

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ARTHUR JOHNSON AND MICHELE
JOHNSON, HUSBAND AND WIFE

Appellants

v.

CHARLEROI BOROUGH

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 267 WDA 2012

Appeal from the Order Entered January 18, 2012
In the Court of Common Pleas of Washington County
Civil Division at No(s): No. 2006-5848

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

MEMORANDUM BY PANELLA, J.

Filed: March 15, 2013

Appellants, Arthur and Michele Johnson, husband and wife, appeal from the order¹ entered January 18, 2012, by the Honorable Katherine E. Emery, Court of Common Pleas of Washington County. After careful review, we affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ As a general rule, an appeal from an order denying post-trial motions is interlocutory, as the final order giving rise to a right to appeal is recognized as the judgment entered subsequent to such orders. **See *Fanning v. Davne***, 795 A.2d 388, 391 (Pa. Super. 2002), *appeal denied*, 573 Pa. 697, 825 A.2d 1261 (2003). Our review of the certified record indicates no such subsequent judgment has been entered in the trial court. However, when it appears, as here, that the order denying post-trial motions was intended to be the final pronouncement on the dispute in the trial court, we may ignore the procedural defect and address the appeal on the merits. **See *id.*** at 391-392.

The Johnsons filed suit against Appellee, Charleroi Borough, alleging that a retaining wall maintained by the Borough had failed and caused damage to the Johnsons' property that was downhill from the wall. The Borough responded by raising various defenses, including, *inter alia*, governmental immunity² and failure to state a claim for which relief might be had. The Johnsons' complaint was subsequently amended, and eventually, a non-jury trial was held on the merits.

The trial court found in favor of the Borough, concluding that the Johnsons had failed to establish that the Borough had breached a duty of care it owed to the Johnsons. The Johnsons filed post-trial motions, which the trial court ultimately denied. This appeal followed.

On appeal, the Johnsons raise the following question for our review:

Is Defendant, Charleroi Borough, liable for the cost and expense of removing their retaining wall and the fill and debris that has slid onto plaintiffs' property and for restoring plaintiffs' property to its condition prior to the collapse of the retaining wall?

Appellants' Brief, at 2. While the Johnsons' arguments are not explicit on what specific decision of the trial court is being challenged, the conclusion of the brief requests that we "vacate the Verdict ... [and] direct the court to

² Appeals from cases that involve this defense are properly addressed to the jurisdiction of the Commonwealth Court. 42 Pa. Cons. Stat. Ann. § 762 (a)(7). However, neither the trial court's reasoning nor the Appellants' issues on appeal are related to this defense. Accordingly, there is no danger of establishing parallel precedents on this issue, and in the interest of judicial economy, we will exercise our discretion to address this appeal.

enter a judgment in favor of [the Johnsons]...” Appellants’ Brief, at 10. We therefore conclude that the Johnsons are challenging the denial of their post-trial motion requesting judgment notwithstanding the verdict.

This Court reviews a trial court’s denial of a motion for judgment notwithstanding the verdict as follows:

Our standard of review of a trial court's denial of a motion for judgment notwithstanding the verdict is whether there was sufficient competent evidence to sustain the verdict. Judgment notwithstanding the verdict will be entered only in a clear case where the facts are such that no two reasonable minds could fail to agree that the verdict was improper. An Appellate court will reverse a trial court ruling only if it finds an abuse of discretion or an error of law that controlled the outcome of the case.

Gillingham v. Consol Energy, Inc., 51 A.3d 841, 848-849 (Pa. Super. 2012) (citation omitted).

Here, the trial court found the expert testimony of Carl Deicas, a civil engineer, credible. **See** Trial Court Opinion, 5/24/2012, at 7. Deicas testified that the retaining wall at issue was built to stabilize a roadway uphill from the wall. **See** N.T., Trial, 12/21, 22/2010, at 187. It was never intended to stabilize the hillside. **See id.** Deicas opined that the natural soil structure of the hill renders it prone to slippage and landslides. **See id.**, at 191. He believed that it was the collapse of the soil on the Johnsons’ property that caused the retaining wall to fail. **See id.**, at 194. Finally, Deicas opined that the wall has no effect on the slippage of the soil on the hill: “The hillside is unstable with or without the wall.” **Id.**, at 200-201.

This testimony is more than sufficient to support the trial court's conclusions that the injuries suffered by the Johnsons are unrelated to any action by the Borough. This testimony is capable of establishing that the landslide was a natural event, and that the Borough's wall did not cause the landslide. Accordingly, we cannot conclude that the trial court erred in denying judgment notwithstanding the verdict to the Johnsons. We therefore affirm the decision of the trial court.

Order affirmed. Jurisdiction relinquished.