

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	
	:	
Marie Jurena,	:	No. 363 C.D. 2010
Appellant	:	Submitted: September 10, 2010

OPINION NOT REPORTED

MEMORANDUM OPINION  
PER CURIAM

FILED: October 19, 2010

Marie Jurena (Jurena) appeals from the February 1, 2010 order of the Court of Common Pleas of Allegheny County (trial court) entering judgment upholding the judgment of the Magisterial District Judge (MDJ), fining Jurena \$1,200.00 plus costs, and dismissing her appeal. Essentially there is one issue before the Court: whether Jurena’s appeal should have been dismissed.<sup>1</sup> For reasons that follow, we affirm the trial court’s order.

Jurena owns a property located at 4637 Elizabeth Avenue, Coraopolis, Pennsylvania. On July 22, 2009, Jurena received a citation for violating Section 20.103 of the Robinson Township Ordinance, i.e., permitting garbage to accumulate at the front of her property for several weeks. On August 12, 2009, she received a citation for violating Section 401 of the Robinson Township Ordinance, i.e., having a nuisance vehicle on her property.

Jurena appealed both citations. A hearing was held September 17, 2009, and on October 16, 2009 the MDJ entered an order finding her guilty of both violations. Jurena appealed the October 16, 2009 order. A hearing was held on

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<sup>1</sup> Jurena actually raises six issues, however, all six issues go to the merits of the violations. As the appeal was dismissed for her failure to appear, that is the only issue before this Court.

January 26, 2010, but Jurena failed to appear at that time. On February 1, 2010, the trial court entered an order entering judgment on the MDJ's judgment, fining Jurena \$1,200.00 plus costs, and dismissing her appeal. Jurena appealed, pro se, to this Court.<sup>2</sup>

Pennsylvania Criminal Procedure Rule 462 states in pertinent part:

(A) When a defendant appeals after the entry of a guilty plea or a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard *de novo* by the judge of the court of common pleas sitting without a jury.

....

(D) If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

Pa.R.Crim.P. 462 (A), (D). “[T]he defendant’s absence must be without cause before the summary appeal may be properly dismissed.” *Commonwealth v. Marizzaldi*, 814 A.2d 249, 252 (Pa. Super. 2002) (emphasis omitted). Here, according to the record, Jurena called the clerk’s office the day before the hearing to request a postponement. She was advised to call the borough which she did not. Notes of Testimony, January 26, 2010 (N.T.) at 2. Instead she called the District Magistrate’s Office (DMO) who, in turn, called the clerk’s office. N.T. at 2. The clerk’s office staff told the DMO to advise Jurena to visit the clerk’s office because they did not give postponements over the phone. N.T. at 2. Jurena failed to do so. N.T. at 2. Rather, Jurena called the courthouse the morning of the hearing stating she would not appear because someone

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<sup>2</sup> “Our standard of review from an appeal of a summary conviction heard *de novo* by the trial court is limited to a determination of whether an error of law has been committed and whether the findings of fact are supported by competent evidence.” *Commonwealth v. Marizzaldi*, 814 A.2d 249, 251 (Pa. Super. 2002).

had flattened her tires. N.T. at 3. The trial court did not find this to be just cause for Jurena's absence.

“The adjudication of the trial court will not be disturbed on appeal absent a manifest abuse of discretion.” *Marizzaldi*, 814 A.2d at 251 (quoting *Commonwealth v. Parks*, 768 A.2d 1168, 1171 (Pa. Super. 2001)). Here, Jurena was instructed as to what to do to receive a postponement and she declined. Accordingly, the trial court did not abuse its discretion by dismissing her appeal upon her failure to appear.

This Court notes that in her brief, Jurena contends, for the first time, that she could not attend the hearing on January 26, 2010, because she had pneumonia. Jurena's Br. at 4a. She also states that her neighbor flattened her tires on January 21, 2010 to prevent her from attending the hearing. She also stated that her car had to be towed to a garage because it would not start. Jurena's Br. at 4a. Had Jurena had pneumonia, she should have so stated when she called the courthouse the morning of the hearing. Moreover, a flat tire five days prior to a hearing is not cause to be absent the day of the hearing.

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

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PER CURIAM

ORDER

AND NOW, this 19th day of October, 2010, the February 1, 2010 order of the Court of Common Pleas of Allegheny County is affirmed.