

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BCS PROPERTY SOLUTIONS,	:	CV-22-00510
Plaintiff	:	
vs.	:	CIVIL ACTION
	:	
SUSAN BAINES,	:	
Defendant	:	

OPINION AND ORDER

AND NOW, this 4th day of October 2022, following argument on Defendant's Petition for Permission to File MDJ Eviction Appeal Nunc Pro Tunc, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

This matter originated as a residential lease action filed in Magisterial District Court on October 1, 2021. On October 11, 2021, Magisterial District Judge Christian D. Frey¹ held a hearing following which he granted judgment for Plaintiff BCS Property Solutions in the amount of \$1,338.01.² MDJ Frey also granted possession of the residence at issue to Plaintiff, and indicated that "the defendant is not permitted to satisfy the order for possession and avoid eviction by paying the rent in arrears and the costs of the proceedings."³ The October 11, 2021 Notice of Judgment was the last filing to the MDJ docket.⁴

¹ The Petition indicates that the judgment was entered by MDJ Aaron Blichle; the docket sheet, however, indicates that MDJ Christian Frey entered the judgment.

² This judgment consisted of \$1,192.80 in "Rent in Arrears" and \$145.31 in "Filing Fees."

³ As discussed below, Defendant has since vacated the residence, and possession is no longer at issue.

⁴ The MDJ docket number was MJ-29101-LT-0000138-2021.

INSTANT PETITION AND HEARING

On May 17, 2022, over seven months after the entry of judgment, Defendant Susain Baines filed a “Petition for Permission to File MDJ Eviction Appeal Nunc Pro Tunc” (the “Petition”). The Petition acknowledged that the appeal period had passed, and provided the following reason for the delay:

“I was admitted to Emergency General Surgery Geisinger on 9/21/21 and released 01/03/22 from the nursing rehab center. Attached are [copies] of my relevant medical records.”⁵

The Court held a hearing on the Petition on June 15, 2022, at which Defendant testified. She clarified the timeline surrounding the action below and her failure to file an appeal, indicating that she did not attend the October 11, 2021 hearing before MDJ Frey because she was still in the hospital recovering from her emergency surgery on September 21, 2021. She explained that she was discharged from the hospital directly to a nursing rehabilitation facility in Milton, and first became aware of the hearing before MDJ Frey after she left that facility in early January 2022. Defendant testified that while she was recovering her sister collected her mail and put it in a pile, which included the October 11, 2021 Notice of Judgment.

In response to the Court’s question as to why over four months had elapsed between her learning of the Judgment in early January and filing the Petition on May 17, 2022, Defendant explained that she first attempted to resolve the matter by reaching out to Plaintiff, but Plaintiff refused to discuss the matter with Defendant.

⁵ Defendant’s medical records are not attached to the Petition in the Court file. As discussed below, however, Defendant testified as to her time in the hospital and rehab center, and the Court finds her credible concerning the nature and duration of her medical treatment.

Defendant testified that she next went to North Penn Legal Services (“NPLS”),⁶ who initially advised her that she had no grounds to file a late appeal before informing her on March 2, 2022 that she may have grounds to appeal *nunc pro tunc*. Defendant explained that, after March 2, 2022, NPLS was assisting her in preparing the filing of the appeal,⁷ but they were unable to complete the process until mid-May.

Regarding the current status of the residence, Defendant testified that she no longer resides there, and had in fact been planning to move out when she was admitted to the hospital. Following her discharge from the nursing facility, she began living at a different address. Therefore, her reason for attempting to appeal *nunc pro tunc* was not to seek a return to the property but to have the opportunity to defend against the monetary claim for unpaid rent.

Plaintiff’s counsel agreed that Plaintiff did not need a writ of possession, as Defendant’s sister had started moving Defendant’s personal belongings out of the property and it was empty enough that a new tenant could rent it. Plaintiff’s counsel further indicated that he spoke to Attorney Kathleen Raker of NPLS in September of 2022 regarding Defendant’s concerns about the state of the property, at which time Plaintiff took actions to address those concerns.⁸

⁶ NPLS is a non-profit legal aid organization.

