

JENNIFER STREET,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 08-02, 678
	:	
SHAWN R. BRANTON, D.D.S.,	:	CIVIL ACTION – LAW
	:	
Defendant	:	
	:	

OPINION AND ORDER

AND NOW, this 11th day of February, 2010, the court hereby GRANTS Plaintiff's Motion to Strike Defendant's Demand for Jury Trial. The Court does not find that any good cause exists for Plaintiff to demand a Jury Trial past the time proscribed by Pennsylvania Rule of Civil Procedure 1007.1.

Although an untimely jury trial demand may be granted by a trial judge, it need not be. It is important here that the exception not swallow the rule. If an untimely jury trial demand was honored in every case except, for instance, when such impinged upon the substantive rights of another party, then there would be no reason at all for the existence of Rule 1007.1(a). Thus, this Court adopts a good cause standard regarding jury trial demands untimely made.

The Courts reasoning is consistent with the Pennsylvania Supreme Court case *Jones v. Van Norman*, 522 A.2d 503 (Pa. 1987). In that case, an untimely jury trial demand was made as part of a pre-trial memorandum. It was argued that there would be no prejudice to the other party in granting a jury trial because at the time the demand was made, discovery was still outstanding and the trial date was at least three months away. *Jones*, 522 A.2d 509. In affirming the lower court's holding that per Rule 1007.1(a) a jury trial had been waived, the

Supreme Court also held that “considerations of prejudice to the other side play no part in enforcing a waiver of a jury trial where the provisions of Rule 1007.1(a) have not been met.”

Ibid.

After *Jones* was decided, however, the Pennsylvania Superior Court maintained that under certain circumstances strict adherence to the time requirements set forth in Pa.R.C.P. 1007.1(a) is not necessary and a trial judge may grant an “untimely jury demand.” *Dauphin Deposit Bank and Trust Company v. Pifer*, 556 A.2d 904, 906 (Pa. Super. 1989). Without requiring strict compliance to Rule 1007.1(a), the Superior Court in *Dauphin* cautioned that its decision was not meant to “imply that full compliance with the rules of procedure is not required or that failure to do so is without peril.” *Ibid.* While embracing the Supreme Court mandate from *Jones* stating that “lack of prejudice to either side is not a factor in determining a waiver,” the Court in *Dauphin* held that “[b]ecause the constitutional right is a right to jury trial and not a right to forego a trial by jury, we will not reverse a trial judge’s decision to grant a tardy request for jury trial without good reason. No such reasons have been presented here.” *Id.*, at 907.

In the case at bar, Defendant admits that his demand for a jury trial was untimely and should have been made over 11 months ago. Defendant’s Brief, pg. 1. The reason that a jury trial demand was not made within the time requirements proscribed by Pa.R.C.P. 1007.1 can only be stated in counsel’s own words: “Immediately upon learning a jury demand was not made previously, Defendant served Plaintiff with a Demand for jury trial on or about January 28, 2010. Defendant’s Brief, pg. 2.

Defendant argues that good cause allows the Defendant to proceed with a jury trial because he is represented by an out-of-town attorney and will, thus, be inherently harmed by this case proceeding with a bench trial. This Court, respectfully disagrees that any Lycoming County Court of Common Pleas Judge would favor any party's case based upon the locale of any attorney. Whether or not Defendant, a local dentist, feels comfortable with a Lycoming County judge objectively applying the law to the facts, this Court is confident that this is precisely what will occur.

Defendant has shown no good cause for an untimely jury trial demand. Accordingly, Plaintiff's Motion to Strike is Granted.

BY THE COURT,

Joy Reynolds McCoy, Judge

cc: Mary Grady Walsh, Esquire
Kevin H. Wright & Associates
34 Green Street
P.O. Box 5011
Lansdale, PA 19446
John Humphrey, Esquire
Gary Weber, Esquire
The Honorable Judge Dudley N. Anderson
Jerri Rook, Executive Secretary to the Honorable Judge Joy Reynolds McCoy