

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MICHAEL RAVEN	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
LANCASTER EXPLORATION AND	:	No. 750 MDA 2021
DEVELOPMENT COMPANY, LLC AND	:	
LAWRENCE M. ELKUS	:	

Appeal from the Order Entered May 13, 2021
In the Court of Common Pleas of Sullivan County
Civil Division at No: 2018CV-191

BEFORE: PANELLA, P.J., STABILE, J., and DUBOW, J.

MEMORANDUM BY STABILE, J.: **FILED: APRIL 5, 2022**

Appellant, Michael Raven, appeals from the order entered on May 13, 2021¹ in the Court of Common Pleas of Sullivan County dismissing his civil action against Appellees, Lancaster Exploration and Development Company, LLC, and Lawrence M. Elkus. Finding no abuse of discretion in the court’s ruling, we affirm.

The trial court explained:

The action was instituted by the filing of a writ of summons on August 29, 2018. Thereafter, nothing was filed until this court’s general call notice, which was filed on February 19, 2021. During [a May 4, 2021] conference thereon, the court was informed that the matter was settled by settlement agreement in September

¹ The order was issued by the trial court at the conclusion of a May 4, 2021 status conference but was not entered on the docket until May 13, 2021.

2018, shortly after the filing of the writ of summons and that should any disputes arise out of the settlement agreement, the same were to be decided by an Arizona arbitration panel. Counsel for [Appellant] indicated he would like to keep the action alive to conduct an “investigation” into an affiliated legal malpractice claim. This court was not presented with sufficient rationale to keep the matter, which sat dormant for approximately two and a half years, active.

Trial Court Rule 1925(a) Opinion, 7/6/21, at 2 (some capitalization omitted).

As the trial court noted, Appellant initiated this action by writ of summons on August 29, 2018, and there were no other filings prior to February 2021. There is no indication that Appellant took any steps to serve the writ² or sought to have the writ reissued (or a complaint filed) prior to February 2021 when the case was included on the list of cases subject to dismissal for inactivity on March 24, 2021. The docket reflects that counsel entered an appearance for Appellant on March 15, 2021, and filed a statement of intent to proceed, in accordance with Pa.R.Civ.P. 230.2.

The docket further reflects that on April 12, 2021, counsel filed a praecipe to reissue the August 29, 2018 writ of summons, and on April 14, 2021, filed a praecipe to “reinstate complaint,” even though the docket does not reflect the filing of a complaint at any time.

Because counsel filed a statement of intent to proceed, the trial court scheduled a status conference in accordance with Pa.R.Civ.P. 230.2(h). The

² In fact, counsel for Appellant voiced his understanding “that there was no service on it[.]” Notes of Testimony, 5/4/21, at 8.

conference took place via Zoom on May 4, 2021. The court acknowledged a settlement agreement prepared in 2018 that called for any related disputes to be handled in Arizona.³ The court then ordered that the action “is hereby dismissed. . . . You can petition the court to reopen with just cause pursuant to the rule if you so desire, but right now, the matter is dismissed.” Notes of Testimony, 5/4/21, at 11. As reflected above, in its Rule 1925(a) opinion, the court explained that it did not find any “sufficient rationale” for keeping the long-dormant action alive and therefore dismissed the matter. Trial Court Rule 1925(a) Opinion, 7/6/21, at 2.

Appellant did not petition for reinstatement, as authorized by Pa.R.Civ.P. 230.2(d)(1). Had a petition been filed within 60 days of the order of termination, the court would have been required to grant the petition and reinstate the action. Pa.R.Civ.P. 230.2(d)(2). Nor did Appellant file a petition to open the judgment of *non pros*, despite the trial court’s invitation to do so. **See** Notes of Testimony, 5/4/21, at 11. Instead, Appellant filed an appeal to this Court and, in response to the trial court’s directive, filed a Rule 1925(b) statement raising the following matters complained of on appeal:

1. Whether [the trial court] erred in entering the subject Order?

³ Counsel for Appellees explained during the settlement conference that the settlement agreement “was signed by [Appellant] on his behalf and behalf of his various different entities two weeks—ten days after he filed the writ of summons in 2018. In addition, that settlement agreement requires all future disputes to be arbitrated in Arizona.” Notes of Testimony, 5/4/21, at 8.

2. Whether [the trial court] erred in dismissing the within matter with prejudice for lack of jurisdiction?
3. Whether [the trial court] erred in transferring this matter from the Commonwealth of Pennsylvania and this court of common pleas?
4. Whether [the trial court] erred in entering the subject Order solely upon oral argument – an otherwise status conference [*sic*]?
5. Whether [the trial court] erred in adjudicating dismissal and transfer without a pending motion or likewise?
6. Whether [the trial court] erred in effectively entering a *sua sponte* subject Order solely upon argument?
7. Whether [the trial court] erred in failing to give notice that dismissal and transfer are to be argued let alone adjudicated at the subject conference?

Appellant’s Rule 1925(b) Statement, 6/21/21, at 1-2 (some capitalization omitted).

In the brief filed with this Court, Appellant asks us to consider the following three issues:

- A. Whether the trial court abused its discretion by dismissing this matter without a showing that Appellant’s inactivity caused Appellee actual prejudice?
- B. Whether the trial court explicitly based its decision on a finding regarding jurisdiction and not inactivity, making a petition to reinstate the action futile?
- C. Whether the trial court abused its discretion by prematurely determining lack of jurisdiction before preliminary objections were raised, without reviewing a complaint, without reviewing a contract, and without reviewing any record upon which to base that decision?

