IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Green Tree Run Community Association, AKA/DBA: c/o Robert J. Hoffman, Esquire	:	
v.	:	No. 1097 C.D. 2014
	:	Submitted: October 17, 2014
Susanne Vaughan and Kathleen Vaughan, Appellants	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE BROBSON **FILED: January 30, 2015**

Appellants Susanne and Kathleen Vaughan (the Vaughans) appeal from an order of the Court of Common Pleas of Philadelphia County (trial court). The trial court denied the Vaughans' motion to reinstate their appeal of an order of a Philadelphia Municipal Court (Municipal Court) Judge, which entered a money judgment against the Vaughans. Because we are unable to conduct effective appellate review, we will vacate the trial court's order and remand the matter to the trial court for further consideration.

I. BACKGROUND

A. Municipal Court Judgment and Appeal

This matter began on or about August 27, 2013, when appellee Green Tree Run Community Association, identified in the caption as "Green Tree Run

Community Association aka/dba/: c/o Robert J. Hoffman" (the Association) filed a statement of claim in the Municipal Court, asserting that the Vaughans, who own property within the Green Tree Run condominium development, had failed to pay condominium fees owed to the Association. (Reproduced Record (R.R.) at 25a.)[1] The statement of claim identified the Association's address as 126 W. State Street, Media, PA 19063, which apparently is the business address of the Association's counsel, Robert Hoffman, who prepared the statement of claim. (*Id.*) On October 29, 2013, a Municipal Court Judge issued an order of judgment against the Vaughans in the amount of $5,811.12. (R.R. at 4a.) The Municipal Court issued a notice of money judgment to the Vaughans, advising them that they had the right to appeal the order and judgment to the trial court. (R.R. at 29a.)

On or about October 31, 2013, the Vaughans filed a notice of appeal of the Municipal Court's order. (R.R. at 32a.) The certified record also includes the Vaughans' Praecipe for Rule to File a Complaint, requesting the prothonotary of the Court of Common Pleas of Philadelphia County to enter a rule upon the Association to file a complaint. (Original Record Item 2.) In an attempt to serve the Association with the notice of appeal, the Vaughans submitted to the Montgomery County Sheriff's Department (the Sheriff's Department) an "Order for Service." (R.R. at 40a.) The *Order for Service* identifies the purpose of the request for service to be for an appeal and identifies the entity and address to be served as Green Tree Run Community Association, 120 North Bethlehem Pike,

[1] The fees the Association sought to collect appear to have originated primarily as a result of what a statement of account refers to as "3/22, 3/24, 4/4 Broken Horn" (totaling $1,372.00), a plumbing fee of $88.50, and several late fees. (R.R. at 26a-27a.) The fees the Association sought to collect also appear to include acceleration and legal fees. (R.R. at 27a.)

Fort Washington, PA 19034.[2] The address identified in the *Order for Service* is distinct from the address the Association used in filing its statement of claim against the Vaughans in Municipal Court. It is not clear whether this *Order for Service* included the Vaughans' Praecipe for Rule to File Complaint as well as the notice of appeal, but the Vaughans claim that they included the rule to file a complaint with the notice of appeal that they sent to the Sheriff's Department. (Vaughans' Brief at 6.) The Sheriff's Department did not serve the notice of appeal on the Association via CAMCO at the Fort Washington address until December 9, 2013.

B. The Association's Praecipe to Strike the Appeal

On December 11, 2013, the Association filed a praecipe, requesting the Prothonotary of the Court of Common Pleas of Philadelphia County to strike the Vaughans' appeal of the Municipal Court's order. (R.R. at 6a-7a.) The Association claimed that the Vaughans failed to comply with Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings before Magisterial District Judges (Pa. R.C.P.M.D.J. or MDJ Rules) Nos. 1005(B) and 1006. MDJ Rule No. 1005(B) requires an appellant to file proof of service of the notice of the appeal and of a rule to file a complaint with the prothonotary within ten days after filing the notice of appeal. MDJ Rule No. 1006 provides that "[u]pon failure of the appellant to comply with . . . [MDJ] Rule 1005(B), the prothonotary shall, upon praecipe of the appellee, mark the appeal stricken from the record. The court of common pleas may reinstate the appeal upon good cause shown." The note to this

[2] This is the address of "CAMCO," the Association's property management company.

rule provides that it is "intended to provide sanctions for failing to act within the *time limits* prescribed." (Emphasis added.)

