

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Gregory G. Stokes, :
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 Appellant :
 :
 v. : No. 1271 C.D. 2007
 :
 Borough of Indiana : Argued: May 6, 2008

BEFORE: HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES GARDNER COLINS, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: May 23, 2008

Gregory G. Stokes (Stokes) appeals the Order of the Court of Common Pleas of Indiana County (trial court) granting the Borough of Indiana's (Borough) Motion for Nonsuit. In the opinion accompanying the trial court's order, the trial court determined that Stokes failed to make a prima facie case under the Whistleblower Law.¹ However, because Stokes' appeal is taken from a non-final order, this Court lacks jurisdiction over this appeal. We must, therefore, quash Stokes' appeal.

¹ Act of December 12, 1986, P.L. 1559, 43 P.S. §§ 1421-28.

Stokes appealed the trial court’s order granting Borough’s Motion for Non-Suit. (See Stokes’ Notice of Appeal (appealing “from the order entered in this matter on the 8th day of June, 2007”); Opinion and Order of Court (dated June 8, 2007, granting Borough’s Motion for Non-Suit).) Grant of a motion for nonsuit is not a final, appealable order. As this Court stated in Crawford v. Department of Justice, 556 A.2d 547, 547-48 (Pa. Cmwlth. 1989), a trial court may entertain a post-trial motion to remove a nonsuit or set it aside. Id. (citing Pa. R.C.P. No. 227.1). Until the would-be appellant moves for removal of the nonsuit and the trial court refuses such motion, there is no final, appealable order which this Court may review and, therefore, no right to appeal. Id. at 548 (citing Conte v. Barnett’s Bootery, Inc., 467 A.2d 391 (Pa. Super. 1983)). The record shows that Stokes did not move for removal of the nonsuit and the trial court never had the opportunity to deny such a motion.

With certain exceptions, with regard to orders of the courts of common pleas, this Court has jurisdiction only over *final* orders. Section 762 of the Judicial Code, 42 Pa. C.S. § 762. Because the order from which Stokes appealed, the grant of a motion for nonsuit, is not a final order, we lack jurisdiction to hear this appeal and must quash it.²

RENÉE COHN JUBELIRER, Judge

² Although neither party raised this issue for our consideration, we are compelled to raise it ourselves, as it deals with the jurisdiction of this Court, a matter which is not waivable. Crawford, 556 A.2d at 547 n.1; Delaware County v. City of Philadelphia, 620 A.2d 666, 667 (Pa. Cmwlth. 1993).

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Gregory G. Stokes,

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v.

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No. 1271 C.D. 2007

ORDER

NOW, May 23, 2008, the appeal of Gregory G. Stokes in the above-captioned matter is hereby **QUASHED**.

RENÉE COHN JUBELIRER, Judge