

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

MARCOS SANCHEZ, M.D., :
 :
Plaintiff :
 :
Vs. : No. 11-0247
 :
MEHDI NIKPARVAR, M.D. and :
INCARE, LLC, :
Defendants :

FILED
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CARBON COUNTY
PROTHONOTARY
BY: _____

MEMORANDUM OPINION

Matika, J. - October 12, 2017

This Memorandum Opinion is issued in response to yet another frivolous Appeal to the Superior Court by the Defendant, Mehdi Nikparvar, M.D. For the reasons stated herein, the Appeal should be quashed.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant, Mehdi Nikparvar, M.D. (hereinafter "Nikparvar") has filed appeal after appeal to the Superior Court alleging errors by the Trial Court. In the most recent Appeal filed on August 17, 2017, Nikparvar challenges the Orders of Court entered on August 10, 2017. Those Orders, not surprisingly, were not attached to the Notice of Appeal, but are attached hereto for the benefit of the Appellate Court. In those Orders, this Court denied Nikparvar's Motion to have the undersigned recuse himself from

further action in this case as well as his "Motion to Object and Dismiss to hold the Defendant in Contempt of Court" as Nikparvar did not appear to pursue those motions and for want of evidence to support them.¹ Additionally, this Court granted the motion of Plaintiff, Marcos Sanchez, M.D. (hereinafter "Sanchez") to find Nikparvar in contempt.

On August 17, 2017, Nikparvar filed the instant appeal. While Nikparvar claims he personally served the Court as he claimed in his affidavit filed with the Notice of Appeal, no such service was ever effectuated. This Court learned of the Appeal upon receipt of a copy of the Appeal Docket sheet from the Superior Court on or about August 25, 2017. As a result, on August 28, 2017, this Court directed that Nikparvar file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellant Procedure 1925(b). As of the date of this Memorandum Opinion, Nikparvar has failed to file this statement.

LEGAL DISCUSSION

In accordance with Pennsylvania Rule of Appellate Procedure 1925(b):

If the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors

¹ Attorney Donald Moser appeared on Nikparvar's behalf at this hearing. It should be noted that the dockets also reflect entries of appearance of other attorneys for Nikparvar, all of whom receive copies of all filings per the docket entries.

complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal ("Statement").

Pa.R.A.P. 1925(b). Pursuant to subsection (2) of Pennsylvania Rule of Appellate Procedure 1925(b),

The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing and service of the Statement. Upon application of the appellant and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental Statement to be filed.

Pa.R.A.P. 1925(b)(2). "Appellant shall file of record the Statement and concurrently shall serve the judge[,] with service upon the judge to "be in person or by mail as provided in Pa.R.A.P. 121(a)." Pa.R.A.P. 1925(b)(1).

An examination of the docket entries in this matter establishes that this Court's Order directing Nikparvar to file a concise statement was docketed on August 28, 2017. Additionally, the docket entries verify that said order was mailed to all counsel of record for Nikparvar as well as Defendant himself by the Carbon County Prothonotary by way of first class mail on August 28, 2017. The consequence of such was that Nikparvar had until September 18, 2017, that being the twenty-first day following the docketing of this Court's Order directing Nikparvar to file a concise statement, to serve upon the Court such statement of matters complained of.

Nikparvar has failed to file his concise statement by September 18, 2017, or on any date thereafter.

As the Supreme Court of this Commonwealth has ruled, in order for an appellant to preserve his or her claims for appellate review, appellant must comply with a trial court's order requiring appellant to file a statement of matters complained of on appeal in a timely manner. *Commonwealth v. Castillo*, 888 A.2d 775, 780 (Pa. 2005). Any issues not raised in an appellant's concise statement will be deemed waived. *Hess v. Fox Rothschild, LLP.*, 925 A.2d 798, 803 (Pa. Super. Ct. 2007). "Since the Rules of Appellate Procedure apply to criminal and civil cases alike, the principles enunciated in criminal cases construing those rules are equally applicable in civil cases." *Kanter v. Epstein*, 866 A.2d 394, 400 n.6 (Pa. Super. Ct. 2004), *appeal denied*, 880 A.2d 1239 (Pa. 2005).

