NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

KAREN DIAZ AND ALEJANDRO DIAZ, II, Appellants v. FRANK CHAVARA & DIANE CHAVARA, Appellees	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1815 WDA 2014

Appeal from the Order Entered October 3, 2014
In the Court of Common Pleas of Westmoreland County
Civil Division at No(s): 3766 of 2014

BEFORE: BENDER, P.J.E., SHOGAN, J., and MUSMANNO, J.

MEMORANDUM BY BENDER, P.J.E.: **FILED FEBRUARY 1, 2016**

Appellants, Karen Diaz and Alejandro Diaz, II, appeal from the order entered on October 3, 2014, dismissing Appellants' Writ of Summons filed in the above-captioned matter with prejudice. After careful review, we affirm.

We begin by summarizing the relevant facts and procedural history of this case. On September 1, 2012, Appellants executed a six month lease of an apartment owned by Appellees, located at 220 West Third Street, Greensburg, PA 15601. Pursuant to the lease agreement, Appellants agreed to pay Appellees rent in the amount of $375 per month. At the end of the six month lease term, Appellants continued to occupy the apartment on a month-to-month basis in accordance with the terms of the lease. A dispute arose over Appellants' failure to pay rent in October 2013, and on November 13, 2013, Appellees initiated an eviction action against Appellants at Case

No. 7175 of 2013. On March 12, 2014, Appellees filed an Amended Complaint to reflect the increased amount owed for past due rent for the months of October 2013 through March 2014, totaling $2,250.00. In response, Appellants filed an Answer and New Matter on March 31, 2014, in which they raised personal injury and premises liability issues related to an alleged bat infestation in the apartment. Appellants then filed a Writ of Summons on July 31, 2014, at Case No. 3766 of 2014, alleging premises liability, which was served on Appellees on August 26, 2014.

On August 13, 2014, the parties appeared for trial court proceedings and entered into a settlement agreement resolving all pending claims. A consent order was entered reflecting the terms of the agreement and provided, in pertinent part: "The parties mutually agree to release any and all present and/or future claims against each other relative to the matters at dispute in this case and/or arising therefrom[.]" Consent Order, 8/13/14, at 1. Subsequently, Appellees filed a motion to dismiss Appellants' Writ of Summons, asserting that the parties had agreed to resolve all claims. The motion to dismiss was granted by the trial court on October 3, 2014. Appellants filed a timely notice of appeal, as well as a timely concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b).[1]

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[1] On November 30, 2015, Appellants submitted a document entitled "Affidavit of Zachary I. Mesher, Esquire." In response, Appellees filed a
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Herein, Appellants present the following sole issue for our review: "Should a [c]ourt dismiss a Writ of Summons for a premises liability case where a settlement agreement on an eviction matter had been entered into settling all claims relating to landlord-tenant?" Appellant's Brief at 2.

We review Appellants' claim under the following standard:

> To the extent that the question presented involves interpretation of rules of civil procedure, our standard of review is *de novo*. To the extent that this question involves an exercise of the trial court's discretion in granting [a] "motion to dismiss," our standard of review is abuse of discretion.

Coulter v. Ramsden, 94 A.3d 1080, 1086 (Pa. Super. 2014).

Preliminarily, we note that:

> The Rules of Appellate Procedure state unequivocally that each question an appellant raises is to be supported by discussion and analysis of pertinent authority. Appellate arguments which fail to adhere to these rules may be considered waived, and arguments which are not appropriately developed are waived. Arguments not appropriately developed include those where the party has failed to cite any authority in support of a contention. This Court will not act as counsel and will not develop arguments

(Footnote Continued) ———————————

motion to strike the affidavit, asserting that the affidavit cannot be considered by this Court, as it is not a part of the certified record. Our review of the certified record confirms that the affidavit is not included therein. Therefore, we cannot consider said document and grant Appellees' motion to strike. ***See Ruspi v. Glatz***, 69 A.3d 680, 691 (Pa. Super. 2013) (stating "[t]he law of Pennsylvania is well settled that matters which are not of record cannot be considered on appeal. Thus, an appellate court is limited to considering only the materials in the certified record when resolving an issue. … Moreover, for purposes of appellate review, what is not in the certified record does not exist." ***Id.*** (internal quotation marks and citations omitted)).

> on behalf of an appellant. Moreover, … mere issue spotting without analysis or legal citation to support an assertion precludes our appellate review of a matter.

Coulter, 94 A.3d at 1088-89 (internal quotation marks and citations omitted).[2]

The argument section of Appellants' brief is completely lacking of any citation to legal authority in support of their arguments and fails to provide any analysis of pertinent authority.[3] Accordingly, we are constrained to conclude that Appellants' claim is waived. ***See Papadoplos v. Schmidt, Ronca & Kramer, PC.***, 21 A.3d 1216, 1229 (Pa. Super. 2011) (finding

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[2] Pa.R.A.P. 2119 provides, in pertinent part, as follows:

> **Rule 2119. Argument**
>
> **(a) General rule.** The argument shall be divided into as many parts as there are questions to be argued; and shall have … such discussion and citation of authorities as are deemed pertinent.

