

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

JAMES FARANO and	:	
CHRISTINE MAYERNIK,	:	
Plaintiffs	:	
	:	
vs.	:	No. 14-2808
	:	
C&D TROUT PONDS, INC.	:	
	:	
Defendant	:	
Kim R. Roberti, Esquire		Counsel for Plaintiffs
Joel B. Wiener, Esquire		Counsel for Defendant

MEMORANDUM OPINION

Serfass, J. - March 28, 2017

Defendant, C&D Trout Ponds, Inc. (hereinafter "Defendant") has appealed from the decision and verdict rendered by this Court in favor of Plaintiffs, James Farano and Christine Mayernik (hereinafter "Plaintiffs"), following a non-jury trial. We file the instant Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that Defendant's appeal be quashed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL HISTORY

On December 10, 2014, Plaintiffs filed a complaint against C&D Trout Ponds, Inc. seeking recognition and enforcement of an implied deed restriction limiting the use of Defendant's property. Defendant filed an answer and new matter on January 15, 2015 averring that Defendant's property is not subject to the

restrictions contained in Plaintiff's respective deeds because Defendant's deed does not expressly state any restrictions of use and because the property was previously used for commercial purposes.

Following a non-jury trial held before the undersigned on June 2, 2016, counsel for the parties submitted proposed findings of fact and conclusions of law on July 29, 2016.

On December 29, 2016, this Court issued a decision and verdict, which was entered on the docket and mailed to counsel of record by the Prothonotary of Carbon County on that same date. On January 10, 2017, counsel for Plaintiffs filed a "Praecipe to Enter Final Judgment". Pursuant to that praecipe, judgment was entered in favor of Plaintiffs on January 10, 2017. Not until January 13, 2017, did counsel for Defendant file his motion for post-trial relief pursuant to Pennsylvania Rule of Civil Procedure 227.1. Subsequently, on January 17, 2017, Plaintiffs filed a "Motion to Strike Defendant's Post-Trial Motion for Failure to Timely File." Prior to this Court ruling on either motion, Defendant filed a notice of appeal with the Superior Court on January 30, 2017.

DISCUSSION

Pursuant to Pennsylvania Rule of Civil Procedure 227.1(c)(2), a party shall file post-trial motions within ten (10) days after "... the filing of the decision in the case of a trial without a jury". In analyzing this requirement, the Pennsylvania Superior

Court has held that the ten-day period during which counsel must file post-trial motions begins on the date that the Office of the Prothonotary sends notice of the decision to counsel. Carr v. Downing, 565 A.2d 181 (Pa. Super. 1989). See also Brednick v. Marino, 644 A.2d 199, 200 (Pa. Super. 1994); and U.S. Bank, N.A. v. Pautenis, 118 A.3d 386 (Pa. Super. 2015). In Carr, the Superior Court held that Plaintiffs' post-trial motions were untimely because they were filed nineteen (19) days after the trial court's decision was filed. The Superior Court determined that the Philadelphia County Prothonotary had sent the trial court's decision to the parties on the same day it was filed because the Prothonotary used a separate stamp to note when the document was sent.

Unlike the Office of the Prothonotary in Philadelphia County, the Carbon County Prothonotary does not use a separate stamp to indicate when a filing is sent to the parties. However, pursuant to Pennsylvania Rule of Civil Procedure 236, the docket entries in this action reflect that our decision and verdict was mailed to counsel of record on the day that it was filed, December 29, 2016. Therefore, counsel for Defendant had ten (10) days from December 29, 2016 to file his post-trial motion. The ten-day time period would have expired on Sunday, January 8, 2017. Since the last day fell on a Sunday, Pennsylvania Rule of Civil Procedure 106(b) would have permitted Defendant's post-trial motion to be filed Monday,

January 9, 2017¹. It is undisputed that Defendant's motion was not filed until January 13, 2017. Since the motion was filed after January 9, 2017, it was untimely pursuant to Pa.R.C.P. 227.1(c)(2).

As the Superior Court has made clear, 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). Moreover, when Defendant filed its notice of appeal a mere seventeen (17) days after the filing of its post-trial motion and prior to this Court issuing any ruling thereon, the jurisdiction of the Superior Court was invoked and our jurisdiction in the case was effectively terminated. See Pa.R.A.P. 1701(a) ("[A]fter an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter").

CONCLUSION

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

BY THE COURT:

Steven R. Serfass, J.

¹ "Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the laws of this Commonwealth or of the United States, such day shall be omitted from the computation." Pa.R.C.P. 106(b).