

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Johnstown Housing Authority	:	
	:	
v.	:	
	:	
Bertha Artis,	:	No. 2373 C.D. 2010
Appellant	:	Submitted: March 25, 2011

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: May 11, 2011

Bertha Artis (Tenant) appeals from the October 1, 2010 order of the Court of Common Pleas of Cambria County (trial court) denying Tenant's Petition for Appeal *Nunc Pro Tunc*. There is one issue before the Court: whether the trial court properly denied Tenant's *nunc pro tunc* appeal after her ten-day appeal period had expired. For the reasons that follow, we affirm the order of the trial court.

Johnstown Housing Authority (Landlord) leased a property located at 527 Vine Street, Apartment 1009, Johnstown, Pennsylvania, to Tenant. Landlord petitioned to evict Tenant. On August 25, 2010, the Magisterial District Justice (MDJ) entered judgment in favor of Landlord for the possession of the property. Tenant delivered her notice of appeal to her attorney's office without speaking to anyone in the office. Unbeknownst to Tenant, her attorney was on vacation and did not return until after her ten-day appeal period had lapsed. On September 24, 2010, Tenant filed a Petition for Appeal *Nunc Pro Tunc* to the order of possession. On

October 1, 2010, the trial court denied Tenant's petition. Tenant appealed to this Court.¹

Pa.R.C.P.M.D.J. No. 1002.B (Rule 1002.B) provides that the statutory appeal period for a judgment of possession for a residential lease is ten days. Rule 1002.B further states in relevant part: "The prothonotary shall not accept an appeal from an aggrieved party which is presented for filing more than ten (10) days after the date of entry of judgment without leave of court and *upon good cause shown*." Rule 1002.B (emphasis added).

Tenant argues that "good cause shown" as written in Rule 1002.B includes more than negligence or fraud on behalf of the court system. Specifically, Tenant contends that the fact that she delivered her Notice of Appeal to her lawyer's office within ten days demonstrated good cause for purposes of Rule 1002.B, given the fact that her specific attorney was on vacation at that time. We disagree.

A statutory appeal period is mandatory and may not be extended as a matter of grace or mere indulgence. An appeal *nunc pro tunc* may be allowed only where a delay in filing the appeal is caused by extraordinary circumstances involving fraud or some breakdown in the administrative process, or *non-negligent* circumstances related to an appellant or his [or her] counsel or a third party.

Russo v. Unemployment Comp. Bd. of Review, 13 A.3d 1000 (Pa. Cmwlth. 2010) (citation and quotation marks omitted) (emphasis added). While Tenant is correct that the term "good cause shown" includes more than negligence or fraud on behalf of the court system, her circumstances nonetheless fail to demonstrate good cause.

¹ "The standard of review in a case challenging a dismissal of a petition for leave to appeal *nunc pro tunc* is whether the trial court committed an error of law. Our scope of review is plenary." *Brown v. Levy*, 993 A.2d 364, 365 n.1 (Pa. Cmwlth. 2010).

Here, Tenant's contention that she delivered her notice of appeal to her attorney's office within the ten-day appeal period does not alter the fact that due diligence would have required her to have spoken to someone at the office. Her failure to do so was negligence on her part. An appellant's negligence cannot be the basis for a *nunc pro tunc* appeal. As such, Tenant clearly has not demonstrated good cause for her untimely filing. Accordingly, the trial court did not err in denying Tenant's Petition to Appeal *Nunc Pro Tunc*.

For all of the above reasons, the order of the trial court is affirmed.

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Johnstown Housing Authority	:	
	:	
v.	:	
	:	
Bertha Artis,	:	No. 2373 C.D. 2010
Appellant	:	

ORDER

AND NOW, this 11th day of May, 2011, the October 1, 2010 order of the Court of Common Pleas of Cambria County is affirmed.

JOHNNY J. BUTLER, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Johnstown Housing Authority	:	
	:	
v.	:	
	:	
Bertha Artis,	:	No. 2373 C.D. 2010
Appellant	:	Submitted: March 25, 2011

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

DISSENTING OPINION
BY JUDGE McCULLOUGH

FILED: May 11, 2011

Because I believe that the trial court erred in summarily denying Bertha Artis (Tenant)'s Petition for Appeal Nunc Pro Tunc on the basis that "good cause" to permit an untimely appeal under Rule 1002.B of the Pennsylvania Rules for Magisterial District Judges requires a showing of either fraud or a breakdown of the court's operation, I respectfully dissent.¹

As the Majority acknowledges, an appeal nunc pro tunc may be allowed where the delay in filing the appeal is caused by extraordinary circumstances involving fraud, a breakdown in the administrative process, or non-negligent conduct on the part of the appellant, the appellant's attorney or the attorney's staff. Cook v. Unemployment Compensation Board of Review, 543 Pa. 381, 671 A.2d 1130 (1996). However, the trial court's opinion reflects that it reviewed the assertions set forth in

¹ According to her brief, on August 10, 2010, a district magistrate ruled that Tenant, a 74 year-old woman who relies on a walker, had to move out of her senior citizen public housing apartment for slapping another tenant during an argument. There is no dispute that no rent is due in this case.

Tenant's petition for nunc pro tunc relief, specifically, that: Tenant dropped off the Notice of Judgment/Transcript at Laurel Legal Services but did not speak to an attorney about filing an appeal; the attorney handling Tenant's case was away due to a family medical situation; and Tenant did not return until September 13, 2010, but believed that an appeal had been timely filed; without considering whether Tenant's pleadings suggested non-negligent conduct which, if proven, may establish that nunc pro tunc relief is warranted in this case. Trial court op. at 3-4. See Connor v. Westmoreland County Board of Assessment Appeal, 598 A.2d 610, 612 (Pa. Cmwlth. 1991).

In my view, the assertions in the petition are sufficient to suggest that Tenant could demonstrate good cause for the untimely filing of her appeal, and I believe the trial court erred in denying Tenant an opportunity to present evidence showing that non-negligent conduct caused the late filing. In the absence of such evidence, I believe the record is insufficient to support the Majority's conclusion that Tenant's request to appeal nunc pro tunc was properly denied.

For these reasons, I would reverse the trial court's decision and remand for a hearing at which Tenant could present evidence in support of her petition to appeal nunc pro tunc.

PATRICIA A. McCULLOUGH, Judge