As stated previously, "any issues not raised in a 1925(b) statement will be deemed waived." *Commonwealth v. Lord*, 719 A.2d 306, 309 (Pa. 1998). However, there are caveats to a finding of waiver as delineated in *Forest Highlands Community Association v. Hammer*, 879 A.2d 223 (Pa. Super. Ct. 2005). To determine that appellant has waived such issues the *Hammer* Court stated:

First, the trial court must issue a Rule 1925(b) order directing an Appellant to file a response within [twenty-one] days of the order. Second, the Rule 1925(b)

order must be filed with the prothonotary. Third, the prothonotary must docket the Rule 1925(b) order and record in the docket the date it was made. Fourth, the prothonotary shall give written notice of the entry of the order to each party's attorney of record, and it shall be recorded in the docket the giving of notice. See Pa.R.C.P. 236. If any of the procedural steps set forth above are not complied with, Appellant's failure to act in accordance with Rule 1925(b) will not result in a waiver of the issues sought to be reviewed on appeal.

Id. at 309.

In the case at bar, this Court issued an order on August 28, 2017 directing Nikparvar to file a concise statement within twenty-one days from the date Prothonotary docketed said order. The order was filed, docketed, and made of record in the dockets by the Carbon County Prothonotary on August 28, 2017. The docket entries make evident that the Prothonotary provided notice of the order to numerous counsel of record for Nikparvar as well as Nikparvar himself, via first class mail, on August 28, 2017. In view of the fact that Nikparvar has failed to timely file a concise statement as prescribed by this Court's Order of August 28, 2017, Nikparvar thus has not complied with said order. Consequently, this Court believes Nikparvar has waived his right to appellate review. Accordingly, this Court respectfully recommends that the Honorable Superior Court quash Nikparvar's appeal.

CONCLUSION

Based upon the foregoing, this Court concludes Nikparvar has

waived his right to appellate review of this matter. Accordingly, this Court respectfully requests Nikparvar's appeal of the August 10, 2017 Court orders be **QUASHED**.

BY THE COURT:



Joseph J. Matika, Judge

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

FILED

MARCOS SANCHEZ, M.D.,
Plaintiff

vs.

MEHDI NIKPARVAR, M.D. and INCARE,
LLC,
Defendant

No. 11-0247

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BY:

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ORDER OF COURT

AND NOW, this 10TH day of August, 2017, upon consideration of the "Plaintiff, Marcos Sanchez, M.D., Motion to Hold Defendant Mehdi Nikparvar M.D. in contempt of this Court's Order of November 17, 2016", and after hearing thereon at which the Defendant, Mehdi Nikparvar, M.D. failed to appear, it is hereby **ORDERED and DECREED** that the defendant, Mehdi Nikparvar, M.D. is adjudicated **GUILTY of Contempt** for willfully violating this Court's Order of November 17, 2016 in failing to pay to the Plaintiff, Marcos Sanchez, M.D. the total sum of Seventy-Seven Thousand Three Hundred Eleven Dollars and Fourteen Cents (\$77,311.14) consisting of Two Thousand, Two Hundred and Forty-Nine Dollars and Fourteen Cents (\$2,249.14) in costs and (\$75,062.00) in attorneys fees.

As a consequence, and sanction thereto, Defendant, Mehdi Nikparvar, M.D. shall undergo imprisonment in the Carbon County Correctional Facility for a period of thirty (30) days effective October 1, 2017 at 9:00 A.M. Defendant, Mehdi Nikparvar M.D. may purge himself of this prison sentence by paying to the Plaintiff, Marcos Sanchez, M.D. the sum of Seventy-Seven Thousand, Three

Hundred Eleven Dollars and Fourteen Cents (\$77,311.14) before
October 1, 2017.

BY THE COURT:



Joseph J. Matika, J.

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

MARCOS SANCHEZ, M.D.,
Plaintiff

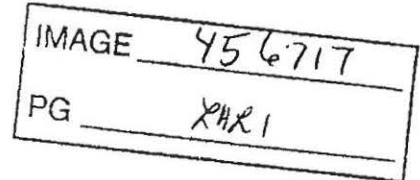
vs.

MEHDI NIKPARVAR, M.D. and INCARE,
LLC,
Defendant

No. 11-0247

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ORDER OF COURT

AND NOW, this 10TH day of August, 2017, upon commencing a hearing on the Defendant, Medhi Nikparvar, M.D.'s "Motion to Recuse Judge Matika" and "Motion to Object and Dismiss to Hold the Defendant in Contempt of Court" and noting Mehdi Nikparvar, M.D.'s failure to appear as directed, it is hereby **ORDERED** and **DECREED** that both Motions are **DENIED**.

BY THE COURT:


Joseph J. Matika, J.