Appellant’s Brief at 8.

As this Court instructed in **Golab v. Knuth**, 176 A.3d 335 (Pa. Super. 2017):

Our standard of review is as follows: “The question of whether an action has been properly terminated pursuant to Pa.R.J.A. 1901, or its local rule counterpart, rests within the discretion of the trial court and will not be disturbed absent an abuse of that discretion or an error of law.” **Tucker v. Ellwood Quality Steels Co.**, 802 A.2d 663, 664 (Pa. Super. 2002) (citations omitted); **see also Indep. Tech. Servs. v. Campo’s Express**, 812 A.2d 1238, 1240 (Pa. Super. 2002) (stating that “[a]n order terminating an action for inactivity will not be reversed absent a manifest abuse of discretion.”).

Id. at 338-39. While Pa.R.J.A. 1901(a) provides general guidelines for purging inactive cases, Rule 230.2 “streamline[s] the procedure for the trial court to conduct an administrative purge of inactive cases[.]” Pa.R.Civ.P. 230.2 (Comment).

We first consider whether the issues raised in Appellant’s brief were preserved in his Rule 1925(b) statement. In the first issue presented in his brief, he claims trial court abuse of discretion for dismissing the action without a showing of prejudice to Appellees.⁴ His second issue suggests the court explicitly dismissed the action based on jurisdiction, not inactivity, making the filing of a Rule 230.2(d)(2) petition futile. In his third issue, he contends the

⁴ We note that a “plaintiff who cannot show a reasonable excuse for the delay may not challenge the entry of the judgment of *non pros* on the ground that the record failed to establish actual prejudice.” **See** Pa.R.Civ.P. 3051 (Comment - 2013).

trial court abused its discretion by dismissing the action based on jurisdiction, without the benefit of a complaint or preliminary objections raising the issue of jurisdiction. There are no claims in Appellant's Rule 1925(b) statement that correspond with any of the issues set forth in his Statement of Questions Involved.⁵ Therefore, the issues are waived. **See** Pa.R.A.P. 1925(b)(4)(vii) (issues not included in the Rule 1925(b) statement are waived).

Even if Appellant's issues were not waived, he would not be entitled to relief. First, he neither complied with the procedure for seeking reinstatement nor petitioned the court to open or strike the judgment, even though the trial court clearly advised him of his right to file a petition to open. **See** Notes of Testimony, 5/4/21, at 11. The failure to file a petition to open or strike pursuant to Pa.R.Civ. 3051 "operates as a waiver of any claims of error concerning the judgment of *non pros* entered by the Court of Common Pleas." **Krell v. Silver**, 817 A.2d 1097, 1101 (Pa. Super. 2003) (citing **Sahutsky v. H.H. Knoebel Sons**, 782 A.2d 996, 1001 (Pa. 2001)). Second, Appellant's issues as framed suggest that the trial court dismissed the action based on jurisdiction. The court's words defeat that assertion. While the court acknowledged Appellees' representations that the matter was settled in

⁵ While the second matter raised in the Rule 1925(b) statement and Issue B in Appellant's brief both mention jurisdiction, we find them distinguishable. The issue in the Rule 1925(b) statement alleges the court erred in dismissing the action for lack of jurisdiction. In contrast, the issue in his brief raises the lack of a practical remedy resulting from the dismissal for lack of jurisdiction.

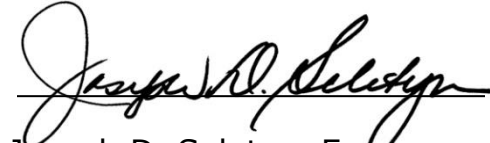
Arizona in 2018 and that any disputes regarding the settlement were to be determined by an arbitration panel in that state, the court did not dismiss or “explicitly transfer this matter to Arizona based on lack of jurisdiction,” as Appellant contends. **See** Appellant’ Brief at 13, 14. On the contrary, the court based its dismissal on the fact it “was not presented with sufficient rationale to keep the matter, which sat dormant for approximately two and a half years, active.” Trial Court Rule 1925(a) Opinion, 7/6/21, at 2. In addition, we find it rather disingenuous for Appellant to assert the trial court abused its discretion by “prematurely determining lack of jurisdiction” without the benefit of a complaint or preliminary objections challenging jurisdiction. Appellant filed a writ of summons on August 29, 2018 but did not bother to have the writ reissued or to file a complaint in the two and a half years that followed. If there was no complaint to review, it was due to the fact Appellant never filed one. Nor did the trial court take any action that could be construed as transferring or directing transfer of a Pennsylvania writ of summons to Arizona. Rather, the trial court, wanting to get a stale case off the docket, dismissed the action for inactivity and the failure of Appellant to present any legitimate rationale for allowing the case to continue. Therefore, even if Appellant did preserve any issue(s) for review by this Court, Appellant has failed to demonstrate that the trial court abused its discretion by terminating

the action in accordance with Pa.R.J.A. 1901(a) and Pa.R.Civ.P. 230.2.

Therefore, we shall not disturb the court's order.⁶

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/5/2022

⁶ In his reply brief, Appellant asserts, for the first time, that the trial court failed to comply with Rule 230.2's notice requirements. Appellant's Reply Brief at 1-2. However, Appellant makes that assertion with respect to the April 9, 2021 notice of the settlement conference, not to the February 19, 2021 notice served on Appellant, advising that the action would be discontinued for inactivity on March 24, 2021, absent action by Appellant. There is no suggestion the February 19, 2021 notice failed to comply with Rule 230.2's notice requirements.