On December 23, 2013, the Vaughans filed with the trial court a petition for a hearing to reinstate their appeal. According to the Vaughans' petition to reinstate the appeal, the Association's attorney, after the date the Vaughans filed the notice of appeal but before the date of service at the Fort Washington address, contacted the Vaughans personally regarding the Municipal Court's judgment, requesting payment. (R.R. at 16a.) Thereafter, the Vaughans' attorney contacted the Association's attorney, directing him not to contact the Vaughans personally and advising him that the Vaughans had filed an appeal of the Municipal Court's judgment. (*Id.*)

C. The Petition to Reinstate the Appeal

The Vaughans averred in their petition to reinstate that a person who works for the Vaughans' attorney contacted the Sheriff's Department on December 9, 2013, indicating that the law office had received "returns of service" for an unrelated complaint, but not for the notice of appeal. (*Id.*) An employee of the Sheriff's Department indicated that it had no record of receiving or serving either the notice of appeal or the unrelated complaint, even though the Vaughans' attorney had received a receipt of return of service for the unrelated complaint. (*Id.*) The Vaughans averred that on December 11, 2013, their attorney received a completed order for service of the notice of appeal, indicating that the appeal had been served at the Fort Washington address on December 9, 2013. (*Id.*) The order for service appears to confirm that the date the Vaughans' attorney prepared the document was November 6, 2013. (R.R. at 40a.) A receipt stamp on the document similarly appears to confirm that the Sheriff's Department received the

document on November 15, 2013, but that the Sheriff's Department, as indicated on the form, did not serve the notice of appeal upon the Association via CAMCO until December 9, 2013. (*Id.*) Based upon the dates identified on the service document, the Vaughans asserted that any problem with the timing of the service of the notice of appeal was the fault of the Sheriff's Department. (R.R. at 14a.) In their memorandum of law in support of their petition to reinstate the appeal, the Vaughans focused upon the alleged failure of the Sheriff's Department to serve the notice of appeal in a timely manner, and they admitted that they did not become aware of the problem until the Association's attorney contacted the Vaughans in an attempt to collect the judgment.

On January 31, 2014, the trial court, without conducting a hearing, issued an order denying the Vaughans' petition to reinstate. Although the Association had cited the MDJ Rule Nos. 1005(B) and 1006, as the basis for the praecipe to strike the Vaughans' appeal, the trial court referred to the Pennsylvania Rules of Civil Procedure and the Philadelphia County Court of Common Pleas Civil Division Rules (Philadelphia Rules) in its decision. *See* Trial Court's Pa. R.A.P. 1925(a) Opinion.

D. Rule 1925(a) Opinion

The Vaughans appealed the trial court's order, and the trial court directed them to file a concise statement of errors raised on appeal. The Vaughans filed a statement of errors complained of on appeal, which included assertions that the trial court erred by failing to consider: (1) whether the Association was prejudiced by permitting reinstatement of the appeal; (2) Pa. R.C.P. No. 1.6, which directs courts to engage in liberal construction of the rules of procedure; (3) the Superior Court's decision in *Delverme v. Pavlinsky*, 592 A.2d 746 (Pa. Super.

1991); and (4) the Supreme Court's decision in *Pomerantz v. Goldstein*, 387 A.2d 1280 (Pa. 1978).

The trial court issued an opinion under Pa. R.A.P. 1925(a), rejecting the Vaughans' claims of error. The trial court purported to consider the matter in light of the Philadelphia Rules, relating to appeals from orders of Municipal Court Judges, rather than the MDJ Rules. The trial court did not discuss all of the applicable Philadelphia Rules, including Philadelphia Rule No. 1001(h), which relates specifically to striking appeals from a Municipal Court order, other than noting that Philadelphia Rule No. 1001(h), like MDJ Rule No. 1006, provides a trial court with the power to reinstate an "appeal upon good cause shown."

The trial court concluded that the Vaughans failed to demonstrate that they had good cause for failing to effectuate service of their appeal upon the Association. The trial court rejected the Vaughans' claim that the Sheriff's Department was at fault, concluding that the Vaughans provided "no reason why they were attempting to serve [the Association] in Montgomery County in the first place." The trial court reasoned that service at the Montgomery County address was unreasonable, because (1) the Association's address is in Philadelphia County; and (2) the Association's attorney, who had filed the statement of claim, which was the genesis of the Vaughans' appeal and which listed the attorney's address as the Association's address, is in Media, Delaware County. Thus, the crux of the trial court's reasoning in denying the petition to reinstate the appeal was the trial court's view that no reason existed for the Vaughans to serve the Association at the Fort Washington address.

