

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JPMC SPECIALTY MORTGAGE LLC

IN THE SUPERIOR COURT OF
PENNSYLVANIA

v.

WILLIAM MICHAEL BRILLA, RHONDA
BRILLA

APPEAL OF: WILLIAM M. BRILLA

No. 977 WDA 2013

Appeal from the Order Entered May 21, 2013
In the Court of Common Pleas of Clearfield County
Civil Division at No(s): 2013-738-CD

BEFORE: PANELLA, J., MUNDY, J., and STABILE, J.

MEMORANDUM BY MUNDY, J.: FILED: March 7, 2014

Appellant, William Michael Brilla, appeals from the May 21, 2013 order dismissing without prejudice his motion to proceed *in forma pauperis* (IFP) in his defense of the underlying mortgage foreclosure action initiated by Appellee, JPMC Specialty Mortgage LLC. Because we determine the appeal to be interlocutory, we quash the appeal.

A summary of the pertinent procedural history of the case follows. On May 13, 2013, Appellee filed a complaint in mortgage foreclosure against Appellant and Rhonda L. Brilla, his former spouse.¹ On May 16, 2013, Appellant filed a petition and affidavit for leave to proceed IFP in accordance

¹ Rhonda L. Brilla, who is designated as *pro se* in the underlying action, has not participated in this appeal.

with Pennsylvania Rule of Civil Procedure 240.² On May 20, 2013, the trial court entered the following order.

² Rule 240 provides in pertinent part as follows.

Rule 240. In Forma Pauperis

(a) This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection From Abuse Act.

(b) A party who is without financial resources to pay the costs of litigation is entitled to proceed in forma pauperis.

(c) Except as provided by subdivision (d), the party shall file a petition and an affidavit in the form prescribed by subdivision (h). The petition may not be filed prior to the commencement of an action or proceeding or the taking of an appeal.

...

(3) Except as provided by subdivision (j)(2), the court shall act promptly upon the petition and shall enter its order within twenty days from the date of the filing of the petition. If the petition is denied, in whole or in part, the court shall briefly state its reasons.

...

(f) A party permitted to proceed in forma pauperis shall not be required to

(1) pay any cost or fee imposed or authorized by Act of Assembly or general rule which is payable to any court or prothonotary or any public officer or employee, or

(Footnote Continued Next Page)

NOW, this 20th day of May, 2013, the [trial c]ourt being in receipt of the Request to Proceed in Forma Pauperis by [Appellant]; the [trial c]ourt noting that a Defendant in a civil case is not required to pay a fee for filing documents or for the litigation to proceed; it is the ORDER of this [trial c]ourt that the Petition be DISMISSED, without prejudice, as moot.

Trial Court Order, 5/21/13, at 1.

On June 10, 2013, Appellant filed a notice of appeal from the May 21, 2013 order. On June 20, 2013, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Appellant timely complied on July 3, 2013.

On appeal, Appellant raises the following questions for our review.

1. Did the trial court abuse its authority by:
 - a. Denying [] Appellant's Petition/Affidavit for Leave to Proceed *In Forma Pauperis* by relying on frivolous and faulty legal reasoning in its interpretation and application of Pa.R.C.P. 240, as well as relevant case law and the Pennsylvania statutes?
 - b. Failing to conduct a hearing on [] Appellant's Petition/Affidavit for Leave to

(Footnote Continued) _____

(2) post bond or other security for costs as a condition for commencing an action or proceeding or taking an appeal.

...

Pa.R.C.P. 240.

Proceed *In Forma Pauperis* by relying on frivolous and faulty legal reasoning in its interpretation and application of Pa.R.C.P. 240, as well as relevant case law and the Pennsylvania statutes?

Appellant's Brief at 4.

Generally, our standard of review of a trial court's denial of IFP status is well settled. "This Court will refer to the trial court questions regarding the veracity of a petitioner's allegations. ... Our Court will reverse the trial court's determination only if an abuse of discretion occurred." ***In Re Adoption of B.G.S.***, 614 A.2d 1161, 1170-1171 (Pa. Super. 1992) (citations omitted).

The trial court has considerable discretion in deciding whether a person is indigent. However, in making that determination, the trial court must focus on whether the person can afford to pay and cannot reject the allegations contained in an application without conducting a hearing. If some allegations in the application are accepted but others are rejected, a hearing nonetheless is required.

Crosby Square Apartments v. Henson, 666 A.2d 737, 739 (Pa. Super. 1995). Any denial by the trial court of a petitioner's IFP status must be accompanied with at least a brief statement of the trial court's reasons. Pa.R.C.P.240(c). This is to afford a petitioner the opportunity to redress any technical deficiencies in his application. ***Goldstein v. Haband Co., Inc.***, 814 A.2d 1214, 1218 (Pa. Super. 2002).

