

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAVID MILLER, : NO. 05-00,223  
Appellant :  
 :  
vs. :  
 : CIVIL ACTION - LAW  
AQUA VANTAGE POOLS & SPAS, :  
Appellee :

MARY MILLER, : NO. 05-00,232  
Appellant :  
 :  
vs. :  
 : CIVIL ACTION - LAW  
AQUA VANTAGE POOLS & SPAS, :  
Appellee :

OPINION IN SUPPORT OF ORDER OF JULY 27, 2005,  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE<sup>1</sup>

The Millers<sup>2</sup> appeal from this Court’s Order of July 27, 2005, which reinstated Aqua Vantage’s appeal from the default judgment entered by the magistrate after that appeal had been stricken by praecipe. In their statement of matters complained of, the Millers challenge the Court’s finding of good cause to reinstate the appeal.

The appeal of the magistrate’s judgment was filed on January 31, 2005, with respect to the judgment entered in David Miller’s favor, and on February 2, 2005, with respect to the judgment entered in Mary Miller’s favor.<sup>3</sup> When counsel prepared to serve the Notices of

1 The Court wishes to note its belief that the Order from which Appellants appeal is not a final, appealable order. See Wilkes-Barre Clay Products Co. v. Koroneos, 493 A.2d 744 (Pa. Super. 1985). The issues raised on appeal will be addressed, however, since a determination of the appealability of an Order is for Superior Court rather than this Court.

2 Because Appellants were appellees and Appellee was appellant in the action below, the Court will use their proper names in the instant opinion for ease of reference.

3 When Aqua Vantage’s counsel filed the first appeal, he believed the judgment against his client had been entered in favor of both Millers in a single case; after he learned that separate judgments had been entered, he filed the second appeal.

Appeal on the Millers' counsel, he noticed the Prothonotary had failed to sign the Rules to File a Complaint. He then wrote to the Prothonotary requesting the rules be issued, and on February 25, 2005, such were provided.<sup>4</sup> The Appeals and Rules were then served on counsel for the Millers that day. In the meantime, however, on February 16, 2005, the Millers had praeciped to strike the appeals based on a failure to comply with Pa.R.C.P.M.D.J. Rule 1005B, which requires the filing of proof of service of notice of the appeals and rules within ten days,<sup>5</sup> and the appeals had been stricken. After a hearing on July 27, 2005, this Court found good cause to reinstate the appeals and further, that the Millers would suffer no prejudice thereby. The appeals were therefore reinstated.

Rule 1006 of the Rules of Civil Procedure for Magisterial District Judges provides for the striking of an appeal for failure of the appellant to comply with Rule 1004A or 1005B, and also allows the court of common pleas to "reinstate the appeal upon good cause shown". The Millers argue that Aqua Vantage's failure to comply with Rule 1005B was attributable to an inadvertent error and thus insufficient to support a finding of good cause, citing Slaughter v. Allied Heating, 636 A.2d 1121 (Pa. Super. 1993). In Slaughter, however, the Superior Court found no abuse of the trial court's discretion in its refusal to reinstate an appeal where the petitioning party made an "unspecific allegation" of inadvertent error in her request to the trial court and offered no explanation at all before the Superior Court. Slaughter, *supra* at 1125. This Court believes Slaughter to be distinguishable inasmuch as the petitioning party herein has advanced a specific explanation of the reason for the delay, and the delay was based in part on an error by the Prothonotary's office.

Further, support for this Court's decision appears to lie in the case of Quarato v. Facelifters, Ltd., 451 A.2d 777 (Pa. Super. 1982), wherein the Superior Court reinstated an appeal in spite of a procedural defect where the appellees did receive notice of the appeal,

---

4 The Prothonotary has apparently backdated the issuance of the rules to coincide with the filing dates of the appeals, as the rules appear on the dockets as having been issued on the same date as the Notices of Appeal were filed, but the copy of the Notice of Appeal attached to Aqua Vantage's Petition to Reinstate Appeal, Exhibit "B", while file-stamped with a date which corresponds with the docket, does not contain a rule signed by the Prothonotary.

5 The Millers' counsel had been made aware of the appeal by way of a copy of the letter and Notice of Appeal which was mailed to the Prothonotary in conjunction with the filing of the first appeal.

based on the principles enunciated in Rule 126 of the Rules of Civil Procedure,<sup>6</sup> and its determination that “justice would be served” by reinstatement. Here, Aqua Vantage has offered an explanation for the delay in filing the proofs of service, and since the Millers were informally notified of the appeals when they were filed, the slight delay in the actual service of formal notice of the appeals and the rules caused them no prejudice. As in Quarato, this Court believes justice is best served by reinstatement. The Court therefore respectfully suggests its decision to grant the petition should be affirmed.

Dated: September 9, 2005

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Timothy Reitz, Esquire  
Todd Kerstetter, Esquire, 545 North Second Street, Shamokin, PA 17872  
Gary L. Weber, Esq.  
Hon. Dudley Anderson

---

<sup>6</sup> Pa.R.C.P. Rule 126 states that these rules are to be construed liberally "to secure the just, speedy and inexpensive determination" of cases, and that the court "may disregard any error or defect of procedure which does not affect the substantial rights of the parties."