

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

GARY CHESLAK, :
 :
 Plaintiff :
 :
 Vs. : No. 13-0471
 :
 WILLIAM MCGINLEY, Clerk of :
 Courts for Carbon County, :
 :
 Defendant :

Gary Cheslak Pro Se
William Z. Scott, Esquire Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - March , 2015

On March 5, 2015, Plaintiff, Gary Cheslak (hereinafter "Cheslak") filed an appeal from this Court's "Verdict" entered on January 30, 2015. In light of the fact that his Appeal was untimely filed thirty-four (34) days after the judgment was entered and the fact that Cheslak did not file post-trial motions pursuant to Pennsylvania Rule of Criminal Procedure 227.1(c)(2), justice demands quashing of the Appeal. In the alternative, should the Appellate Court find a reason to address the merits of the Appeal, the Court would respectfully request that the Judgment be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND¹

A Non-Jury Trial was held in this matter on November 7, 2015. Upon consideration of the testimony presented by Cheslak and the Defendant, William McGinley (hereinafter "McGinley"), this Court took the matter under advisement due to the complexity of the case. On January 30, 2015, a "Decision and Verdict" was issued by the Court. Attached to this decision was a separate "Verdict" which pronounced this Court's findings relative to relief entered by the Court.² It is this document from which Cheslak appeals.

Pursuant to Pennsylvania Rule of Appellate Procedure 903, "Except as otherwise prescribed by this rule, the notice of appeal required by Rule 902, shall be filed within 30 days after the entry of the order from which the appeal is taken." Pennsylvania Rule of Appellate Procedure 903(a). "Because the timeliness of an appeal implicates [Appellate] jurisdiction, [the Court] cannot address the merits of an appeal or cross appeal before determining whether it was timely." *Krankowski v.*

¹ For the state of brevity and in light of the procedural defects in this Appeal, reference is made to the findings of facts made by the Court and found in the appended "Decision and Verdict."

² The Court acknowledges that the use of the term "Verdict" was improper as verdicts are rendered by a Jury and decisions are made by a Trial Judge, (See Pennsylvania Rule of Civil Procedure 227.1(c)(1)(2) and 1038(b,c)), however the use of both terms in the Court determination in this case is still tantamount to a judgment, since a judgment is that official entry of a verdict or decision upon the docket. *Sands v. Andino*, 590 A.2d 761, 764 (Pa. Super. Ct. 1991). In this case at bar, the Court entered the appropriate declaratory relief which is dictated and demanded in an action in mandamus.

O'Neil, 928 A.2d 284, 285 (Pa. Super. Ct. 2001). Clearly, an appeal is untimely if it is filed thirty-four (34) days after the order, which is the subject of the appeal, was entered; thus this Court is divested of jurisdiction.

Further, as reflected in the docket entries, Cheslak did not file any post-trial motions to this Court's decision. "[A] party must file post-trial motions from a trial court's decision and order following the conclusion of a trial." *Chalkey v. Roush*, 805 A.2d 491, 495 (Pa. 2002). This is so the trial court could correct any errors in its rulings and therefore avoid unnecessary appeals. *Chalkey* at 494 N.9 In *L.B. Foster Co. v. Lang Enterprises, Inc.*, the Court held that "if an issue has not been raised in a post-trial motion, it is waived for appeal purposes." 710 A.2d 55(Pa. 1998). As a result, in those situations, our Courts have consistently quashed appeals where no post-trial motions are filed, where they are required. *Cerniga v. Mon Valley Speed Boat Club, Inc.*, 862 A.2d 1272 (Pa. Super. Ct. 2004).

After the Court's decision on January 30, 2015, Cheslak was required to file post-trial motions within ten (10) days pursuant to Pennsylvania Rule of Criminal Procedure 227.1(c)(2). His failure to do so eliminates any issues that could have been preserved for appeal and likewise demands that the appeal be quashed.

Should the Appellate Court find reason to address the merits, this Court could simply stand on its "Decision and Verdict" issued January 30, 2015, complete with findings of fact, conclusions of law, and its legal rationale for the same, and respectfully requests the Appellate Court affirm its decision.

BY THE COURT:

Joseph J. Matika, J.