

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

City of Philadelphia	:	
	:	
v.	:	No. 2028 C.D. 2013
	:	Submitted: October 6, 2014
New Life Evangelistic Church	:	
c/o Bishop William L. Jackson,	:	
Appellant	:	

**BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE P. KEVIN BROBSON, Judge**

OPINION BY JUDGE BROBSON FILED: April 24, 2015

Appellant New Life Evangelistic Church c/o Bishop William L. Jackson (New Life Church) appeals from an order of the Court of Common Pleas of Philadelphia County (trial court). The trial court granted a permanent injunction in favor of the City of Philadelphia (City). The injunction, *inter alia*, authorized the City to demolish property New Life Church owns, consisting of buildings that formerly were used as a parochial church and school.

In this appeal, the primary question New Life Church raises is whether the procedures before the trial court violated the due process rights of New Life Church. The City, however, asserts that New Life Church has waived all the issues in this appeal by failing to file post-trial motions under Pa. R.C.P. No. 227.1. Because we agree with the City’s waiver argument, we affirm the trial court’s order.

On October 1, 2013, the City filed a complaint in equity (the Complaint), asserting that New Life Church was the owner of property located at

2826 through 2846 N. 9th Street in the City and formerly owned by the Archdiocese of Philadelphia, consisting, *inter alia*, of a church and school building. The City averred that it had sent numerous notices of violations under the Philadelphia Property Maintenance Code (PMC), to which New Life Church never responded. The most recent notices of violations indicated that the church building was in imminent danger of collapse and provided New Life Church with the option of making necessary repairs or demolishing the structures within a particular period of time. The City filed the Complaint after New Life Church again failed to respond to the notices. In the Complaint, the City sought an injunction to authorize the City (1) to demolish the structures, (2) to obtain liens against the property, (3) to recover administrative costs and fines, and (4) other relief as deemed appropriate. The City contemporaneously filed petitions seeking a temporary restraining order and a preliminary injunction, through which the City also sought initial relief authorizing the demolition of the structures.

The trial court scheduled an emergency hearing for October 3, 2013, to address the City's petitions. Also, on October 2, 2013, the City filed with the trial court a petition for alternative service. The City appeared for the October 3, 2013 hearing, but no one appeared on behalf of New Life Church. Counsel for the City indicated that the City made several attempts to serve New Life Church through its apparent President, Bishop William Jackson (Jackson). Counsel for the City stated that she believed that Jackson was avoiding service but also believed that he had received a copy of the Complaint. She noted that the day before the hearing, October 2, 2013, the City had filed the above-mentioned petition for alternative service. After the City's attorney informed the trial court of

the efforts the City made to serve Jackson, the trial court proceeded to consider the City's petition.

The trial court issued an order from the bench, authorizing the alternative service the City requested.¹ The trial court concluded that Jackson was seeking to avoid service of process and that the City had properly served Jackson. With regard to the merits of the City's request, the trial court granted the City's request for preliminary injunctive relief. By written order dated October 3, 2013, captioned "Preliminary Injunction," the trial court determined that the church structure presented a danger to the public and authorized the City to demolish the church and school building. The trial court also directed the City to take certain actions to serve Jackson and provide proof of such service. According to the docket, a sheriff/process server filed an affidavit of service on October 4, 2013, indicating that the trial court's October 3, 2013 order was served by posting a copy of the order on numerous locations, including Jackson's residence and various windows and doors of the building premises. (Reproduced Record (R.R.) at 262a-79a.)

On October 8, 2013, New Life Church c/o Jackson filed a motion for reconsideration of the trial court's October 3, 2013 order. New Life Church challenged the entry of the October 3, 2013 order based upon the contention that the City failed to serve New Life Church properly with the City's Complaint. On October 9, 2013, the City filed a "motion for permanent injunction—emergency."

¹ The trial court's docket indicates that the trial court issued a written order deeming the City's motion for alternative service as moot, apparently based upon the trial court's determination to permit alternative service during the October 3, 2013 hearing. Although this order appears to be dated October 3, 2013, the order has a docketing date of October 7, 2013.

