

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

David M. Davis, :
 :
 Appellant :
 :
 v. : No. 1990 C.D. 2007
 :
 Port Authority of Allegheny County : Submitted: April 4, 2008

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE COHN JUBELIRER**

FILED: July 11, 2008

David M. Davis (Davis) appeals from an order of the Court of Common Pleas of Allegheny County (trial court), which denied his Motion for Post Trial Relief. On appeal, Davis argues the trial court erred in entering a verdict in favor of the Port Authority of Allegheny County (Port Authority) on his negligence claim because such a verdict was precluded by the magisterial district judge's judgments as to the Port Authority's cross-complaints, which the Port Authority had not appealed. Alternatively, Davis argues that the trial court erred in failing to adhere to the law of the case as established by one of its prior orders, which involved an inherent

determination that the Port Authority was negligent. For the reasons discussed herein, we affirm the order of the trial court.

On February 28, 2005, Davis filed a civil complaint with an Allegheny County magisterial district judge alleging that a bus driver working for the Port Authority had negligently struck Davis's car during a motor vehicle accident that occurred on October 9, 2004. Through his complaint, Davis sought to recover \$3,590.66 in damages. In response, the Port Authority filed cross-complaints against Davis and Helen D. Davis, the individual who was driving Davis's car at the time of the accident, seeking \$321.58 in damages.

On April 21, 2005, following a hearing, the magisterial district judge entered three separate "Notice[s] of Judgment" in the same docket with regard to: (1) Davis's civil complaint, in favor of Davis and against the Port Authority in the amount of \$3,674.16; (2) the Port Authority's cross-complaint against Davis, in favor of Davis and against the Port Authority; and (3) the Port Authority's cross-complaint against Helen Davis, in favor of Helen Davis and against the Port Authority.

The Port Authority filed a single notice of appeal with the trial court on April 29, 2005, to which it attached the judgment entered on Davis's civil complaint. The Port Authority did not, however, attach the judgments entered on the Port Authority's cross-complaints. The Port Authority's notice of appeal contained a praecipe to enter rule upon Davis to file a complaint with the trial court.

In accordance with the notice of appeal, Davis filed a Complaint with the trial court alleging negligence on the part of the Port Authority. The Port Authority then

filed an answer to Davis's Complaint and also filed a complaint to join Helen Davis as an additional defendant and to bring a cross-claim against her. In response, Helen Davis filed preliminary objections alleging that she was not properly served and that any claims brought against her for monetary damages, contribution, or indemnity were barred by the magisterial district judge's prior judgment, which was not appealed. In response to these preliminary objections, the trial court issued an order on March 15, 2006, which dismissed the Port Authority's claims against Helen Davis.

Davis subsequently filed a Motion for Summary Judgment alleging that the magisterial district judge's prior determinations dismissing the Port Authority's cross-complaints, which the Port Authority had not appealed, entitled Davis to a determination finding the Port Authority liable for negligence based on the doctrine of res judicata. However, on March 8, 2007, the trial court issued an order, which denied Davis's Motion for Summary Judgment and continued the matter to the September trial list.

At trial, Davis's counsel advised the trial court that he was unable to present any witnesses in support of his claim and that he intended only to preserve the ability to argue that the trial court had erred in denying his Motion for Summary Judgment. Consequently, on September 10, 2007, the trial court issued a non-jury verdict in favor of the Port Authority and against Davis with respect to Davis's Complaint.

Davis later filed a Motion for Post Trial Relief alleging that the trial court was precluded from ruling in favor of the Port Authority because such a verdict was inconsistent with the final judgments made by the magisterial district judge as to the

Port Authority's cross-complaints, which the Port Authority had not appealed. Davis also alleged that such a verdict would be inconsistent with the law of the case as established by the trial court's March 15, 2006 order dismissing the Port Authority's joinder of Helen Davis as an additional defendant, which inherently involved a determination that the Port Authority was 100 percent negligent. However, by order dated September 25, 2007, the trial court denied Davis's Motion for Post Trial Relief. Davis's appeal to this Court followed.¹

On appeal, Davis first argues that the trial court erred in entering a verdict in favor of the Port Authority because such a verdict was precluded by the magisterial district judge's judgments as to the Port Authority's cross-complaints, which were not appealed. We disagree.

