

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DELAWARE COUNTY AUTO REHAB T/A
DELAWARE COUNTY TOWING

Appellant

v.

NATIONWIDE MUTUAL FIRE INSURANCE
CO.

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1807 EDA 2012

Appeal from the Order Entered May 16, 2012
In the Court of Common Pleas of Delaware County
Civil Division at No(s): 10-051046

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.*

JUDGMENT ORDER BY LAZARUS, J.

Filed: February 5, 2013

This appeal has been taken from the order entered on May 16, 2012. Appellant did not file post-trial motions within ten days following the entry of that order. We dismiss the appeal.

Pennsylvania Rule of Appellate Procedure 227.1(c)(2) states that "post-trial motions shall be filed within ten days after . . . the filing of the decision in the case of a trial without jury." *See Chalkey v. Roush*, 805 A.2d 491 (Pa. 2002) (under Rule 227.1, party must file post-trial motions at conclusion of trial in any type of action in order to preserve claims party may wish to raise on appeal); *Lane Enterprises, Inc. v. L.B. Foster Co.*, 710 A.2d 54 (Pa. 1998) (Pa.R.C.P. 227.1 requires parties to file post-trial

* Retired Senior Judge assigned to the Superior Court.

motions in order to preserve issues for appeal; if issue has not been raised in post-trial motion, it is waived for appeal purposes). Pa.R.A.P. 302(a) states, "Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."

The Note to Pa.R.C.P. 227.1 does not excuse Appellant's failure to file post-trial motions. The Note states "a motion for post-trial relief may not be filed to orders disposing of . . . motions for . . . summary judgment . . . or other proceedings which do not constitute a trial." On September 29, 2011, the trial court denied Appellant's motion for summary judgment based on the voluntary payment rule. On May 16, 2012, following a non-jury trial, the court entered judgment in favor of Appellee, again rejecting Appellant's position with respect to the voluntary payment rule. Because the court's order of May 16, 2012 was entered following a non-jury trial, post-trial motions were required.

Appellant's argument that the trial court's order of May 16, 2012 rendered the September 29, 2011 order denying its motion for summary judgment an order that could be appealed within thirty days, and without the filing of post-trial motions, has no basis in the Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Appellate Procedure, or in our decisional law.

In the absence of post-trial motions, no issues were preserved for appellate review.

Appeal dismissed.