

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller,	:	
Appellant	:	
	:	
v.	:	
	:	
Radnor Township Department	:	
of Community Development,	:	
Radnor Township Zoning Hearing	:	
Board, Steven Bajus and S.W.	:	
Bajus, Ltd.	:	No. 140 C.D. 2011

PER CURIAM

ORDER

NOW, January 9, 2012, having considered appellant's application for reconsideration, the application is granted in part and denied in part.

Appellant, James D. Schneller's motion for reconsideration is GRANTED for the limited purpose of amending the Court's memorandum opinion and order, filed November 2, 2011, to clarify why appellees Steven Bajus and S.W. Bajus, Ltd., were precluded from participating and why appellant's appeal was untimely. To the extent that appellant's motion for reconsideration requests further relief, it is DENIED.

The memorandum opinion and order filed November 2, 2011, are vacated. Following reconsideration, the attached memorandum opinion and order are entered as the final decision in this matter.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller, :
Appellant :
 :
v. : No. 140 C.D. 2011
 : Submitted: August 12, 2011
Radnor Township Department :
of Community Development, :
Radnor Township Zoning Hearing :
Board, Steven Bajus and S.W. :
Bajus, Ltd. :

OPINION NOT REPORTED

MEMORANDUM OPINION
PER CURIAM

FILED: January 9, 2012

James D. Schneller, *pro se*, appeals two orders of the Court of Common Pleas of Delaware County (trial court) rejecting his attempt to challenge a modification to a sidewalk plaza. Because Schneller’s notice of appeal was untimely, we will quash the appeal.

The underlying dispute in this case concerns Schneller’s opposition to the modification to the sidewalk and plaza adjoining a property at 103 North Wayne Avenue, Wayne, Pennsylvania, owned by Steven Bajus and S.W. Bajus, Ltd. (Bajus).¹ Schneller requested the Township Zoning Officer to investigate whether a “town commons” for public use existed at that location and whether Bajus had obtained the necessary permits for the project. *See Reproduced Record*

¹ By order of July 29, 2011, this Court precluded Bajus from participating in this appeal after he failed to file a brief on time.

at 22a (R.R. ___). The Township Zoning Officer rejected Schneller's request by letter dated September 9, 2009.

Schneller appealed to the Radnor Township Zoning Hearing Board (Board). The Board determined that Schneller was not an aggrieved person, in spite of his testimony that he walked and rode his bicycle past the Bajus property and was not in favor of the modification. The Board held that Schneller lacked standing because he lived three-quarters of a mile away from the Bajus property and could not even see the property, or sidewalk, from his residence. Accordingly, the Board dismissed his appeal on December 17, 2009.²

Schneller appealed the Board's order to the magisterial district judge on February 24, 2009.³ In his appeal, which he called a "complaint," he alleged that the Board, the Radnor Township Department of Community Development and Bajus (collectively, Radnor and Bajus) had obstructed his zoning appeal, violated the Radnor Township Zoning Code, retaliated against him, concealed public records, failed to enforce municipal ordinances and violated the Crimes Code.⁴ The magisterial district judge issued a judgment in favor of Radnor and Bajus on May 4, 2010. Schneller filed an application for leave to proceed *in forma pauperis* with the trial court on June 2, 2010, followed by an appeal of the magisterial district judge's decision on June 23, 2010.⁵

² The Board's determination was mailed to Schneller on January 25, 2010.

³ Schneller's appeal was docketed at CV-0000033-10.

⁴ Schneller also filed a criminal complaint setting forth similar allegations.

⁵ On appeal to the trial court, Schneller set forth substantially the same claims including, *inter alia*, conspiracy by both Radnor and Bajus and the magisterial district judge; concealment of public records; and failure to dispose of the matter as it pertains to Bajus, since they were not included in the caption of the order. See R.R. 12a-17a.

Radnor and Bajus filed preliminary objections to Schneller's complaint, arguing that (1) the trial court lacked subject matter jurisdiction and (2) Schneller failed to exhaust his statutory remedies. Radnor and Bajus noted that Section 1002-A of the Municipalities Planning Code (MPC), 53 P.S. §11002-A,⁶ requires all land use appeals to be filed with the court of common pleas, not a magisterial district judge. As such, Radnor and Bajus argued that the local magistrate properly dismissed Schneller's complaint for lack of subject matter jurisdiction. Likewise, the trial court also lacked subject matter jurisdiction to hear Schneller's appeal of the magisterial district judge's decision.

On July 29, 2010, Schneller filed preliminary objections to the preliminary objections of Radnor and Bajus. He contended, *inter alia*, that the trial court lacked jurisdiction to rule on Radnor and Bajus's preliminary objections because it had not yet decided his motion to proceed *in forma pauperis*. Moreover, he argued that Radnor and Bajus's preliminary objections were in error because he appealed an excessive filing fee that he paid⁷ and "claimed a right to take as much of his case as possible" to the magisterial district judge.⁸ Therefore, he believed

⁶ Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. §11002-A. It states, in relevant part, that

(a) All appeals from all land use decisions rendered pursuant to Article IX . . . shall be taken to the court of common pleas of the judicial district wherein the land is located and shall be filed within 30 days after entry of the decision . . . or, in the case of a deemed decision, within 30 days after the date upon which notice of said deemed decision is given . . . It is the express intent of the General Assembly that, except in cases in which an unconstitutional deprivation of due process would result from its application, the 30-day limitation in this section should be applied in all appeals from decisions.

