

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph Pilchesky, :
Appellant :
v. : No. 1219 C.D. 2009
 : Submitted: April 23, 2010
Mayor Christopher Doherty, the :
City of Scranton :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE LEAVITT

FILED: July 1, 2010

Joseph Pilchesky (Pilchesky) appeals an order of the Court of Common Pleas of Lackawanna County (trial court) denying his petition for *nunc pro tunc* review of a 2007 order of the trial court dismissing his complaint against the Mayor and City of Scranton. In this appeal, Pilchesky argues that this 2007 order was legally erroneous, which entitled him to *nunc pro tunc* relief to correct that error. We disagree and will affirm the trial court's order dismissing Pilchesky's petition.

On August 13, 2007, Pilchesky filed a complaint for declaratory judgment against the City of Scranton and Mayor Christopher Doherty (Mayor), arguing that the Mayor had improperly used government funds to purchase banners and billboards to promote the Mayor's reelection campaign. On August 14, 2007, Pilchesky filed a second complaint against the Mayor and the City, seeking a declaratory judgment that a pool house at Nay Aug Park had been constructed in violation of building codes. The City filed preliminary objections to both

complaints. On November 21, 2007, the trial court granted the City's preliminary objections and dismissed both of Pilchesky's complaints with prejudice. The trial court held that Pilchesky had not satisfied the prerequisites for standing set forth in *Application of Biester*, 487 Pa. 438, 409 A.2d 848 (1979). No appeal was taken from this order.

On January 12, 2009, Pilchesky filed a petition to vacate, *nunc pro tunc*, the trial court's November 21, 2007, order dismissing his complaint regarding the Nay Aug Park pool house. Pilchesky argued that the trial court dismissed his 2007 complaint for the wrong reason. Specifically, Pilchesky argued that the trial court should have dismissed his complaint for failure to join the architect and builder of the pool house as indispensable parties, as opposed to dismissing it for Pilchesky's lack of standing. On May 20, 2009, the trial court dismissed Pilchesky's petition to vacate its order of November 21, 2007.¹ Pilchesky now appeals to this Court.

On appeal,² Pilchesky argues that the trial court erred by not considering his petition to vacate the November 21, 2007, order on a *nunc pro tunc* basis. Pilchesky argues that the trial court should have known that he had failed to join indispensable parties to his 2007 action, and, therefore, should have dismissed his original complaints for lack of jurisdiction, not lack of standing. This error, according to Pilchesky, constitutes a basis for his challenging the trial court's November 21, 2007, order *nunc pro tunc*. We disagree.

¹ The trial court did not issue an opinion in support of its order.

² This Court's review of a denial of *nunc pro tunc* relief is limited to determining whether the trial court abused its discretion or committed an error of law. *Department of Transportation, Bureau of Traffic Safety v. Rick*, 462 A.2d 902, 903 (Pa. Cmwlth. 1983).

Nunc pro tunc relief is available in extraordinary circumstances, such as when there is a breakdown in a court's operations or the administrative process, or when a litigant has failed to file a timely notice of appeal due to non-negligent circumstances. *Criss v. Wise*, 566 Pa. 437, 442, 781 A.2d 1156, 1159 (2001). Here, Pilchesky's goal was to convince the trial court to vacate its 2007 order because he believed the trial court had erred by dismissing his complaint for the wrong reason.³ This is not a reason to allow a litigant to challenge a court order more than one year after it is entered. Every appeal is based upon the theory that the court has erred in some respect. Pilchesky should have raised his allegation of error in a motion for reconsideration of the 2007 order or in a direct appeal. However, Pilchesky failed to take any action for over one year, and both of those avenues are now time-barred. *See* Pa. R.A.P. 903(a) (notice of appeal "shall be filed within 30 days after the entry of the order from which the appeal is taken."); *Haines v. Jones*, 830 A.2d 579, 584 (Pa. Super. 2003) ("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."). Pilchesky has not alleged any extraordinary circumstances, such as a breakdown in the court's operations, that would allow him to challenge a 2007 court order more than a year later on a *nunc pro tunc* basis.

For all of the foregoing reasons, we affirm the trial court's order.

MARY HANNAH LEAVITT, Judge

³ Pilchesky implies that his case would have somehow been successful if certain indispensable parties had been joined. However, Pilchesky does not address whether he would have had standing, which is a threshold requirement that must be satisfied by all litigants and the reason that Pilchesky's complaints were dismissed in the first place.

