NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

RANDY DAWSON, D/B/A RAD TOYS CENTRAL,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
SHAWN WILLIAM VAUGHT,	:	
Appellant	:	No. 867 WDA 2012

Appeal from the Order Entered April 30, 2012
In the Court of Common Pleas of Erie County
Civil Division No(s).: 30032-12

BEFORE: STEVENS, P.J., MUNDY, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED MAY 30, 2013**

Appellant, Shawn William Vaught, appeals from the order entered in the Erie County Court of Common Pleas denying his petition for leave of court to file a notice of appeal from the district justice judgment *nunc pro tunc* and to open the default judgment entered in favor of Appellee, Randy Dawson, d/b/a Rad Toys Central.[1] Appellant avers that the untimely filing of the notice of appeal was the result of the district justice office's failure to mail him a certified copy of the judgment required for the notice of appeal. Appellant also contends that his petition to open the default judgment was

* Former Justice specially assigned to the Superior Court.

[1] Appellee did not file a brief in this appeal.

timely filed, provided a reasonable excuse for the failure to file a responsive pleading, and pleaded a meritorious defense to the allegations in the complaint. We affirm.

On August 26, 2011, Appellee filed a civil complaint seeking $12,000 against Appellant in district court. Appellee alleged, "[Appellant] was given money for goods and services but never shipped the goods nor did he return the funds given to him. For 7.3L Powerstroke motor plus shipping." Aplnt's Pet. for Leave of Ct. & Pet. to Open J, 1/13/12, at Ex. A. A hearing was held on November 17, 2011 before Erie County Magisterial District Judge Denise Stuck-Lewis. Appellant did not attend the hearing,[2] and as a result, default judgment was entered against him on that date.[3]

Fifty-three days later, on January 9, 2012, Appellee filed a notice of filing judgment with the prothonotary of the Court of Common Pleas of Erie County, which entered judgment of $12,183.60 against Appellant. On January 13, 2012, Appellant filed the instant petition for leave of court to appeal *nunc pro tunc* and to open judgment.

Appellant's petition averred the following. On November 21, 2011, Appellant notified his counsel of the default judgment. ***Id.*** at 1 (unpaginated). Appellant contends that counsel informed him that he would

[2] In the petition for leave of court and to open judgment, Appellant averred "he chose not to attend" the hearing. ***Id.*** at 1.

[3] There is no transcript of the hearing.

appeal after receiving a certified copy of the judgment, which he needed to obtain "from the district justice's office in order to properly appeal the judgment." ***Id.*** at 2. Appellant's counsel's paralegal informed counsel in an e-mail dated November 30, 2011 that she "called to request a certified copy of the Notice of Judgment . . . and was told that we must wait 30 days from the date of entry, which would be December 17, 2011. [The court] said that they cannot issue a certified copy prior to that date because they must give the parties 30 days to either pay or appeal. . . ." ***Id.*** at Ex. E. at 1. Counsel replied to his paralegal in an e-mail "[the court's] mistaken. We need the certified judgment to take the appeal." ***Id.***

On April 30, 2012, the trial court denied Appellant's petition. Appellant filed a motion for reconsideration on May 22, 2012, which was denied on May 29, 2012. Appellant filed a timely notice of appeal on May 30, 2012.[4]

Appellant statement of questions involved raises the following issues for our review:

> Did the trial court commit a mistake of law or abuse its discretion in denying . . . Appellant's request 1) for leave of court with which to file a Notice of Appeal of the District Justice Judgment; or 2) to open the default judgment against . . . Appellant when he filed a timely petition, had a legitimate excuse for not filing a Notice of Appeal and where [Appellant] had defenses to [Appellee's] cause of action?

[4] Appellant was not ordered to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

Appellant's Brief at 2.[5]

Appellant argues that the failure to file a timely notice of appeal to the Court of Common Pleas was based upon

> the disagreement with the District Justice's office concerning the request for a certified copy of the judgment. . . . For some reason, perhaps because counsel never received the requested certified copy of the judgment, counsel and his paralegal unintentionally and inadvertently did not mark the last day to appeal the District Justice judgment on their respective calendars.

Id. at 9. He avers that this "mistake was essentially a clerical error." ***Id.***

Appellant contends he

> is prepared to plead and present meritorious defenses to the claim asserted by [Appellee] in his District Justice complaint. Granted, given the liberal pleading rules afforded litigants when filing District Justice complaints, it was very difficult to determine the nature and extent of [Appellee's] claim. . . . Nevertheless, . . . if the claim is stated more precisely, [Appellant] would deny the substance of the allegations.

