

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IN RE: ONE 2001 FORD F350XLT	:	IN THE SUPERIOR COURT OF
TRUCK VIN 1FTWW33F21EA25318 ONE	:	PENNSYLVANIA
FLORIDA TRAILER VIN	:	
5FEFS20273CD12129,	:	
	:	
	:	
	:	
APPEAL OF: ALEKSANDR K.	:	
KULINKOVICH	:	No. 2840 EDA 2011

Appeal from the Order entered September 28, 2011,
Court of Common Pleas, Wayne County,
Civil Division at No. 876 Civil 2010

BEFORE: DONOHUE, OLSON and FITZGERALD*, JJ.

MEMORANDUM BY OLSON, J.:

Filed: January 16, 2013

Appellant, Aleksandr K. Kulinkovich, appeals from an order entered on September 28, 2011 in the Civil Division of the Court of Common Pleas of Wayne County that denied Appellant's petition to open and strike the trial court's October 14, 2010 order. After careful review, we vacate and remand.

On October 8, 2010, Mark Veren ("Veren") filed a petition requesting the trial court to grant him ownership of a 2001 Ford F350 truck ("Truck") and a trailer ("Trailer").¹ Petition for Ownership, 10/8/10. According to Veren, in 2009 he permitted the Truck and the Trailer to be parked on his property in Manchester Township in exchange for rent. *Id.* at ¶ 3. Veren averred that the rent was never paid in full, so on April 14, 2010, he sent a

¹ In the petition for ownership, Veren listed the vehicle identification numbers ("VIN") for the Truck and the Trailer as 1FTWW33F21EA25318 and 5FEFS20273CD12129, respectively.

*Former Justice specially assigned to the Superior Court.

letter to AK Tropical Blossom Honey Inc., 23 Susanna Lane, Staten Island, NY 10312. *Id.* Therein, Veren's counsel informed AK Tropical Blossom Honey that it was and had been trespassing on Veren's real estate for its failure to pay rent for the past three months. 4/14/10 Letter, at Exhibit A. Veren's counsel demanded that the Truck and the Trailer be removed from the property within 15 days, or he would report the problem to the Pennsylvania State Police and file an action to eject the vehicles from Veren's land. *Id.*

Veren's petition further alleged that he received no response to counsel's letter of April 14, 2010 and that the vehicles remained on his property. Petition for Ownership, 10/8/10, at ¶ 5. Veren noted that the vehicles had been on his property since 2009 and he believed them to be abandoned. *Id.* at 10. Veren asked the trial court to authorize the Pennsylvania Department of Transportation ("PennDOT") to establish title in his name so that he could sell the Truck and the Trailer. *Id.* at 9. Veren did not attempt to serve his petition for ownership on anyone. *See* N.T., 6/20/11, at 3.

On October 14, 2010, the trial court granted Veren's petition and awarded him ownership of the Truck and the Trailer; in addition, the court extinguished any other person's right, title, and interest in the vehicles. Trial Court Order, 10/14/10.

On December 2, 2010, AK Tropical Blossom Honey filed a petition to open and strike the trial court's October 14, 2010 order. Petition to Open and Strike, 12/2/10. AK Tropical Blossom Honey averred that it was the owner of the Truck and the Trailer, and its current address was 23 Susanna Lane, Staten Island, NY 10312. *Id.* at ¶ 5-6. According to AK Tropical Blossom Honey, it did not receive service of Veren's petition at its New York address. *Id.* at ¶ 8. AK Tropical Blossom Honey learned of Veren's petition in early November 2010 when an attempt was made to remove the vehicles from Veren's property. *Id.* at ¶ 9. AK Tropical Blossom Honey therefore concluded that Veren's petition and the trial court's resulting order were in violation of the service of process requirements set forth in the Pennsylvania Rules of Civil Procedure. *Id.* at ¶ 10. Within its petition to open and strike, AK Tropical Blossom Honey included: 1) an answer to Veren's petition for ownership; 2) a Florida certificate of title, issued to Appellant, for the Trailer with a VIN number of 5FEFS20273CO12129;² and, 3) an Ohio certificate of title, issued to Northstar Auto Sales, Inc. for a 2001 Ford F350 with a VIN number of 1FTWW33F21EA25318.

On December 9, 2010, the trial court issued a rule to show cause upon Veren, and on February 1, 2011, Veren filed an answer to the petition alleging that the petition to open and strike should be dismissed. Answer to

² We note that Veren's petition for ownership listed the VIN number for the Trailer as 5FEFS20273CD12129, not 5FEFS20273CO12129.