The trial court issued rules to show cause relating to both New Life Church's reconsideration request and the City's motion for permanent injunctive relief. By order dated October 9, 2013, the trial court set October 15, 2013 as the date for hearing regarding the motions.

Jackson appeared *pro se* before the trial court for the October 15, 2013 hearing. During that hearing, Jackson stated that he was seeking reconsideration because he "wasn't notified of the time to come to the last hearing." (R.R. at 308a.) Counsel for the City,² in response to a question from the trial court, stated that the e-mail the City sent to Jackson on October 3, 2013 provided the correct time and date of the hearing. (R.R. at 310a.) Jackson, however, took issue with the manner in which the City's counsel provided that notice, observing that he expected the City's counsel to provide him with notice through the same method she used before when she contacted him—*i.e.*, text message or letter. (*Id.*) When asked by the trial court if it was his testimony that he had no notice of the hearing, he responded "[n]o proper notice." (R.R. at 319a.) The trial court denied the petition for reconsideration. (R.R. at 320a.)

During the course of the October 15, 2013 hearing, the trial court, in discussing New Life Church's reconsideration request regarding the preliminary injunction hearing, noted that New Life Church had or should have "the opportunity and the right to be present, to be heard, to confront." (R.R. at 311a.) Thereafter, when the trial court began its discussion of the merits of the matter, counsel for the City indicated that the City wanted "to incorporate by reference the testimony" that the trial court considered during the October 3, 2013 hearing.

² A different attorney represented the City during the October 15, 2013 hearing.

(R.R. at 320a-21a.) The trial court asked whether Jackson had “anything to offer, any expert witnesses, any witnesses, *anything to refute or counter anything that the Court heard that the building is in eminent [sic] danger of falling?*” (R.R. at 323a-24a (emphasis added).) Jackson responded that they “bought that church in need of repairs in 1997 [S]ince this process began, we found a steeple company that is willing to help us and I have entered an agreement with them.” (*Id.*) New Life Church ultimately offered to the trial court a copy of an agreement Jackson had entered with a contractor for the purpose of repairing the church building’s steeple.

By order dated October 15, 2013, the trial court denied reconsideration of the October 3, 2013 order and granted the City’s request for permanent injunctive relief. In so doing, the trial court held that the only basis upon which New Life Church sought reconsideration was the allegedly improper notification to New Life Church of the courtroom location and time of the hearing, and that Jackson “received written notice of the October 3, 2013 hearing and was properly served with the Petition for . . . Preliminary Injunction, and the Complaint in Civil Action.” (R.R. at 336a.)

On October 25, 2013, New Life Church filed a second motion for reconsideration, seeking reconsideration of the October 15, 2013 order granting the City’s request for a permanent injunction. In that motion, New Life Church asserted the following:

1. Our church after having received preliminary injunction, and days later an emergency hearing and immediately following an issue of a permanent injunction was not given access and proper time for discovery to gather and offer additional professional opinions to help our case.

2. Our church would like to have the right to maintain ownership of all of our belongings and property in the church.
3. Our church would like to have the right to the relics and antique treasures in the church.

(R.R. at 340a.) On November 4, 2013, the trial court denied the request for reconsideration, based upon its conclusion that New Life Church had not raised any issues appropriate for reconsideration—*i.e.*—ones arising from a change in the law, new evidence, or a need to address a clear error of law or fact or to prevent manifest injustice. (R.R. at 346a.) In other words, the trial court apparently perceived these issues as ones that New Life Church should have raised during the proceeding on October 15, 2013.

On November 4, 2013, approximately twenty days after the trial court entered its order, New Life Church appealed to this Court, and the trial court directed New Life Church to file a concise statement of errors complained of on appeal. In its concise statement, New Life Church raised fourteen instances of alleged error, including challenges to the City's service of process preceding the preliminary injunction hearing and the trial court's decision to proceed with the preliminary injunction hearing without the participation of New Life Church. (R.R. at 349a.) New Life Church asserted that the proceedings in the preliminary injunction hearing violated its due process rights. Additionally, New Life Church alleged that the trial court erred in concluding that the church and school building presented an imminent danger and by imposing a lien against New Life Church when New Life Church did not have sufficient time to exercise its right to defend itself in the matter. (*Id.*)

