

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

TRUBIE A. SUTPHIN, JR. AND MICHAEL
K. SUTPHIN

Appellees

v.

DOROTHY M. ROHM

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1155 MDA 2012

Appeal from the Judgment Entered October 15, 2012
In the Court of Common Pleas of Fulton County
Civil Division at No(s): 2009-73-C

BEFORE: BOWES, J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY GANTMAN, J.:

Filed: February 27, 2013

Appellant, Dorothy M. Rohm, appeals from the judgment entered in the Fulton County Court of Common Pleas in favor of Appellees, Trubie A. Sutphin, Jr. and Michael K. Sutphin, in this quiet title action. We affirm.

The trial court set forth the relevant facts and procedural history as follows:

[Appellees] Trubie "Butch" Sutphin, Jr. and Michael K. Sutphin, jointly own real estate located in Thompson Township, Fulton County. This property was once owned by the neighboring Powells, who conveyed it to the Greybills and Smiths, who then conveyed it to Trubie Sutphin, Sr. It was then conveyed on January 11, 1989, by Trubie Sutphin, Sr. to himself, Edna Sutphin, and [Appellees] as joint tenants with the right of survivorship. Following the death of Edna in September 2000, and Trubie Sr. in October 2008, title vested in [Appellees] as the remaining joint tenants.

[Appellant] owns an adjoining tract of real estate. That property has been owned by [Appellant's] family, the Everts, for all time relevant to this matter. It was conveyed to [Appellant] on March 22, 2007.

Between the tracts of land owned by [Appellant and Appellees] lies a small area of land ("Disputed Area"), in which [Appellant] has record title[.] ...[Appellees] [claim] that prior conduct of the parties has given [Appellees] superior title. The disputed area begins at a tree line on [Appellant's] property and slopes down to [Appellees'] property. The dispute occurred following a subdivision of lands prepared by Shelly & Witter, Inc., in January 2007, at the direction of [Appellant] and her predecessors in title, which depicted an "apparent overlap" in boundaries between [Appellees'] land and [Appellant's] land.

(Trial Court Opinion, filed May 23, 2012, at 1). On February 27, 2009, Appellees filed a complaint to quiet title on the disputed area. The court conducted a bench trial on February 2-3, 2012. By decree and opinion filed on May 23, 2012, the court found in favor of Appellees and against Appellant; notice per Pa.R.C.P. 236 was sent to the parties on May 24, 2012. Appellant filed post-trial motions on Thursday, June 7, 2012. On June 11, 2012, Appellees filed a response objecting to the untimeliness of Appellant's post-trial motions as well as lack of specific reference to the record. By order filed June 21, 2012, the court denied Appellant's post-trial motions, specifically because they were untimely filed. On the same day, Appellant filed a notice of appeal. On June 26, 2012, the court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Appellant timely complied.

Appellees have filed a motion in this Court to quash the appeal on the basis of waiver, asserting Appellant failed to file a timely motion for post-trial relief. This Court denied Appellees' motion on October 10, 2012, without prejudice to Appellees' right to raise the issue before the merits panel assigned to this case, and conditional upon entry of final judgment by the trial court. On October 15, 2012, Appellant filed a *praecipe* to enter judgment, which the court entered on that date in favor of Appellees.¹

Appellant raises the following issues for our review:

GIVEN THE FACT THAT THIS COURT AND THE PENNSYLVANIA SUPREME COURT HAVE HELD THAT THE DOCTRINES OF CONSENTABLE BOUNDARY AND ADVERSE POSSESSION ARE RELATED, AND GIVEN THE STANDARD OF PROOF THAT THIS COURT HAS ARTICULATED FOR ADVERSE POSSESSION, WAS THERE SUFFICIENT EVIDENCE IN THE RECORD FOR THE TRIAL COURT TO CONCLUDE THAT [APPELLEES] ESTABLISHED A CONSENTABLE BOUNDARY BETWEEN TWO CONTIGUOUS PARCELS (THEIRS AND APPELLANT'S) WHEN THE PARTIES DO NOT DISPUTE THAT THE BOUNDARY IN THEIR DEEDS IS THAT ADVOCATED BY APPELLANT, AND WHEN THE

