toll the appeal, nor does it act as a stay of the appeal period.⁵ *Monsour Med. Ctr. v. Cmwlth*, 533 A.2d 1114, 1116 (Pa. Cmwlth. 1987). Therefore, because Appellant did not appeal the trial court's order and the trial court failed to act on her motions for reconsideration within thirty (30) days of entry of the Court's order, the trial court was without jurisdiction to consider those motions or Appellant's subsequent motion that was filed more than thirty (30) days past the entry of the trial court's order.

Appellant further argues that the trial court committed an error of law by ignoring the newly presented facts and law that Appellant attempted to bring to the trial court's attention through her motion for reconsideration. Because we have concluded that the trial court properly sustained the Township's motion to quash the request for reconsideration, we need not address the merits of Appellant's motion for reconsideration.

Accordingly, the order of the trial court is affirmed.

P. KEVIN BROBSON, Judge

⁵ Pursuant to Rule 903(a) of the Pennsylvania Rules of Appellate Procedure, a notice of appeal must be filed within thirty (30) days following the entry of the order from which the appeal is taken. Pa. R.A.P. 903(a).

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Appellant	:	

ORDER

AND NOW, this 24th day of March, 2011, the order of the Court of Common Pleas of Chester County, dated May 20, 2010, is hereby AFFIRMED.

P. KEVIN BROBSON, Judge