

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

NATIONSTAR MORTGAGE, LLC

Appellee

v.

LEROY E. GLICK AND SAVILLE S. GLICK,
HIS WIFE

Appellants

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1530 MDA 2013

Appeal from the Order Entered July 30, 2013
In the Court of Common Pleas of Lancaster County
Civil Division at No(s): CI-12-04621

BEFORE: GANTMAN, P.J., ALLEN, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.:

FILED JUNE 27, 2014

LeRoy and Saville Glick, Husband and Wife (“the Glicks”), appeal *pro se* from the order entered in the Court of Common Pleas of Lancaster County granting summary judgment in favor of Nationstar Mortgage, LLC (“Nationstar”). The Glicks raise three issues challenging the trial court’s grant of summary judgment. After our review, we dismiss the appeal.

On March 28, 2012, Nationstar filed a complaint in mortgage foreclosure against the Glicks. Nationstar alleged that the Glicks executed a mortgage on the property known as 2469 New Holland Pike in Lancaster, to Mortgage Electronic Registration Systems, Inc. [MERS], as nominee for AMTrust Bank. That mortgage was assigned by MERS as nominee for AmTrust Bank to AmTrust Bank, A Division of New York Community Bank. The mortgage was assigned a second time to Nationstar. Each mortgage

instrument and assignment was recorded in the Office of the Recorder in Lancaster County.

The Glicks filed preliminary objections on April 27, 2012, which the trial court dismissed. On November 9, 2012, the Glicks filed an answer to the complaint, arguing that Nationstar is not the real party in interest. Thereafter, on May 24, 2013, Nationstar filed a motion for summary judgment, attaching exhibits, documents of public record or business records, establishing that Nationstar is the holder of the mortgage note and the mortgagee of record, and, therefore, that Nationstar is the real party in interest and has standing to bring the foreclosure action. The Glicks filed a response to the motion, and on July 30, 2013, the court granted summary judgment in favor of Nationstar.

The Glicks filed a notice of appeal on August 13, 2013. On September 3, 2013, the trial court entered an order requiring the Glicks to file a Concise Statement of Errors Complained of on Appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b) "no later than September 24, 2013." Pa.R.A.P. 1925(b) order, 9/3/2013. The court's order was docketed on September 4, 2013. The docket indicates that the prothonotary provided notice of the trial court's September 3, 2013 order to the parties on September 4, 2013. **See** Lancaster County Court Docket No: CI-12-04621, 10/8/2013, at 2.

Pursuant to Pa.R.A.P. 1925(b)(2), "[t]he judge shall allow the appellant as least 21 days from the date of the order's entry on the docket

for the filing and service of the Statement.” Pa.R.A.P. 1925(b)(2). Thus, the court should have listed the due date as no later than September 25, 2013. In any event, the Rule 1925(b) statement was not filed until October 2, 2013, and therefore was untimely. **See Greater Erie Indus. Development Corp. v. Presque Isle Downs, Inc.**, 88 A.3d 222, 225 (Pa. Super. 2014) (whenever trial court orders appellant to file concise statement of errors complained of on appeal, appellant must comply in timely manner); **see also Feingold v. Hendrzak**, 15 A.3d 937, 940 (Pa. Super. 2011); **Hess v. Fox Rothschild, LLP**, 925 A.2d 798, 803 (Pa. Super. 2007).

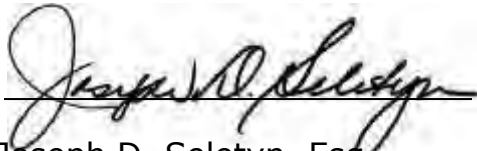
The Glicks’ Rule 1925(b) statement indicates that it was hand-delivered to Judge Wright on October 1, 2013, and docketed on October 2, 2013. **See** Pa.R.A.P. 1925(b)(1) (“ Filing and service.—Appellant shall file of record the Statement and concurrently shall serve the judge. Filing of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a) and shall be complete on mailing if appellant obtains a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified, in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c)”). There is nothing of record that indicates the Glicks obtained a United States Postal Service Form 3817, a Certificate of Mailing, or other similar United States Postal Form to substantiate the date the statement was mailed to the court such that a date

prior to the docketing date could operate as the filing date. Issues not included in a timely filed Rule 1925(b) statement are waived. **See** Pa.R.A.P. 1925(b)(4)(vii). See also ***Greater Erie Indus. Development Corp.***, 88 A.3d at 227 (Gantman, J., concurring) (“Absent any error in the Rule 1925(b) order or the trial court's docket, and with no available exception to waiver, [the Glicks’] issues are waived.”).

The trial court noted the late filing in its Rule 1925(a) opinion and recommended this Court dismiss the appeal. We agree.

Appeal dismissed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/27/2014