

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ROBERT D. KLINE,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
DAVID HOPCRAFT AND	:	
JANE HOPCRAFT AND DAVI, LLC,	:	
	:	
Appellees	:	No. 1319 MDA 2012

Appeal from the Order Entered June 29, 2012,
In the Court of Common Pleas of Perry County,
Civil Division, at No. CV-WS-2008-00407.

BEFORE: BENDER, SHOGAN and FITZGERALD*, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED JULY 11, 2013

Appellant, Robert D. Kline, appeals from the order of court marking the underlying case satisfied. Upon review, we affirm.

The trial court has summarized the factual and procedural history of this case as follows:

This case arose out of a breach of contract action originally filed in May of 2008 by Appellant Robert D. Kline. Kline trades/does business as Omni Water Treatment Service, and alleges that Appellees owe for services rendered and equipment rented. At the time of the alleged breach, Appellees owned and operated Middle Ridge Tavern, located in Newport, Pennsylvania.

In his Complaint, Kline alleges that the Hopcrafts entered into a water treatment rental agreement on or about April 2006. Furthermore, Kline claims damages in the amount of \$1,401.59. The agreement was signed by Robert Kline and David Hopcraft on March 1st, 2006. Jane Hopcraft was not a party to this agreement, and David did not sign in any apparent representative capacity. In his Complaint, Kline demands

*Former Justice specially assigned to the Superior Court.

\$1,401.59 from both the Hopcrafts and Davi, LLC, (David being an agent of Davi, LLC, which is apparently the corporate entity responsible for Middle Ridge Tavern).

On June 4, 6, and 9 of 2008, Kline filed a notice of default informing the Hopcrafts that unless they act within ten days, a judgment may be entered without hearing. On June 16th, the Prothonotary entered a judgment against Appellees in the amount of \$2,076.84 against the Hopcrafts [sic], and \$1,926.90 against Davi, LLC. Costs were assessed, as well as fees due to a check written to Kline which was returned for insufficient funds.

On August 5th, 2008, Kline filed Interrogatories and a Request for Production of Documents, apparently in an attempt to assess Appellees' financial state of affairs. On that same day, Kline filed a Writ of Execution directed to the Sheriff of Perry County. The Prothonotary responded with a Writ of Execution - (Money Judg[.]ments), directing the Sheriff to levy upon the property of Appellees (all accounts and all contents of all safety deposit boxes).

On September 3rd, 2008, Kline filed a Motion to Compel Answers to Interrogatories and Request for Inspections, and this Court responded the next day by issuing upon Appellees a Rule to Show Cause. Appellees never responded to this Rule.

According to the Sheriff's Return filed January 19th, 2009, the Sheriff did expose to public sale, several items of personal property owned by the Hopcrafts, specifically, one Grandfather Clock, and one 2000 Mazda 626 automobile. The items were "sold" to the highest bidder, Appellant Robert Kline, who paid \$115.06 - the Sheriff's costs. What transpired after the "sale" remains a matter of some contention, and will be discussed later in this memorandum.

More recently, nearly two years after the Sheriff's Sale, Appellant Kline filed his Motion to Compel Answers to Post Judgment Interrogatories on November 9th, 2010 - the interrogatories Appellant Kline filed with this Court on August 5th, 2008. Shortly thereafter, the Court ordered that the interrogatories be answered by Appellee Hopcraft within ten days of service.

On November 29th, 2010, Appellee Hopcraft, acting *pro se*, filed a Response to Plaintiff's Motion to Compel Answers to Post Judgment Interrogatories. The next day, Kline filed a Motion to Compel Answers to Post Judgment Interrogatories Directed to Jane Hopcraft, and the Court signed Kline's Proposed Order, directing Jane Hopcraft to answer all interrogatories within ten days. She filed her four-paragraph response on December 3rd, 2010, acting *pro se*.

Kline, alleging David Hopcraft never fully answered the post-trial interrogatories, filed a Motion for Sanctions on December 8th, 2010, and the Court scheduled a hearing for January 26th, 2011. After the hearing, the Court ordered that Appellees be re-served the subject interrogatories, and Appellees were given ten days in which to answer. David Hopcraft answered this second set of interrogatories on February 2nd, 2011, by hastily handwriting answers on each page of Appellant Kline's second set of interrogatories, and a copy was provided to the Court on February 9th. At the request of Appellee, because Appellees sought counsel, the Court decided to hold Appellees' answers pending the outcome of Appellees' forthcoming petition.

Kline filed a Motion for Sanctions against Jane Hopcraft on February 7th, 2011. Next, on February 16th, 2011, Attorney George F. Douglas, III did file a Petition to Mark Case Satisfied on Appellees' behalf. Kline quickly responded with a Motion to Strike the Petition but a hearing was scheduled for, and held on, April 19th, 2011. At its conclusion, the parties were given seven days in which to file supporting briefs. Both parties complied. This Court granted Appellees' Petition to Mark Case Satisfied on June 29th, 2012.