⁷ NPLS has not entered its appearance for Defendant, who remains pro se. Although NPLS is constrained by limited resources to accept representation of only a fraction of those litigants who seek its assistance, NPLS commonly provides assistance when possible to pro se litigants without entering an appearance.

⁸ Specifically, Plaintiff’s counsel stated that Plaintiff had an exterminator check the residence for bedbugs, which was one of Defendant’s concerns. Although the exterminator did not find bedbugs, Plaintiff directed the exterminator to spray for them anyway in order to fully address Defendant’s concerns.

ANALYSIS

The timeliness of an appeal is a jurisdictional question, and a failure to file an appeal within the statutorily prescribed time limits generally divests the court of jurisdiction.⁹ This is true in both appeals to appellate courts as well as de novo appeals in courts of common pleas.¹⁰ A party wishing to file an appeal after the expiration of the time allotted must seek permission to appeal *nunc pro tunc*.

The decision whether to grant a petition to appeal *nunc pro tunc* is committed to the sound discretion of the trial court.¹¹ In order to obtain leave to file an appeal *nunc pro tunc*, a party must demonstrate either that the “delay in filing [was] caused by ‘extraordinary circumstances involving fraud or some breakdown in the court’s operations through a default of its officers,’” or that the “appeal was untimely filed because of non-negligent circumstances related to appellant, appellant’s counsel, or an agent of appellant’s counsel.”¹² The second of these exceptions “is meant to apply only in unique and compelling cases in which the appellant has clearly established that she attempted to file an appeal, but unforeseeable and unavoidable events prevented her from actually doing so.”¹³ To invoke this exception, the appellant must prove that “(1) the appellant’s notice of appeal was filed late as a result of non-negligent circumstances, either as they relate to the appellant or the

⁹ *Valley Forge Center Associates v. Rib-It/K.P., Inc.*, 693 A.2d 242, 245 (Pa. Super. 1997).

¹⁰ *Blucas v. Agiovlasis*, 179 A.3d 520, 525 (Pa. Super. 2018) (quoting *Lee v. Guerin*, 735 A.2d 1280, 1281 (Pa. Super. 1999)).

¹¹ *Fischer v. UPMC Northwest*, 34 A.3d 115, 120 (Pa. Super. 2011) (quoting *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999)).

¹² *Id.* at 120, 120 n.2.

¹³ *Criss v. Wise*, 781 A.2d 1156, 1160 (Pa. 2001).

appellant's counsel; (2) the appellant filed the notice of appeal shortly after the expiration date; and (3) the appellee was not prejudiced by the delay.”¹⁴

Here, there is no allegation of fraud or a breakdown in the court's operations, and thus Defendant relies on the “non-negligent circumstances” exception. The Court must therefore analyze whether the circumstances here satisfy the three requirements to invoke that exception.

The first prong is easily satisfied here, as an emergency hospitalization and subsequent rehabilitation is clearly a “non-negligent circumstance... as [it] relate[s] to” Defendant. Her hospitalization and subsequent inpatient rehabilitation began over a week before Plaintiff filed the MDJ action and extended well past the time within which the rules allow an appeal. Without knowing the exact circumstances of Defendant's medical and family situations, the Court cannot say whether she could or should have taken steps to assure she received timely notice of important mailings rather than reviewing them only after her discharge; this possibility, however, does not transform Defendant's emergency hospitalization and rehabilitation into a negligent circumstance. Thus, the Court believes the first prong has been satisfied.

Defendant has not, however, satisfied the second prong of the exception, the requirement that the appeal be filed “shortly after the expiration date.” Defendant testified that she learned of the judgment shortly after her discharge on January 3, 2022, and that based on NPLS's advice she took no action for nearly two months. Defendant stated that on March 3, 2022, NPLS informed her she may be able to file

¹⁴ *Id.* at 1159 (citing *Bass v. Commonwealth Bureau of Corrections, et al.*, 401 A.2d 1133

an appeal *nunc pro tunc*. Even so, Defendant did not file her Petition for an additional two-and-a-half months; she explained that an NPLS employee was assisting her and that they were unable to complete the Petition until May 17, 2022. At that point, more than seven months had passed since the hearing, and four-and-a-half months had passed since Defendant learned of the judgment.

