

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

County of Allegheny :  
 :  
 v. : No. 230 C.D. 2011  
 :  
 John Gagliardi, : Submitted: May 6, 2011  
 :  
 Appellant :

OPINION NOT REPORTED

**MEMORANDUM OPINION  
PER CURIAM**

**FILED: September 13, 2011**

John Gagliardi (Appellant), pro se, appeals from the Order of the Court of Common Pleas (trial court) of Allegheny County (County), dated April 21, 2010, ordering Appellant to obtain a general docket (GD) number rather than filing his Motion to Strike Tax Liens (Motion) under a Delinquent Tax Docket (DTD) number.

The facts in this case, as set forth by the trial court in its Statement in Lieu of Opinion (Statement), are summarized as follows: Appellant gave County a Notice of Presentment that he would be presenting his Motion. The date and time of presentment was set for April 21, 2010 at 1:30 p.m. The Motion was listed at DTD numbers 09-045313 and 08-045745. Upon said date and time for presentment, counsel for the County and counsel for the County's Department of Court Records (Department) appeared, but Appellant failed to appear or notify County or the trial

court that he would not be appearing. County advised the trial court that Appellant had been repeatedly forewarned that all tax appeals must be filed at a GD number and using a DTD number is not permitted. (Statement at 1, 2.) The trial court issued the following Order:

AND NOW, this 21 day of April, 2010, [Appellant] having given a Notice of Presentment to [County] that he would present to the Motions Judge a Motion to Strike Tax Liens against incorrect Party on 4-21-10 at 1:30 p.m. [County] appeared through counsel at the appointed time. [Appellant] failed to appear and did not advise the [trial court] or counsel for [County] that he would not appear. [Appellant] is ordered to obtain a GD number for his Motion and to pay the cost of filing. [Appellant's] Motion is denied with prejudice and [Appellant] is ordered to pay the counsel fees of [County] as shall be determined by the [trial court].

(Order, April 21, 2010, Docket Entry 1) (Order). Pursuant to the Order, the Department thereafter issued a GD number, assessed Appellant with the costs of initiating the case in the amount of \$128.00, and requested remittance of this amount. (Letter from Department to Appellant (April 22, 2010) at 1, Docket Entry 2.) On April 22, 2010, Appellant filed a Memorandum of Law in Support of Motion to Strike Erroneous Tax Liens. (Docket Entry 3.) On April 27, 2010, Appellant filed a Motion for Reconsideration of the trial court's Order. (Docket Entry 4.) After review of the Motion for Reconsideration, on April 28, 2010, the trial court entered an order denying the Motion for Reconsideration.<sup>1</sup> (Docket Entry 5.) On May 3, 2010, Appellant filed a Notice of Appeal to the Superior Court (Docket Entry 6) from the trial court's Order dated April 21, 2010, and a Concise Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P.

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<sup>1</sup> Docket Entry 5 is dated April 28, 2010 on the docket, but the order itself is dated in handwriting as April 27, 2010.

1925(b). (Docket Entries 7, 8.) On May 13, 2010, the trial court filed its Statement (Docket Entry 9) and, on May 14, 2010, Appellant filed an Amended Concise Statement. (Docket Entry 10.) The Superior Court entered an order dated December 21, 2010 transferring jurisdiction of this appeal to our Court.<sup>2</sup>

We first note that the trial court's dismissal with prejudice refers to the dismissal of the Motion *under the DTD number*, which is not a docket number used for litigation in the trial court.<sup>3</sup> That the dismissal with prejudice referred only to the Appellant's Motion under the DTD number is evidenced by the fact that the Department subsequently issued a GD number under which Appellant was to re-file his Motion. Appellant was ordered to obtain a GD number and to pay the cost of initiating his action with the trial court, so that he could properly initiate his suit and present his claims along with any substantive arguments he intends to

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<sup>2</sup> On August 26, 2010, prior to the transfer of this case to Commonwealth Court, Appellant filed with the Superior Court a Motion to Strike Appellee's Brief for Failure to Comply with the Pennsylvania Rules of Appellate Procedure. The Superior Court deferred its disposition of this motion to the panel of the Superior Court to be assigned to decide the merits of the appeal in this matter. Upon transfer of this case to Commonwealth Court on December 21, 2010, this Court requested that the parties re-file fifteen copies of their respective briefs to this Court to conform with Pa. R.A.P. 2172 and Appellant was required to file fifteen additional copies of his motion with this Court by March 15, 2011. Appellant did not comply with the requirement to re-file the motion. Despite this failure, we have reviewed Appellant's motion and find that County's brief sufficiently conforms in all material respects to the Rules of Appellate Procedure of this Court. We will, therefore, deny Appellant's motion.