Pa.R.A.P. 2119(a).

[3] Although we acknowledge that Appellants are proceeding *pro se* in this appeal, as we have previously stated, *pro se* litigants are "not entitled to any particular advantage because [they] lack legal training." ***Savannah v. Hall***, 2015 WL 7454022, at *1 (Pa. Super. November 23, 2015) (citing ***Kovalev v. Sowell***, 839 A.2d 359, 367 n.7 (Pa. Super. 2003)). "Further, any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing." ***Id.*** "Accordingly, a *pro se* litigant must still comply with the Pennsylvania Rules of Appellate Procedure." ***Id.*** (citing ***Jones v. Rudenstein***, 585 A.2d 520, 522 (Pa. Super. 1991)).

waiver where the appellants advanced only a cursory argument in support of their issue, and failed to cite to any pertinent legal authority).

Nevertheless, even if Appellants had properly developed their argument, we would conclude that it is without merit. First, Appellants' averment that the trial court committed a legal error based on Pa.R.C.P. 1031 when it dismissed their writ of summons is of no moment. As Appellees point out, the writ of summons was not dismissed for failure to bring the claim as a counterclaim to Appellees' complaint. Appellees' Brief at 7. Rather, it was dismissed because the claims forming the basis of the writ were previously dismissed as part of a global settlement. Dismissal Order, 10/3/14, at 1-2.

Appellants further contend that the settlement agreement did not include the personal injury or premises liability matters raised in their action against Appellees and, therefore, the writ of summons was wrongfully dismissed. Appellants' Brief at 3-4. After careful review of the record, we disagree.

"The enforceability of settlement agreements is governed by principles of contract law." ***Commerce Bank/Pennsylvania v. First Union Nat. Bank***, 911 A.2d 133, 145 (Pa. Super. 2006) (quoting ***Mazzella v. Koken***, 739 A.2d 531, 536 (Pa. 1999)). A settlement agreement will be enforced where there is a meeting of the minds as to the terms, as well as the subject-matter, of the agreement. ***Mazzella***, 739 A.2d at 536. As evidenced by the following colloquy that took place during the August 13,

2014 settlement hearing, we believe that there was a "meeting of the minds" and that the settlement clearly included Appellants' personal injury and premises liability claims against Appellees:

> THE COURT: [Appellants] will not pursue any actions against [Appellees]; is that correct, ma'am? You're not going to pursue any further actions against them. Everything is going to be finished today?
>
> [COUNSEL FOR APPELLANTS]: Pursuant to the residential lease, correct.
>
> THE COURT: Is that *all* matters, so when we walk out of here today, everybody knows that there's no issues, anything further. The only thing left to do after today is for Mrs. Diaz and her son to move out of the house and the money to be split up and basically you're done, and *this is a settlement of all the issues*.
>
> [COUNSEL FOR APPELLEES]: *All pending issues* between the parties.
>
> THE COURT: Is that your understanding, ma'am?
>
> MS. DIAZ: Yes.

Settlement Hearing Transcript, 8/13/14, at 8-9 (emphasis added). In summarizing the agreement entered into by the parties, the Court further stated:

> [Appellees] have agreed that they will not pursue any further action regarding an alleged harassment case against Alejandro Diaz that is currently listed as a summary appeal in the Court of Common Pleas of Westmoreland County. And *[Appellants] will not pursue any further actions against [Appellees]*.

Id. at 10 (emphasis added). Appellants did not raise any objection to this statement at the time of the hearing. Moreover, the Consent Order

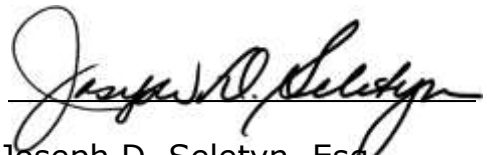
provides, in pertinent part: "The parties mutually agree to release *any and all* present and/or future claims against each other relative to the matters at dispute in this case and/or arising therefrom…" Consent Order, 8/13/14, at 1 (emphasis added).

Appellants' personal injury and/or premises liability claims against Appellees were clearly pending at the time of the settlement. Not only had Appellants filed their writ of summons just two weeks prior to the settlement hearing, Appellants also raised these issues in the landlord/tenant matter as part of their New Matter. We are not convinced by Appellants' claim now, on appeal, that they were not aware that their personal injury/premises liability claims were included in the settlement agreement.

Based on our review of the record, we find no abuse of discretion or error of law committed by the trial court. Thus, we affirm the trial court's granting of the motion to dismiss.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/1/2016