NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

JAMES S. DUFFY,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
v.	:	
JOSEPH M. MILLER, ESTATE OF CATHERINE M. MILLER AND CLARA M. BURNER, JOHN K. LOTT AND SHEILA GANTZ T/A BEAR MOUNTAIN REALTY,	:	
Appellees	:	No. 2151 MDA 2012

Appeal from the Order entered November 5, 2012,
Court of Common Pleas, Adams County,
Civil Division at No. 2011-SU-0002014

JOHN K. LOTT, ET AL.,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellees	:	
v.	:	
JAMES S. DUFFY,	:	
Appellant	:	No. 2152 MDA 2012

Appeal from the Order November 5, 2012,
Court of Common Pleas, Adams County,
Civil Division at No. 12 SU 215

BEFORE: DONOHUE, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED DECEMBER 23, 2013**

James S. Duffy ("Duffy") appeals *pro se* from the November 5, 2012 order entered by the Court of Common Pleas, Adams County, memorializing the settlement agreement entered into between Duffy and Joseph M. Miller,

the Estate of Catherine M. Miller and Clara M. Burner, and John K. Lott and Sheila Gantz t/a Bear Mountain Realty (collectively, "Appellees"). Upon review, we dismiss the appeal.

The trial court summarized the factual and procedural histories of this case as follows:

> The underlying litigation involves competing claims of ejectment and specific performance/unjust enrichment. [Duffy] claimed he had been promised the opportunity to purchase property located at 493 Quaker Valley Road, Biglerville, Adams County, Pennsylvania, and invested significant funds towards enhancing the property. Appellee, Bear Mountain Realty, claimed that [Duffy] had no legal interest in the property and sought his ejectment. The litigation was consolidated and a non-jury trial commenced on November 2, 2012. Prior to the conclusion of trial, the parties placed on the record a counseled agreement reached between them. The terms of the agreement were memorialized by [c]ourt [o]rder dictated in open court in the presence of the parties and counsel. The material terms of the [o]rder included: (1) payment to [Duffy] in the amount of $4,500 with an additional payment of $4,500 upon his vacating the subject property; (2) [Duffy] would vacate the subject property within 90 days of the date of the [o]rder; and (3) the parties would end the litigation and enter mutual releases with [Duffy] releasing any interest he may have in the subject property.

Trial Court Opinion, 1/31/13, at 1-2.

On November 2, 2012, Duffy's attorney, W. Scott Arnoult, Esquire, filed a praecipe to discontinue and remove the *lis pendens* with prejudice in accordance with the settlement agreement. On December 3, 2012, Duffy

filed a *pro se* motion to terminate representation by Attorney Arnoult. Therein, he alleged that he sought to have Attorney Arnoult withdraw or appeal the settlement agreement on November 13, 2012, but that Attorney Arnoult refused, despite counsel's alleged admission that certain portions of the agreement had been "slipped [] in" by the opposing parties. Application for Termination of Counsel, 12/3/12, at ¶¶ 3-4. Duffy averred that he had yet to see a written copy of the court's order at that time, and once he received it he again demanded that counsel take steps to vacate or rescind the settlement agreement. Attorney Arnoult again refused, stating that he was going to withdraw from representation, but subsequently failed to do so. Also on December 3, 2012, Duffy filed a *pro se* notice of appeal from the November 5 order memorializing the settlement agreement and a *pro se* application for supersedeas.[1]

On December 5, 2012, the trial court granted Duffy's request to terminate counsel's representation. On January 28, 2013, the trial court denied Duffy's request for supersedeas and ordered that "[a]ll parties are directed to comply with the [o]rder of [c]ourt dated November 2, 2012 [and filed November 5, 2012]." Trial Court Order, 1/28/13.

On appeal, Duffy contends that the settlement agreement was not knowingly, voluntarily or intelligently entered into; that the settlement

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[1] Although the application for supersedeas appears on the docket in the certified record on appeal, the document itself does not.

agreement constitutes unjust enrichment; and that the settlement agreement is unconscionable. Duffy's Brief at 9, 11, 14.[2] All of the issues raised by Duffy suggest that the trial court should set aside the settlement agreement and vacate the order memorializing it for various reasons. Indeed, in his conclusion, he requests that this Court "remand for the expressed purposes of the lower court conducting an [e]videntiary [h]earing into the validity of the settlement agreement." ***Id.*** at 15. The record reflects, however, that Duffy never made a request to the trial court that it vacate its November 5, 2012 order.[3] Nor does the record reflect that Duffy ever raised the arguments contained in his brief before the trial court.[4]

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[2] We note with disapproval that Duffy failed to abide by several Rules of Appellate Procedure when authoring his brief, including failing to state the scope and standard of review applicable to the issues raised, failing to append the trial court's 1925(a) opinion to his brief, and failing to include a statement of the questions presented on appeal. ***See*** Pa.R.A.P. 2111(a)(3), (4), (10), 2116(a). However, we do not quash or dismiss Duffy's appeal on this basis. ***See In re Adoption of G.K.T.***, 75 A.3d 521, 524 n.4 (Pa. Super. 2013).

[3] In his reply brief, Duffy points to his petition for the removal of counsel, wherein he averred that Attorney Arnoult coerced him into settling the case and that he made a timely request for Attorney Arnoult to withdraw the settlement agreement, but that counsel refused. Duffy's Reply Brief at 1-3. Although Duffy is correct that he presented this information to the trial court, there is nothing in the record indicating that he ever requested that the trial court vacate its order.

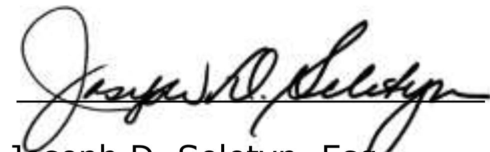
[4] Duffy's inclusion of these issues in his concise statement of errors complained of on appeal does not preserve them for our review. ***See Steiner v. Markel***, 600 Pa. 515, 523, 968 A.2d 1253, 1257 (2009) (an appellant cannot raise a claim for the first time on appeal in his concise statement of errors complained of on appeal).

With few exceptions, none of which are applicable to this case, the law is clear that an appellant must have requested relief before the trial court prior to raising the issue in this Court; failure to do so results in waiver of appellate review of the relief sought. Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."); ***see, e.g., V.B. v. J.E.B.***, 55 A.3d 1193, 1206 (Pa. Super. 2012) (appellant's failure to request the trial court recuse itself from proceedings resulted in waiver of that issue on appeal).

Because Duffy failed to seek before the trial court the relief requested on appeal, we are unable to reach the merits of the issues raised. As there is nothing for us to review, we dismiss the appeal.

Appeal dismissed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2013