

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DEBORAH M. O'CONNOR AND JAMES M.
O'CONNOR,

Appellants

v.

LIBERTY PROPERTY LIMITED
PARTNERSHIP, D/B/A/ LIBERTY
PROPERTY TRUST AND BROGAN
LANDSCAPING, INC.,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 23 EDA 2013

Appeal from the Judgment of February 5, 2013,
in the Court of Common Pleas of Montgomery County,
Civil Division at No. 07-01636

BEFORE: SHOGAN, WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED DECEMBER 18, 2013

Appellants appeal the judgment entered in favor of Deborah M. O'Connor and against Appellees in this personal injury action. We affirm.

We must first determine whether Appellants have preserved their appellate issues for our review, as it appears that they failed to comply with the requirements of Pennsylvania Rule of Appellate Procedure Rule 1925(b).

Rule 1925(b) provides, in relevant part, as follows:

(b) Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.--If the judge entering the order giving rise to the notice of appeal

*Retired Senior Judge assigned to the Superior Court.

("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal ("Statement").

Pa.R.A.P. 1925(b).

This Court has stated:

[I]n order to preserve claims for appellate review, an appellant must comply with a trial court order to file a Statement of Matters Complained of on Appeal, pursuant to Pa.R.A.P. 1925(b). Our Supreme Court recently reiterated the bright-line rule established in [***Commonwealth v. Lord***, 719 A.2d 306 (Pa. 1998)], holding that "failure to comply with the minimal requirements of Pa.R.A.P. 1925(b) will result in automatic waiver of the issues raised [on appeal]."

. . .

The Pennsylvania Rules of Civil Procedure require the prothonotary to give written notice of the entry of a court order to each party and to note on the docket that notice was given. [Pa.R.C.P. 236(a)(2)(b).]

. . .

If the docket does not show that notice of the entry of a Rule 1925(b) order was provided to an appellant, then we will not conclude that the appellant's issues have been waived for failure to file a Rule 1925(b) statement. . . .

In re Estate of Boyle, 2013 Pa. Super. LEXIS 2701, 6-8.

Further, "in determining whether an appellant has waived his issues on appeal based on non-compliance with Pa.R.A.P. 1925, it is the trial court's order that triggers an appellant's obligation under the rule, and, therefore, we look first to the language of that order." ***Berg v. Nationwide Mutual Insurance Company, Inc.***, 6 A.3d 1002, 1007-08 (Pa. Super. 2010).

Rule 1925(b)(3) sets forth the required contents of the order as follows:

(3) Contents of order.--The judge's order directing the filing and service of a Statement shall specify:

(i) the number of days after the date of entry of the judge's order within which the appellant must file and serve the Statement;

(ii) that the Statement shall be filed of record;

(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);

(iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

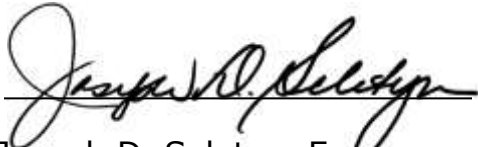
Pa.R.A.P. 1925(b)(3).

Following Appellants' filing of a notice of appeal, the trial court directed Appellants to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Consistent with the requirements of Rule 1925(b)(3), the court's order: (1) directed Appellants to file with the prothonotary a statement of errors; (2) specified the number of days (21) within which Appellants were to file a statement; (3) directed that the statement be served on the trial judge; (4) noted that failure to timely file and serve the statement shall be deemed a waiver of all claimed errors, and (5) that any issue not included in a timely filed and served statement shall be deemed waived. Order of Court, 01/03/13. Further, the docket entry for the court's 1925(b) order complies with Pennsylvania Rule of Civil Procedure 236(b), as it indicates the date notice of the entry of the order was given to the parties.

Because the trial court's order required the filing of the statement with the prothonotary in addition to service on the judge, Appellants were required to comply with both directives. They did not do so; Appellants concede they failed to serve the trial judge with the statement. Moreover, based on this failure, the trial court determined that Appellants had waived any issues for appellate review and did not address the merits of the appeal. We, therefore, find that Appellants' failure to serve the trial judge with the statement of errors complained of on appeal has resulted in waiver of their issues for appellate review. **See *Schaefer v. Aames Capital Corp*, 805 A.2d 534, 535 (Pa. Super. 2002)** (holding the appellant's failure to serve on the trial court a Rule 1925(b) statement after being directed to do so results in waiver of the issues she seeks to raise on appeal). Accordingly, we affirm the judgment.

Judgment affirmed.

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: 12/18/2013