<sup>3</sup> This Court has previously considered the issue of this Appellant's attempts to utilize the Delinquent Tax Docket (DTD) for Appellant's lawsuits involving tax assessments and liens and has noted the repeated advisories from the trial court and the Department that "[t]he DTD [number] is only utilized for municipalities and municipal authorities to file their tax liens against properties located in the County. The DTD is not a docket for general proceedings in the trial court." County of Allegheny v. Gagliardi, No. 2359 C.D. 2007, slip op. at 3, n.1 (Pa. Cmwlth. February 6, 2009).

litigate. The trial court explained that clerks and both appellate and trial court judges have previously pointed out to Appellant that he has failed to follow proper procedures when he files his litigation at DTD numbers and not at GD numbers. (Statement at 2.) The trial court further noted that, despite the fact that Appellant had been instructed to refrain from filing tax appeals at DTD numbers by several trial court judges,<sup>4</sup> Appellant once again filed his Motion using a DTD number without obtaining a GD number, for which the payment of the cost of filing an action is required. (Statement at 2.)

“Appeals are permitted only from final orders so as to prevent piecemeal determinations and protracted litigation. [] The rule of finality is fundamental to the exercise of jurisdiction by an appellate court and is rigorously applied.” Fayette County Office of Planning, Zoning and Community Development v. Fayette County Zoning Hearing Board, 981 A.2d 336, 340 (Pa. Cmwlth. 2009) (citing Brophy v. Philadelphia Gas Works & Philadelphia Facilities Management Corporation, 921 A.2d 80 (Pa. Cmwlth. 2007)). “An appeal will lie only from a final order, unless otherwise permitted by rule or statute.” In Re: Condemnation by the Economy Borough Municipal Authority, 922 A.2d 77, 79 (Pa. Cmwlth. 2007). Pennsylvania Rule of Appellate Procedure 341(b)(1) sets forth the definition of a final order as “any order that disposes of all claims and of all parties.” Pa. R.A.P. 341(b)(1).

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<sup>4</sup> In its Statement, the trial court states that Appellant has been instructed to refrain from filing tax appeals at DTD numbers by two other judges of the trial court. (Statement at 1.)

The Order does not dispose of any claims or the merits of any claims raised by Appellant and relates only to the filing of Appellant's claims in the appropriate docket of the trial court. In fact, in response to the Order, the Department issued a GD number so that Appellant could appropriately file his claims and notified Appellant about this. (Letter from County to Appellant (April 22, 2010) at 1.) Upon payment of the cost of filing, Appellant is free to file his claims and pursue his case by filing it in the proper docket of the trial court with the GD number that has been assigned to his case. Because there has been no disposition of Appellant's claims, the Order is not a final, appealable order, nor does it meet the requirements of the Rules of Appellate Procedure for interlocutory appeals as of right pursuant to Pa. R.A.P. 311, for interlocutory appeals by permission pursuant to Pa. R.A.P. 312, or as a collateral order from which an appeal may be taken pursuant to Pa. R.A.P. 313.

Likewise, the portion of the Order requiring Appellant to pay County's counsel fees *as shall be determined by the court*, is not a final order that we can review. No hearing has been held regarding counsel fees and such fees remain to be determined by the trial court.

For the foregoing reasons, we must quash this appeal.

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

County of Allegheny	:	
	:	
v.	:	No. 230 C.D. 2011
	:	
John Gagliardi,	:	
	:	
Appellant	:	

**PER CURIAM**

**ORDER**

**NOW**, September 13, 2011, John Gagliardi's (Appellant) Motion to Strike County of Allegheny's Brief for Failure to Comply with the Pennsylvania Rules of Appellate Procedure is hereby **DENIED** and Appellant's appeal from the Order of the Court of Common Pleas of Allegheny County in the above-captioned matter, dated April 21, 2010, is hereby **QUASHED**.