The only case upon which Davis relies to support his argument is Borough of Downingtown v. Wagner, 702 A.2d 593 (Pa. Cmwlth. 1997). In that case, the Borough of Downingtown filed a complaint against Wagner with a magisterial district judge for unpaid sewer and refuse charges, and in response, Wagner filed a cross-complaint against the Borough of Downingtown. Id. at 595. After a hearing, the magisterial district judge entered two separate judgments: one in favor of the Borough of Downingtown on its complaint; and one in favor of the Borough of Downingtown and against Wagner on Wagner's cross-complaint. Id. Wagner subsequently appealed both judgments in a single notice of appeal and filed a

¹ Our standard of review with regard to a denial of a motion for post-trial relief is limited to determining whether the trial court abused its discretion or committed an error of law. Koter v. Cosgrove, 844 A.2d 29, 32 n.4 (Pa. Cmwlth. 2004).

complaint with the trial court based on his cross-complaint. Id. The common pleas court struck Wagner's appeal of the judgment regarding the Borough of Downingtown's complaint on the basis that such judgment had not been properly appealed. Id. at 595-96. On appeal, this Court affirmed the common pleas court, holding that Wagner was required to file a separate appeal from the judgment regarding the Borough of Downingtown's complaint in order to preserve any challenge to that judgment.² Id. at 596-98.

The trial court, in the present case, responded to Davis's reliance on Borough of Downingtown by explaining that:

Downingtown does not stand for the proposition, as asserted by [Davis], that the [Port Authority's] failure to appeal from an adverse Magisterial District Judgment on [its] counterclaim constitutes a *res judicata* finding that the [Port Authority] is liable to [Davis] on [Davis's] claims against the [Port Authority], where those claims have been properly appealed from the Magisterial District Judgment. The relief afforded by the Downingtown Court was simply striking the Defendant's appeal on the improperly appealed claim. Downingtown did not permit the improperly appealed Magisterial District Judgment to constitute *res judicata* on the properly appealed Magisterial District Judgment claims.

(Trial Ct. Op. at 4.) We agree with the trial court's assessment.

The Port Authority properly appealed the magisterial district judge's judgment entered on Davis's civil complaint. Upon appeal of a magisterial district judge's

² We wish to note that Borough of Downingtown was overruled by American Appliance v. E.W. Real Estate Management, Inc., 564 Pa. 473, 480, 769 A.2d 444, 448 (2001), in which the Supreme Court held that separate notices of appeal do not need to be filed to appeal from judgments on a complaint and a cross-complaint.

judgment, a new complaint must be filed with the trial court, Pa. R.C.P.M.J. 1004(a)-(b), and the trial court's review of the matter is *de novo*. Pa. R.C.P.M.J. 1007(a). Thus, Davis was required to file a new complaint with the trial court alleging that the Port Authority was negligent. Once he did so, Davis had the burden of actually proving to the trial court that the Port Authority was negligent, and Davis was not free to rely on the record that was created before the magisterial district judge. However, Davis failed to present any evidence of the Port Authority's negligence to the trial court, and as a result, the trial court entered a non-jury verdict in favor of the Port Authority. Based on the record before us, we conclude that the trial court did not err in this regard.

Alternatively, Davis argues that the trial court erred by failing to follow the law of the case as established by the trial court's March 15, 2006 order dismissing the Port Authority's claim against Helen Davis based on her preliminary objections. According to Davis, the trial court's March 15, 2006 order inherently involved a determination that the Port Authority was negligent, which became the law of the case. Again, we disagree.

The trial court's March 15, 2006 order dismissed the Port Authority's claims against Helen Davis after she filed preliminary objections, which were based on the judgments issued by the magisterial district judge. Davis, in his Motion for Post Trial Relief, admits that "the District Justice final judgments in favor of the Plaintiff [Davis] . . . and in favor of Plaintiff's driver [Helen Davis] on the Port Authority's Cross Civil Complaint, . . . by themselves, could be interpreted as . . . a situation where no party was negligent" (Motion for Post Trial Relief ¶ 5.) However,

Davis asserts that when the “District Justice judgment in favor of the Plaintiff [Davis] and against the Port Authority [for negligence]” is “read with the final judgments by the District Justice” they “lead to the conclusion that the Port Authority was determined to be 100% negligent” (Motion for Post Trial Relief ¶ 5.) Because the Port Authority appealed the judgment in favor of Davis and against the Port Authority regarding the Port Authority’s negligence, we cannot read that judgment together with the other judgments; the other judgments must stand alone. Standing alone, the other judgments do not compel the conclusion that the Port Authority was negligent, as Davis admits in his Motion for Post Trial Relief. Thus, although the trial court dismissed the Port Authority’s claim against Helen Davis, there did not need to be, nor was there, any inherent determination that the Port Authority was negligent. Therefore, we conclude that the trial court did not fail to properly apply the law of the case.

Accordingly, for the reasons discussed above, we affirm the order of the trial court.

RENÉE COHN JUBELIRER, Judge

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David M. Davis,	:	
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Appellant	:	
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v.	:	No. 1990 C.D. 2007
	:	
Port Authority of Allegheny County	:	

ORDER

NOW, July 11, 2008, the order of the Court of Common Pleas of Allegheny County in the above-captioned matter is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, Judge