

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ATLANTIC NATIONAL TRUST, LLC,

Appellee

v.

STIVALA INVESTMENTS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2279 MDA 2012

Appeal from the Order Entered November 25, 2011
In the Court of Common Pleas of Lackawanna County
Civil Division at No(s): 2010 CV 3405

BEFORE: BOWES, OLSON and WECHT, JJ.

MEMORANDUM BY OLSON, J.:

Filed: March 7, 2013

Appellant, Stivala Investments, appeals from the order entered November 25, 2011, in the Court of Common Pleas of Lackawanna County, directing that certain insurance proceeds received by Appellant be directed to Appellee, Atlantic National Trust ("Atlantic National"). For the following reasons, we conclude that Appellant has failed to preserve its issues for appellate review and therefore affirm.

The parties in this matter are familiar with the complex and protracted factual and procedural background underlying this case. Of relevance to this appeal, the certified record reveals the following.

On or about October 14, 1994, Appellant obtained a mortgage, in the amount of \$550,000.00, from Atlantic National's predecessor, Pioneer Bank

NA, to purchase real property. Of relevance to this appeal, paragraph 3(a) of the subject mortgage reads as follows:

Insurance: Mortgagor will keep the improvements now existing or hereafter erected on the Premises insured against loss by fire and other hazards and casualties. The insurance carrier providing the insurance will be chosen by the Mortgagor subject to the approval by the Mortgagee, which approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form and amount acceptable to the Mortgagee and shall contain a mortgagee clause in favor of Mortgagee. Mortgagor hereby assigns all insurance policies and the proceeds thereof to Mortgagee as additional security to the extent that such insurance policies and proceeds have not previously been validly assigned. In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Mortgagee. Mortgagee may file proofs of and settle all claims under such policies and may demand and receive all monies to the extent of its interest in the proceeds. At the Mortgagee's option, the proceeds of insurance may be applied to the Indebtedness remaining unpaid under the Loan Documents or released for the rebuilding of the Premises.

Mortgage, 10/14/1994, at ¶ 3(a). Appellant obtained insurance to cover the property secured by the mortgage and Atlantic National was a named loss payee in the insurance policy.

Sometime thereafter, Appellant stopped paying the mortgage, which necessitated the filing of a complaint in confession of judgment, docketed at 2003 CIV 369; as well as a complaint in confession of judgment docketed at 2005 CIV 3319.¹

¹ According to the trial court, "[b]oth of these matters have endured [] complex and timely appeals, as well as many various motions at the [trial court] level. After each stage of this tortured history, judgment has been (*Footnote Continued Next Page*)

On January 29, 2010, while the complaints in confession of judgment were being litigated, Appellant asserts that it submitted a change request to the insurance company seeking the deletion of Atlantic National as a loss payee on the insurance policy for the subject property. According to Appellant, it believed it was entitled to request such a change because Atlantic National had fraudulently induced it to purchase the subject property.

On June 27, 2010, the property endured an act of vandalism, prompting Appellant to make a claim under the covering insurance policy for damages. The covering insurance policy issued Appellant a check for \$45,000.00. On January 5, 2011, Atlantic National filed a "petition to preserve and compel the turnover of insurance proceeds under policy of insurance on real estate subject to execution." Within that petition, Atlantic National sought payment of the insurance proceeds that had been paid to Appellant.

Thereafter, on February 1, 2011, Atlantic National purchased the property at a sheriff's sale.

Several months later, on October 21, 2011, the trial court held a hearing on Atlantic National's petition. At that hearing, the trial court heard testimony from three different witnesses and accepted 12 exhibits. Both

(Footnote Continued) _____

issued to [Atlantic National]." Trial Court Opinion and Order, 11/25/2011, at 1-2.

parties submitted post-hearing briefs, and on November 25, 2011, the trial court entered an order holding that “all insurance proceeds in the amount of \$45,000.00 from the claim instituted from the events that occurred on June 27, 2010 shall be directed to [Atlantic National].” Trial Court Opinion and Order, 11/25/2011, at 7. Significantly, neither party filed post-trial motions, and neither party filed a praecipe for entry of final judgment on the trial court’s November 25, 2011 verdict. On December 23, 2011, Appellant filed a notice of appeal.²

Appellant presents three issues for appeal:

Did the lower court err in finding that [Atlantic National] had met its burden of proof?