The trial court issued an opinion in accordance with Pa. R.A.P. 1925(a), rejecting New Life Church's arguments. With regard to the

claims of New Life Church concerning service, the trial court determined that the City had made several attempts to serve New Life Church. (Trial Court Opin. at 11-12.) The trial court found that Jackson lacked credibility and determined that Jackson had knowingly sought to avoid service. (*Id.* at 12.) With regard to the notice provided to Jackson concerning the time and location of the October 3, 2013 hearing, the trial court similarly determined that counsel for the City had provided written notice to Jackson via email and that Jackson had received the notice. (*Id.*) Additionally, the trial court concluded that, even if service of process and notice of the October 3, 2013 hearing were deficient, New Life Church had not been prejudiced by such deficiencies, based upon its opportunity to be heard at the October 15, 2013 hearing, during which the City indicated that at least one of its witnesses was available for cross-examination, and New Life Church had the opportunity to contest service of process and the merits of the City's Complaint. (*Id.* at 13.) On the merits, the trial court acknowledged that Jackson presented an agreement between New Life Church and a steeple repair company under the terms of which New Life Church would have the steeple repaired. The trial court deemed this agreement insufficient, based upon the imminent danger it found to exist and the fact that New Life Church failed to present any evidence indicating that it had the financial means to proceed to remediate the dangerous condition before irreparable harm might occur. (*Id.* at 14.)

On appeal to this Court, New Life Church asserts that (1) the trial court erred in issuing a preliminary and permanent injunction, alleging that the City and/or the trial court (a) failed to provide notice, which, New Life Church contends, violated its due process rights, and (b) lacked jurisdiction over New Life Church, based upon the alleged failure of the City to serve New Life Church with

the Complaint before the October 3, 2013 hearing; (2) the October 15, 2013 hearing did not provide New Life Church with adequate due process or cure issues regarding the October 3, 2013 hearing; and (3) the trial court erred in concluding that sufficient evidence of record supported the trial court's order authorizing the demolition of the school building. The City, on the other hand, contends that any errors that may have occurred with regard to the preliminary injunction hearing, such as service, notice, and hearing were essentially harmless based upon the process afforded before and during the October 15, 2013 hearing on the permanent injunction request. Additionally, the City contends that the only order from which New Life Church appealed was the trial court's October 15, 2013 order and that New Life Church waived consideration of all of the issues it has raised, because it failed to file post-trial motions following the trial court's entry of the October 15, 2013 order.

First, we will address the City's argument regarding waiver. The City argues that New Life Church failed to file post-trial motions and, therefore, has waived all of the issues in this appeal. "Only issues which a party specifically raises in its post-trial motions are preserved and will be considered on appeal." *Burrell Educ. Ass'n v. Burrell Sch. Dist.*, 674 A.2d 348, 350 (Pa. Cmwlth. 1996); Pa. R.C.P. No. 227.1.

In *Chalkey v. Roush*, 805 A.2d 491 (Pa. 2002), our Supreme Court held that the post-trial motion requirements set forth in Pa. R.C.P. No. 227.1 are mandatory in both law and equity matters. *Chalkey*, 805 A.2d at 496. The Supreme Court held that "there is no excuse for a party's failure to file post-trial motions from a trial court's order following an equity trial." *Id.* "Under Rule 227.1, a party must file post-trial motions at the conclusion of a trial in *any* type of

action in order to preserve claims that the party wishes to raise on appeal. In other words, a trial court's order at the conclusion of a trial, whether the action is one at law or in equity, simply cannot become final for purposes of filing an appeal until the court decides any timely post-trial motions." *Id.* at 496 (emphasis in original).

This matter, however, involves a proceeding before the trial court whereby the City, following an *ex parte* hearing on its request for a *preliminary injunction*, sought a permanent injunction. Thus, while acknowledging that injunction hearings generally arise in the context of a proceeding that encompasses the collection and evaluation of evidence, we believe it is important to examine the nature of a permanent injunction *hearing* and the one that was conducted in this case, in particular, in light of the language of Pa. R.C.P. No. 227.1, which requires *post-trial* motions.