The Vaughans raise two issues on appeal, which we rephrase as follows:[3] (1) whether the trial court applied the wrong rules of court in considering the Vaughans' petition to reinstate their appeal and thus abused its discretion;[4] and (2) whether the alleged failure of the Sheriff's Department to comply in a timely fashion with the order to serve the Association submitted to the Sheriff's Department warrants the reinstatement of the appeal, such that the trial court abused its discretion in denying the petition to reinstate.

II. DISCUSSION

Philadelphia Rule No. 1001, relating to "General Provisions Applicable to Municipal Court Appeals," provides a good place to begin our discussion. Philadelphia Rule No. 1001(a)(1) provides that "[f]inal orders issued by the Municipal Court in connection with money judgments . . . are appealable to the Court of Common Pleas. The proceeding on appeal shall be conducted de novo in accordance with the Rules of Civil Procedure." Philadelphia Rule No. 1001(b), relating to "[n]otice[s] of [a]ppeal," provides that "[a n]otice of [a]ppeal,

[3] Our review of a trial court's order denying a petition to reinstate an appeal is limited to considering whether the trial court abused its discretion. *See McKeown v. Bailey*, 731 A.2d 628, 631 (Pa. Super. 1999) (opining that phrase "good cause" is not defined by the MDJ Rules, but interpreted by courts as requiring "legally sufficient reason" for relief requested and holding that determination of whether good cause exists is left to discretion of trial court).

[4] The Association asserts that the Vaughans failed to preserve this issue because they did not include it in their statement of errors complained of on appeal. We believe that in order to engage in a meaningful appellate review of this matter we are required to consider the appeal in accordance with the rules of court that are applicable to this matter. We cannot proceed to decide an appeal based upon an improper legal foundation. As we explain below, the trial court may have an explanation regarding the rules it applied in this case, but the trial court did not provide a sufficient discussion regarding the appropriate rules to be applied.

substantially in the form set forth below . . . shall be filed with the Prothonotary, within the time periods set forth below." Philadelphia Rule No. 1001(c) provides, in part, that a party seeking to appeal must file a notice of appeal within "[thirty] days after the entry of a judgment for money." Philadelphia Rule No. 1001(d), relating to service, provides that the moving party shall file the notice of appeal "on the appellee as provided by the rules applicable to service of original process in Philadelphia County, as set forth in Pa. R.C.P. No. 400.1." Philadelphia Rule No. 1001(e), relating to return of service, requires an appellant to file a return of service, as required by Pa. R.C.P. No. 405.

With regard to the pleadings on appeal, Philadelphia Rule No. 1001(f) provides that

> [i]f the appellant was the defendant in the action before the Municipal Court, he shall file with the Notice of Appeal a praecipe *requesting the Prothonotary to enter a rule as of course upon the appellee* to file a complaint within twenty (20) days after service of the rule or suffer entry of judgment of non pros.

(Emphasis added.) Philadelphia Rule No. 1001(h), relating to "[s]triking [a]ppeal," provides:

> Upon . . . the *failure of the appellant who was the defendant* in the Municipal Court action *to serve upon the appellee* (who was the plaintiff in the Municipal Court action) of [sic] *a rule to file a complaint* . . . the Prothonotary shall, upon praecipe of the appellee, mark the appeal stricken from the record. The Court of Common Pleas may reinstate the appeal upon good cause shown.

The Association's praecipe to strike referred to the MDJ Rules as the basis for relief. It appears, however, that the Court of Common Pleas of Philadelphia County, under the apparent authority of Section 1123(a)(4)(iii) of the

Judicial Code,[5] has adopted specific rules that are applicable in appeals from Municipal Court orders and judgments. Although these two sets of rules have many similarities, they also have marked differences. A key point of difference between these two sets of rules for the striking of an appeal is that the MDJ Rules provide for the striking of an appeal when the appealing party fails "to file with the prothonotary of a trial court proof of service of copies of his *notice of appeal, and proof of service of a rule upon the appellee to file a complaint . . . within ten (10) days after filing the notice of appeal*." Pa. R.C.P.M.D.J. No. 1005(B) (emphasis added).

