

**[J-92-2001]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

MARY CHALKEY, a/k/a MARY MATULA,	:	No. 10 WAP 2001
	:	
Appellant	:	Appeal from the Order of the Superior
	:	Court entered August 7, 2000 at No.
	:	1622PGH1998, vacating the Order of the
v.	:	Court of Common Pleas of Cambria
	:	County, Civil Division, entered August 11,
	:	1998 at No. 1997-3857, and remanding
FRANKLIN DELANO ROUSH, JR.,	:	for further proceedings.
	:	
Appellee	:	
	:	
	:	ARGUED: September 10, 2001

**OPINION OF THE COURT**

**MR. JUSTICE NIGRO**

**DECIDED: AUGUST 21, 2002**

In this appeal, Appellant Mary Chalkey, a/k/a Mary Matula,<sup>1</sup> argues that the Superior Court erred in holding that Appellee Franklin Delano Roush, Jr. did not waive his claims on appeal as a result of his failure to file post-trial motions with the trial court. While we find that pursuant to Rule 227.1 of the Pennsylvania Rules of Civil Procedure, parties are required to file post-trial motions from a trial court's order following a trial in both actions at law and in equity in order to properly preserve issues that they wish to raise on appeal, we also find that this rule shall be applied prospectively only. Thus, we affirm the Superior Court's order granting Roush relief in the instant case.

In April 1994, the Court of Common Pleas of Cambria County entered a judgment of approximately \$80,000.00 against Chalkey pursuant to an action brought by her brother's

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<sup>1</sup> Chalkey is now deceased and therefore is represented by her estate.

estate seeking liquidation of a property interest that her brother shared with her. Attorney Rex W. McQuaide represented Chalkey in that action. McQuaide also assisted Chalkey in trying to secure the money to satisfy the judgment she owed to her brother's estate. When Chalkey failed to satisfy the judgment by late 1995, a judgment creditor scheduled a sheriff's sale on December 8, 1995 for a large parcel of property owned by Chalkey.

In November 1995, Chalkey retained Roush to act as her attorney in an attempt to stay the scheduled sheriff's sale. Roush, acting on behalf of Chalkey, filed a motion for a stay of the sale, and on December 4, 1995, the trial court held a hearing on the motion. Following the hearing, the trial court denied the motion for a stay. Later that day, however, Chalkey entered into a contract of sale with Roush for the large parcel of land scheduled to be sold in exchange for \$76,000.00, the amount remaining under the judgment against her.

In October 1997, Chalkey filed an action in equity requesting that the trial court declare the sale of the parcel to Roush void and require Roush to account to her for any revenue obtained from either a disposition of the property or a sale of timber from the property.<sup>2</sup> Chalkey argued that Roush had exerted undue influence over her by using his position as her attorney to convince her to sell him the property for much less than its value. Furthermore, according to Chalkey, Roush was guilty of fraud and/or false pretenses because he led Chalkey to believe that he was merely loaning her the money in order to prevent the sheriff's sale.

On July 13, 1998, the trial court held a trial regarding the merits of Chalkey's claims. At the close of the trial, the court incorporated the evidence from the previous proceedings,

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<sup>2</sup> Chalkey also sought preliminary and permanent injunctions restraining Roush from conveying the property, encumbering the property, or selling timber from the property. Upon the filing of her complaint, the trial court granted Chalkey's request for a preliminary injunction and following a lengthy trial on October 10, 1997, it also granted Chalkey's request for a permanent injunction.

including the lengthy October 10<sup>th</sup> trial concerning the permanent injunction.<sup>3</sup> See, n.2, supra. On August 11, 1998, the trial court issued an opinion containing findings of fact and conclusions of law. Specifically, the trial court determined that a confidential relationship existed between Roush and Chalkey and that Roush took unfair advantage of that relationship in order to obtain the property from Chalkey for less than its value. The trial court therefore found that the contract for the sale of the property should be voided based on the theory of undue influence<sup>4</sup> and the parties should be returned to the positions they occupied before the transfer of the property. Accordingly, the trial court entered an order in which it declared the sale of the property void, instructed Roush to transfer the property back to Chalkey, and directed Roush to pay Chalkey the sums he received from an agreement to sell timber that was located on the property.

Roush did not file post-trial motions in response to the trial court's order. Rather, he immediately appealed from the order to the Superior Court. A three judge panel of the Superior Court, relying on this Court's per curiam order in Lane Enterprises, Inc. v. L.B. Foster Co., 710 A.2d 54 (Pa. 1998), rev'g, 700 A.2d 465 (Pa. Super. 1997), determined that the issues raised by Roush on appeal were waived because Roush failed to raise them in post-trial motions. Roush filed a Petition for Reargument, which the Superior Court granted, and the case was reargued before an en banc panel of the Superior Court. Following argument, a majority of the Superior Court determined that because the trial court did not enter a decree nisi pursuant to Rule 1517(a) of the Rules of Civil Procedure,<sup>5</sup> Roush

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<sup>3</sup> Neither party objected to this incorporation of evidence from the previous proceedings.

