

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Hidden Valley Condominium :
Owners' Association :
v. : No. 792 C.D. 2011
: Submitted: July 1, 2011
April A. Header a/k/a April Header, :
Appellant :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN

FILED: August 4, 2011

April A. Header a/k/a April Header (Owner) appeals from the April 23, 2010, order of the Court of Common Pleas of Berks County (trial court), which denied Owner's petition for leave to file post-trial motions *nunc pro tunc*. We affirm.

In October 2001, Hidden Valley Condominium Owners' Association (Association) filed an action against Owner for overdue maintenance expenses. Owner filed a counterclaim for damages to her condominium caused by a fire in an adjacent condominium. Owner claimed that she was not sufficiently compensated for the damages, that she had been unable to inhabit her condominium since the fire and that the Association did not make proper repairs.

The trial court held a non-jury trial in August 2009 and entered a verdict on November 17, 2009. The trial court found in favor of the Association and against

Owner, awarding the Association \$21,978.14. On December 2, 2009, the trial court's prothonotary entered notice of entry of judgment on the docket.

On December 10, 2009, Owner filed an appeal with the Superior Court, which denied Owner's appeal for failure to seek post-trial relief. Owner sought reconsideration, which the Superior Court denied without prejudice to seek leave to file post-trial motions *nunc pro tunc* with the trial court.

On March 17, 2010, Owner filed a petition with the trial court for leave to file post-trial motions *nunc pro tunc*. Owner asserted that her counsel was unable to communicate with her about the November 2009 verdict because, at the time, Owner was in Virginia attending to medical and emotional issues caused by the litigation. Owner claimed that she suffered from post-traumatic stress disorder and attention deficit hyperactivity disorder (ADHD) and that she could not function after being subjected to character assassination at the non-jury trial. Owner averred that, about two weeks after the verdict was entered, she contacted counsel to inquire about a possible verdict, but, by then, the ten-day period for filing post-trial motions had passed.

On March 19, 2010, the trial court issued a rule upon the Association to show cause why Owner was not entitled to file post-trial motions *nunc pro tunc*. The rule required that the Association file an answer within thirty days of "this date." (R.R. at 5a.) The trial court's prothonotary entered the rule on March 22, 2010.

The Association filed its answer with the trial court on April 21, 2010. Although the answer was two days late, the trial court accepted it because it was filed within thirty days of the Association's receipt of the rule and because Owner was not prejudiced by the late filing. In its answer, the Association questioned Owner's stated reason for failing to file post-trial motions. The Association pointed out that, in a letter to the Superior Court, counsel for Owner had argued that post-trial motions were not required in this case. Thus, the Association maintained that, even if Owner had informed counsel of her location in Virginia, Owner would not have filed post-trial motions with the trial court. The Association also asserted that it would be prejudiced by the untimely post-trial motions because: (1) Owner has not paid her assessments for more than ten years; (2) Owner's delinquency has caused a financial burden to the Association, preventing needed repairs and improvements to the common areas; and (3) allowing the post-trial motions would require the Association to unnecessarily pay additional legal fees.

On April 23, 2010, after argument on the rule, the trial court denied Owner's petition for leave to file post-trial motions *nunc pro tunc*. The trial court explained that: (1) Owner's post-trial motions were four months late and would have been prejudicial to the Association; (2) Owner's travel to Virginia without telling her counsel was not a sufficient reason for granting *nunc pro tunc* relief; and (3) Owner did not provide medical evidence to support her claims of mental distress.¹ Owner appealed to the Superior Court, which transferred the matter to this court.

¹ The trial court also stated that the evidence presented at the trial established that Owner owed the overdue condominium fees, that Owner's insurance adequately compensated her for the fire loss and that the condominium had been sufficiently repaired to make it habitable.

Owner argues that the trial court erred in denying her petition for leave to file post-trial motions *nunc pro tunc*. We disagree.

In the case of a non-jury trial, post-trial motions shall be filed within ten days after notice of the filing of the decision. Pa. R.C.P. No. 227.1(c)(2). “Generally, the failure to timely file a motion for post-trial relief within 10 days after the issuance of the notice of the decision . . . precludes consideration of the issues on their merits.” 1 Goodrich Amram 2d §227.1(c):6 (2005). However, a “court may exercise its discretion to address an untimely filed post-trial motion if the adverse party has no objection to the untimeliness and states so on the record.”² *Gallagher v. Bensalem Township*, 598 A.2d 325, 327 (Pa. Cmwlth. 1991). Here, the Association did **not** state on the record that it had no objection to the untimeliness of Owner’s post-trial motions. Thus, the trial court did not err in failing to exercise its discretion to address Owner’s untimely post-trial motions.

Moreover, in *E.J. McAleer & Co., Inc. v. Iceland Products, Inc.*, 475 Pa. 610, 614, 381 A.2d 441, 443 (1977), our Supreme Court stated that a trial court may exercise its discretion to allow exceptions to be filed out of time where the particular circumstances indicate that there are good and sufficient reasons for doing so. In *Coyne v. County of Allegheny*, 566 A.2d 378, 380 n.3 (Pa. Cmwlth. 1989), this court also recognized that, in the exercise of its discretion to allow untimely post-trial

² In *Kurtas v. Kurtas*, 521 Pa. 105, 109, 555 A.2d 804, 806 (1989), our Supreme Court stated with regard to post-trial motions that, under Pa. R.C.P. No. 126, a trial court has latitude to overlook a procedural defect that does not affect the substantial rights of a party.

motions, a trial court should examine the reason for the failure to comply with Pa. R.C.P. No. 227.1(c)(2). Here, Owner went to Virginia after the non-jury trial and failed to inform counsel of her location. The trial court did not err in concluding that this was not a good and sufficient reason for failing to file post-trial motions within the ten-day period.

Owner next argues that the trial court erred in accepting and considering the Association's untimely answer to the trial court's rule. We disagree.

Rule 206.7 of the Pennsylvania Rules of Civil Procedure governs the procedure following the issuance of a rule to show cause. The rule's explanatory comment states that "[t]he rule provides some flexibility by giving the court discretion to consider an answer not timely filed." Pa. R.C.P. No. 206.7, Explanatory Comment – 1995.

Here, the trial court considered the Association's late answer because the Association filed it within thirty days of receiving a copy of the rule and because there was no prejudice to Owner from the late filing. Owner contends that she was prejudiced by the late filing because it prevented her from knowing the Association's arguments until the date of oral argument on her petition. However, Owner does not indicate what she would have done differently had she known the specific arguments of the Association prior to the date of oral argument. Thus, we are not persuaded that Owner was prejudiced by the Association's late answer or that the trial court abused its discretion by considering the Association's answer.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

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ORDER

AND NOW, this 4th day of August, 2011, the order of the Court of Common Pleas of Berks County, dated April 23, 2010, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Senior Judge