Petition to Strike, 2/1/11, at ¶ 14. Veren denied that AK Tropical Blossom Honey owned the vehicles and asserted that he was the owner of the vehicles. *Id.* at ¶ 5. Veren also claimed that because he received no response to the April 2010 letter to AK Tropical Blossom Honey in Staten Island, NY, he did not know whether that address was correct. *Id.* at ¶ 7. As such, Veren denied that he was required to serve his petition for ownership on AK Tropical Blossom Honey at the Staten Island address. *Id.* at ¶ 8. Veren further claimed that he had no one on which to serve his petition for ownership, "since the vehicles in question had been abandoned on his premises and a check of the records by the Pennsylvania State Police revealed no ownership in AK Tropical Blossom Honey Inc. [...] ." *Id.* at ¶ 10.³

On March 24, 2011, Appellant preaccepted to amend the name of the party seeking to open and strike the court's October 14, 2010 order. Appellant sought to substitute his own name for that of AK Tropical Blossom Honey.⁴

The trial court held a proceeding on June 20, 2011 at which counsel for the parties presented argument and exhibits. As one of his exhibits, Appellant produced a sales receipt reflecting his purchase of the Truck from

³ Veren sold the vehicles through an intermediary to an unknown third party. N.T. 2/1/11, at 2. It is unclear from the record when that sale occurred.

⁴ Appellant's brief states that he is the owner of AK Tropical Blossom Honey, Inc. Appellant's Brief at 2.

Northstar Auto Sales for a total of \$15,651.00 on April 11, 2006. The trial court denied Appellant's petition to open and strike on September 28, 2011 and this appeal timely followed.

In his brief, Appellant raises a single issue for our consideration:

Whether a judgment related to title of a [2001] Ford truck obtained by default against a non-Pennsylvania resident professional truck driver who was never served should be opened when (1) he promptly moved [...] to open the default judgment, (2) provided proof that he purchased the vehicle in his own name, and (3) had only failed to file a responsive pleading due to his never having been served, as to which fact there is no dispute[?]

Appellant's Brief at 1.⁵

We apply the following standard in reviewing an order that denied a petition to open a default judgment:

It is well settled that a petition to open a default judgment is an appeal to the equitable powers of the court, and absent an error of law or a clear, manifest abuse of discretion, [an order refusing to open the default] will not be disturbed on appeal. An abuse of discretion occurs when a trial court, in reaching its conclusions, overrides or misapplies the law, or exercises judgment which is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will.

Myers v. Wells Fargo Bank, N.A., 986 A.2d 171, 175 (Pa. Super. 2009) (citation omitted). As we consider an order denying a motion to open a default judgment, our standard of review requires that we:

examine the entire record for any abuse of discretion, reversing only where the trial court's findings are inconsistent with the clear equities of the case. Moreover, this Court must determine

⁵ Appellant does not challenge the denial of his petition to strike the order.

whether there are equitable considerations which require that a defendant, against whom a default judgment has been entered, receive an opportunity to have the case decided on the merits. Where the trial court's analysis was premised upon record evidence, where its findings of fact were deductions from other facts, a pure result of reasoning, and where the trial court made no credibility determinations, this Court may draw its own inferences and arrive at its own conclusions. Finally, where the equities warrant opening a default judgment, this Court will not hesitate to find an abuse of discretion.

Aquilino v. Philadelphia Catholic Archdiocese, 884 A.2d 1269, 1280 (Pa. Super. 2005).⁶

A default judgment may be opened where the moving party has “(1) promptly filed a petition to open the default judgment, (2) provided a reasonable excuse or explanation for failing to file a responsive pleading, and (3) pleaded a meritorious defense to the allegations contained in the complaint.” ***Myers***, 986 A.2d at 175-176 (footnote and internal citations omitted). Moreover, while the equities of a particular case carry significant weight in our inquiry, equitable considerations standing alone will not justify opening a default judgment where the moving party fails to demonstrate all three of the required criteria. ***Id.***

There is little dispute that Appellant promptly filed his petition to open the default judgment and provided a reasonable justification for his failure to

⁶ Because a petition to open a judgment is an appeal to a court's equitable powers, we have said that a court may consider matters *dehors* the record when reviewing such a petition. ***Aquilino***, 884 A.2d at 1283 (citations and quotations omitted). “[A] petition to open a judgment is the proper method of seeking relief from a judgment where the irregularity of the judgment is predicated upon matters outside of the record.” ***Id.***

respond to Veren's initial claims. Appellant petitioned to open the default judgment just two months after Veren filed his petition for ownership of the vehicles and one month after Appellant learned that ownership of the vehicles had been granted to Veren. Moreover, Appellant tendered a reasonable explanation for his failure to respond to Veren's original petition given Veren's failure to effect service.

