

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ODELA LARMOND,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
NANCY TUCKEY,	:	
	:	
Appellant	:	No. 1835 EDA 2012

Appeal from the Order Entered June 15, 2012,
In the Court of Common Pleas of Montgomery County,
Civil Division, at No. 2012-13668.

BEFORE: FORD ELLIOTT, P.J.E., BENDER and SHOGAN, JJ.

MEMORANDUM BY SHOGAN, J.:

Filed: January 29, 2013

Appellant, Nancy Tuckey ("Ms. Tuckey"), appeals *pro se* from the order denying her petition to appeal *nunc pro tunc* a judgment entered in favor of Appellee, Odela Larmond ("Tenant"), for \$1,012.50 (\$925.00 security deposit, plus \$87.50 filing costs). We affirm.

Ms. Tuckey leased a duplex unit to Tenant for three years less one month. Pursuant to the lease agreement, Tenant agreed to maintain the unit in a clean and sanitary condition at all times. If Tenant violated this provision, Ms. Tuckey had the right to withhold Tenant's \$925.00 security deposit for the cost of cleaning and repairs.

Ms. Tuckey notified Tenant that she was terminating the lease on December 31, 2011. After Tenant vacated the unit, Ms. Tuckey withheld her

\$925.00 security deposit to cover the cost of cleaning, sanitizing, and repairing damage to the unit.

Tenant filed a complaint in the magisterial district court on February 13, 2012, averring that Ms. Tuckey wrongfully withheld the security deposit. After a hearing on April 2, 2012, the district justice awarded Tenant the return of her \$925.00 security deposit plus \$87.50 in filing costs and entered judgment in her favor for \$1,012.50.

Ms. Tuckey did not file an appeal to the Court of Common Pleas of Montgomery County within the requisite time period. **See** Pa.R.C.P.D.J. 1002 ("A party aggrieved by a judgment for money . . . may appeal therefrom within thirty (30) days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal..."). Rather, Ms. Tuckey filed a petition for leave to file an appeal *nunc pro tunc* in the Court of Common Pleas of Montgomery County on May 24, 2012. In support of her petition, Ms. Tuckey averred that she did not learn about the entry of the award in favor of Tenant until May 8, 2012. On that day, she received an undated letter from Tenant informing her of the district justice's award. She subsequently requested and received a copy of the district justice's award from the Deputy Court Administrator's Office. According to Ms. Tuckey, the district justice failed to serve her with a copy of its award and entry of judgment, thereby preventing her from filing

a timely appeal for *de novo* review to the Court of Common Pleas of Montgomery County.

The trial court conducted a hearing on June 12, 2012, at which both parties appeared *pro se*. The trial court listened to each party's position and took the matter under advisement. Several days later, the trial court entered an order denying Ms. Tuckey's petition. In its opinion to this Court, the trial court succinctly explained why it denied Ms. Tuckey's petition:

A full hearing on the issue was held before the magisterial district judge. The judge found in favor of [Tenant], awarding the return of her . . . security deposit. [Ms. Tuckey] did not file a timely appeal in this case. Thus, she has filed an appeal *nunc pro tunc*, claiming she did not receive notice of the judge's decision. [Ms. Tuckey's] unsworn self serving allegation that she did not receive notice from the magisterial district judge, which this Court does not find credible, is not a basis to grant an appeal *nunc pro tunc*.

Trial Court Opinion, 7/31/12, at 1.

On appeal, Ms. Tuckey presents a package of assertions and exhibits, many *dehors* the certified record, in an attempt to reargue her defense. In fact, her brief fails to comply with the requirements of Chapter 21 of our rules of appellate procedure in every aspect. Nevertheless, we shall address the merits of Appellant's single complaint that the trial court erred in denying her petition for leave to file an appeal *nunc pro tunc*.

We employ an established standard of review:

[T]he standard of review applicable to the denial of an appeal *nunc pro tunc* is whether the trial court abused its

discretion. An abuse of discretion is not merely an error of judgment but is found where the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will as shown by the evidence or the record.

In the usual case, where a party requests permission to file an appeal *nunc pro tunc*, it is because counsel for the appealing party has not timely filed an appeal. That party must therefore show more than mere hardship. Rather, a trial court may grant such an appeal only if the delay in filing is caused by extraordinary circumstances involving fraud or some breakdown in the court's operation through a default of its officers.

Amicone v. Rok, 839 A.2d 1109, 1113 (Pa. Super. 2003) (quoting ***Nagy v. Best Home Services, Inc.***, 829 A.2d 1166, 1167 (Pa. Super. 2003)) (brackets original; internal quotation marks and citations omitted).

We further note: "It is not the role of an appellate court to pass on the credibility of witnesses; hence we will not substitute our judgment for that of the factfinder. Thus, the test we apply is not whether we would have reached the same result on the evidence presented, but rather, after due consideration of the evidence which the trial court found credible, whether the trial court could have reasonably reached its conclusion." ***Lebanon County Hous. Auth. v. Landeck***, 967 A.2d 1009, 1012 (Pa. Super. 2009).

Here, Ms. Tuckey failed to present evidence that her failure to file an appeal was caused by extraordinary circumstances involving fraud or some breakdown in the court's operation through a default of its officers. Indeed, the trial court did not find credible Ms. Tuckey's "unsworn self serving

allegation that she did not receive notice from the magisterial district judge.” Trial Court Opinion, 7/31/12, at 1. We will not substitute our judgment for the trial court’s. Moreover, the record supports the trial court’s disposition in that Ms. Tuckey acknowledged she was at the district justice hearing and the district justice had her address. N.T., 6/12/12, at 4, 6. Also, Tenant received notice of the judgment. *Id.* at 10. Based on the foregoing, we discern no abuse of discretion by the trial court in denying Ms. Tuckey’s petition. She is not entitled to relief.

Order affirmed.