Id. Section 1002-A was added by the Act of December 21, 1988, P.L. 1329.

⁷ Schneller claimed to have paid a \$550 filing fee, when it was actually only \$500.

⁸ Regardless of Schneller's contrived arguments, it is clear that he attempted to appeal the Board's decision, in its entirety, to the magisterial district judge. For example, his "complaint" **(Footnote continued on the next page . . .)**

that since the alleged violations of the Zoning Code were related to the improper filing fee, the magisterial district judge had jurisdiction to hear his appeal.

On September 29, 2010, the trial court issued an order sustaining the preliminary objections of Radnor and Bajus and dismissing Schneller's complaint. In doing so the trial court noted that Section 1002-A of the MPC provides the court of common pleas exclusive jurisdiction over appeals from a zoning hearing board. Because Schneller failed to pursue his exclusive statutory remedy, the trial court sustained the preliminary objections and dismissed Schneller's complaint.⁹

While the trial court was reviewing the parties' preliminary objections it was also reviewing Schneller's application for leave to proceed *in forma pauperis*, which he had filed on June 2, 2010. The trial court found that Schneller failed to allege sufficient information for the court to make a determination and, thus, denied the application and ordered Schneller to pay the filing fee within ten days. When Schneller did not do so, the trial court, by order of August 5, 2010, struck his appeal. On August 13, 2010, Schneller filed a petition to open the August 5 order, alleging that he mailed an amended application to proceed *in forma pauperis*, "as is the local practice," within the ten day time period.¹⁰ On September 7, 2010, the trial court issued another order, this time denying Schneller's amended application to proceed *in forma pauperis* on the grounds that

(continued . . .)

to the local magistrate lacks any mention of an overpayment, but instead contains claims of violations of the Radnor Township Zoning Code, and obstruction of his zoning appeal. *See* R.R. 20a-21a.

⁹ The trial court also noted that it was without subject matter jurisdiction to hear Schneller's appeal.

¹⁰ Schneller blamed the court's clerk for not properly entering his amended application into the record on time.

he has “established [the] ability to pay court costs in numerous other actions.” R.R. 53a.

Schneller filed a notice of appeal with the Superior Court on November 5, 2010, and the appeal was transferred to this Court. The notice of appeal challenges (1) the trial court’s order of September 29, 2010, sustaining preliminary objections and dismissing his complaint, and (2) the trial court’s order of August 5, 2010, striking his notice of appeal for failure to pay the filing fee after his first application to proceed *in forma pauperis* was denied.

Radnor and Bajus request this Court to quash Schneller’s appeal as untimely. To be timely, an appeal must be filed within 30 days after the entry of the order from which the appeal is taken. *See* PA. R.A.P. 903.¹¹ The record shows that Schneller’s notice of appeal was not filed until November 5, 2010, more than thirty days after the entry of the most recent order being appealed, *i.e.*, the trial court order dated September 29, 2010, and entered September 30, 2010.¹² An untimely appeal deprives the appellate court of jurisdiction and, thus, must be quashed. *Thorn v. Newman*, 538 A.2d 105, 107 (Pa. Cmwlth. 1988).

Schneller argues that he filed his appeal on October 13, 2010, and later paid the filing fee on November 5, 2010. Schneller argues that his appeal was therefore timely, but he is wrong. A prothonotary is not required to enter an appeal on the docket until the filing fee is paid. Section 3(b) of the Act of November 26,

¹¹ It provides, in relevant part:

(a) General rule. Except as otherwise prescribed by this rule, the notice of appeal required by Rule 902 (manner of taking appeal) shall be filed within 30 days after the entry of the order from which the appeal is taken.

PA. R.A.P. 903.

¹² The Certified Record includes copies of the official dockets from the trial court and Superior Court. Both dockets list Schneller’s appeal as being filed on November 5, 2010.

1982, P.L. 744, 42 P.S. §21073.¹³ *See also Southern Chester County Concerned Citizens Organization v. Zoning Board of Lower Oxford Township*, 937 A.2d 1141, 1143 (Pa. Cmwlth. 2007). Because Schneller’s appeal was untimely, this Court lacks jurisdiction to hear his appeal.

Accordingly, Schneller’s appeal is quashed.¹⁴

¹³ Section 3(b) states:

The prothonotary *shall not be required to enter on docket any suit or action or order of court or enter any judgment thereon or perform any services whatsoever for any person, political subdivision or the Commonwealth until the requisite fee is paid.*

42 P.S. §21073(b) (emphasis added).

¹⁴ Because we quash Schneller’s appeal for lack of jurisdiction, we will deny the subsequent motion he filed with this Court on September 23, 2011, entitled “Motion for Waiver of Defenses and of Jurisdiction over Non-Appearing Party.”

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James D. Schneller,	:	
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of Community Development,	:	
Radnor Township Zoning Hearing	:	
Board, Steven Bajus and S.W.	:	
Bajus, Ltd.	:	

PER CURIAM

ORDER

AND NOW, this 9th day of January, 2012, the appeal of James D. Schneller of the orders of the Delaware County Court of Common Pleas, in the above-captioned matter, dated August 5, 2010, and September 30, 2010, is QUASHED. Schneller's Motion for Waiver of Defenses and of Jurisdiction over Non-Appearing Party filed September 23, 2011, is DENIED.