Did the lower court err by failing to find that the underlying mortgage was either void or abandoned and the insurance proceeds clause therein was not in effect?

Did the court err by granting [Atlantic National’s] claim to the insurance proceeds?

Appellant’s Brief at 4.

Prior to addressing the merits of Appellant’s arguments, however, we address two issues: (1) whether we have jurisdiction to consider this appeal following entry of a final judgment; and (2) whether Appellant preserved its

² Presumably relying upon its November 25, 2011 opinion and order, the trial court did not order Appellant to submit a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b), and the trial court did not submit a Rule 1925(a) opinion of its own.

issues for appellate consideration through the filing of post-trial motions. ***Davanzo v. Finelli***, 437 A.2d 995, 996 (Pa. Super. 1981) (“Although [Atlantic National] does not raise the propriety of [A]ppellant's appeal, we have oft-stated that the appealability of an order goes to the appellate court's jurisdiction and may be raised *sua sponte*.”); 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.”)

Specifically, pursuant to Pennsylvania law, this Court may reach the merits of an appeal taken from, *inter alia*, a final order disposing of all claims and all parties in a case. **See** Pa.R.A.P. 341; 42 Pa.C.S.A. § 742; Pa.R.Civ.P. 1308 (defining “final order”); ***Stahl v. Redcay***, 897 A.2d 478, 485 (Pa. Super. 2006) (citation omitted). The parties in this matter assert, and we agree, that the trial court’s November 25, 2011 opinion and order announcing the verdict from the October 25, 2011 hearing disposed of all claims and all parties in this case.

Pennsylvania law has long held, however, that in a civil matter, even if a verdict disposes of all claims and all parties in a case, an order announcing that verdict is not final until judgment on the verdict has been entered with the trial court. **See *Simpson v. Pennsylvania Turnpike Commission***, 121 A.2d 84, 85 (Pa. 1956). Indeed, the entry of judgment is a prerequisite to an appellate court’s exercise of jurisdiction. **See *Davanzo***, 437 A.2d at 996.

Review of the certified record in this matter reveals that no party has petitioned for entry of judgment upon the trial court's November 25, 2011 verdict, and no such judgment has been entered. Consequently, as the verdict now stands, we lack jurisdiction over the matter because no final judgment has been entered. *Id.*

When an appellant improvidently takes an appeal prior to entry of final judgment, ordinarily this Court will not quash the appeal, but will direct the appellant to praecipe for entry of judgment, and the notice of appeal will be treated as being filed on the date judgment is entered. *See* Pa.R.A.P. 301(a); Pa.R.A.P. 905(a); *cf. Seay v. Prudential Ins.*, 543 A.2d 1166 (Pa. Super. 1988). In this matter, however, even if we were to remand for entry of final judgment, Appellant has failed to preserve any issues for appeal by failing to file a post-trial motion.

Specifically, Pennsylvania Rule of Civil Procedure 227.1 provides, in pertinent part:

(c) Post-trial motions **shall** be filed within ten days after

* * *

(2) notice of nonsuit or the filing of the decision in the case of a trial without jury.

Pa.R.C.P. 227.1(c) (emphasis added).

This Court has emphasized the mandatory nature of post-trial motions under Pa.R.C.P. 227.1 as follows:

The Pennsylvania Supreme Court has stated that the filing of post-trial motions is mandatory if a litigant wishes to preserve

issues for appellate review. *See L.B. Foster Co. v. Lane Enterprises, Inc.*, 551 Pa. 307, 710 A.2d 55 (1998) (“Pa.R.Civ.P. 227.1 requires parties to file post-trial motions in order to preserve issues for appeal. If an issue has not been raised in a post-trial motion, it is waived for appeal purposes. *See Benson v. Penn Central Transportation Company*, 463 Pa. 37, 342 A.2d 393 (1975) and *Commonwealth v. Metz*, 534 Pa. 341, 633 A.2d 125 (1993)”; *Lane Enterprises, Inc. v. L.B. Foster Co.*, 551 Pa. 306, 710 A.2d 54 (1998) (same).