The Court finds this timeline insufficient to satisfy the second prong of the non-negligent circumstances exception, as Defendant did not “file[] the notice of appeal¹⁵ shortly after the expiration date.” As suggested above, the Court is inclined to not hold any delay against Defendant prior to her discharge on January 3, 2022 when analyzing whether she acted with sufficient promptness in this matter. Even so, the delay of four-and-a-half months between learning of the judgment and filing the Petition – or even the two-and-a-half month delay between receiving NPLS’s advice and filing the Petition – is too long to be reasonable. The Court accepts that Defendant was largely relying on the advice of NPLS, even though they did not and do not formally represent her. The Petition, however, consists of a two-page pre-printed form with the relevant information handwritten into appropriate spaces in pen. Only a single question regarding the reason for the delay required information beyond the purely demographic, such as names, addresses and other information that could be copied directly from the Notice of Judgment. Whether Defendant herself delayed or merely felt she had no choice but to accept NPLS’s delay in the completion of this straightforward Petition, the delay is simply not compatible with

¹⁵ Here, the Court construes the filing of the Petition as the relevant timeframe, as Pa. R.C.P.M.D.J. 1002 precludes the prothonotary from accepting a late appeal from a Magisterial District Court judgment without leave of court.

the requirement that a party must file the appeal “shortly after the expiration date” to invoke the exception.¹⁶

Furthermore, the Supreme Court of Pennsylvania has suggested that the non-negligent circumstances exception applies only when “the appellant has clearly established that she attempted to file an appeal” within the relevant time period “but unforeseeable and unavoidable events precluded her from actually doing so.”¹⁷ Although Defendant has not established that she attempted to appeal within the relevant time period after the October 11, 2021 hearing, for the reasons discussed above that failure is likely excusable. Defendant has also not, however, established that she attempted to appeal within thirty days after learning of the judgment, or even within thirty days after March 2, 2022 when NPLS advised her that she may have the right to appeal *nunc pro tunc*. Even assuming *arguendo* that NPLS’s delay interfered with Defendant’s attempts to appeal, such is not an “unforeseeable and unavoidable event” given NPLS’s inability to formally represent Defendant.

Ultimately, when a party has missed a deadline by many months – even through non-negligent circumstances – the need for haste in resolving the issue should be apparent. Here, the action below was filed, the hearing occurred, and the appeal period ran all while Defendant was emergently hospitalized or recovering in an inpatient facility, and thus her failure to timely file an appeal was excusable. In

¹⁶ Because the Court finds that Defendant has not satisfied the second prong of the non-negligent circumstances, it need not address the third requirement, that “appellee was not prejudiced by the delay.”

¹⁷ *Criss*, 781 A.2d at 1160 (citing *Moring v. Dunne*, 493 A.2d 89, 92-93 (Pa. Super. 1985) (“although death of appellant’s attorney may have qualified as a non-negligent circumstance, appellant failed to prove that he attempted to appeal *on time* but was precluded from doing so as a result of receiving late notice of attorney’s death”) (emphasis added)).

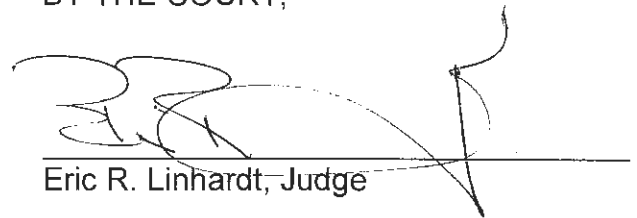
order to file an appeal *nunc pro tunc*, however, a party must file the late appeal in a reasonable, expedient timeframe after discovering the missed deadline. Here, over four months passed between Defendant's discovery of the judgment and her filing of the Petition, and thus the Petition was not filed "shortly after the expiration date" as required to invoke the non-negligent circumstances exception. Therefore, the Court finds that Plaintiff is not entitled to an appeal *nunc pro tunc*.

ORDER

AND NOW, this 4th day of October 2022, for the foregoing reasons, the Court DENIES Defendant's Petition for Permission to File MDJ Eviction Appeal Nunc Pro Tunc.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Norman M. Lubin, Esq.

Susan Baines

1209 W. 4th Street, Rm. 2, Williamsport, PA 17701.

Gary Weber, Esq. (Lycoming Reporter)

MDJ Christian D. Frey