¹ Ordinarily, an appeal properly lies from the entry of judgment. **See generally *Johnston the Florist, Inc. v. TEDCO Const. Corp.***, 657 A.2d 511, 514-15 (Pa.Super. 1995). Nevertheless, a final judgment entered during pendency of an appeal is sufficient to perfect appellate jurisdiction. ***Drum v. Shaull Equipment and Supply, Co.***, 787 A.2d 1050 (Pa.Super. 2001), *appeal denied*, 569 Pa. 693, 803 A.2d 735 (2002). Here, Appellant filed a notice of appeal on June 21, 2012, prior to the entry of judgment. Final judgment was entered on October 15, 2012. Thus, Appellant's notice of appeal relates forward to October 15, 2012, the date judgment was entered. **See** Pa.R.A.P. 905(a) (stating notice of appeal filed after court's determination but before entry of appealable order shall be treated as filed after such entry and on day of entry). Hence, there are no procedural/jurisdictional impediments to our review of this appeal.

ONLY EVIDENCE OF RECORD SHOWING APPELLANT'S AWARENESS OF THE ALLEGED CONSENTABLE BOUNDARY, SHOWS THAT APPELLANT ASSERTED HER RIGHTS UPON LEARNING OF AN ENCROACHMENT TO THE BOUNDARY LINE IN HER DEED?

GIVEN THE EXACTING STANDARD OF PROOF THAT THE APPELLATE COURTS HAVE ARTICULATED TO ESTABLISH A CLAIM OF ADVERSE POSSESSION, HAVE APPELLEES MET THAT EXACTING STANDARD, AND DID THE TRIAL COURT ERR IN HOLDING THAT APPELLEES DID ESTABLISH THEIR CLAIM UNDER THE DOCTRINE OF ADVERSE POSSESSION?

(Appellant's Brief at 3).

In her first and second issues combined, Appellant asserts she first learned of Appellees' claim to her land in 2007, and quickly asserted her ownership rights when she discovered Appellees were hunting and building a fence on the disputed area. Appellant declares she did not agree to a compromise that conceded a portion of her property to Appellees. Appellant also argues she did not acquiesce to Appellee's adverse property claim or to a boundary line other than the one contained in her deed. Appellant further contends Appellees failed to establish a residence on the disputed property or cultivate the land, and did not exclusively use or otherwise possess the disputed area. Appellant asserts Appellees did not openly challenge her ownership of the disputed area until Butch Sutphin constructed a fence on the land in 2007. Appellant maintains she vigorously defended and asserted her property rights promptly. Appellant concludes the evidence was insufficient for the trial court to find Appellees possessed superior title to the

disputed area, under the doctrines of consentable boundary by acquiescence and adverse possession. We cannot agree.

As a prefatory matter, we must determine whether Appellant properly preserved her issues for review. *See Tucker v. R.M. Tours*, 939 A.2d 343, 346 (Pa.Super. 2007), *affirmed*, 602 Pa. 147, 977 A.2d 1170 (2009) (citing *Commonwealth v. Wholaver*, 588 Pa. 218, 903 A.2d 1178 (2006), *cert. denied*, 549 U.S. 1171, 127 S.Ct. 1131, 166 L.Ed.2d 900 (2007) (stating: “This Court may *sua sponte* determine whether issues have been properly preserved for appeal”); *Hall v. Owens Corning Fiberglass Corp.*, 779 A.2d 1167, 1169 (Pa.Super. 2001) (stating: “post-trial relief may not be granted unless the grounds for such relief are specified in the post-trial motion”). Further, the rules of civil procedure apply in an action to quiet title from commencement of the case to the entry of judgment. *Kennel v. Thomas*, 804 A.2d 667 (Pa.Super. 2002); Pa.R.C.P. 1061(a).

