

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Jayne Horner, Emil P. Horner, Jr.,	:	
and Mary L. Horner,	:	
Appellants	:	
	:	
v.	:	No. 2153 C.D. 2006
	:	Argued: September 4, 2007
Loyalsock Township School	:	
District	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge**

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: February 22, 2008**

Jayne Horner, Emil P. Horner, Jr. and Mary L. Horner appeal from the order of the Court of Common Pleas of Lycoming County (common pleas) that struck their appeal from a Board of View’s condemnation award. The Horners challenge as legal error common pleas’ ruling that they failed to properly perfect their appeal; they assert that the prothonotary’s erroneous docketing of their appeal should not bar consideration on the merits. We agree and, therefore, reverse.

The facts are undisputed. After a Board of View filed its report, on March 28, 2006, for the condemnation of the Horners’ real property by the Loyalsock Township School District, the Horners filed an appeal to common pleas, challenging the amount of the award and the failure to include delay damages, and

requesting a jury trial. The Horners filed their appeal on April 27, 2006, that is within the thirty day period provided under Section 513 of the Eminent Domain Code, Act of June 22, 1964, Special Sess., P.L. 84, 26 P.S. § 1-513. The appeal documents, *i.e.*, cover letter requesting filing of the enclosed appeal, the appeal, the docketing statement form and the demand for a jury trial, all appropriately bore the docket number 01-01475, which had been assigned to the Horners' preliminary objections challenging the condemnation, and the docket number under which the Board of View filed its award. Nevertheless, the prothonotary assigned the appeal a new number, 06-00893 and did not docket it under 01-01475. After the School District received notice of the appeal, its attorney corresponded with counsel for the Horners by letter dated May 8, 2006, noting that the appeal was filed to the wrong docket number and stating:

For several days after the appeal deadline, we checked the court filings to verify that an appeal had been duly filed in the above matter. Finally, we did receive a copy in the mail, however, there was still no appeal docketed in the above matter.

What we found is that the Horner appeal was docketed to a different number. Actually, because you had enclosed a filing fee, none is required, the Prothonotary's office took your appeal as a new case filing.

The Prothonotary's position is that he has no authority to change the filing at this time. He believes that he can only make a change in the docketing pursuant to Court Order.

My suggestion is that we agree that your notice of appeal should have been filed to Civil Action No. 01-01475 and should have not been taken as commencing a new law suit. I will ask the Court for an order directing the Prothonotary to correct the file accordingly.

Please advise at your earliest convenience.

Certified Record at 12, Horners' Motion for Reconsideration, Exhibit D. Supp. R.R. at 9. The record does not reflect what, if any, response was made by Horners' attorney, but he does not assert that he made any attempt to correct the appeal number.<sup>1</sup>

On June 30, 2006, at a pre-trial conference, the parties and the assigned judge acknowledged that the appeal had been improperly docketed, but again no one took any corrective action. Subsequently, the School District moved to strike the appeal. Common pleas granted this motion, relying upon *Antonis v. Liberati*, 821 A.2d 666 (Pa. Cmwlth. 2003), *appeal granted*, 577 Pa. 673, 842 A.2d 407 (2004) and stating, "The Court finds that Plaintiffs failed to properly effectuate their appeal and, despite Defendant's counsel alerting Plaintiffs' counsel to said problems with said ineffective appeal, have not, to date, made any attempts to rectify said problem." Common Pleas' Order of October 16, 2006. Thereafter, the Horners filed the present appeal.<sup>2</sup>

On appeal, the Horners contend that, insofar as they did nothing to cause the prothonotary's docketing error, they should not have been charged with a duty to seek correction of the docket, particularly after the School District and the assigned judge were aware of the error. Rather, they believe that upon learning of the erroneous docket number, common pleas should have directed its correction

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<sup>1</sup> When asked at oral argument why he did not follow up on this suggestion, counsel simply stated that he "didn't have to" because his original filing was correct.

<sup>2</sup> This court initially dismissed the appeal, by order of January 22, 2007, due to failure to file a statement of matters complained of on appeal, as directed by common pleas. However, after it came to light that receipt of common pleas' 1925(b) order was delayed because the county prothonotary failed to mail it to the proper address, our court, on February 23, 2007, vacated the order of dismissal and reinstated the appeal.

without requiring any further action on the part of the Horners. Finally, the Horners argue that inasmuch as the School District represented that it would seek to correct the docket number, it should have been estopped from moving to strike the appeal on the basis of the improper docketing.