We must first, determine if this appeal is properly before us. Appellee avers that the May 13, 2013 order is not a final appealable order and is not

subject to any exception to the finality requirement for appellate jurisdiction. Appellee's Brief at 3, *citing* Pa.R.A.P. 311, 313, 341. Appellant cites our Supreme Court's holding in ***Grant v. Blaine***, 868 A.2d 400 (Pa. 2005) for the proposition that trial court orders denying petitions to proceed IFP are final and appealable.³ Appellant's Brief at 3. The ***Grant*** Court's holding, however, was conditional. When "the practical consequence ... is effectively to put an appellant 'out of court', we hold an order denying *in forma pauperis* status is a final, appealable order." ***Grant, supra*** at 403 (citation omitted). The Court explained the underlying principles of its holding as follows.

In determining what constitutes a final order ... we look to a practical rather than technical construction of an order.... Whether an order is final and appealable cannot necessarily be ascertained from the face of a decree alone, nor simply from the technical effect of the adjudication. The finality of an order is a judicial conclusion which can be reached only after an examination of its ramifications. We have also said that if the practical consequence of the order by the trial court is effectively to put an appellant "out of court" the order will be treated as final. Similarly, an order is "final" if it precludes a party from presenting the merits of his claim to the lower court.

³ Appellant made a similar argument in his response to this Court's July 8, 2013 *per curiam* order directing Appellant to show cause why this appeal should not be dismissed as interlocutory. Appellant's Letter to Show Cause, 7/22/13, at 1 ¶¶ 2-3. This Court, without determining the issue, permitted the appeal to proceed to a panel where the finality issue could be revisited. *Per Curiam* Order, 7/25/13, at 1.

Id., quoting **Pugar v. Greco**, 394 A.2d 542, 544-545 (Pa. 1978) (some internal quotation marks and citations omitted).

Thus, this Court has held, “[w]here an order denying an IFP application does not put the litigant out of court, the order is interlocutory and not immediately appealable as of right.” **Goldstein, supra, Inc.**, at 1218 n. 2; **cf. Crosby Square Apartments, supra** at 738 (holding order denying IFP status was a final order where Appellant, defendant in a landlord tenant action, was “out of court” due to claimed inability to pay costs associated with appeal to the court of common pleas).

Instantly, Appellant does not contend that the trial court’s May 21, 2013 order has prevented him from proceeding with a defense of the underlying action.⁴ Rather, Appellant claims the trial court was obligated to provide him a hearing before denying him IFP status. Appellant’s Brief at 7-8. Additionally, Appellant contends the trial court’s reference in its May 21, 2013 order to “a fee for filing documents” is overly narrow. Appellant’s Brief at 7. Appellant notes that Rule 240 applies to excuse an indigent party from

⁴ On July 11, 2013, the trial court denied Appellant’s motion to stay proceedings pending appeal, noting “Pursuant to Pa.[R.A.P.]1701(b)(6), a court may proceed further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal.” Trial Court Order, 7/11/13, at 2-3 ¶ 11. On July 22, 2013 this Court entered a *per curiam* order denying Appellant’s motion to this Court to stay the proceedings below pending appeal. *Per Curiam* Order, 7/22/13, at 1. The certified record forwarded to this Court indicates that various pleadings and preliminary objections by both parties have been filed and addressed by the trial court both before and after Appellant filed his notice of appeal.

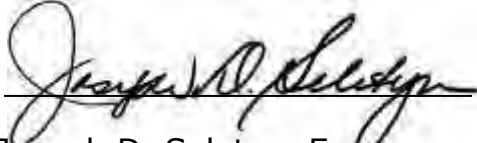
payment of “any cost or fee imposed or authorized by Act of Assembly or general rule which is payable to any court or prothonotary or any public officer or employee.” *Id.*, quoting Pa.R.C.P. 240(f). We conclude Appellant misconstrues the trial court’s order.

In its order, the trial court did not attempt to limit the scope of fees or costs that are covered by Rule 240. Rather, the trial court’s May 21, 2013 order, while dismissing Appellant’s motion, did so without prejudice and without a determination of Appellant’s indigence. The trial court simply noted that at the initial stages of the instant case, Appellant, as defendant, did not face any fees or costs that would prevent him from proceeding with defense of the action irrespective of his state of indigence. Accordingly, the trial court deemed Appellant’s request premature and the issue of his indigence moot. The trial court did not rule that Appellant could not proceed IFP. The trial court left open Appellant’s ability to file a renewed petition at any later stage of the proceedings when such fees or costs might present an impediment to his defense of the action.

In these circumstances, we conclude the holding in *Grant* does not apply, because Appellant is not “out of court” or unable to proceed with defending the instant litigation. Accordingly, the trial court’s order is interlocutory and not appealable. We therefore quash the appeal as we are without jurisdiction to entertain it. *See Goldstein, supra.*

Appeal quashed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/7/2014