

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KEVIN C. LIBBY,	:	NO. 13 – 02,638
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
PALMER WETZEL, JR., d/b/a WETZEL LUMBER CO.,	:	
Defendant	:	

OPINION IN SUPPORT OF ORDER OF JANUARY 21, 2015,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Plaintiff has appealed this court’s Order of January 21, 2015, which granted Defendant’s Motion for Summary Judgment. In his Statement of Matters Complained of on Appeal, Plaintiff contends the court erred in granting the motion “despite sufficient evidence existing to establish all elements of a negligence claim and there being several issues of material facts to be determined” and in “determining that Plaintiff failed to file a timely Brief in Opposition”.

This action arises from injuries Plaintiff allegedly suffered while operating a log skidder owned by Defendant. Plaintiff has alleged that Defendant was negligent in maintaining the skidder. In his Motion for Summary Judgment, Defendant argued that Plaintiff had failed to offer evidence of a duty owed to Plaintiff, that such a duty was breached by Defendant, or that the breach resulted in Plaintiff’s injuries. Plaintiff did not file a response to the motion but did file a brief in opposition on the day of argument.

Defendant’s motion was granted for several reasons. First and foremost, Plaintiff had failed to file a response¹ as required by Pa.R.C.P. 1035.3(a).² The court therefore entered summary judgment against him pursuant to Pa.R.C.P. 1035.3(d).³ Second, and with respect to

1 Contrary to the statement of the issue in Plaintiff’s Statement of Matters Complained of on Appeal, the court found that Plaintiff failed to file a timely *response*, not a timely *brief in opposition*.
2 That rule provides that “the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying ... (2)evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” Pa.R.C.P. 1035.3(a)(2).
3 “Summary Judgment may be entered against a party who does not respond.” Pa.R.C.P. 1035.3(d).

the merits, the court noted that Plaintiff had provided no expert testimony establishing a causal connection between the incident and his injuries. Plaintiff also had failed to offer evidence of a duty owed to him and breach of that duty: in response to the evidence offered by Defendant, that it was Plaintiff's responsibility to check the fluid levels of the skidder during his use of the machine, Plaintiff referred to Restatement of Torts (Second) Section 404,⁴ which the court found inapplicable here, and, as far as breach, stated merely that "[t]he failure of the machinery itself is a clear indication that the repairs/maintenance on the machinery were not done satisfactorily." The court found this bald assertion to be no evidence at all.

Dated: _____

Respectfully submitted,

Dudley N. Anderson, Judge

cc: R. Thom Rosamilia, Esq., 241 West Main Street, Lock Haven, PA 17745
Douglas Engelman, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson

⁴ That section provides: "An independent contractor [who] negligently makes, rebuilds, or repairs a chattel for another is subject to the same liability as that imposed upon negligent manufacturers of chattels."