

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

TIDIOUTE TOWERS	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
SCOTT A. SNYDER,	:	No. 643 WDA 2013
	:	
Appellant	:	

Appeal from the Order Entered March 5, 2013,
in the Court of Common Pleas of Warren County
Civil Division at No. 2012-00651

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

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

Scott A. Snyder appeals, *pro se*, from the order of March 5, 2013, denying his motion to reinstate the appeal and striking the appeal. We affirm.

Tidioute Towers, the apartment building where appellant resided, sought to evict appellant after several incidents involving its maintenance man. The matter proceeded to district court, where Magisterial District Judge (“MDJ”) Cynthia K. Lindemuth granted possession to appellee, as well as money damages of \$796.44. Appellant filed a timely *pro se* appeal from that judgment on December 6, 2012; however, he made no attempt to serve the notice of appeal on appellee, appellee’s attorney, or Judge Lindemuth, as required by the rules. On December 18, 2012, appellee filed a praecipe to strike off the appeal. On January 16, 2013, appellant filed a *pro se* petition

to reinstate the appeal. On March 5, 2013, following a hearing, the trial court denied appellant's petition to reinstate and ordered the appeal stricken. This timely appeal followed.¹

The Pennsylvania Rules of Civil Procedure for Magisterial District Judges provide, in pertinent part:

Rule 1005. Service of Notice of Appeal and Other Papers

- A. The appellant shall by personal service or by certified or registered mail serve a copy of his notice of appeal upon the appellee and upon the magisterial district judge in whose office the judgment was rendered. If required by Rule 1004B to request a rule upon the appellee to file a complaint, he shall also serve the rule by personal service or by certified or registered mail upon the appellee. The address of the appellee for the purpose of service shall be his address as listed on the complaint form filed in the office of the magisterial district judge or as otherwise appearing in the records of that office. If the appellee has an attorney of record named in the complaint form filed in the office of the magisterial district judge, the service upon the appellee may be made upon the attorney of record instead of upon the appellee personally.

¹ The trial court did not order appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P., Rule 1925(b), 42 Pa.C.S.A. On April 5, 2013, the trial court filed an opinion explaining the reasons for its decision. We note that an order denying a motion to reinstate an appeal is a final order for appeal purposes. ***Anderson v. Centennial Homes, Inc.***, 594 A.2d 737, 739 n.2 (Pa.Super. 1991) (citation omitted).

- B. The appellant shall file with the prothonotary proof of service of copies of his notice of appeal, and proof of service of a rule upon the appellee to file a complaint if required to request such a rule by Rule 1004B, within ten (10) days after filing the notice of appeal.

Pa.R.C.P.M.D.J., Rule 1005(A), (B), 42 Pa.C.S.A.

Rule 1006. Striking Appeal

Upon failure of the appellant to comply with Rule 1004A or Rule 1005B, the prothonotary shall, upon praecipe of the appellee, mark the appeal stricken from the record. The court of common pleas may reinstate the appeal upon good cause shown.

Pa.R.C.P.M.D.J., Rule 1006, 42 Pa.C.S.A.

While the phrase "good cause shown" has not been precisely defined, this court has interpreted it to require an appealing party to proffer some legally sufficient reason for reinstating the appeal. ***Anderson v. Centennial Homes, Inc.***, 406 Pa.Super. 513, 517, 594 A.2d 737, 739 (1991). "[T]he determination of whether good cause has been demonstrated is trusted to the trial court's sound discretion." ***Id.***

Slaughter v. Allied Heating, 636 A.2d 1121, 1123 (Pa.Super. 1993), ***appeal denied***, 539 Pa. 669, 652 A.2d 839 (1994).

The purpose of Rule 1005

is to prevent parties from appealing from an adverse judgment of a district justice and then delaying the case by failing to timely notify the non-appealing party. The rule also ensures that the district justice will be notified as the notice of appeal may act as a supersedeas, and thus, may affect the prevailing party's attempt to execute on the judgment. The requirements of Rule 1005 further promote the

speedy, orderly and just determination of the appeal and eliminate any dispute as to whether service was actually made.

Id. at 1124 (citations omitted).

Instantly, appellant admitted that he did not serve a copy of the notice of appeal on appellee, appellee's counsel, or Judge Lindemuth; nor, consequently, did he file proofs of service within ten days as required by Rule 1005B. As of the date of the hearing on appellant's motion to reinstate the appeal, appellant had still not served appellee or Judge Lindemuth with copies of the notice of appeal. (Notes of testimony, 3/5/13 at 7.) Appellant testified that he is *pro se* and lacks legal knowledge. (**Id.**) According to appellant, he was unaware he had to serve appellee and Judge Lindemuth with the notice of appeal. (**Id.** at 8.) Appellant reiterates the same argument on appeal to this court, asserting that lack of legal knowledge constitutes good cause. (Appellant's brief at 1.) We disagree.