In contrast to that rule, Philadelphia Rule No. 1001(h) only permits the prothonotary of the trial court to strike an appeal when the appellant fails to serve upon the appellee a rule to file a complaint. Philadelphia Rule No. 1001(h) makes no reference to service of the notice of appeal. Moreover, the Philadelphia Rules, unlike the MDJ Rules, do not impose a time period for filing proof of return of service with the prothonotary. Philadelphia Rule No. 1001(e) ("The appellant must file a return of service as required by Pa. R.C.P. No. 405.") Pa. R.C.P. No. 405, to which Philadelphia Rule No. 1001(e) refers, does not mention a requirement for or a time period within which an appellant must file proof of service with a trial court.

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[5] This section of the Judicial Code provides, in pertinent part:

> In cases under this paragraph the defendant . . . shall have the right to appeal de novo . . . to the court of common pleas, *in accordance with local rules of court established by the administrative judge of the trial division. These rules shall not be inconsistent with Statewide rules of procedure as established by the Supreme Court*.

42 Pa. C.S. § 1123(a)(4)(iii) (emphasis added).

Also of particular concern in this case is the distinction regarding the place to serve a notice of appeal and a rule to file a complaint. MDJ Rule No. 1105A clearly provides that an appellant seeking to challenge an order of a Magisterial District Judge must serve the appellee either at the address listed in the complaint filed with the Magisterial District Judge or at the address of the appellee's attorney, if applicable. In contrast, Philadelphia Rule No. 1001(d) provides that an appellant should file a notice of appeal "on the appellee as provided by the rules applicable to service of original process in Philadelphia County, as set forth in Pa. R.C.P. No. 400.1." Pa. R.C.P. No. 400.1, however, is silent as to the address at which a notice of appeal should be served.

We also note that there is an additional inconsistency in the identity of the applicable rules in this matter. The Prothonotary of the trial court issued a standing case management order to the Vaughans. That order specifically provides that the Vaughans, "[a]s the party taking this appeal . . . must serve a copy of [the] notice of appeal and this [order] on the opposing party." (Certified Record Item 1.) This order additionally provides that "SERVICE must be made upon the opposing party pursuant to [Pa. R.C.P. No.] 440. You are required to file proof of service promptly in the Prothonotary's Second Filing Unit . . . upon completion of service." (*Id.*) Pa. R.C.P. No. 440, relating to service of legal papers other than original process," provides pertinently that

> [c]opies of all legal papers other than original process . . . shall be made . . . by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on a pleading . . . or at such other address as a party may agree."

Additionally, Pa. R.C.P. No. 440(c) provides that "[i]f service of legal papers . . .is to be made by the sheriff, he shall notify by ordinary mail the party requesting

service to be made that service has or has not been made upon a named party or person." Although we do not find authority in the Philadelphia Rules for adopting the service requirements contained in Pa. R.C.P. No. 440 to notices of appeals from orders of Municipal Court Judges, the trial court, on remand, may also need to address the question of whether this rule is applicable to the proceedings and the authority for such a conclusion.

In this matter, the Association did not base its praecipe to strike on an allegation that the Vaughans failed to serve upon the Association a rule to file a complaint, but rather based its praecipe solely on the failure of the Vaughans to file proof of service within ten days of filing their notice of appeal, which is only a requirement of the MDJ Rules. Before we can meaningfully evaluate the Vaughans' challenge to the trial court's order denying the petition to reinstate the appeal, the trial court must first consider and discuss the question of which rules for appeals to the trial court apply. If the trial court concludes that the MDJ Rules are not applicable, the trial court must consider the petition to reinstate in light of the Philadelphia Rules adopted for appeals in the trial court and also in light of the stated basis of the Association's request to strike, *i.e.*, timely filing of a proof of service.

Accordingly, we vacate the trial court's order and remand this matter to the trial court for further proceedings in accordance with this opinion.

P. KEVIN BROBSON, Judge

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v.	:	No. 1097 C.D. 2014
Susanne Vaughan and Kathleen Vaughan, Appellants	:	

O R D E R

AND NOW, this 30th day of January, 2015, the order of the Court of Common Pleas of Philadelphia County (trial court) is vacated and the matter is remanded to the trial court for further proceedings consistent with this opinion.

Jurisdiction relinquished.

P. KEVIN BROBSON, Judge