NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

MARGARET A. CORNELL	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
CASSANDRA M. GILLEN,	:	No. 340 WDA 2013
	:	
Appellant	:	

Appeal from the Judgment Entered April 19, 2013,
in the Court of Common Pleas of Allegheny County
Civil Division at No. AR 11-004807

BEFORE: FORD ELLIOTT, P.J.E., OTT AND WECHT, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED DECEMBER 18, 2013**

Cassandra M. Gillen ("Gillen") appeals, ***pro se***, from the judgment entered April 19, 2013 in favor of Margaret A. Cornell ("Cornell"). We affirm.

This is a breach of contract action. According to the complaint, Cornell, plaintiff in the court below, lent Gillen, her daughter, $10,000 to save her flower shop, Cassandra's Floral. The flower shop was about to be sold at sheriff's sale. Cornell alleges that on October 30, 2009, she gave a cashier's check in the amount of $10,000 to Gillen which Gillen then turned over to the Allegheny County Sheriff's Office to stop the sale. As a condition of the $10,000 loan, Gillen signed an agreement to repay $5,000 cash on March 4, 2010, and to repay the remaining balance of $5,000 over the next two years, at a rate of $200/month.

Apparently, both a magisterial district judge and a board of arbitrators ruled in favor of Gillen.[1] Cornell appealed, and a trial ***de novo*** was scheduled for 9:00 a.m. on January 16, 2013. Cornell was present at the appointed time and place, with her attorney and an expert witness, a forensic accountant. Gillen failed to appear. After waiting until almost 10:20 a.m., the trial court heard evidence from Cornell and then issued a verdict in favor of Cornell and against Gillen in the amount of $10,000.

The following day, January 17, 2013, Gillen filed a motion for a new trial. Argument on the motion was held on January 29, 2013. At the hearing on her motion, Gillen alleged that she was mistaken as to the date of trial. (Notes of testimony, 1/29/13 at 4.) Gillen stated that as soon as she realized her mistake, she contacted the court and arrived at approximately 10:40 a.m. (***Id.*** at 7-8.) On January 30, 2013, the motion for new trial was denied.

Gillen filed a ***pro se*** notice of appeal on February 19, 2013. On February 26, 2013, Gillen was ordered to file a concise statement of errors complained of on appeal within 21 days pursuant to Pa.R.A.P., Rule 1925(b), 42 Pa.C.S.A.; she complied on March 19, 2013, and the trial court filed an opinion on May 20, 2013.[2]

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[1] Cornell notes that she was ***pro se*** at that time. (Cornell's brief at 2.)

[2] On April 5, 2013, this court issued a rule to show cause why the appeal should not be dismissed as interlocutory, as judgment had not been entered. Gillen filed a response on April 16, 2013, and on April 19, 2013, the verdict

As stated above, Gillen failed to appear for trial. Pennsylvania Rule of Appellate Procedure 218 provides, in relevant part, as follows:

> **Rule 218. Party Not Ready When Case is Called for Trial**
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> (b) If without satisfactory excuse a defendant is not ready, the plaintiff may
>
> (1) proceed to trial,
>
> . . . .
>
> (c) A party who fails to appear for trial shall be deemed to be not ready without satisfactory excuse.

Pa.R.A.P., Rule 218(b)(1), (c), 42 Pa.C.S.A. "A decision of the court following a trial at which the defendant failed to appear is subject to the filing of a motion for post-trial relief which may include a request for a new trial on the ground of a satisfactory excuse for the defendant's failure to appear." ***Id.***, note.

> When a defendant receives proper notice and nonetheless fails to appear or provide a satisfactory excuse for non-appearance at, or prior to, the time set for trial, the trial may proceed properly in the defendant's absence. Following an adverse verdict in such proceedings, a defendant may file post-verdict

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was reduced to judgment. (Docket #24.) ***See Melvin v. Melvin***, 580 A.2d 811, 817 (Pa.Super. 1990) ("When an appeal is improvidently taken prior to entry of final judgment, ordinarily this Court will direct the appellant to praecipe judgment and notice of appeal will be treated as being filed on the date judgment is entered.") (citations omitted); Pa.R.A.P., Rule 905(a)(5), 42 Pa.C.S.A. ("A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.").

> motions which may include a request for a new trial on equitable grounds similar to those which permit the opening of a default or confessed judgment.

Melvin, 580 A.2d at 818 (citations omitted).

> The law is clear that a satisfactory excuse must be an excuse that would constitute a valid ground for a continuance. Examples of valid grounds are an agreement of counsel; illness of counsel, a party, or a material witness; inability to maintain the testimony of an absent witness by means of discovery; or such other grounds as may be allowed by the court.

Manack v. Sandlin, 812 A.2d 676, 681 (Pa.Super. 2002), ***appeal denied***, 572 Pa. 766, 819 A.2d 548 (2003) (citations and quotation marks omitted). A defendant's post-verdict motion for a new trial after failing to appear is a matter of judicial grace, and we review for an abuse of the trial court's discretion. ***Melvin***, 580 A.2d at 819; ***Wood v. Garrett***, 353 Pa. 631, 637, 46 A.2d 321, 323 (1946). "These rules, made for the orderly administration of justice should not be lightly ignored." ***Wood***, ***supra*** (citation omitted).

As described above, this case was assigned a trial date of January 16, 2013, with the call of the list set for 9:00 a.m. Gillen failed to appear, and after waiting until almost 10:20 a.m., the trial court heard evidence from Cornell and entered a verdict in her favor for $10,000. At the hearing on Gillen's post-verdict motion for a new trial, Gillen's only excuse was that she thought trial was scheduled for the following day. She did not allege that she was not provided notice of the trial date. The trial court did not find Gillen's excuse to be satisfactory. As the trial court states in its opinion,

> During said hearing, [Gillen] testified that she did not appear in Court on January 16, 2013 for trial, as required, because she thought the 16th was actually the 15th. Following the hearing, this Court entered an Order dated January 30, 2013 denying [Gillen]'s Motion. This Court denied [Gillen]'s Motion because [Gillen] did not present a reasonable excuse under the circumstances and/or a meritorious defense. On the other hand, [Cornell], an elderly woman on oxygen, was present and ready to proceed on January 16, 2013, as scheduled, along with her attorney and a forensic [accountant].

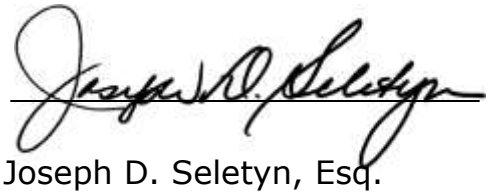
Trial court opinion, 5/20/13 at 1.

Cornell's attorney noted that they had difficulty getting her to court on January 16 as she is confined to a wheelchair. (Notes of testimony, 1/29/13 at 9.) A new trial would result in substantial additional cost to Cornell, who had retained an expert. (***Id.***) Gillen stated she was only a few minutes late, when in fact she was an hour and twenty minutes late. (***Id.*** at 4, 7.)

We cannot say the trial court abused its discretion in denying Gillen's motion for a new trial. Gillen's mistake does not constitute a satisfactory excuse for failing to appear at trial. In addition, Gillen characterizes this as a "landmark case" and "one of a kind." (***Id.*** at 5; Gillen's brief at 5.) In fact, it is a simple breach of contract case, and there is no meritorious defense apparent from the record. ***See Wood***, 353 Pa. at 637, 46 A.2d at 323 (finding that even if the defendant had a legitimate excuse, equity would not require a new trial where the defendant had no meritorious defense).

Judgment affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/18/2013