In ***Slaughter***, the appellant, Allied Heating, allegedly sent notices of the appeal via regular mail to the appellee and the MDJ; however, the rules require an appellant to serve a copy of the notice of appeal by personal service or by certified or registered mail. ***Slaughter***, 636 A.2d at 1122-1123 n.2. No proofs of service were filed within ten days as specified by Rule 1005B, and both the appellee and the MDJ denied receiving the notices allegedly mailed by the appellant. **Id.** Appellant was unrepresented at the time; later, appellant retained counsel who promptly served the appellee and

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the MDJ with the notice of appeal and filed proofs of service. **Id.** The appellee filed a praecipe to strike the appeal because of the appellant's failure to comply with Rule 1005B. **Id.** at 1123. The prothonotary struck the appeal, and the appellant's petition to reinstate the appeal was denied. **Id.**

This court affirmed, distinguishing those cases in which the appealing party timely served the notice of appeal on both the opposing party and the MDJ and merely failed to timely file proof of service. **Id.** at 1124. "Where the notice of appeal is timely filed and served upon the non-appealing party and the district justice, the intent underlying the rule has been fulfilled and no further purpose remains to be served by penalizing the appealing party for failing to timely file the proofs of service." **Id.** (citations omitted). In **Slaughter**, there was no evidence, other than the appellant's own unsupported allegations, that the appellee and the MDJ were served with the notice of appeal until several months later, when the appellant retained counsel. **Id.** We found the cases which disregarded a technical failure to timely file proofs of service were distinguishable. **Id.**

In addition, this court in **Slaughter** rejected the appellant's explanation that its non-compliance with the rules was due to inadvertent error where it was unrepresented by counsel at the time the notice of appeal was filed. **Id.** at 1125. "[A]n unspecific allegation that the failure to comply with Rule 1005B was attributable to 'inadvertent error' is insufficient to show

good cause.” *Id.* (citation omitted). **See also Howland, Hess, Guinan & Torpey v. Perzel**, 667 A.2d 1163, 1165 (Pa.Super. 1995) (trial court did not abuse its discretion when deciding that the appellant failed to show good cause for reinstating her appeal where she did not merely fail to timely file proofs of service, but also failed to send a copy of the notice of appeal to the MDJ as required by Rule 1005A); **Anderson**, 594 A.2d at 740, quoting 25 Standard Pa. Practice 2d § 130:166 (1984) (“An appeal from a decision of a district justice which has been stricken should be reinstated only under exceptional circumstances”).

The **Slaughter** court also rejected the appellant’s argument that it was unrepresented at the time it filed notice of appeal:

It is well settled that an individual who chooses to proceed **pro se** is not entitled to any particular advantage because of his or her lack of legal training. **O’Neill v. Checker Motors Corp.**, 389 Pa.Super. 430, 434, 567 A.2d 680, 682 (1989). As our Supreme Court has explained, an individual choosing to represent him- or her-self must, to some reasonable extent, assume the risk that the lack of expertise and legal training will prove his or her undoing. **Vann v. Commonwealth, Unemployment Compensation Board of Review**, 508 Pa. 139, 149, 494 A.2d 1081, 1086 (1985). **Accord O’Neill v. Checker Motors Corp.** Appellant’s **pro se** status, without more, thus does not establish good cause.

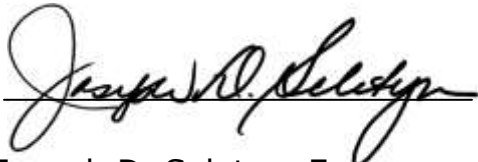
Slaughter, 636 A.2d at 1125. Therefore, appellant’s argument concerning his lack of legal knowledge as a layperson misses the mark. While the trial court could have chosen to exercise leniency and reinstate the appeal,

particularly where appellee filed a praecipe to strike the appeal shortly after the 10-day period to file proofs of service had run, we cannot say the trial court abused its discretion by refusing to do so where appellant failed to serve either the opposing party or the MDJ with the notice of appeal. We are bound by this court's decision in **Slaughter**. **See also Perzel**, 667 A.2d at 1165 n.1 (while Pa.R.C.P. 126 allows the court to "disregard any error or defect of procedure which does not affect the substantial rights of the parties," "it is not an abuse of discretion for the trial court to enforce the rules of civil procedure and refuse to grant liberal construction of the rules of procedure."), citing **Paden v. Baker Concrete Construction, Inc.**, 540 Pa. 409, 658 A.2d 341 (1995); **Anderson**, 594 A.2d at 739 ("while the trial court may ignore procedural noncompliance, it is not required to do so").

Appellant failed to show good cause to reinstate the appeal. Therefore, the trial court did not abuse its discretion in denying the motion.

Order 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