It is undisputed that the Horners filed a timely appeal in the prescribed manner indicating on the appeal papers the correct number under which the prothonotary should have docketed the filing.<sup>3</sup> It is further undisputed that the prothonotary, the parties and the assigned judge all understood, within a short time after the appeal was filed, that the prothonotary misdocketed the appeal under the an improper number.

The dispute arises over who had the responsibility to correct this simple and obviously innocent mistake and, indeed, a great deal of finger-pointing attends the dialogue. The parties have not cited, and we are unaware of, any rule that prevents a prothonotary from correcting a docketing error made by her office. Moreover, we fail to understand why common pleas did not enter a prompt directive when the issue first came to light at the pre-trial conference. Certainly, counsel for the school district had no duty to take any action and behaved in a highly professional manner in bringing the error to the attention of the Horner's counsel and suggesting an easy and practical solution in which he offered to cooperate. Had counsel for the Horners accepted this offer, or had the court or the prothonotary taken action easily available to them, the entire matter could have been resolved with minimal effort, instead of turning into time consuming and expensive litigation over a collateral matter of no particular consequence.

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<sup>3</sup> Section 516 of the Eminent Domain Code prescribes the information that must be set forth in the appeal.

Nonetheless, we must agree with the trial court that the primary *duty* to act fell on counsel for the Horners. We flatly reject his argument that since he filed the appeal on time with the correct docket number, he had no further responsibility. At a minimum, counsel, once alerted to the fact that his appeal had not been properly perfected, owed his client a duty to take whatever action was necessary to remedy the problem. We must disagree, however, with the trial court's application of *Antonis v. Liberati* to the facts presented here. In *Antonis*, the plaintiff accepted a note and mortgage to secure a loan. Antonis's attorney, Liberati, prepared and filed these documents with the Recorder of Deeds, but a clerk in the Recorder's office misspelled the debtor's name and the mortgage was indexed incorrectly. As a result, the debtor was later able to sell the property without disclosing the mortgage. Unable to prevail in his suit against the purchasers, who had no notice of the lien, Antonis sued the debtor's estate, the Recorder of Deeds and his attorney, Liberati. The jury awarded damages against all three. On appeal, this court reversed the judgment as to the Recorder, but affirmed as to Liberati.<sup>4</sup> We agreed with the trial court's instruction that "it was Liberati's obligation, as Antonis's attorney, to verify that the note and mortgage were recorded properly after he delivered them to the Recorder's Office." *Antonis*, 821 A.2d at 669.

While we reiterate that we agree with common pleas that the Horner's counsel had a similar duty in this case, at least once he became aware of the misnumbering, several differences make *Antonis* inapposite here. First, of course,

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<sup>4</sup> We held that the Recorder could not be held vicariously liable for the error of a member of her staff and further that she was immune pursuant to 42 Pa. C.S. §§ 8541-64. The award against the debtor's estate was not in issue on appeal.

this is not an action against counsel, so a finding that he had (or even breached) a duty to his client does not answer the question of whether his *clients'* appeal should have been struck. In addition, unlike in *Antonis*, where the plaintiff's security had been irretrievably lost by the sale of the mortgaged property to an innocent purchaser, when this matter came before the court, no harm had been done. A simple docketing error by the prothonotary had prevented timely perfection of the Horner's appeal, and ordering the prothonotary to enter the appeal on the docket number under which it was properly filed in the first place would have caused no harm or prejudice to anyone.

Provisions in the Rules of Civil Procedure, as well as in the Judicial Code, clearly convey an aversion in our law to the sort of hyper-technicality applied in the present case. For example, Pa. R.C.P. No. 126 directs: "The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." See also Pa. R.A.P. 105(a) (expressing the same policy and providing similar authorization for *sua sponte* correction of nonsubstantive technical filing defects). Pa. R.C.P. No. 213, while not directly addressing the present circumstances, demonstrates the power afforded to the courts of common pleas to *sua sponte* direct measures to facilitate the prompt and economical dispensation of justice, such as consolidating actions arising from the same transactions or occurrence or transferring actions mistakenly filed in a court lacking jurisdiction in order to facilitate the prompt and economical dispensation of justice. Section 708(a) of the Judicial Code, 42 Pa. C.S. § 708(a), announces the general principle that "[n]o

objection to a governmental determination shall be defeated by reason of error in the form of the objection or the office of clerk of court in which the objection is filed.”

Here, in spite of the prothonotary’s error, the Horners’ appeal promptly came before the court, albeit under the wrong docket number. While we in no way condone counsel’s failure to take prompt affirmative action to protect his client, once the appeal came before the court and the docketing error was brought to its attention, we believe common pleas ought to have ordered the defect corrected and gone on with the matter.

Accordingly, we reverse and remand for consideration on the merits.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

