

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

**HEPBURN TOWNSHIP,  
Plaintiff**

**vs.**

**COREY MACH,  
Defendant**

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**NO. 20-0657**

**OPINION**

**AND NOW**, this **22<sup>nd</sup>** day of **March, 2021**, this matter is before the Court on a Petition for Allowance of Appeal, Nunc Pro Tunc filed by Defendant. The relevant procedural facts are as follows:

On June 30, 2020, Defendant filed a Notice of Appeal from a judgment entered by Magisterial District Justice Solomon (hereinafter "MDJ") on June 2, 2020. On July 10, 2020, Defendant filed a Proof of Service indicating he served a copy of the Notice of Appeal upon the MDJ and Plaintiff by certified mail on that date. Attached to the Proof of Service are two receipts dated July 10, 2020 for the mailing of certified letters.

On September 4, 2020, Plaintiff filed a Praecipe to Strike the Appeal for Defendant's failure to comply with Pa.R.C.P.M.D.J. 1005(B). Specifically, Plaintiff states that Defendant failed to make service as required by the Rule and failed to show proof of an actual receipt of any mailing. Attached to Plaintiff's praecipe is a copy of an envelope addressed to Plaintiff from Defendant with a mailing date of August 22, 2020 and a printout of the MDJ docket, which shows that Defendant's appeal filed June 30, 2021 was received and entered into their system on July 13, 2020. The Lycoming County Prothonotary entered an Order striking the appeal on September 11, 2020.

On September 21, 2020, Defendant filed an Affidavit of Service indicating that he mailed the Notice of Appeal to Plaintiff on July 10, 2020, which was returned to him as undeliverable. He mailed the Notice of Appeal a second time to a different address on August 22, 2020. Defendant filed his Petition for Allowance of Appeal on February 5, 2021 and a hearing was held on March 12, 2021 at which time Marc Drier, Esquire appeared on behalf of the Plaintiff and Defendant appeared personally and was unrepresented.

In relevant part, Rule 1005 states as follows:

A. The appellant shall by personal service or by certified or registered mail serve a copy of the notice of appeal upon the appellee and upon the magisterial district judge in whose office the judgment was rendered . . . .

B. The appellant shall file with the prothonotary proof of service of copies of the notice of appeal . . . within 10 days after filing the notice of appeal.

Pa.R.C.P.M.D.J. 1005(A) and (B).

“Failure to file the proof of service of a notice of appeal is obviously not as vital to the appeal process as the filing of the notice itself. The rules recognize this by allowing reinstatement ‘for good cause shown’ (Rule 1006) when there is failure to file the proof of service (Rule 1005B)[.] No such power of reinstatement is granted with respect to the filing of the notice of appeal . . . . The appellant who establishes that the notice of appeal was timely filed and who has not deliberately ignored the filing requirements of Rule 1005B should not be barred from proceeding with his appeal.” *Seiple v. Pitterich*, 35 Pa.D.&C.3d 592, 596 (C.P. Mercer November 20, 1984). *See also Hyde v. Crigler*, 10Pa.D.&C.3d 769, 774 (C.P. Allegheny June 28, 1979).

Defendant testified that he mailed the Notice of Appeal to MDJ Solomon and Plaintiff on July 10, 2020, a Friday. Defendant has provided the receipts for these mailings. Additional evidence that Defendant mailed the Notice of Appeal on July 10, 2020 is found in the MDJ's docket entry, which shows that it received the Notice on July 13, 2020, the Monday after it was mailed.

Plaintiff argues that even if the Notice was mailed on July 10, 2020, it did not receive it until almost a month and a half later. Defendant testified that on August 20, 2020, he received a return/undeliverable notice for the original mailing sent to Plaintiff. The reason the letter was returned was because Defendant sent it to an address he found on the Office of Open Records website, which is incorrect. Upon learning this, Defendant resent the mailing to Plaintiff on August 22, 2020, which, according to Defendant, was received and signed for by the Plaintiff on August 25, 2020.<sup>1</sup>

The Court finds that Defendant, who is pro se, attempted in good faith to comply with the above-referenced Rules. Plaintiff has clearly now received notice of the appeal and has not argued that it is prejudiced by the month and a half late notice. Further, Defendant timely filed his Notice of Appeal and did not deliberately ignore the service requirements set forth in Rule 1005. In fact, while Defendant failed to make service in a timely manner, Defendant did timely file a Proof of Service document with the Prothonotary. Therefore, the Court finds that Defendant has shown good cause to reinstate his appeal.

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<sup>1</sup> Defendant indicates in his Petition that Plaintiff received notice of the appeal on August 25, 2020, but even the copy of the envelope attached to Plaintiff's Praecipe to Strike indicates that the August 22, 2020 letter was attempted to be delivered twice and eventually returned to

**ORDER**

**AND NOW**, this **22<sup>nd</sup>** day of **March, 2021**, for the reasons set forth above, Defendant's Petition for Allowance of Appeal is **GRANTED** and his appeal filed June 30, 2020 **REINSTATED**. Plaintiff shall have twenty (20) days from the date of this Order to file a Complaint.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

CC: Marc Drier, Esq.  
Corey Mach – 1475 SR 973 East, Cogan Station, PA 17728  
MDJ Solomon  
Lycoming County Prothonotary  
Alexandra Sholley – Judge Tira's Office  
Gary Weber, Esq.

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Defendant on September 24, 2020. Plaintiff nevertheless learned of the appeal at some point prior, as its Praecipe to Strike was filed on September 4, 2020.