

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

STONEKEY REALTY, LLC	:	CV-22-00677
Plaintiff	:	
vs.	:	
	:	
IRVIN COOK,	:	
Defendant	:	

ORDER

AND NOW, this 12th day of December 2022, the Court issues the following Order regarding Plaintiff’s Motion to Vacate Stay of Eviction and Dismiss Appeal.

BACKGROUND

On June 15, 2022, Plaintiff filed a Landlord/Tenant Complaint against Defendant. On July 1, 2022, Magisterial District Judge Gary A. Whiteman entered judgment in Plaintiff’s favor in the amount of \$1,767.71.¹ The initial judgment incorrectly stated that possession of the property was not granted to Plaintiff; however, on July 7, 2022 MDJ Whiteman issued a corrected judgment granting possession of the property to Plaintiff and providing that Defendant could satisfy the Order of Possession by paying the monetary portion of the judgment before execution of the Order. The corrected judgment indicated that Defendant had “10 days from 7/7/22 to pay or appeal.”

¹ The monetary judgment consisted of \$1,600.00 for rent in arrears and \$167.61 in fees and costs.

On July 18, 2022, Defendant timely filed a Notice of Appeal with this Court.² The Prothonotary certified that the filing of the appeal would function as a supersedeas under Pa. R.C.P.M.D.J. 1008. Along with the Notice of Appeal, Defendant filed a Praecipe to Enter Rule to File Complaint upon Plaintiff.³

INSTANT MOTION

On August 2, 2022, at 10:38 a.m., Plaintiff filed the instant Motion to Vacate Stay of Eviction and Dismiss Appeal for Failure to Effectuate Service of Process. Plaintiff's Motion indicated that Defendant had not effectuated service of his appeal on either Plaintiff or MDJ Whiteman within ten days of filing a Notice of Appeal in violation of Pa. R.C.P.M.D.J. 1005.⁴ The Motion avers that Plaintiff "only learned that an Appeal was filed when she contacted the magistrate in an attempt to file paperwork to obtain possession of the property in question."

Later that day, at 1:33 p.m., Defendant filed a Proof of Service of Notice of Appeal and Rule to File Complaint with the Prothonotary. Defendant's Proof of Service indicated that he served the Notice of Appeal and Rule on both MDJ Whiteman and Plaintiff "on August 2, 2022 by... certified or registered mail, sender's receipt attached hereto." Defendant attached to the Proof of Service certified mail

² Because the 10th day following July 7, 2022 was a Sunday, Defendant was permitted to file the appeal on the first business day thereafter.

³ The Rule to File Complaint completed by the Prothonotary's Office incorrectly listed Defendant, rather than Plaintiff, as the party upon whom the Rule was being entered. Neither party has raised this error as relevant to the merits of this matter.

⁴ Pa. R.C.P.M.D.J. 1005A provides that a party appealing a magisterial judgment must "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." Rule 1005B provides that the appellant must file proof of service within ten days after filing the notice of appeal.

receipts indicating he mailed the Notice of Appeal to Plaintiff and MDJ Whiteman on August 2, 2022.

The Court held a hearing on the Motion on September 22, 2022. Kathleen Borgess, Plaintiff's proprietor, testified for Plaintiff. Ms. Borgess indicated that after Plaintiff obtained the corrected judgment on July 7, 2022, she received a certified letter related to Defendant regarding "Section 8"⁵ but did not learn that an appeal was pending until she went to MDJ Whiteman to obtain documents necessary to execute the Order of Possession of the property. She indicated that despite Defendant's filing of a Proof of Service and attached certified mail receipt, Plaintiff still has not received a Notice of Appeal from Defendant.

On questioning by the Court, Ms. Borgess clarified that she first went to MDJ Whiteman's to obtain documentation on July 18, 2022 and was told to come back the following day. She testified that when she returned, someone from MDJ Whiteman's office called the County Courthouse and learned that Defendant had indeed filed an appeal, and that the Prothonotary had indicated as a matter of course that the appeal functioned as a supersedeas.

Next, Defendant testified on his own behalf. He noted that he had timely filed his appeal on July 18, 2022, but did not serve the Notice of Appeal within the ten-day deadline because he was not aware he had to do so. He explained that once he

⁵ Based on her testimony, the Court believes Ms. Borgess is referring to a copy of the July 18, 2022 Order granting Defendant permission "to proceed in this matter without payment of fees and costs." That Order did not specify what "this matter" consisted of or otherwise indicate Defendant had filed an appeal of the July 7, 2022 judgment.

realized he had not satisfied the Rules, he immediately mailed the Notice of Appeal to both Plaintiff and MDJ Whiteman and filed Proof of Service. Defendant testified that he relied heavily on guidance provided by North Penn Legal Services (“NPLS”),⁶ but did not remember specifically what he mailed in accordance with their advice. He indicated that when he discussed the situation with NPLS after Plaintiff filed the instant Motion, they contacted MDJ Whiteman and ultimately apologized to Defendant, though they remained unable to represent him. Defendant testified that Plaintiff served its Motion to Vacate on him by hand delivery on August 2, 2022 as he was returning home after filing his Proof of Service.

