

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

AFFORDABLE MINI STORAGE,

Appellant

v.

LAMAR OUTDOOR ADVERTISING AND
RICHARD J. HOFFMAN,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1236 WDA 2012

Appeal from the Judgment of August 7, 2012,
in the Court of Common Pleas of Westmoreland County,
Civil Division at No. 3056 of 2010

BEFORE: BOWES, LAZARUS and COLVILLE*, JJ.

CONCURRING MEMORANDUM BY COLVILLE, J.: **FILED AUGUST 28, 2013**

I concur in the result. I write separately to note the manner in which I would dispose of this matter.

In order to preserve issues for appellate review, Appellant was required to file post-trial motions. ***See Bennett v. Juzelenos***, 791 A.2d 403, 405 (Pa. Super. 2002) ("In the case of a nonjury trial, an appellant ordinarily must file post-trial motions pursuant to Pa.R.C.P. 227.1(c)(2), in order to preserve issues for appellate review.") (citations omitted). Appellant did file post-trial motions wherein it listed perceived trial court errors. Appellant, however, failed to specify what type of relief it was requesting. Pa.R.C.P. 227.1(d) ("A motion for post-trial relief **shall specify**

*Retired Senior Judge assigned to the Superior Court.

the relief requested and may request relief in the alternative. Separate reasons shall be set forth for each type of relief sought.”) (emphasis added).

This oversight is significant for multiple reasons. The type of relief sought in a post-trial motion and denied by a trial court defines this Court’s standard of review. For instance, we review the denial of a post-trial request for a new trial differently than we review the denial of a post-trial request for judgment notwithstanding the verdict (“JNOV”). **See Fletcher-Harlee Corp. v. Szymanski**, 936 A.2d 87, 93 (Pa. Super. 2007) (reciting the manner in which this Court reviews the denial of a post-trial motion for JNOV and the denial of a post-trial motion for a new trial). Furthermore, if an appellant fails to request a certain form of relief in a post-trial motion, then the appellant waives any claim for that relief on appeal. **See, e.g., Hall v. Owens Corning Fiberglass Corp.**, 779 A.2d 1167, 1169 (Pa. Super. 2001) (“Our review of the record, specifically [the a]ppellant’s motion for post-trial relief dated March 19, 1999, reflects that [the a]ppellant did not request relief of a JNOV. [The a]ppellant filed a post-trial motion for a new trial and listed multiple grounds for support of the request. Accordingly, because the claim was not specified in post-trial motions, this issue was not preserved and is, therefore, waived.”).

Because Appellant failed to make a claim for relief in its post-trial motions, I would find that Appellant waived its issues on appeal.

In assessing Appellant’s post-trial motions, the Majority suggests that “the only construction one can place on [paragraph 7 of Appellant’s post-trial motions] is that Appellant was requesting judgment notwithstanding the

verdict.” Majority Memorandum at 5-6 n.1. The Majority further asserts, “The specific nature of the relief requested is fully apparent from a reading of the post-trial motion, and that document satisfies the mandates of Pa.R.C.P. 227.1(d).” ***Id.***

We are to interpret the Rules of Civil Procedure, in part, as follows:

(a) The object of all interpretation and construction of rules is to ascertain and effectuate the intention of the Supreme Court.

(b) Every rule shall be construed, if possible, to give effect to all its provisions. When the words of a rule are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

Pa.R.C.P. 127(a) and (b).

As I mentioned above, Pa.R.C.P. 227.1(d) provides, “A motion for post-trial relief **shall specify the relief requested** and may request relief in the alternative. Separate reasons shall be set forth for each type of relief sought.” (emphasis added). This rule clearly and unambiguously required Appellant to specify the relief it was requesting in its post-trial motions. Appellant’s post-trial motions did not specify what relief Appellant was requesting. Thus, in my view and contrary to the Majority’s assertion, Appellant’s post-trial motions clearly do not satisfy the mandates of Pa.R.C.P. 227.1(d).