In *Lane Enterprises, Inc. v. L.B. Foster Co.*, 700 A.2d 465, 469-470 (Pa. Super. 1997), after a nonjury trial in a breach of contract action, the trial court issued an opinion disposing of issues the parties raised in trial memoranda. Following the trial court's decision, instead of filing post-trial motions, the appellant, Foster, filed a praecipe to enter judgment and a notice of appeal. A panel of this Court reviewed the merits of the appeal despite the lack of post-trial motions. *Id.* In a one-paragraph *per curiam* order, the Pennsylvania Supreme Court reversed this Court and reiterated the importance of post-trial motions. *See Lane Enterprises, Inc.*, 710 A.2d at 54 and *L.B. Foster Co.*, 710 A.2d at 55.

In other decisions applying Pa.R.C.P. 227.1 in actions at law, our Court has consistently quashed appeals from orders or verdicts following nonjury trials when no post-trial motions were filed. *See e.g. Baughman v. State Farm Mut. Auto. Ins. Co.*, 441 Pa. Super. 83, 656 A.2d 931 (1995) (quashing an appeal taken directly from an order, captioned as a judgment, which was entered after a nonjury trial); *Krystal Development Corp. v. Rose*, 704 A.2d 1102, 1103 (Pa. Super. 1997) (without post-trial motions after a nonjury trial, there are no issues preserved for appellate review). The importance of filing post-trial motions cannot be overemphasized. “[T]his is not blind insistence [sic] on a mere technicality since post-trial motions serve an important function in adjudicatory process in that they afford the trial court in the first instance the opportunity to correct asserted trial error and also clearly and narrowly frame issues for appellate review.” *Fernandes v. Warminster Mun. Auth.*, 296 Pa. Super. 523, 442 A.2d 1174, 1175 (1982). Even when a litigant files post-trial motions but fails to raise a certain issue, that issue is deemed waived for purposes of appellate review. *See Hall v. Owens Corning Fiberglass Corp.*, 779 A.2d 1167, 1169 (Pa. Super. 2001) (where a claim was not specified in the

post-trial motions, the issue was not preserved and is, therefore, waived).

Diamond Reo Truck Co. v. Mid-Pac. Indus., Inc., 806 A.2d 423, 428 (Pa. Super. 2002) (footnote omitted).

In this matter, at the October 25, 2011 hearing, the trial court heard extensive testimony from multiple witnesses and accepted 12 exhibits. Consequently, though perhaps not docketed or titled as such, the October 25, 2011 proceeding was a nonjury trial from which Appellant was obligated to file post-trial motions. *Id.*; Pa.R.Civ.P. 227.1(c)(2). Appellant filed no such post-trial motions, rendering all appealable issues arising from the October 25, 2011 verdict waived and foreclosing our consideration of the matter.³ Consequently, we are constrained to affirm.

Order affirmed.

³ We note our awareness of the Supreme Court of Pennsylvania's recent decision in ***Newman Development Group v. Genuardi's Family Markets***, 52 A.3d 1233 (Pa. 2012), holding that, under the circumstances of that matter, our Court had improperly found the appellant's issues waived for failure to file post-trial motions. ***Newman Development Group***, however, is distinguishable from this case because, in that matter, the trial court order appealed from was an order on remand that the trial court entered without a proceeding constituting a "trial." *Id.* at 1251. In this matter, the case is not on remand, and the trial court's acceptance of testimony and evidence at the October 25, 2011 hearing plainly constituted a nonjury trial. Therefore, pursuant to long established Pennsylvania law, Appellant was obligated to file post-trial motions to preserve its issues for appeal.

