

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD FEIST,	:	NO. 07 – 02,416
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
TERRI FEIST,	:	
Defendant	:	Petition to Open Judgment

OPINION AND ORDER

Before the Court is Defendant’s Petition to Open Judgment and to Stay Sheriff’s Sale, filed December 17, 2007. Argument on the petition was heard January 4, 2008.

On May 23, 2007, Magisterial District Judge Kenneth Schriener entered judgment in favor of Plaintiff and against Defendant in the total amount of \$5,617.50, after a hearing at which both parties appeared and presented testimony and/or other evidence. Plaintiff then caused this judgment to be entered in Common Pleas court on October 31, 2007, and a Writ of Execution, levying on a Dodge Caravan owned by Defendant and her sister, was issued to the Sheriff on November 1, 2007. A Sheriff’s sale was scheduled for December 20, 2007, and then postponed to January 18, 2008, and it is this judgment and sale Defendant wishes to avoid.

While Defendant has captioned her request a petition to open judgment, seeking to open the judgment entered in Common Pleas court, it appears Defendant actually wishes to upset the judgment entered by the Magisterial District Judge, and thus the Court considers her request in the nature of a petition for permission to appeal the magistrate’s judgment nunc pro tunc.¹ In that regard, the Court looks to the standard established by the Commonwealth Court with respect to appeals from administrative decisions of the Department of Transportation. That

¹ Plaintiff’s counsel has directed the Court to caselaw respecting the opening of judgments entered by default, wherein it has been held that to open such a judgment, a party must establish (1) the petition to open was promptly filed; (2) there exists a meritorious defense to the underlying claim; and (3) there is a reasonable excuse or explanation for the party’s failure to file a responsive pleading. Dumoff v. Spencer, 754 A.2d 1280 (Pa. Super. 2000). In the instant case, the magistrate has already decided the defense is not meritorious, inasmuch as he entered judgment against Defendant. Further, Defendant did not fail to file a responsive pleading, but rather, participated in the hearing before the magistrate. For these reasons, it does not appear that such caselaw can be directly applied. The Court thus believes it more appropriate to analyze the matter as a request to appeal nunc pro tunc.

Court has consistently held that "if an appeal is not filed within the statutorily mandated period of thirty days, the court has no jurisdiction to hear the appeal of the suspension, unless the delay in filing the appeal was caused by fraud, deception, coercion, duress or a breakdown in administrative procedure." Department of Transportation, Bureau of Driver Licensing v. Schallaci, 639 A.2d 924, 926 (Pa. Commw. 1994), *quoting McGraw v. Department of Transportation, Bureau of Traffic Safety*, 552 A.2d 1165, 1166-67 (Pa. Commw. 1989).

In the instant case, Defendant contends the delay following the entry of the magistrate's judgment was occasioned by emotional difficulties she suffered during that time period. It is clear she was aware of the proceedings and the entry of judgment, and no fraud, deception, coercion or duress is alleged. Neither can the Court find any breakdown in administrative procedure. Accordingly, Defendant is not entitled to relief and the judgment must stand.

ORDER

AND NOW, this 8th day of January 2008, for the foregoing reasons, Defendant's Petition to Open Judgment and to Stay Sheriff's Sale is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Tiffani Kase, Esq.
John Person, Esq.
Gary Weber, Esq.
Sheriff
Hon. Dudley Anderson

