

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| WILLIAM T. GILES and SHARON R. GILES, | : | |
| Plaintiffs, | : | DOCKET NO. 12-01,143 |
| vs. | : | |
| | : | CIVIL ACTION |
| RONALD E. READ, | : | |
| Defendant. | : | |

ORDER

AND NOW, this, 4th day of June, 2014, following argument on Plaintiffs’ petition to file an appeal in this matter *nunc pro tunc*, Plaintiffs’ petition is DENIED. This Court believes that the equities weigh in favor of denying the appeal *nunc pro tunc* and letting this court’s non-jury verdict stand in this matter.

While post-trial motions must be filed within 10 days after verdict pursuant to Pa. R.C.P. No. 227.1(c), a trial court has discretion to allow the filing of post-trial motions *nunc pro tunc*. Generally, courts require that extraordinary circumstances interfered with the timely filing of the appeal/motion to provide *nunc pro tunc* relief. See, D.L. Forrey & Associates, Inc., v. Fuel City Truck Stop, Inc., 71 A.3d 915 (Pa. Super. 2013); Lenhart v. Cigna Companies, Inc., 824 A.2d 1193, 1196 (Pa. Super. 2003). Extraordinary circumstances have historically been limited to fraud and a breakdown in the court’s operations but now also include instances of a non-negligent failure to file timely. See, e.g., Criss v. Wise, 781 A.2d 1156 (Pa. 2001); Lee v. Guerin, 735 A.2d 1280, 1281 (Pa. Super. 1999)(further citations omitted.) “Our Supreme Court has made it clear that the circumstances occasioning the failure to file an appeal must not stem from counsel's negligence or from a failure to anticipate foreseeable circumstances.” Lenhart, *supra*, quoting, Criss v. Wise, 781 A.2d 1156 (Pa. 2001). As to a non-negligent failure to file an appeal, the Superior Court has noted that “without a doubt the passage of any but the *briefest period* of time during which an appeal is not timely filed would make it most difficult to arrive at

a conclusion that the failure to file was non-negligent.” Freeman v. Bonner, 761 A.2d 1193, 1195 (Pa. Super. 2000), *quoting*, Bass v. Commonwealth, 401 A.2d 1133, 1135 (1979)(emphasis added).

In this case, Plaintiffs did not file post-trial motions to the verdict and Order entered January 31, 2014 until April 24, 2014. Instead Plaintiffs filed a notice of appeal on February 25, 2014. On April 7, 2014, the Superior Court Dismissed the appeal for failure to file post-trial motions pursuant to Pa. R.C.P. 227.1(c)(2) without prejudice to seek leave to file post-trial motions *nunc pro tunc*. The Superior Court denied Plaintiffs request for a remand. On April 24, 2014, Plaintiffs filed a petition to file a motion for post-trial relief *nunc pro tunc*. Plaintiffs contend that the time to draft and file an appropriate motion for post-trial relief was insufficient because of a delay between when the Prothonotary filed the verdict and when it was mailed. The non-jury verdict was filed by the Prothonotary on January 31, 2014; the postage stamp on the enveloped is dated February 5, 2014. Plaintiffs do not state the date that the verdict was received; they contend the earliest date it could have been received was February 7, 2014, leaving them with 3 days to draft and file post-trial motions.

Applying the law to the present case, the Court concludes that extraordinary circumstances did not interfere with the ability to file post-trial motions nor does equity weigh in favor of relief. Although there was an apparent delay between when the Prothonotary filed the verdict and when it was mailed, there were still 3 days to timely file post-trial motion and/or a request for an extension to file or supplement the motion. Moreover, Plaintiffs could have, but did not, file a post-trial motion within 10 days of their receipt of the verdict *nunc pro tunc*. Plaintiffs filed their post-trial motion 17 days after the dismissal from Superior Court and almost

3 months after the verdict. In sum, more than a brief period of time passed before filing the post-trial motion.

Furthermore, this Court believes that the equities weigh in favor of denying the appeal *nunc pro tunc* and letting this court's non-jury verdict stand in this matter. As noted by this Court when it denied summary judgment, "[a]n easement by necessity arises upon a showing that there was a conveyance of a part of a tract of land in such a manner that the part conveyed or the part retained is denied access to a public road." Graff, 673 A.2d at 1032, n.4. In order to find an easement by necessity, the claiming party must prove: 1) unity of title of the dominant and servient tenement, 2) severance of this unity of title, and 3) the dominant tenement's necessity to use the easement both at the time of conveyance and the present. *Id.* at 1032. An easement premised upon necessity must be of strict necessity; therefore, the necessity cannot be created by the individual claiming the easement, nor does the necessity exist if the claimant can access the public road through his own land. *Id.* at 1032.

Instantly, no issue exists as to the first two prongs of the easement by necessity requirements; the parties agree that their properties had unity of title that was severed. As the third prong, the Court conducted a site view of the property. After viewing the property, the Court concluded that the easement was necessary for vehicles to access the public road from the rear lot. The evidence at trial established that the defendant did not erect the buildings which impede access as they existed in their present location when he purchased the lot. The evidence further established that the rear lot has been accessed via Giles Lane continuously; Plaintiffs even used Giles Lane to access the rear lot when it belonged to them. The prior owner used Giles Lane to access the property when it belonged to her. It is reasonable to infer that the property was acquired in reliance on that access.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this, 4th day of June, 2014, Plaintiffs' petition to file post-trial motions *nunc pro tunc* is DENIED.

BY THE COURT,

June 4, 2014
Date

Richard A. Gray, J.

cc: C. Rocco Rosamilia, Esq. – Counsel for Plaintiffs
241 West Main Street, Lock Haven, PA 17745
Jonathan E. Butterfield, Esq. – Counsel for Defendant