

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

BANKS TOWNSHIP, :  
: Appellee :  
v. : No. 19-0426 :  
MICHAEL GARBACIK, :  
: Appellant :  
John M. Solt, Esquire Counsel for Appellee  
Michael Garbacik Pro Se

FILED  
2022 JUN -8 PM 1:07  
CARBON COUNTY  
PROTHONOTARY

MEMORANDUM OPINION

Serfass, J. - June 8, 2022

Here before the Court is the appeal of our non-jury trial verdict entered on April 19, 2022 in favor of Banks Township (hereinafter "Appellee") and against Michael Garbacik (hereinafter "Appellant") pursuant to which we ordered Appellant to remove the portion of his concrete driveway encroaching upon the public right of way of a township road. We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a), respectfully recommending that the instant appeal be dismissed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is the owner of real property situated at 31 East Market Street, Tresckow, Carbon County, Pennsylvania. The subject property is a rectangular tract of land bordering East Hemlock Street, an unpaved alleyway owned and maintained by Appellee, on

the northern edge. In 2018, Appellant hired a contractor to construct a concrete driveway at the rear of his property alongside East Hemlock Street. In October 2018, Appellee commissioned Joseph T. Brutosky, P.E., P.L.S., a professional land surveyor, to conduct a land survey to determine the location of East Hemlock Street in respect to adjoining property owners. Mr. Brutosky's survey indicated that a portion of Defendant's concrete driveway encroaches upon East Hemlock Street. The dimensions of the encroachment were measured as 5.51' x 35' on the northwestern edge and 5.84' x 35' on the northeastern edge.

On March 4, 2019, Appellee initiated the instant action through the filing of a complaint seeking to eject Appellant's encroachment from Appellee's property. A non-jury trial was held before the undersigned on March 11, 2022. Appellee presented testimony from Mr. Brutosky and Richard Porpiglia, a duly elected supervisor of Banks Township, regarding the encroachment upon East Hemlock Street and the potential safety risks it poses. Appellant did not produce a survey or any other evidence indicating that the concrete driveway does not encroach upon East Hemlock Street.

On April 19, 2022, we issued a decision and verdict in favor of Appellee and against Appellant directing him to remove the portion of the concrete driveway encroaching upon the public right of way on East Hemlock Street within sixty (60) days and authorizing Appellee to remove the aforesaid encroachment and

assess the costs of such removal to Appellant if he failed to remove the encroaching portion. (Court's Verdict of 4/19/22). Notice was mailed to the parties that same day.

On May 9, 2022, Appellee filed a Praecipe to Enter Judgment on the April 19, 2022 verdict. That same day, judgment was entered in favor of Appellee by the Carbon County Prothonotary and Appellant was notified of such entry. On May 17, 2022, Appellant filed an Appeal to the Superior Court of Pennsylvania requesting review and reversal of this Court's April 19, 2022 verdict. On May 18, 2022, we entered an order directing Appellant to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). In compliance with our order, Appellant filed his "Concise Statement of Matters Complained of on Appeal" on June 3, 2022.

#### DISCUSSION

We respectfully recommend that the instant appeal be dismissed because no issues have been preserved for appellate review. "Post-trial motions shall be filed within ten days after notice of nonsuit or the filing of the decision in the case of a trial without jury." Pa.R.C.P. 227.1(c)(2). Post-trial motions serve the "important function in [the] adjudicatory process [of] afford[ing] the trial court in the first instance the opportunity to correct asserted trial court error and also clearly and narrowly fram[ing] issues for appellate review." Newman Dev. Grp. of Pottstown, LLC v. Genuardi's Fam. Mkts., Inc., 52 A.3d 1233, 1239

(Pa. 2015) (*quoting* Diamond Reo Truck Co. v. Mid-Pac. Indus., Inc., 806 A.2d 423, 428 (Pa.Super. 2002)).

A party must file post-trial motions to preserve claims the party wishes to raise on appeal. Chalkey v. Roush, 805 A.2d 491, 492 (Pa. 2002). The failure to timely file post-trial motions results in waiver of issues raised on appeal. U.S. Bank, N.A. v. Pautenis, 118 A.3d 386, 391 (Pa.Super. 2015) (*citing* D.L. Forrey & Associates, Inc. v. Fuel City Truck Stop, Inc., 71 A.3d 915, 919 (Pa.Super. 2013)). "Issues not raised in the trial court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a).

In the instant matter, our decision and verdict were docketed by the Carbon County Prothonotary on April 19, 2022 and notice was mailed to Appellant that same day. The verdict specifically directed the Carbon County Prothonotary to enter judgment on the verdict if no motion for post-trial relief had been filed under Pennsylvania Rule of Civil Procedure 227.1 within ten (10) days. The ten-day time period would have expired on Friday, April 29, 2022. Appellant did not file a post-trial motion with this Court. Instead, Appellant filed an appeal directly to the Superior Court twenty-eight (28) days after the entry of the verdict on the docket of this Court. Therefore, we submit that Appellant has failed to preserve any issues for appellate review.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be dismissed as no issues have been properly preserved for review by the Honorable Superior Court.

BY THE COURT:

A handwritten signature in black ink, appearing to read "S.R. Serfass", written over a horizontal line.

Steven R. Serfass, J.