

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Republic Services of Pennsylvania, :  
LLC d/b/a York Waste Disposal :  
 :  
v. : No. 2389 C.D. 2009  
 :  
Dennis Samuel Krone, : Submitted: September 24, 2010  
 :  
Appellant :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: January 6, 2011**

Dennis Samuel Krone (Mr. Krone) appeals, pro se, from the November 4, 2009, Order of the Court of Common Pleas of York County (trial court), which granted the Motion for Judgment on the Pleadings (Motion for Judgment) filed by Republic Services of Pennsylvania, LLC d/b/a York Waste Disposal (York Waste) and entered judgment against Mr. Krone in the amount of \$263.80 plus costs. Mr. Krone argues that the trial court abused its discretion or erred by, *inter alia*, not addressing the Preliminary Objections (P.O.s) that were before the trial court prior to granting the Motion for Judgment.

York Waste contracted with Dover Township (Township), in which Mr. Krone resides, to provide refuse collection for the residences within the Township. Pursuant

to Sections 20-103 and 20-105 of the Township Code of Ordinances (Ordinance), participation in the Township-contracted waste collection program is mandatory. (Ordinance §§ 20-103, 20-105, R. Item 23, Exh. A.) On or about February 3, 2009, York Waste filed a civil complaint against Mr. Krone, seeking a judgment of \$181.80 plus costs. (Civil Complaint, February 3, 2009, R. Item 22, Exh. B.) A hearing was held before a Magisterial District Judge (MDJ), who found in York Waste's favor and entered a judgment on May 27, 2009, against Mr. Krone in the amount of \$263.80. (MDJ Judgment/Transcript in Civil Case, May 27, 2009, R. Item 25.) On June 22, 2009, Mr. Krone filed a Notice of Appeal with the trial court, as well as an "Emergency Motion For Void Judgment." (Notice of Appeal, June 22, 2009, R. Item 25; Emergency Motion For Void Judgment, June 22, 2009, R. Item 26.)

Subsequently, on July 16, 2009, York Waste filed with the trial court a Complaint in a Civil Action (Complaint) against Mr. Krone. The Complaint included a Notice to Defend and was served on Mr. Krone on July 25, 2009. The Complaint alleged, in relevant part, the following. York Waste currently holds the contract with the Township to collect refuse for the residential units in the Township. (Compl. ¶ 3.) Refuse collection services in the Township are governed by Chapter 20 of the Ordinance, which makes participation in the Township's waste collection program mandatory for the Township's residential property owners. (Compl. ¶¶ 4-5.) Beginning in 2006, York Waste was contracted by the Township to collect refuse at 5251 Davidsburg Road, Dover Township, to which Mr. Krone holds title. (Compl. ¶¶ 2, 6-7.) As the owner of this property, Mr. Krone is responsible for the payment of refuse collection services for the property. (Compl. ¶ 8.) York Waste sent Mr. Krone quarterly invoices and, to date, there is an outstanding balance due and owing on that

account for \$263.80. (Compl. ¶¶ 9-10.) Pursuant to the Ordinance, York Waste is entitled to late penalty fees in the amount of ten percent annum if the invoice is not paid within thirty days, which results in a \$14.10 late fee due and owing on this account.<sup>1</sup> (Compl. ¶¶ 11-12.)

On August 10, 2009, Mr. Krone filed a “Motion for Hearing on Void Judgment” (Motion for Hearing) and a memorandum of law in support thereof on August 11, 2009. The Motion for Hearing went before the trial court in Motions Court on September 1, 2009, without the presence of York Waste; however, the Motions Judge determined that the Motion for Hearing should not be considered in Motions Court but should proceed through the channels provided by the Pennsylvania Rules of Civil Procedure. (Hr’g Tr. at 1, 5-6, September 1, 2009.) Accordingly, the Motions Judge declined to take any action on the Motion for Hearing and allowed the matter to proceed. (Hr’g Tr. at 5-6.)