<sup>4</sup> Given this finding, the trial court did not address Chalkey's claims of false pretenses and fraud.

<sup>5</sup> Rule 1517(a) provides that following an equity trial:

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did not waive his issues by failing to file post-trial motions.<sup>6</sup> The Superior Court remanded the matter to the trial court to allow both the trial court and Roush to comply with the Rules of Civil Procedure. Subsequently, this Court granted allocatur to decide whether the Superior Court properly concluded that Roush did not waive the issues he raised on appeal by failing to file post-trial motions in accordance with Rule 227.1.<sup>7</sup>

In 1984, this Court rescinded Rules 1518 and 1519 of the Rules of Civil Procedure, which governed the procedures for post-trial relief in an equity action,<sup>8</sup> and adopted Rules

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(a) The court shall make an adjudication . . . . The adjudication shall consist of (1) a statement of the issues; (2) a closely condensed chronological statement, in narrative form or in separate findings, of all the facts which are necessary to be known in order to determine the issues; (3) a discussion of the questions of law involved and the court's conclusions of law; and (4) a decree nisi.

Pa.R.C.P. 1517(a). A decree nisi is an interlocutory judgment or provisional decree that becomes a final upon a motion by a party unless cause can be shown against it. BLACK'S LAW DICTIONARY (7<sup>th</sup> ed. 1999). Thus, when a trial court enters a decree nisi, the parties are provided with an opportunity to object to the decree nisi as becoming the proposed disposition of the case.

<sup>6</sup> The en banc panel of the Superior Court was divided with five judges agreeing with the majority opinion and four judges agreeing with the dissenting opinion. The dissent found that because the trial court's opinion substantially complied with Rule 1517(a), the majority's analysis elevated form over substance. The dissent further determined that Rule 227.1 of the Rules of Civil Procedure is explicit in requiring a party to file post-trial motions at the conclusion of trial in an action at law and in equity and therefore, Roush's failure to do so warranted a finding that his claims were waived pursuant to Lane Enterprises, 710 A.2d 54.

<sup>7</sup> As this issue concerns a matter of law, our scope of review is plenary. Phillips v. A-Best Products Co., 665 A.2d 1167, 1170 (Pa. 1995).

<sup>8</sup> Rule 1518 provided that within twenty days from a court's adjudication, a party could file exceptions from that adjudication. Furthermore, Rule 1518 stated that "[m]atters not covered by exceptions are deemed waived, unless, prior to final decree, leave is granted to file exceptions raising these matters." Pa.R.C.P. 1518 (rescinded). According to Rule (continued...)

227.1 through 227.4 to establish uniform procedures for post-trial relief in actions at law and equity, and actions tried with or without a jury. See Pa.R.C.P. 227.1 cmt. (1983).

Pursuant to Rule 227.1(c), a party shall file post-trial motions within ten days after a:

- (1) verdict, discharge of the jury because of inability to agree, or nonsuit in the case of a jury trial; or
- (2) notice of nonsuit or the filing of the decision or adjudication in the case of a trial without jury or equity trial.

Pa.R.C.P. 227.1(c). After a party files post-trial motions, the trial court may then:

- (1) order a new trial as to all or any of the issues; or
- (2) direct the entry of judgment in favor of any party; or
- (3) remove a nonsuit; or
- (4) affirm, modify or change the decision or decree nisi; or
- (5) enter any other appropriate order.

Pa.R.C.P. 227.1(a). Grounds not specified by a party in post-trial motions pursuant to Rule 227.1 shall be deemed waived on appellate review. Pa.R.C.P. 227.1(b)(2); see also Pa.R.A.P. 302(a); Lane Enterprises, 710 A.2d 54 (Pa. 1998).<sup>9</sup>

In Lane Enterprises, this Court recently reviewed whether a party may be excused from filing post-trial motions under Rule 227.1. 710 A.2d 54. Lane Enterprises involved an

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1519, an en banc court would review the exceptions filed by a party and if none of the parties filed exceptions, upon a praecipe filed by one of the parties, the prothonotary would enter a final decree based on the court's adjudication. See Pa.R.C.P. 1519 (rescinded).