Trial Court Opinion, 9/12/12, at 1-4.

Appellant presents the following issues for review:

1. Did the trial court err in considering the petition to mark case satisfied?
2. Are the trial court's findings of fact supported by the evidence?

3. Did the trial court err as a matter of law in finding there was an agreement to satisfy a judgment?

Appellant's Brief at 3.¹

Before reaching the merits of Appellant's issues, we must address the Appellees' ("Hopcrafts") claim that Appellant's issues are waived for failure to file post-trial motions. In response to Hopcrafts' petition to mark this case satisfied, the trial court conducted a hearing in order to determine whether the matter had been satisfied. Following the hearing, the trial court entered an order marking the case satisfied. Appellant did not file any post-trial motions following entry of the court's order.

An appellant ordinarily must file post-trial motions in order to preserve issues for appellate review. **See also Lane Enterprises v. L.B. Foster Co.**, 710 A.2d 54, 54 (Pa. 1998) (stating that if an issue has not been raised in a post-trial motion as required by Pa.R.C.P. 227.1, it is waived for appellate purposes). The Note to Pa.R.C.P. 227.1(c), however, provides in pertinent part: "A motion for post-trial relief may not be filed to orders disposing of preliminary objections, motions for judgment on the pleadings or for summary judgment, motions relating to discovery or other proceedings which do not constitute a trial." (citing **U.S. National Bank in Johnstown v. Johnson**, 487 A.2d 809 (Pa. 1985)). Further, "[a] motion

¹ We have reordered Appellant's issues for ease of disposition.

for post-trial relief may not be filed to matters governed exclusively by the rules of petition practice.” Pa.R.C.P. 227.1(c), Note.

Our Supreme Court held in ***Coco Brothers, Inc. v. Board of Public Education of the School District of Pittsburgh***, 608 A.2d 1035 (Pa. 1992), that post-trial motions were not required, or even permissible, from a trial court’s order disposing of a petition to enforce a judgment. The Supreme Court held that the proceedings to enforce a judgment were clearly within the type of procedures described in the Note to Rule 227.1(c). ***Id.*** at 1037. Similarly, we held in ***Kramer v. Schaeffer***, 751 A.2d 241, 244 (Pa. Super. 2000), that no post-trial motions were required from a trial court’s decision on a motion to enforce a settlement. Additionally, we have held that a party did not waive claims on appeal for failing to file post-trial motions from an order granting a petition to enforce a settlement agreement, following a hearing on the petition, because such motions are not permitted from an order granting a petition. ***Bennett v. Juzelenos***, 791 A.2d 403, 406 (Pa. Super. 2002).

Thus, post-trial motions are not required, nor permitted, from an order granting a petition. The fact that a hearing took place on the petition does not alter that tenet. Accordingly, we conclude that Appellant has not waived any of his claims for failure to file post-trial motions from the trial court’s order granting the petition to mark the case satisfied following the hearing.

We shall now address the merits of Appellant's claims. First, Appellant argues that the trial court should not have considered the Hopcrafts' petition to mark case satisfied. Appellant's Brief at 6. Appellant maintains that the Hopcrafts' failure to verify the petition pursuant to Pa.R.C.P. 1024 was a fatal defect. *Id.* at 6-7. Appellant further contends that the petition was defective due to the caption on the petition indicating that Hopcrafts' counsel was bringing the petition in his own name. *Id.* at 6.

Rule 1024 of the Pennsylvania Rules of Civil Procedure requires that pleadings containing averments of fact not of record shall be verified by a party to the action. Pa.R.C.P. 1017 defines pleadings as including, with the exception of Rule 1041.1 (regarding asbestos litigation): (1) a complaint and an answer thereto; (2) a reply if the answer contains new matter, a counterclaim or a cross-claim; (3) a counter-reply if the reply to a counterclaim or cross-claim contains new matter; and (4) a preliminary objection and a response thereto. The petition to mark case satisfied is not a pleading encompassed by this rule. Accordingly, the petition is not subject to the requirements of Pa.R.C.P. 1024.

Furthermore, the caption indicating that Hopcrafts' attorney was bringing the petition in his own name was an error that was corrected on the record during the hearing. N.T., 4/19/11, at 5-7. Such error did not result in prejudice to Appellant, as admitted by Appellant during the hearing. *Id.*

at 5-6. Thus, the trial court did not err in considering and ruling upon the Hopcrafts' petition to mark case satisfied.