ANALYSIS

Pa. R.C.P.M.D.J. 1005B provides that a party appealing a magisterial judgment “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. 1006 provides that “[u]pon failure of the appellant to comply with... Rule 1005B, the prothonotary shall, upon praecipe of the appellee, mark the appeal stricken from the record. The court of common pleas may reinstate the appeal upon good cause shown.”

Here, Plaintiff did not file a praecipe to strike the appeal with the Prothonotary, but rather filed the instant Motion. Because Defendant admits that he

⁶ NPLS is a non-profit legal aid organization. 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 to pro se litigants when possible.

did not comply with Rule 1005B, Plaintiff would have been entitled to the striking of the appeal; in such a circumstance, Defendant would have had the right to seek the reinstatement of the appeal “upon good cause shown.” It would be unfair to withhold from Plaintiff the result to which she is legally entitled simply because she petitioned this Court, rather than praeciped the Prothonotary, to strike the appeal. It would likewise be unfair, however, to strike the appeal against Defendant if he would have been entitled to its reinstatement in other procedural circumstances. Therefore, the Court will grant Plaintiff’s Motion unless Defendant would otherwise be entitled to the reinstatement of his appeal for “good cause shown.”

Although there is no single definition of “good cause shown,” courts have generally reinstated dismissed appeals when a party has timely served the notice of appeal but merely failed to file proof of service with the prothonotary.⁷ In these situations, “the intent underlying the rule has been fulfilled [as] it is clear that the opposing party has received notice of the appeal” served by the appellant.⁸ This Court has found good cause to reinstate an appeal when the appellant 1) took affirmative steps to timely serve notice; 2) did timely serve notice on the MDJ; and 3) served notice to the appellee on the 11th day, prior to appellee’s filing of the praecipe to strike.⁹ Courts have typically refused to reinstate stricken appeals, however, when nothing in the record indicates that appellant ever served the

⁷ See, e.g., *Voland v. Gray*, 652 A.2d 935 (Pa. Super. 1995); *Delverme v. Pavlinsky*, 592 A.2d 746 (Pa. Super. 1991); *Quarato v. Facelifters, Ltd.*, 451 A.2d 777 (Pa. Super. 1982); *Katsantonis v. Freels*, 491 A.2d 778 (Pa. Super. 1980).

⁸ *Slaughter v. Allied Heating*, 636 A.2d 1121, 1124 (Pa. Super. 1993).

⁹ *Martin & Murphy, LLC v. Bartos*, CV-21-00680 (November 24, 2021 Opinion and Order).

required notice of appeal.¹⁰ In such cases, it is of no moment that the appellee's filing of a praecipe to strike implies that they learned of the existence of the appeal at some point; pro se status, inadvertent error, and "simply stating that... noncompliance did not substantially affect the rights of the adverse party" are all insufficient to establish good cause to reinstate a stricken appeal from a magisterial judgment.¹¹

Here, Defendant admits that did not make any attempt to comply with the requirements to timely serve the Notice of Appeal or file Proof of Service because he was unaware of the need to do so. It is well-established that ignorance of procedural rules is no excuse for a failure to comply with them, and that *pro se* status confers no extra benefit upon a litigant.¹² This is not a case in which a defendant served the notice of appeal and the plaintiff sought a procedural judgment merely for failure to timely file the proof of such service; rather, Defendant did not serve the Notice of Appeal until the day that Plaintiff filed the instant Motion. Further, the Court cannot say with certainty whether Defendant's August 2, 2022 certified mailing of the Notice of Appeal occurred before or after Plaintiff filed the instant Motion. But that too is a strike against Defendant: one of the purposes of Rule 1005B requiring the filing of proof of service is to "eliminate any dispute as to

¹⁰ See, e.g., *id.*; *Kelley v. Harr*, 2021 WL 1753475 (Pa. Super. 2021) (non-precedential).

¹¹ *Slaughter*, 636 A.2d at 1125.

¹² *Madrid v. Alpine Mountain Corp.*, 24 A.3d 380, 383 (Pa. Super. 2011) ("[I]gnorance of procedural rules does not justify or provide a reasonable explanation for failure to comply..."); *Norman for Estate of Shearlds v. Temple University Health System*, 208 A.3d 1115, 1118-19 (Pa. Super. 2019) ("*pro se* status confers no special benefit... To the contrary, any person choosing to represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing.").

whether service was actually made.”¹³ Defendant’s failure to timely serve the Notice of Appeal and file Proof of Service is the sole cause of this ambiguity in the record.

ORDER

Because Defendant failed to take any efforts to comply with the requirement to serve the Notice of Appeal and file Proof of Service within ten days of filing the appeal, with his late attempt to satisfy these requirements being docketed after Plaintiff filed the instant Motion to Vacate Stay of Eviction and Dismiss Appeal, the Court GRANTS Plaintiff’s Motion. The supersedeas entered in this case on July 18, 2022 is TERMINATED. Defendant’s appeal is DISMISSED. Plaintiff may seek a writ of possession from the Magisterial District Court.

IT IS SO ORDERED.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/jcr

cc: Andrea Pulizzi, Esq.

Irvin Cook

350 Hastings Street, South Williamsport, PA 17702

M.D.J. Gary A. Whiteman

Gary Weber, Esq. (Lycoming Reporter)

¹³ *Slaughter*, 636 A.2d at 1124.