<sup>9</sup> The purpose for Rule 227.1 is to provide the trial court with an opportunity to correct errors in its ruling and avert the need for appellate review. See Pa.R.C.P. 227.1 cmt. 1.b. (1995).

action at law where the trial court, following a bench trial, entered an opinion that did not include any findings of fact or conclusions of law but only disposed of the issues argued by the parties. See Lane Enterprises, 700 A.2d 465 (Pa. Super. 1997). Upon receipt of the trial court's opinion, the appellant assumed that the opinion was a final order and therefore filed a notice of appeal rather than post-trial motions. Id. at 470. The Superior Court concluded that although the appellant did not file post-trial motions pursuant to Rule 227.1, it would nevertheless review the appellant's issues because the trial court's opinion, which lacked fact findings and legal conclusions, led both parties to believe that it was a final order. Id.<sup>10</sup> On appeal, however, this Court reversed by a per curiam order, stating that Rule 227.1 "requires parties to file post-trial motions in order to preserve issues for appeal." Lane Enterprises, 710 A.2d at 54.

In the instant case, the Superior Court recognized that both Rule 227.1 and Lane Enterprises mandate that a party file post-trial motions from a trial court's decision and order following the conclusion of a trial. Nonetheless, relying on several of this Court's previous decisions, the Superior Court determined that in an action at equity, a party may be excused from filing post-trial motions where the trial court entered an order that failed to comply with the requirements for an adjudication listed in Rule 1517(a) and thus, appeared to be final and subject to immediate appeal. See Commonwealth v. Derry Township, 351 A.2d 606 (Pa. 1976) (appellant's claims not waived as it cannot be presumed that appellant knew that he had to file exceptions to preserve his right to appeal where the trial court's

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<sup>10</sup> In deciding whether to review the appellant's claims, the Superior Court relied on Donegal Mutual Ins. Co. v. State Farm Mutual Automobile Ins. Co., 546 A.2d 1212 (Pa. Super. 1998), and Storti v. Minnesota Mutual Life Ins. Co., 479 A.2d 1061 (Pa. Super. 1984), both actions in equity. In those cases, the Superior Court excused the appellant's failure to file post-trial motions because the trial court entered an adjudication that failed to conform to Rule 1517(a) and thus, may have confused the appealing party as to whether post-trial motions were necessary. 700 A.2d at 465.

adjudication neither comports with the requirements of Rule 1517(a) nor indicates that it is a decree nisi); Community Sports, Inc. v. Oakland Oaks, 240 A.2d 491 (Pa. 1968) (excusing appellants' failure to file exceptions because they may have justifiably relied on chancellor's statement that no decree nisi would be filed).<sup>11</sup> We disagree that such an excuse remains permissible under Rule 227.1.

Community Sports, Derry Township, and the other decisions of this Court that the Superior Court relied upon below, were all decided under Rule 1517, in conjunction with Rule 1518, which together provided for a post-trial practice particular to actions in equity. In rescinding Rule 1518 and replacing it with Rule 227.1, however, this Court intended to abolish that equity-specific practice and establish a standard post-trial practice, which applies to both actions at law and actions in equity. See Pa.R.C.P. 227.1 cmt. (1983). Under Rule 227.1, a party must file post-trial motions at the conclusion of a trial in any type of action in order to preserve claims that the party wishes to raise on appeal. In other words, a trial court's order at the conclusion of a trial, whether the action is one at law or in equity, simply cannot become final for purposes of filing an appeal until the court decides any timely post-trial motions. See Pa.R.C.P. 227.1(a).

Moreover, just as we found that there was no excuse for a party's failure to file post-trial motions from a trial court's abrupt opinion following a trial in an action at law in Lane Enterprises, we find that there is no excuse for a party's failure to file post-trial motions from

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<sup>11</sup> In reviewing the exception to the waiver rule, the Superior Court also relied on this Court's decisions in In re Involuntary Termination of Parental Rights to B.M.D. and R.L.D., 409 A.2d 404 (Pa. 1979) and Patrick & Williams Co. v. Adams, 322 A.2d 341 (Pa. 1974). In B.M.D., this Court noted that the trial court completely disregarded Rule 1517(a) by entering a final decree rather than a decree nisi. Thus, the Court concluded that the trial court's order must be vacated and the case remanded so that the trial court could enter an appropriate adjudication from which the appellant could file exceptions. 409 A.2d at 407. Similarly, in Patrick & Williams Co., the trial court entered a "final decree" and this Court determined that the decree must be vacated because it essentially precluded the appellant from filing exceptions. 322 A.2d at 341.

a trial court's order following an equity trial, even if that order does not comply with the requirements for an adjudication listed in Rule 1517(a).<sup>12</sup> See Lane Enterprises, 710 A.2d at 54. Thus, the exceptions provided in Community Sports, Derry Township, as well as those other cases by this Court relied upon by the Superior Court below, are no longer valid and our decision in Lane Enterprises applies in actions in equity, just as it applies in actions at law. With this unequivocal rule, there is no danger that parties will be confused as to whether they should file post-trial motions or proceed directly to an appeal from an order entered by a trial court in an action in equity.<sup>13</sup>

