

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

<b>ERIE INSURANCE GROUP and</b>	:	
<b>CHRIS GAYDOSCIK &amp;</b>	:	
<b>TRACY GAYDOSCIK,</b>	:	
<b>Plaintiffs/Appellants</b>	:	
	:	<b>No. 10-2686</b>
<b>vs.</b>	:	
	:	
	:	
<b>CHARLES RALPH PARKER, SR.,</b>	:	
<b>Defendant/Appellee</b>	:	

J. Scott Watson, Esquire  
Cynthia S. Ray, Esquire

Attorney for Plaintiffs/Appellants  
Attorney for Defendant/Appellee

**MEMORDANDUM OPINION<sup>1</sup>**

Webb, S.J. – January \_\_\_\_\_, 2012

An Arbitration Hearing was to be held in the above-captioned matter on October 27, 2011, at 9:00 AM. Defendant, defense counsel, and the three-member arbitration panel convened at that time and date in the place specified on all issued notices. Neither Plaintiffs nor Plaintiffs’ counsel appeared. We called the case for trial.

At the time of trial, we heard testimony from Defendant and argument from Defense counsel. We found in favor of Defendant, and Plaintiff filed the instant appeal.

**I. Local Rule 1303**

Pennsylvania Rule of Civil Procedure 1303(b)(2) provides:

When the board is convened for a hearing, if one or more parties is not ready the case shall proceed and the arbitrators shall make an award unless the court (1) orders a continuance, or (2) hears the matter if the notice of hearing contains the statement required by subdivision (a)(2) and all parties present consent.

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<sup>1</sup> This opinion is prepared and filed in accordance with Pa. R.A.P., Rule 1925(a).

Pa.R.C.P. No. 1303(a)(2) contains the statement which, by county rule, may be included on the notice setting forth the date, time, and location of the hearing. Carbon County Local Rule 1303 enumerates a notice substantively identical to that contained in Pa.R.C.P. No. 1303(a)(2).<sup>2</sup> A copy of this notice appears on both the Arbitration Hearing Notice<sup>3</sup> and the Amended Arbitration Hearing Notice,<sup>4</sup> and reads as follows:

The matter will be heard by a board of arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to trial de novo on appeal from a decision entered by the judge.

One of Plaintiffs' main issues on appeal is that the order continuing the hearing from September 8, 2011 to October 27, 2011, is defective because it does not contain the required language cited above. Plaintiffs have attached this order as Exhibit B; however, Plaintiffs have failed to attach the other two notices they received regarding this hearing. Those two notices contained the required language. There are no returns of service or any other indications that Plaintiffs were not served with the original notice and the amended notice,<sup>5</sup> containing the necessary language.

There is also no indication that Plaintiffs were unaware of the scheduling order changing the date to October 27, 2011. In fact, Plaintiffs' counsel admits that alternate counsel was assigned to this case, but that counsel "mis-calendared" the event. We are certainly sympathetic to counsel's cited reason for not attending the hearing personally. Nevertheless, it is our position

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<sup>2</sup> The word "[t]his" appears at the beginning of the statement in Pa.R.C.P. No. 1303(a)(2), whereas the Carbon County Local Rule begins with the word "[t]he."

<sup>3</sup> Dated June 27, 2011.

<sup>4</sup> Dated August 24, 2011.

<sup>5</sup> We find the issue regarding the Pa.R.C.P. No. 1303(a)(2) language missing from one notice but present on another to be similar to one of the issues disposed of in *Jamison v. Johnson*, 762 A.2d 1094 (Pa.Super.2000). In that case, the first notice did not contain the Pa.R.C.P. No. 1303(a)(2) language; however, the second notice did. Moreover, in *Jamison*, Appellants were also represented by counsel and the court stated: "As counsel is deemed to have constructive knowledge of the Pennsylvania Rules of Civil Procedure, this argument lacks merit." We wholeheartedly agree.

that the two notices provided were sufficient to put Plaintiffs on notice of the possibility that, in their absence, the case may be called for trial.

## **II. Reliance on Defendant's Testimony and Defense Counsel's Arguments**

According to Pa.R.C.P. No. 218(c): "A party who fails to appear for trial shall be deemed to be not ready without satisfactory excuse." On the date of the arbitration hearing, Erie Insurance, Chris and Tracy Gaydosick, and Plaintiffs' counsel all failed to appear. The arbitration panel was not given a reason for the aforementioned parties' failure to appear, nor was the court apprised of such information. Indeed, contained within Plaintiffs' statement of matters complained of on appeal is a reason for Plaintiffs' counsel's failure to appear, but no reason is given as to why Plaintiffs themselves did not appear. We do not find the reasons or lack of reasons satisfactory; therefore we believe it was within our discretion to call the matter for trial.

As far as this court is concerned, when we called the matter for trial, we did not hear any testimony contrary to what was presented by Defendant. We found Defendant to be credible, and it was within our discretion to rely on what we heard and render a decision accordingly.

**BY THE COURT:**

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**Richard W. Webb, S.J.**