We begin with the language of Pa. R.C.P. No. 227.1, which provides in pertinent part:

Post-Trial Relief

(a) After trial and upon the written Motion for Post-Trial Relief filed by any party, the court may

- (1) order a new trial as to all or any of the issues; or
- (2) direct the entry of judgment in favor of any party; or
- (3) remove a nonsuit; or
- (4) affirm, modify or change the decision; or
- (5) Enter any other appropriate order.

.....

(c) Post-trial motions shall be filed within ten days after

- (1) Verdict, discharge of the jury . . . or nonsuit

....

Pa. R.C.P. No. 227.1 does not define the term “trial.” We find guidance in considering the question of whether the order from which New Life Church appealed invokes the requirement of Pa. R.C.P. No. 227.1 to file post-trial motions in a recent unanimous decision of the Supreme Court, *Newman Development Group of Pottstown v. Genuardi’s Family Markets, Inc.*, 52 A.3d 1233 (Pa. 2012). In *Newman*, our Supreme Court considered a challenge to the Superior Court’s conclusion that a party had waived issues under Pa. R.C.P. No. 227.1 by failing to file post-trial motions. That case involved an appeal from a decision of a trial court. On remand, the Superior Court instructed the trial court to recalculate damages following resolution of the liability issue in a commercial lease dispute. Part of the Supreme Court’s analysis focused on the question of whether the proceeding the trial court conducted on remand constituted a “trial” for the purposes of Pa. R.C.P. No. 227.1.

The appellants in that matter advanced arguments that the remand proceeding *in that case* lacked the hallmarks of a traditional trial—the submission of additional evidence. The Supreme Court opined that “the plain language of Rule 227.1 does not address this circumstance, much less does it make clear that post-trial motions are required.” *Newman*, 52 A.3d at 1248. Although the Supreme Court was analyzing a matter following remand, in contrast to this matter, the Supreme Court observed that

the proper interpretation of the Rule is that it does not purport to address the remand scenario, and thus a party cannot be faulted—upon pain of waiver—for failing to file post-trial motions to a proceeding which amounts to less than an actual trial. A remand proceeding such as the one here, that relies on an existing record, is not a trial—even if the trial court draws different conclusions

from that record to comport with an appellate court's directive. Thus, the remand proceeding in this instance, where the trial court merely reached a different damage calculation based upon facts and contract terms already in the record, was not a "trial," and Rule 227.1 does not apply."

Id. at 1251. Thus, the Supreme Court, while recognizing that not all court proceedings constitute "trials" for the purpose of Pa. R.C.P. No. 227.1, nevertheless signaled that a hearing that bears the hallmarks of a trial by requiring or admitting, or as in this case, *offering a party the opportunity to present additional evidence*, does constitute a "trial" for the purposes of Pa. R.C.P. No. 227.1.

In this matter, the trial court conducted a hearing on the City's petition for a permanent injunction. Although the City requested the trial court to accept the evidence submitted at the preliminary injunction hearing, the trial court made fairly clear that it understood that Jackson had not yet had an opportunity to examine the City's witnesses. As indicated above, the trial court offered Jackson the opportunity to submit additional evidence by specifically asking Jackson if he had any information, *i.e.*, evidence, in response to the City's case, but Jackson did not offer any except for the contract for steeple repair. Certainly Jackson did not represent the interests of New Life Church in an able way, but we cannot conclude here that he did not have an opportunity to examine one of the City's witnesses or to offer his own evidence. That fact does not alter the essential fact that Jackson had the opportunity for an evidence-based proceeding, and, therefore, we conclude that the hearing that the trial court conducted constituted a "trial" for the purposes of Pa. R.C.P. No. 227.1.

Consequently, when New Life Church failed to file post-trial motions within ten days following the trial court's order, the issues it sought to raise in its concise statement of errors complained of on appeal were waived.

Accordingly, we affirm the trial court's October 15, 2013 order.

P. KEVIN BROBSON, Judge

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	:	
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New Life Evangelistic Church	:	
c/o Bishop William L. Jackson,	:	
Appellant	:	

ORDER

AND NOW, this 24th day of April, 2015, the October 15, 2013 order of the Court of Common Pleas of Philadelphia County is AFFIRMED.

P. KEVIN BROBSON, Judge