

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

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BRIAN SARGENT AND SARGENT
ENTERPRISES, INC.,
Plaintiffs/Appellants

vs.

THE BOROUGH OF JIM THORPE,
Defendant/Appellee

And

Glen Onoko Estates Home
Owners Association
Intervenor

No. 23-CV-1593

Neil D. Ettinger, Esquire	Counsel for Plaintiff/Appellants
James R. Nanovic, Esquire	Counsel for Defendant/Appellee
Julie Burkart, Esquire	Counsel for Intervenor

MEMORANDUM OPINION

Matika, J. - September 25, 2024

This Opinion is provided to the Commonwealth Court in response to the Appeal filed on July 25, 2024 by the Plaintiffs/Appellants, Brian Sargent and Sargent Enterprises, Inc.¹ (hereinafter "Appellants"). For the reasons stated herein, the court requests that the appeal be quashed.

¹ Both Brian Sargent and Sargent Enterprises Inc. are the parties who filed the appeal from the decision of the Borough of Jim Thorpe. However, we have been unable to determine Sargent Enterprises, Inc.'s status vis-à-vis, its interest in this appeal as the only property owner listed in the short-term rental application is Brian J. Sargent.

FACTUAL² AND PROCEDURAL BACKGROUND

Brian Sargent (hereinafter "Sargent") is the owner of a single-family dwelling located in the Borough of Jim Thorpe (hereinafter "Borough") at 1112 Broadview Drive. On or about March 11, 2021, Borough adopted two (2) ordinances, one of which amended the zoning ordinance and the other regulating short-term rentals.

On or about September 25, 2022, Sargent submitted a short-term rental application to the Borough pursuant to the ordinance regarding short-term rentals. Zoning Officer Matthew Helbers denied Sargent's application on or about October 17, 2022. Thereafter, Sargent appealed that decision to the Borough of Jim Thorpe, which on June 1, 2023, denied that appeal. Again, Sargent appealed, this time, to the Court of Common Pleas which heard arguments on April 29, 2024. At that time, the Court took the matter under advisement.

While the matter was pending under advisement, Sargent, on July 25, 2024, filed the subject appeal. Thereafter, on August 7, 2024, we directed Sargent to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b) as well as a petition for permission to appeal pursuant to Pa.R.A.P. 702(b).

² For the reasons that will be apparent herein, we never made any finding of fact and glean these procedural facts from the record below and the underlying appeal filed by Sargent.

Sargent has filed neither.

LEGAL DISCUSSION

I. Failure to File a Concise Statement

With respect to appellate review, it is well-settled under Pa.R.A.P. 1925 that "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." Pa.R.A.P. 1925(a). When filing a concise statement pursuant to Rule 1925(b), "the appellant *must* comply in a timely manner." Hess v. Fox Rothchild, LLP, 925 A.2d 798, 803 (Pa.Super 2007) (*citing Commonwealth v. Castillo*, 888 A.2d 775, 776 (Pa. 2005)). Furthermore, "any issues not raised in a 1925(b) statement will be deemed waived." Commonwealth v. Lord, 719 A.2d 306, 309 (Pa. 1998).

In this case, Sargent has not filed a concise statement of matters complained of on appeal and therefore, we submit that any issues raised on appeal would be waived. Pa.R.A.P. 1925 is clear in that "any issue not properly included in the statement timely filed and served pursuant to subdivision (b) shall be deemed waived." Pa.R.A.P. 1925(b)(3)(iv). Courts have strongly held that the filing of a Rule 1925(b) statement must be filed timely and failure to file such statement in a timely manner results in

Appellant waiving all claims. Commonwealth v. Fransen, 42 A.3d 1100, 1104 (Pa.Super 2012).

II. Interlocutory Appeals by Permission

The Court is permitted "'in its discretion' to entertain an appeal of an interlocutory order if... there is a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter." Kensey v. Kensey, 877 A.2d 1284, 1289 (2005); 42 Pa.R.A.P § 702. The party pursuing the appeal (Appellant) must seek permission through the filling of a petition, which is a required, otherwise there is no jurisdiction. Estate of Considine v. Wachovia Bank, 996 A.2d 1148, 1154 (2009); Pa.R.A.P. 1311(b); Com v. Brister, 16 A.3d 530, 534 (2011). After a petition is filed, the court may, "in its discretion, permit an appeal to be taken from such interlocutory order." Pa.R.A.P 702(b). First, we note that there is no order to appeal from and secondly, no such petition in this case was filed, therefore no permission to grant the appeal can be given.

CONCLUSION

For all the reasons stated herein, we respectfully recommend that the instant appeal be quashed as no issues have been properly

preserved for appellate review, as Sargent has failed to file a concise statement of errors complained of on appeal and failed to file a petition with the trial court for permission to appeal pursuant to Pa.R.A.P. § 702(b).

BY THE COURT:



Joseph J. Matika, J.