The Pennsylvania Rules of Civil Procedure set out the requirements for post-trial relief and state in pertinent part:

Rule 227.1. Post-Trial Relief

* * *

(c) Post Trial motions **shall** be filed **within ten days** after

(1) verdict, discharge of the jury because of inability to agree, or nonsuit in the case of a jury trial; or

(2) notice of nonsuit or the filing of the decision in the case of a trial without a jury.

If a party has filed a timely post-trial motion, any other party may file a post-trial motion within ten days after the filing of the first post-trial motion.

Pa.R.C.P. 227.1(c) (emphasis added). Following a trial, an appellant must file post-trial motions to preserve issues for appellate review; issues not raised in post-trial motions are waived. ***Cerniga v. Mon Valley Speed Boat Club, Inc.***, 862 A.2d 1272, 1274 (Pa.Super. 2004). The purpose of the rules providing that grounds not specified by post-trial motions are waived on appeal is to provide the trial court the first opportunity to review and reconsider its earlier rulings and correct its own error. ***Chalkey v. Roush***, 757 A.2d 972, 975 (Pa.Super. 2000) (*en banc*), *affirmed*, 569 Pa. 462, 805 A.2d 491 (2002) (quoting ***Soderberg v. Weisel***, 687 A.2d 839, 845 (Pa.Super. 1997)). Absent objection from the opposing party, the trial court may exercise its discretion to consider the merits of untimely filed post-trial motions. ***Millard v. Nagle***, 587 A.2d 10, 12 (Pa.Super. 1991). Nevertheless, issues raised in an untimely post-trial motion are waived for purposes of appellate review, if the trial court specifically declares the motion untimely and declines to reach the actual merits of the motion. ***Kennel, supra*** at 668. "When the appellant has failed to preserve issues for appeal, the issues are waived, and the...court's order is more properly 'affirmed.'" ***In re K.L.S.***, 594 Pa. 194, 197 n.3, 934 A.2d 1244, 1246 n.3

(2007) (stating when appellant has waived issues on appeal, appellate Court should affirm decision of trial court rather than quash appeal).

Instantly, the trial court found in favor of Appellees and against Appellant by decree filed on May 23, 2012, with Rule 236 notice sent on May 24, 2012. Appellant filed her post-trial motions fourteen days later, on Thursday, June 7, 2012, which was beyond the ten-day deadline under Pa.R.C.P. 227.1(c). Appellees objected to the filing on the grounds of timeliness and lack of specific reference to the record. On June 21, 2012, the trial court denied Appellant's post-trial motions as untimely.² Therefore, Appellant's failure to file post-trial motions in a timely manner constitutes waiver of her issues on appeal. **See** Pa.R.C.P. 227.1(c); ***Kennel, supra***.

Moreover, in its Pa.R.A.P. 1925(a) opinion, the court makes clear that the basis for its decision to deny Appellant's post-trial motions was principally because they were untimely. The court also stated:

Further, we note that [Appellant's] failure to comply with Pa.R.C.P. 227.3 and point to specific portions of the transcript has impeded the ability of the Court to conduct a thorough review of the issues raised. By merely incorporating the arguments in the post-[trial] motion into the Concise Statement, [Appellant] has denied the [c]ourt

² In its order filed June 21, 2012, the court denied Appellant's post-trial motions primarily as untimely and provided only a general statement that it had a sufficient basis for rendering its decision. Thus, the court's main reason to deny Appellant's post-trial motions was her failure to file her motion in a timely manner. To the extent the court commented on the content of the motions, it did so only in a very broad manner that could hardly be called an examination on the merits.

a chance to further address any specific arguments. Essentially, [Appellant's] post-trial motion and concise statement ask the Court to ignore its prior ruling, revisit two days of trial (this time by way of transcript), and re-write its findings.

(Trial Court Opinion, filed August 14, 2012, at 2). Based upon the foregoing, Appellant waived her issues for appellate review. Accordingly, we affirm.³ ***See In re K.L.S., supra.***

Judgment affirmed.

³ Due to our disposition, we deny Appellees' motion to quash.