York Waste filed its Motion for Judgment, and a brief in support thereof, on August 31, 2009. In the Motion for Judgment, York Waste surmised that Mr. Krone’s Motion for Hearing was his “Answer” to the Complaint, asserted that no other pleadings were filed, and concluded that the pleadings were now closed. (Motion for Judgment ¶¶ 3-5.) York Waste claimed that it was entitled to judgment on the pleadings because in his “Answer,” i.e., the Motion for Hearing, Mr. Krone, *inter alia*, failed to specifically admit or deny any of the Complaint’s allegations,

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<sup>1</sup> The Complaint also requested attorney’s fees. (Compl. ¶ 13.) However, the trial court denied this request by Opinion and Order dated February 5, 2010, a decision that York Waste has not appealed.

address the Complaint's specific averments, or allege that he lacked sufficient knowledge from which he could form a response. (Motion for Judgment ¶¶ 26-30, 33-34.) York Waste contended that Mr. Krone's lack of response rendered the Complaint's factual averments deemed admitted. (Motion for Judgment ¶ 35.) Having admitted the Complaint's factual averments, there was no factual dispute that Mr. Krone owed York Waste for refuse collection as required by the Ordinance and, therefore, York Waste contended it was entitled to judgment on the pleadings. (Motion for Judgment ¶¶ 35-36.)

Mr. Krone filed P.O.s<sup>2</sup> on September 21, 2009, with a request for oral argument, a Motion in Opposition to York Waste's Motion for Judgment, as well as briefs in support of these documents. York Waste filed a P.O. in the nature of a motion to strike Mr. Krone's P.O.s because, *inter alia*, they were untimely filed (the twenty-day time limit within which to file P.O.s had lapsed on August 14, 2009, and the P.O.s were filed thirty-eight days thereafter), and York Waste was prejudiced by the late filing. (York Waste P.O. ¶¶ 11-13.) York Waste also filed a brief in support of its P.O. and a brief in response to Mr. Krone's Motion in Opposition.

The trial court concluded that the only matter before it was the Motion for Judgment and that, since both parties addressed the merits of the Motion for Judgment, in the interest of judicial economy, it would proceed on the merits of the case, which would "render[] moot the procedural Preliminary Objections." (Trial Ct.

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<sup>2</sup> Mr. Krone's P.O.s assert a lack of jurisdiction by the trial court, a lack of capacity to sue on the part of York Waste, failure to conform to rule of law or court, insufficient specificity of pleading, and failure to exhaust administrative remedies. (Mr. Krone's P.O. ¶ 15.)

Op. at 2 n.1.) The trial court agreed with York Waste that it was entitled to judgment on the pleadings in this matter. The trial court, which considered the Motion for Hearing as the “Answer” filed in response to the Complaint, found that the Motion for Hearing’s responses: asked for specific examples, strict proof, and further explanation of the allegations set forth in the Complaint; did not correspond to the paragraphs set forth in the Complaint; and did not admit, deny, or address any of the Complaint’s allegations. (Trial Ct. Op. at 4-5.) Rather, the Motion for Hearing consisted only of irrelevant material and statements, which amounted to general denials and resulted in the admission of all the averments set forth in the Complaint pursuant to the Rules of Civil Procedure. (Trial Ct. Op. at 5.) Having concluded that all of the Complaint’s averments were effectively admitted, the trial court found that Mr. Krone raised no defense or issue of material fact and, therefore, it granted York Waste judgment on the pleadings. (Trial Ct. Op. at 5; Trial Ct. Order.) Mr. Krone now appeals to this Court.<sup>3</sup>

Mr. Krone argues, *inter alia*, that the trial court abused its discretion when it ignored the outstanding P.O.s to the Complaint and, instead, concluded that Mr. Krone’s failure to submit a proper answer in compliance with the Rules of Civil Procedure constituted his deemed admission of the facts averred in the Complaint and then considered the pleadings closed. For its part, York Waste reasserts its position that it was entitled to judgment on the pleadings because Mr. Krone failed to file a proper responsive pleading, rendering the Complaint’s factual averments deemed

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<sup>3</sup> This Court’s review of a trial court’s grant of judgment on the pleadings is “limited to determining whether the trial court committed an error of law or abused its discretion.” Felli v. Department of Transportation, 666 A.2d 775, 776 n.2 (Pa. Cmwlth. 1995).

admitted and, thus, there were no material facts in dispute and a jury trial would be a fruitless exercise. We agree with Mr. Krone that the trial court should have considered and ruled on the outstanding P.O.s of Mr. Krone and York Waste, before ruling on the merits of the Motion for Judgment.

