

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JAYNE HORNER, EMIL P. HORNER, JR.,	:	
and MARY L. HORNER,	:	
Plaintiffs/Appellants	:	
	:	
v.	:	No. 06-00,893
	:	CIVIL ACTION
LOYALSOCK TOWNSHIP SCHOOL	:	
DISTRICT,	:	
Defendant/Appellee	:	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

The Appellants appeal this Court’s October 16, 2006 Order granting the Defendant’s Motion to Strike off Pleading (specifically, the Court’s Order of October 16, 2006 struck off the Plaintiff’s appeal from the Board of Viewers). The Appellants raise four issues on appeal all of which challenge this Court’s rationale and authority for granting the Defendant’s Motion to Strike off Pleading.

Background

On April 27, 2007, the Appellants filed an Appeal from the Board of Viewer’s March 28, 2006 report as to the issue of compensation for the September 2001 taking by the Appellee; the Lycoming County Prothonotary inadvertently assigned this Appeal a new docket number, 06-00,893 instead of docket number 01-01,475, the condemnation docket number. On two separate occasions that the Court is aware of (the first being a May 8, 2006 letter from Appellee’s counsel to Appellants’ counsel and the second, during a June 30, 2006 conference with this Court), counsel for the Appellants was notified that the appeal was incorrectly docketed; Appellants’ counsel failed to take any measures to correct the incorrectly docketed Appeal. Accordingly, on October 17, 2006, this Court granted the Appellee’s August 10, 2006 Motion to Strike off

Pleading for failure to properly effectuate an appeal. On November 15, 2006, the Appellant simultaneously filed a Motion to Reconsider and a Notice of Appeal. Pursuant to Pa.R.A.P. No. 1701, this Court, on December 4, 2006, summarily denied the Appellants' Motion for Reconsideration.

On December 5, 2006, this Court directed the Appellants, in accordance with Pa.R.A.P. No. 1925(b), to file a Concise Statement of Matters Complained of on Appeal on or before December 19, 2006. Having not received said Statement, this Court, on December 27, 2007 entered its Opinion in Support of Order in Compliance with Pa.R.A.P. No. 1925(a)¹ suggesting that the Appellants had waived all issues on appeal for failure to comply with this Court's December 5, 2006 Order directing them to file, pursuant to Pa.R.A.P. No. 1925, a Concise Statement of Matters Complained of on Appeal. On January 9, 2007, this Court summarily denied the Appellants' January 3, 2007 Petition for this Court to consider, *nunc pro tunc*, their Concise Statement of Matters Complained of on Appeal. On February 27, 2007, this Court received the Commonwealth Court of Pennsylvania's February 23, 2007 Order directing this Court to consider the Appellants' January 3, 2007 Statement of Matters Complained of on Appeal as timely and write an Opinion in Support of Order in Compliance with Pa.R.A.P. No. 1925(a) in response thereto no later than April 2, 2007. The Commonwealth Court of Pennsylvania's Order indicated that it found a breakdown in the judicial system when counsel for the Appellant failed to receive Court filings at the address he requested all filings be sent to in his praecipe of September 12, 2007.² Upon return of the record from the Commonwealth Court of

¹ This Opinion was not docketed until January 2, 2007.

² Counsel for the Appellants maintains a Philadelphia office, which is the address he continues to list on all filings with the Court; however, on September 12, 2006, Appellants' counsel praeciped the Lycoming County Prothonotary to make all future service at his Minnesota office.

Pennsylvania on April 3, 2007, the Court hereby enters the following Opinion in Support of Order in Compliance with Pa.R.A.P. No. 1925(a).

Discussion

The Appellants had thirty days (30) from March 28, 2007 (the date the Board of Viewer's Report was entered) to effectuate an appeal to the Board of Viewer's Report. On the thirtieth day, April 27, 2007, the Appellants filed an appeal with this Court; however, although the Appellants had indicated the correct docket number (01-01,475) on their filings, the Lycoming County Prothonotary assigned the appeal a new docket number (06-00,893). In a letter dated May 8, 2006, Appellee's counsel notified Appellants' counsel that their appeal was incorrectly docketed; the Appellants took no action to rectify the problem. On June 30, 2006, during a court conference with the parties, the issue of the incorrectly docketed appeal was discussed. At said conference, counsel for the Appellees indicated his intent to file a Motion to Strike off Pleadings if the Appellants failed to remedy the incorrect docket number by way of a Motion/Petition to the Court; again, the Appellants failed to take any action to remedy the incorrect docket number. Accordingly, on October 17, 2006, this Court granted the Appellee's August 10, 2006 Motion to Strike off Pleading for failure to properly effectuate their appeal.

Although the factual scenario giving rise to the case *sub judice* is not identical, this Court finds persuasive the Commonwealth Court of Pennsylvania's decision in *Antonis v. Liberati*, 821 A.2d 666 (Pa. Commw. 2003). In *Antonis*, the Commonwealth Court held that counsel for the mortgagee, not the Recorder, was negligent in failing to ensure that the mortgage at issue was properly filed with the Recorder's Office. "It is an easy matter for a mortgagee, or a grantee in each particular instance, either in person, or by a representative, to look at the record, and see that the instrument has been properly entered." *Id.* at 670. Here, even after opposing counsel

and the Court notified Appellant counsel that some action needed to be taken to correct the docketing error regarding the Appellants' appeal, Appellants' counsel, as this Court determined was his duty, refused to take any action to remedy the error; accordingly, the Court struck the Appellants' appeal.

Conclusion

For the foregoing reasons, this Court respectfully suggests that its October 16, 2006 Order granting the Defendant's Motion to Strike off Pleading be affirmed.

DATE: _____

By the Court,

Nancy L. Butts, Judge

xc: Dan Biersdorf, Esq.
BIERSDORFF & ASSOCIATES
33 S. 6th Street, Suite 4100
Minneapolis, MN 55402
E. Eugene Yaw, Esq.
Judges
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq. (Lycoming Reporter)