Id. at 10-11.

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[5] We note that Appellant addresses both issues together in the argument section of the brief. Appellant thus does not comply with Pa.R.A.P. 2119(a), which provides: "The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part—in distinctive type or in type distinctively displayed—the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent." ***See*** Pa.R.A.P. 2119(a); ***Universal Underwriters Ins. v. A. Richard Kacin, Inc.***, 916 A.2d 686, 689 n.6 (Pa. Super. 2007) (declining to quash appeal despite violations of Pa.R.A.P. 2116(a) and Pa.R.A.P. 2119(a) where brief was not so defective as to preclude effective appellate review).

Appellant avers that the petition to open the default judgment was timely filed because he was notified of the entry of the judgment in the Court of Common Pleas on January 10, 2012 and the petition to open was filed on January 13. ***Id.*** at 7. He states:

> Under the extremely liberal pleading rules at the District Justice level, [Appellee's] complaint is probably minimally sufficient to hold a hearing in that forum. . . . Appellant's contention in his appeal, is that due to the very limited amount of information pled in . . . Appellee's District Justice complaint, . . . Appellant was severely limited in pleading a defense with any degree of specificity.

Id. at 12.

First we consider whether the trial court erred in denying Appellant's petition for leave of court to file an appeal *nunc pro tunc*.

> Our Supreme Court has characterized the purpose of *nunc pro tunc* restoration of appellate rights as follows:
>
> > Allowing an appeal *nunc pro tunc* is a recognized exception to the general rule prohibiting the extension of an appeal deadline. This Court has emphasized that the principle emerges that an appeal *nunc pro tunc* is intended as a remedy to vindicate the right to an appeal where that right has been lost due to certain extraordinary circumstances. Generally, in civil cases an appeal *nunc pro tunc* is granted only where there was fraud or a breakdown in the court's operations through a default of its officers.
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> ***Union Elec. Corp. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cty***., 560 Pa. 481, 746 A.2d 581, 584 (2000) (citations and internal quotation marks omitted).

> Our standard of review over an order denying *nunc pro tunc* restoration of a petitioner's appellate rights is deferent:
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> > The denial of an appeal *nunc pro tunc* is within the discretion of the trial court, and we will only reverse for an abuse of that discretion. ***Freeman v. Bonner***, 761 A.2d 1193, 1194 (Pa. Super. 2000). In addition to the occurrence of "fraud or breakdown in the court's operations," *nunc pro tunc* relief may also be granted where the appellant demonstrates that "(1) [his] notice of appeal was filed late as a result of nonnegligent circumstances, either as they relate to the appellant or the appellant's counsel; (2) [he] filed the notice of appeal shortly after the expiration date; and (3) the appellee was not prejudiced by the delay." ***Criss v. Wise***, 566 Pa. 437, 781 A.2d 1156, 1159 (2001).
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> ***Rothstein v. Polysciences, Inc.***, 853 A.2d 1072, 1075 (Pa. Super. 2004) (citations modified). "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, or ill will." ***U.S. Bank N.A. v. Mallory***, 982 A.2d 986, 994 (Pa. Super. 2009).

Vietri ex rel. Vietri v. Delaware Valley High School, 63 A.3d 1281, 1284 (Pa. Super. 2013).

In ***Lloyd, Inc. v. Microbytes, Inc.***, 929 A.2d 653, 655 (Pa. Super. 2007), this Court addressed the following issue:

> [I]s a judgment in magisterial district court "entered" when the judgment form is signed by the magisterial district judge, or when notice of the judgment is printed out and the process of providing notice is initiated? **We conclude that the answer is the date the judgment form is signed by the magisterial district judge.**

Id. at 655 (emphasis added). We reasoned that because

> there is no "docket" in magisterial district court[, t]he signed judgment/transcript acts as the "record" of the proceedings. Thus, using a common sense viewpoint, "entry" of judgment must be construed to occur simultaneously with recordation of the judgment on the pre-printed judgment/transcript form.

Id. at 655-56 (footnote omitted).

Pa.R.C.P.M.D.J. No. 1002(A) provides:

> A party aggrieved by a judgment for money, or a judgment affecting the delivery of possession of real property arising out of a nonresidential lease, may appeal therefrom **within thirty (30) days after the date of the entry of the judgment by filing with the prothonotary of the court of common pleas a notice of appeal** on a form which shall be prescribed by the State Court Administrator together with a copy of the Notice of Judgment issued by the magisterial district judge. The prothonotary shall not accept an appeal from an aggrieved party which is presented for filing more than thirty (30) days after the date of entry of the judgment without leave of court and upon good cause shown.