Pa. R.C.P. No. 1028(c)(2) provides that “[t]he court shall determine **promptly** all preliminary objections.” Id. (emphasis added). “The presence of preliminary objections which have not been disposed of is a fatal defect, readily apparent from the face of the record. . . .” Advance Building Services Company v. F & M Schaefer Brewing Company, 384 A.2d 931, 932 (Pa. Super. 1978) (involving the grant of a motion to strike default judgment on the grounds that the nonmoving party’s preliminary objections were not resolved before the trial court granted default judgment); but see Schall v. Sandy Township, 641 A.2d 618, 623 (Pa. Cmwlth. 1994) (holding that trial court’s failure to resolve preliminary objections, if erroneous, was harmless error where the issue objected to was fully litigated, and the defendant fully participated without raising the trial court’s failure or seeking leave to file a responsive pleading). A case cannot be considered ripe for a disposition on its merits, either by trial or by other hearing, until all of the pleadings are closed, which includes the disposition of any outstanding preliminary objections by the trial court. Reddick v. Puntureri, 363 A.2d 1198, 1200 (Pa. Super. 1976).

Here, despite the presence of P.O.s filed by both Mr. Krone and York Waste, the trial court chose to dispose of the matter on the merits of the Motion for Judgment on the rationale that, by doing so, the P.O.s would be rendered moot. We recognize that the trial court was valiantly attempting to streamline the process and cut through

the multiple and conflicting motions in an effort to conserve judicial resources; however, the trial court is first required to rule on the P.O.s before considering the merits, and the failure to do so is a fatal procedural defect that must be addressed.<sup>4</sup> Advance Building Services Company, 384 A.2d at 932. This case is unlike Schall, where, after the P.O.s were filed, a full hearing was held at which the defendant was

able to delve into its preliminary objections by asking questions related to Schall's standing (R.R. 18-19a) and about the Agreement itself (R.R. 56-66a). Given the [defendant's] seeming acquiescence to the hearing as evidenced by its full participation, the absence in the transcript of any protest against having the hearing, its apparent failure at the hearing to raise the trial court's failure to rule on the preliminary objections, failure to seek leave of court to file responsive pleadings and the absence of any proven or perceived prejudice, we conclude[d] that, if the trial court erred, it was harmless.

641 A.2d. at 623. In Schall, the only issue raised in the P.O. was Schall's standing, which was fully litigated before the trial court and, on appeal, we held that the trial court "in effect . . . treated all of the averments of the complaint as denied." Id. at 623-24. In this case, however, the averments of the Complaint were treated as admitted and there was no hearing at which the issues raised in any of the P.O.s were addressed.

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<sup>4</sup> We note that it is within the sound discretion of a trial court to permit the late filing of a pleading, such as preliminary objections, where the opposing party will not be prejudiced and justice so requires. Johnson v. White, 964 A.2d 42, 47 (Pa. Cmwlth. 2009) (quoting Gale v. Mercy Catholic Medical Center Eastwick, Inc., Fitzgerald Mercy Division, 698 A.2d 647, 649 (Pa. Super. 1997)). In Gale, the Superior Court noted that the time frames for pleading are permissive, not mandatory. Gale, 698 A.2d at 649.

Accordingly, although we regret the delay in the resolution of this case, we are nonetheless compelled to vacate the trial court's Order and remand this matter to the trial court to dispose of the outstanding P.O.s filed by Mr. Krone and York Waste.

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**RENÉE COHN JUBELIRER, Judge**



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Republic Services of Pennsylvania, LLC d/b/a York Waste Disposal	:	
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v.	:	No. 2389 C.D. 2009
	:	
Dennis Samuel Krone,	:	
	:	
	:	
Appellant	:	

**ORDER**

**NOW**, January 6, 2011, the Order of the Court of Common Pleas of York County (trial court) in the above-captioned matter is hereby **VACATED**, and this matter is **REMANDED** to the trial court to dispose of the outstanding preliminary objections.

Jurisdiction relinquished.

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**RENÉE COHN JUBELIRER, Judge**