Under these circumstances, the merit of this appeal boils down to whether Appellant presented a meritorious claim of ownership of the vehicles. To demonstrate ownership of the Trailer, Appellant proffered a Florida certificate of title with a VIN number of 5FEFS20273CO12129. To establish ownership of the Truck, Appellant produced a 2006 sales receipt showing that he purchased that vehicle from Northstar Auto Sales, an automotive dealer.

Notwithstanding this proof, the trial court concluded that Appellant's evidence was insufficient to establish a meritorious claim of ownership of the vehicles. With respect to the Trailer, the trial court's opinion reasoned that the VIN number identified by Appellant did not match the VIN number on the certificate of title offered by Veren. Trial Court Opinion, 11/30/11, at 2; **see also** Trial Court Order, 9/28/11, at 1 n.2 (denying Appellant's petition to open and strike). Specifically, Appellant's Florida certificate of title for the Trailer had VIN number 5FEFS20273CO12129, whereas the VIN number for the Trailer reflected on Veren's petition for ownership, referred to VIN

number 5FEFS20273CD12129. As for the Truck, the trial court concluded that Appellant failed to present evidence of current ownership because he did not produce a title, registration materials, or proof of insurance. Trial Court Opinion, 11/30/11, at 2; Trial Court Order, 9/28/11, at 1 n.2. We believe that these factual conclusions are flawed.

With respect to Appellant's ownership of the Trailer, we are unable to agree with the trial court's reasoning which relied heavily upon the certificate of title issued to Veren. That certificate was issued to Veren as a result of the trial court's order that granted Veren's petition for ownership in the face of an alleged default by Appellant. Since Veren's petition and the trial court's order were the subject of Appellant's petition to open, the trial court's reliance on Veren's certificate of title was misplaced.

We also conclude that the discrepancy between the VIN number that appears on Appellant's Florida certificate of title for the Trailer and the VIN number that Veren listed on his petition for ownership does not defeat Appellant's ownership claim with respect to the Trailer. Preliminarily, we note that no one has challenged the authenticity of the state-issued certificate proffered by Appellant. We further note that the VIN numbers identified by the parties both include 17 alpha-numeric components, 16 of which are identical. The VIN number identified by Appellant includes a '**D**' where the VIN number listed by Veren includes an '**O**.' This difference does not disprove Appellant's claim. Instead, the most reasonable inference to

draw from these circumstances is that one of the VIN numbers advanced by the litigants contains a typographical error. Hence, as Appellant has come forward with objective proof of ownership for the Trailer, the default judgment should be opened and this issue should be explored in greater depth at trial.

Lastly, we hold that Appellant's sales receipt for the Truck supplied a sufficient basis upon which to find that he established a meritorious claim of ownership for that vehicle. The trial court found that Appellant failed to present evidence of current ownership because he did not produce a title, or other documents such as registration materials, or proof of insurance. We acknowledge the importance of this information in establishing Appellant's vehicle ownership since these materials could show his ability to control and maintain responsibility for the Truck. The record, however, shows that Appellant was an over-the-road trucker whose concerns about congested parking conditions at his residence in the New York City area led him to pursue the parking and storage arrangement with Veren that gave rise to this dispute. These facts explain Appellant's sporadic and occasional use and possession of the vehicles in question. Because Appellant's possession and use of the vehicles were understandably infrequent given the nature of his employment, the sales receipt was sufficiently probative of the ownership of the Truck, even in the absence of other documents such as a title,

registration materials, or proof of insurance.⁷ Moreover, when Veren, who knew Appellant as a fellow immigrant from Russia, initiated efforts to acquire title to the vehicles, he instructed his attorney to forward a letter to the company owned by Appellant. Throughout the letter, counsel refers to the vehicles as “your property” and asks the recipient to retrieve the vehicles from his client’s land. This letter constitutes additional circumstantial evidence which confirms, as of April 14, 2010 (the date which appears on the letter), that Appellant, or someone under his direction or control, was responsible for, and had an immediate right to use and possess, the vehicles. Based upon the totality of evidence contained within the record, we hold that Appellant pled a meritorious claim of ownership of the Truck and the Trailer, and hence, the trial court abused its discretion in denying his petition to open.

Order vacated. Case remanded for further proceedings.

⁷ The record contains evidence that the Truck was subject to a lien. If that lien secured an outstanding purchase loan, it is unlikely that Appellant would hold title to the vehicle. Nevertheless, he would still be considered the vehicle owner.