

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

KATHLEEN MOONEY

Appellant

v.

ROBERT STEM AND STEM
CONSTRUCTION, INC.

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2261 EDA 2012

Appeal from the Order Dated June 26, 2012
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): September Term, 2011 No. 00653

BEFORE: PANELLA, J., OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY STRASSBURGER, J.

FILED MAY 09, 2013

Kathleen Mooney appeals from the order of June 26, 2012, sustaining the preliminary objection to improper venue filed by Robert Stem and Stem Construction, Inc. (Stem) and transferring the case to the Court of Common Pleas of Chester County.¹ We affirm.

On September 16, 2009, Robert Stem, operating a vehicle owned by Stem Construction, Inc., allegedly rear-ended the vehicle operated by

* Retired Senior Judge assigned to the Superior Court.

¹ An appeal from an order sustaining a preliminary objection to improper venue is an interlocutory appeal as of right pursuant to Pa.R.A.P. 311(c) ("An appeal may be taken as of right from an order in a civil action or proceeding changing venue, transferring the matter to another court of coordinate jurisdiction, or declining to proceed in the matter on the basis of *forum non conveniens* or analogous principles." Pa.R.A.P. 311 (comment)).

Mooney while she was at a complete stop at an intersection in Berwyn, Chester County, Pennsylvania. On September 9, 2011 Mooney filed a complaint in the Court of Common Pleas of Philadelphia County alleging that Stem's negligence in causing this accident resulted in serious bodily injury to her. On January 18, 2012, Stem filed preliminary objections raising improper venue pursuant to Pa.R.C.P. 1028(a)(1). Mooney filed a response, and on April 26, 2012, the trial court ordered the parties to conduct discovery on the issue of whether Stem Corporation regularly conducts business in Philadelphia County, and allowed for further briefing on this issue.² After conducting discovery, on June 4, 2012, Mooney filed a supplemental memorandum of law in opposition to Stem's preliminary objection conceding that Stem Corporation does not conduct business in Philadelphia County, but instead asserted that the preliminary objection was filed untimely and therefore was waived. On June 26, 2012, the trial court entered an order sustaining Stem's preliminary objection to improper venue

² Because the accident occurred in Chester County and Robert Stem does not live in and was not served in Philadelphia County; there is no dispute that the only basis for venue in Philadelphia County would be pursuant to Pa.R.C.P. 2179(a)(2) as a place where Stem Corporation regularly conducts business.

and transferring the case to Chester County. Mooney filed a timely notice of appeal.³

On appeal, Mooney presents one issue for our review: “[w]hether it was an abuse of discretion for [Stem’s] Preliminary Objection to venue to be sustained where [Stem’s] Preliminary Objections were filed after the 20 day deadline prescribed by Pa.R.C.P. 1026 and 1028, with no extension granted by the [trial court] or [Mooney] to file late preliminary objections, so that [Stem’s] objection to venue was therefore waived (Pa.R.C.P. 1006(e)).” Mooney’s Brief at 6.

Our standard of review from an order sustaining a preliminary objection to improper venue and transferring venue is well settled.

In reviewing a trial court's ruling transferring venue, we will not disturb the ruling if the decision is reasonable in light of the facts. An abuse of discretion occurs when the trial judge overrides or misapplies the law, or exercises judgment in a manifestly unreasonable manner, or renders a decision based on partiality, bias, or ill will. However, if there exists any proper basis for the trial court's decision to ... transfer venue, the decision must stand.

McMillan v. First Nat. Bank of Berwick, 978 A.2d 370, 371 (Pa. Super. 2009) (citing ***Harris v. Brill***, 844 A.2d 567, 570 (Pa. Super. 2004) (citations and internal quotation marks omitted)).

³ The trial court did not order Mooney to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b), but did file an opinion.

Mooney's sole argument on appeal is that Stem filed its preliminary objection too late; therefore, the trial court should have considered the issue waived and erred in sustaining the preliminary objection. The trial court concluded that "[d]ue to the lack of any reason as to why [Mooney] would be prejudiced, [the trial court] was well within its discretion to not dismiss the Preliminary Objection as untimely." Trial Court Opinion, 9/5/2012, at 5 (unnumbered). We agree.

Pennsylvania Rule of Civil Procedure 1026(a) provides that "every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading[.]" However, "[t]his twenty day filing period has been interpreted liberally and is permissive rather than mandatory." **Weaver v. Martin**, 655 A.2d 180, 183 (Pa. Super. 1995). Furthermore, "[t]his [C]ourt has recognized that it is within the sound discretion of the trial court to permit a late filing of a pleading where the opposing party will not be prejudiced and justice so requires." **Ambrose v. Cross Creek Condominiums**, 602 A.2d 864, 868 (Pa. Super. 1992).

Mooney's reinstated complaint was filed on October 3, 2011. Counsel for Stem entered his appearance on December 14, 2011, and preliminary objections were filed on January 18, 2012. Notably, Mooney did not raise an issue of timeliness of the preliminary objections in her answer filed on February 12, 2012; and, raised it for the first time on June 4, 2012 in her

brief, apparently after she realized that the merits of her position on improper venue were in jeopardy.⁴

Here, Mooney contends she was prejudiced by the delay because “the ten (10) months spent arguing venue could have been spent litigating and concluding the case.” Mooney’s Brief at 15-16. Such allegation does not implicate prejudice, which has been defined as “any substantial diminution [in Appellant’s] ability to present factual information in the event of trial[.]” ***Gale v. Mercy Catholic Med. Ctr. Eastwick, Inc., Fitzgerald Mercy Div.***, 698 A.2d 647, 650 (Pa. Super. 1997). Thus, based on the lack of sufficient prejudice, we hold that the trial court did not abuse its discretion in accepting the late-filed preliminary objection. Accordingly, we affirm the order of the trial court sustaining Stem’s preliminary objection to improper venue and transferring the case to Chester County, Pennsylvania.

Order affirmed.

⁴ Mooney could have raised her timeliness argument in the first instance by filing preliminary objections to Stem’s preliminary objections or filing a motion to strike Stem’s preliminary objections. Thus, Mooney has arguably waived any objection to the timeliness of Stem’s preliminary objections.

J-A10035-13

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Kevin Gambett", written over a horizontal line.

Prothonotary

Date: 5/9/2013