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<sup>12</sup> Although we do not approve of a trial court's failure to issue an adjudication in accordance with Rule 1517(a), we do not believe that the trial court's error should excuse a party's duty to file post-trial motions from the trial court's order at the conclusion of trial. When the party files post-trial motions, it can point out any errors in the trial court's adjudication, including the court's failure to comply with Rule 1517(a). The trial court shall then issue a supporting memorandum that complies with Rule 1517(a). Furthermore, if a party is unsure whether the trial court has entered an adjudication from which post-trial motions must be filed, the party may always petition the trial court to determine whether the trial court intended its order to be an adjudication from which post-trial motions would follow.

<sup>13</sup> In his concurring opinion, Justice Saylor states that our decision today will nevertheless lead to confusion because it is inconsistent with this Court's decision in Nationwide Mut. Ins. Co. v. Wickett, 763 A.2d 813 (Pa. 2000). We disagree. In Wickett, a declaratory judgment action pursuant to 42 Pa. C.S. § 7532, this Court found that a trial court order sustaining preliminary objections and dismissing certain defendants was an order declaring the rights of the parties, and thus, was a final and immediately appealable order. 763 A.2d at 818. In concluding as such, we relied upon the Declaratory Judgment Act, which states that court declarations regarding the rights, status, and other legal relations of parties in an action "shall have the force and effect of a final judgment or decree." 42 Pa. C.S. § 7532. Justice Saylor contends that consistent application of this statute would require us to find that the order of the trial court in the instant case, which declared the contract between Chalkey and Roush void, is final and immediately appealable as well. However, in Wickett, the trial court's order was made based upon preliminary objections, whereas here, the trial court entered its opinion and order following a trial on the merits of Chalkey's complaint. While the Declaratory Judgment Act states that court declarations made under the Act shall have the force of a final order, the Act also states that where issues of fact must be (continued...)



We recognize, however, that until this point there has been confusion in the courts below regarding whether our enactment of Rule 227.1 abrogated our pre-Rule 227.1 decisions excusing a party from filing post-trial motions in an equity trial where the trial court entered an opinion and order that failed to comply with the requirements for an adjudication in Rule 1517(a). See In re J.J.F., J.R.F., 729 A.2d 79, 82 (Pa. Super. 1999) (remanding case for trial court to enter a decree nisi where trial court entered an order without decree nisi and appellant filed exceptions as well as notice of appeal); Christopher M's Hand Poured Fudge, Inc. v. Hennon, 699 A.2d 1272, 1274 (Pa. Super. 1997) (appellant's failure to file post-trial motions is excused because trial court entered opinion and order instead of decree nisi); Altomare v. Altomare, 513 A.2d 486, 487 n.1 (Pa. Super. 1986) (appellant did not waive claims by failing to file post-trial motions because trial court did not label order decree nisi nor indicate that post-trial motions were required). As noted by Roush, due to this confusion, parties have received mixed signals regarding whether they must file post-trial motions from a trial court's order which does not correspond with Rule 1517(a), or immediately file an appeal.<sup>14</sup> Given this confusion, our decision today, that a party must file post-trial motions from a trial court's order following an equity trial in

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determined in an action seeking declaratory judgment, those issues must be determined as in other civil actions. 42 Pa. C.S. § 7539; see also Pa.R.C.P. 1601. Therefore, where a trial court enters a declaratory order following a trial, parties must file post-trial motions from that order, as they would in any other civil proceeding, before the order may be deemed a final order for purposes of an appeal. On the other hand, where the trial court enters a declaratory order based on a pre-trial motion, as in Wickett, the parties are obviously not required to abide by the post-trial practice rules governing civil proceedings.

<sup>14</sup> Indeed, upon receiving a trial court's order and opinion in an equity action, parties have been forced to face the untenable choice of filing post-trial motions and risking the forfeiture of their appellate rights due to the expiration of the appeal period or filing a direct appeal and risking a holding that their issues were waived due to their failure to file post-trial motions.

order to preserve issues for appeal and that a party shall not be excused from filing post-trial motions where the trial court enters an order that fails to comply with the technical requirements of Rule 1517(a), shall be applied prospectively only. See Pa.R.C.P. 126 (rules of civil procedure shall be construed liberally to secure the just, speedy, and inexpensive determination of every action). Accordingly, in the instant case, we affirm the Superior Court's order granting Roush relief and remanding the matter to the trial court to enter an order that conforms to Rule 1517(a).

Former Chief Justice Flaherty did not participate in the decision of this matter.

Mr. Justice Saylor files a concurring opinion.