

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

BANK OF NEW YORK MELLON AS  
TRUSTEE

Appellee

v.

ANTHONY JOHN CONTE III

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2945 EDA 2016

Appeal from the Judgment Entered August 16, 2016  
In the Court of Common Pleas of Philadelphia County  
Civil Division at No(s): May Term, 2015 No. 103

BEFORE: PANELLA, J., MOULTON, J., and RANSOM, J.

JUDGMENT ORDER BY PANELLA, J.

**FILED SEPTEMBER 20, 2017**

This legal odyssey began in 2010 when Appellee instituted a mortgage foreclosure action against Appellant. At the time of the foreclosure, Appellant owed Appellee approximately \$530,000. Appellee prevailed in that action. This appeal is Appellant's latest legal proceeding to delay the physical loss of the property, which Appellee owns after it acquired it at a sheriff's sale. Appellant refuses to relinquish possession.

As relevant here, Appellee instituted an action in ejectment by way of a complaint. The trial court eventually attached the parties for a "trial" scheduled on August 15, 2016. **See** Notice of Trial Attachment, 6/3/16. At the August 15 proceeding, the parties presented testimony, the court questioned Appellant, and Appellee introduced exhibits. **See** N.T., 8/15/16, at 1-48. At the conclusion of the proceeding, the court announced, "it is

ordered that a judgment is entered in favor of [Appellee] ... for possession of the property ... and against [Appellant]...." **Id.**, at 46. In the order entered on the docket, the court inexplicably crossed out the word "trial" in the phrase "after a trial" and handwrote above the stricken word "hearing." **See** Order, 8/16/16. Conversely, in the "trial work sheet," signed by the judge, the form notes the "trial date," that it was "Non-Jury," and has marked "Finding for Plaintiff Non-Jury." **See** Trial Work Sheet, 8/15/16.

Appellant filed this appeal on September 6, 2016.

"The trial of actions in ejectment by a judge sitting without a jury shall be in accordance with Rule 1038." Pa.R.C.P. 1058. Rule 1038 concerns nonjury trials. And the *Note* to that rule directs one to Rule 227.1 "[f]or post-trial relief following a trial without jury[.]" Rule 227.1(c)(2) requires the filing of post-trial motions "within ten days after" "the filing of the decision in the case of a trial without jury." The failure to file timely post-trial motions results in the waiver of the issues presented on appeal. **See, e.g., Newman Development Group of Pottstown, LLC v. Genuardi's Family Markets, Inc.**, 52 A.3d 1233, 1246 (Pa. 2012) ("There is no dispute that, to secure post-trial or appellate relief, post-trial motions must be filed from the trial court's decision or verdict at the conclusion of a non jury trial...."); **Hall v. Owens Corning Fiberglass Corp.**, 779 A.2d 1167, 1169 (Pa. Super. 2001) ("Essentially, post-trial relief may not be granted unless the grounds for such relief are specified in the post-trial motion. Grounds not specified in the post-trial motion are deemed waived.")

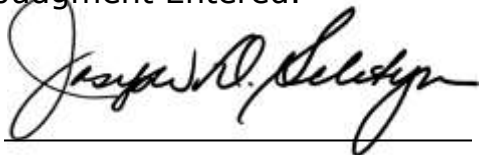
Here, Appellant did not file any post-trial motions. In his brief, he defends this failure by arguing that no trial took place. Rather, he claims it was a “hearing” that did not require the filing of post-trial motions. **See** Appellant’s Brief, at 4-5. In its opinion, the court refers to the proceeding as a hearing. **See** Trial Court Opinion, 2/16/17, at 2 (“after a hearing”). Appellee strenuously disagrees with Appellant’s position. **See** Appellee’s Brief, at 20-23.

What took place was not a hearing; it was a trial, on the merits, that resulted in the court’s determination of the legal claims in the ejectment action. As noted, the Rules of Civil Procedure specifically provide for a nonjury *trial* to take place in an ejectment action. **See** Pa.R.C.P. 1058. The court’s reference to the matter as a “hearing” cannot overrule the prescription of Rule 1058.

Appellant’s failure to file post-trial motions results in the waiver of his issues on appeal.<sup>1</sup>

Judgment affirmed. Motion denied.

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: 9/20/2017

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<sup>1</sup> Appellee filed a “Motion to Dismiss and/or Quash” for Appellant’s failure to comply with the Rules of Appellate Procedure. We deny the motion.