Appellant next asserts that the trial court's findings of fact were not supported by the evidence. Appellant's Brief at 11. Appellant points to the alleged deceptiveness of Hopcraft and bias of Sheriff Nace in making this claim. **Id.** Appellant also maintains that the testimony reveals that there was no agreement resulting in satisfaction of the judgment. **Id.**

The trial court, as fact finder, is free to accept or reject the credibility of both expert and lay witnesses, and to believe all, part or none of the evidence. **Nemirovsky v. Nemirovsky**, 776 A.2d 988, 993 (Pa. Super. 2001). It is not the role of an appellate court to pass on the credibility of witnesses or to act as the trier of fact, and an appellate court will not substitute its judgment for that of the fact finder. **Bonenberger v. Nationwide Mut. Ins. Co.**, 791 A.2d 378, 381 (Pa. Super. 2002).

After the hearing, the trial court found David Hopcraft's and Sheriff Nace's testimony to be credible, and found Appellant's testimony to be incredible. Trial Court Opinion, 9/11/12, at 4-5. The determination of credibility of witnesses is an issue for the trial court, and in this case, the record supports the trial court's conclusion. Because we cannot substitute our judgment for that of the fact finder, we accept those credibility determinations. Thus, we conclude that Appellant's claim lacks merit.

In his final issue, Appellant argues that the trial court erred in granting the motion to satisfy judgment. Appellant's Brief at 7. Appellant argues that the highest bid at the execution sale was \$115.06, and this did not, and could not, satisfy the judgment of \$2,065.84 previously entered. *Id.* at 7-8. We examine this issue applying an established standard of review that this Court has summarized as follows:

The trial court has the discretion to mark the judgment as satisfied, and an appellate court will not disturb its determination absent an abuse of discretion. Under Pennsylvania law, generally, an appellate court will find an abuse of discretion if the record shows that the law has been overridden or misapplied, or that the judgment exercised by the Court was manifestly unreasonable or motivated by partiality, prejudice, bias or ill-will.

Gallagher v. Sheridan, 665 A.2d 485, 486 (Pa. Super. 1995) (internal citations and quotations omitted).

In resolving this issue, the trial court provided the following analysis:

As mentioned earlier in this memorandum, a hearing was held in this matter on April 19, 2011. At this hearing, the Court heard testimony from each party, and ultimately found Appellant Kline incredible.

Appellant claimed damages in the amount of \$1,401.59, and was awarded a default judgment due to Appellees' failure to respond. That figure quickly grew to roughly \$1,900 through the assessment of costs and fees. A Sheriff's Sale was scheduled. Nearly two years later, at the hearing, Appellant claimed he "purchased" Appellees' automobile and grandfather clock for \$115 at the aforementioned Sheriff's Sale.

The Court found both the Sheriff and Appellee David Hopcraft credible. To summarize, they both testified that no real sale took place on the day of the Sheriff's Sale due to lack of

interest, and Appellant accepted both the car and the clock in full satisfaction of the \$1,900 debt. This version of events is supported by the facts. The car was valued at between \$2,200 and \$3,300; the discrepancy due to some damage to the passenger door. Furthermore, the clock was purchased in the late 1980's or early 1990's for approximately \$1,000. The \$115 Appellant "paid" for the car and clock, was paid to the Sheriff to cover his costs. Therefore it is reasonable to believe that these items were accepted as payment-in-full of a \$1,900 debt.

Additionally, after Appellant received the car and clock, he filed nothing with this Court until nearly two years later, when he filed his Motion to Compel Answers to Post Judgment Interrogatories on November 9th, 2010 - the interrogatories Appellant Kline filed with this Court on August 5th, 2008. When asked why he waited nearly two years, Appellant offered the following explanation: "Well, here's why. Because I'm a Christian man and I wanted him to recover. Financially I knew he was in a hard spot. I could have levied on his liquor license. Since I have moral problems with that I didn't do that."

This Court is not inclined to accept Appellant's explanation as true, and because, generally speaking, Appellant Kline's testimony during the April 19th 2011 hearing was simply implausible, the Court ruled in favor of Appellees, and ordered that the case be marked satisfied.

CONCLUSION

What should have been a straightforward civil action concerning a Plaintiff's claim for roughly \$1,400 worth of damages, has become a bloated, complicated monstrosity. After hearing the testimony of each party, this Court believes that on January 19th, 2009, Appellant Kline accepted a motor vehicle and a grandfather clock in full satisfaction of the debt owed him by Appellees. Therefore, no further action is necessary.

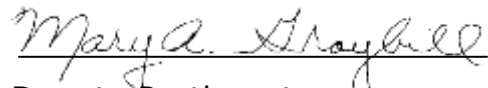
Trial Court Opinion, 9/12/12, at 4-6 (internal footnotes omitted).

The evidence of record supports the trial court's conclusion that the parties agreed that Appellant accepted the vehicle and grandfather clock in

satisfaction of the judgment. As previously mentioned, we cannot substitute our judgment regarding credibility of witnesses for that of the trial court. Thus, given the credibility determinations of the trial court, and the evidence of record, we conclude that the trial court did not abuse its discretion in granting the Hopcrafts' motion to mark the case satisfied. Appellant's final claim fails.

Order affirmed.

Judgment Entered.


Deputy Prothonotary

Date: 7/11/2013