See Pa.R.C.P.M.D.J. No. 1002(A) (emphasis added).

> The phrase "good cause shown" [in rule 1002(A)] has not been precisely defined by the Rules. However, Pennsylvania case law has interpreted this phrase as requiring an appealing party to proffer some "legally sufficient reason" for requesting relief. ***See***, ***e.g.***, ***Slaughter v. Allied Heating***, 431 Pa. Super. 348, 636 A.2d 1121, 1123 (1993), *appeal denied*, 539 Pa. 669, 652 A.2d 839 (1994) (explicating Rule 1006 Pa.R.C.P.D.J.). "The determination of whether good cause has been demonstrated is trusted to the trial court's sound discretion." ***Id.***

McKeown v. Bailey, 731 A.2d 628, 631 (Pa. Super. 1999).

In the case at bar, the district justice recorded the judgment on the form on November 17, 2011. It is uncontested that Appellant received

notice of the judgment entered in the district court. He argues that **the district justice office was mistaken** when it informed Appellant's counsel's paralegal on two occasions that the judgment did not have to be certified prior to taking an appeal. Appellant's Brief at 8-9 (emphasis added).

In the instant case, the trial court opined:

> Statutory authority clearly states a "copy of the Notice of Judgment issued by the magisterial district judge" is necessary to appeal a default judgment issued by a District Justice. Pa.R.C.P.D.J. No. 1002(a). The Notice of Judgment states:
>
> > Any party has the right to appeal within 30 days after the judgment by filing a notice of appeal with the prothonotary/clerk of court of common pleas, civil division. You must include **a copy** of this notice of judgment/transcript form with your notice of appeal.
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> [Aplnt's Pet. for Leave of Ct. & Pet. to Open J., Ex.] B (emphasis added). A "certified" copy of the notice of judgment is only available after the thirty (30) day appeal period has ended. Pa.R.C.P.D.J. No. 402. "Certification by the magisterial district judge should not be done before the expiration of 30 days after the date of entry of the judgment." Pa.R.C.P.D.J. No. 402 note (Subsection D).
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> Therefore, [Appellant] inaccurately claims his counsel was "frustrated and deterred by the District Justice's Office. [Aplnt's Pet. for Leave of Ct. & Pet. to Open J.], ¶ 4. In fact, a certified copy of the Notice of Judgment is not required to file an appeal. . . .
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> * * *
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> [Appellant's] counsel was informed correctly, twice, by staff at the District Justice's office that a certified copy would not be available until the appeal deadline had

> passed. [***Id.*** at] ¶¶ 2-3. [Appellant's] counsel was aware of the deadline and despite clear statutory authority and the statements of the District Justice's Office, did not file an appeal. [Appellant] has asserted no justifiable excuse for the failure to file an appeal . . . .

Trial Ct. Op. at 4-6. We are constrained to agree. We discern no abuse of discretion by the trial court in declining to restore Appellant's appellate rights. ***See Vietri ex rel. Vietri***, ***supra***.

Second, Appellant claims that the trial court erred in denying his petition to open the default judgment. In ***Anderson v. Centennial Homes, Inc.***, 594 A.2d 737 (Pa. Super. 1991), the defendant did not appeal the district justice judgment. ***Id.*** at 740. This Court found where

> the court of common pleas has declined to reinstate [a defendant's] appeal, it has no jurisdiction to entertain petitions to open a judgment which it has declined to review. Here, [the defendant], in an apparent effort to pursue all possible avenues of relief, simultaneously argued that its appeal should be reinstated and that the judgment should be opened. However, . . . we find that where the appeal is not reinstated, a petition to open the judgment which was the subject of the attempted appeal, should not, and indeed cannot, properly be entertained.

Id. Analogously, in the case *sub judice*, the trial court did not reinstate Appellant's appeal. Because the trial court declined to restore his appellate rights, it lacked jurisdiction[6] to consider the claim which was the subject of the attempted appeal[7]. ***See id.***

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[6] "[T]he parties or the court *sua sponte* can raise a challenge to subject matter jurisdiction at any time." ***Step Plan Services, Inc. v. Koresko***, 12 A.3d 401, 417 (Pa. Super. 2010).

Order affirmed.

Judgment Entered.

Deputy Prothonotary

Date: 5/30/2013

[7] We note that the trial court addressed this issue on the merits and found no relief was due. "An appellate court may affirm the trial court for reasons other than those given by the trial court." ***Williams v. Otis Elevator Co.***, 598 A.2d 302, 306 n.1 (Pa. Super. 1991).