

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	
	:	
Helena Csorba,	:	No. 404 C.D. 2014
Appellant	:	Submitted: February 20, 2015

OPINION NOT REPORTED

MEMORANDUM OPINION  
PER CURIAM

FILED: March 19, 2015

Helena Csorba (Csorba) appeals from an order of the Court of Common Pleas of Allegheny County, Criminal Division (trial court), affirming her conviction for two violations of the Etna Borough Ordinance and entering judgment against her when she failed to appear at the summary-appeal hearing. For the reasons that follow, we affirm.

**I.**

In July 2013, Csorba was cited by the Borough of Etna (Borough) for excessive overgrowth and trash on her property in violation of Sections 1289 and 1298 of the Borough's Ordinance, and for keeping chickens on her property in violation of Section 1298 of the Borough's Ordinance. A hearing on Csorba's failure to correct the violations was held before the district magistrate but Csorba failed to attend and the district magistrate entered judgment against her.

Csorba then filed a summary appeal with the trial court and a hearing was held on Tuesday, January 28, 2014. When Csorba failed to appear, the trial judge inquired as to the reason for her absence and the clerk advised, “She called on Friday and Monday. She wanted a postponement. She would not call the [B]orough for postponement. We called the Borough and [it] refused to give her a postponement yesterday. She’s not coming in.” (Trial Court Transcript 1/28/14 at 2.) In follow up, the Borough Solicitor explained:

I received a phone call from [the Clerk] right here about 3:00 yesterday afternoon that Mrs. Csorba had called and said it was too cold for her to come in. And she informed me that she told Mrs. Csorba she should call the [B]orough people and she did not. So I’m not consenting to any continuance.

*(Id.)*

In Csorba’s absence, the trial court entered judgment against her pursuant to Pennsylvania Rule of Criminal Procedure 462(d)<sup>1</sup> and fined her \$1,600.00 plus all applicable costs. This appeal followed.

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<sup>1</sup> Pennsylvania Rule of Criminal Procedure 462(d), governing appeals of convictions in summary proceedings, provides in pertinent part, “If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.” Pa. R. Crim. P. 462(d).

## **II.**

### **A.**

On appeal, Csorba contends that the trial court erred in entering judgment against her and dismissing her appeal because she sought a continuance of the proceedings and was unable to attend on the scheduled date due to harsh weather conditions and the fact that she is disabled. Specifically, she avers that four days before the hearing, she telephoned the trial court, seeking a continuance because of “harsh winter and treacherous road conditions,” “days of warnings of the dangerous conditions because of the excessive snow,” and “high winds contributing to the already below zero temperatures, yielding minus 30-degree temperatures with the wind chill factor.” (Am. Br. at 7–8.) In support of her argument, Csorba has attached to her brief an electronic “weather history” printout for Pittsburgh regarding conditions on January 28, 2014, and a record purporting to document the calls she placed on January 24 and 27, 2014.

Additionally, Csorba argues that the trial court improperly instructed her to contact the citation officer, who she refused to call because of his aggressive nature. She further states that the courthouse advised her that if court were cancelled due to inclement weather, the cancellation would be advertised through public channels.

### **B.**

Pennsylvania Rule of Criminal Procedure 106(a) provides that a court in a summary case “may, in the interests of justice, grant a continuance, on its own motion, or on the motion of either party.” Pa. R. Crim. P. 106(a). It is well settled

that the grant or denial of a continuance is within the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. *Commonwealth v. Randolph*, 873 A.2d 1277, 1281 (Pa. 2005), *cert. denied*, 547 U.S. 1058, 126 S. Ct. 1659, 164 L. Ed. 2d 402 (2006).

Putting aside the fact that Csorba's averments on appeal are not contained in an affidavit,<sup>2</sup> they are insufficient to establish that the trial court abused its discretion in denying her request for a continuance, even if they are deemed true. Not only was her request not of record, but Csorba also failed to contact the Borough prior to the hearing to notify it of her request for a continuance, despite the court's express instruction to do so. Moreover, Csorba did not know, four days in advance of the hearing, whether the specific conditions on the day of the hearing would preclude her attendance, and she disregarded the fact that the local government would make an independent determination on the day in question regarding whether the conditions justified closure. Instead, Csorba decided not to appear, despite the fact that the trial court did not grant her continuance, and she advised the courthouse accordingly the day before the hearing. As such, the record does not establish that Csorba's failure to appear was due to "good cause."

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<sup>2</sup> An appellant may be entitled to a new summary-appeal trial where her "good cause" basis for requesting a continuance is not part of the record before the trial court but she has presented an affidavit on appeal which, if believed, presents a *prima facie* demonstration that cause existed for the absence. *See Commonwealth v. Dixon*, 66 A.3d 794, 797 (Pa. Super. 2013). However, unverified statements in an appellant's brief are insufficient to establish a *prima facie* case because those statements are not part of the record. *See Erie Indemnity Co. v. Coal Operators Casualty Co.*, 272 A.2d 465, 466–67 (Pa. 1971) ("[B]riefs are not part of the record, and the court may not consider facts not established by the record." (internal footnotes omitted)).

Accordingly, because the trial court did not abuse its discretion in denying Csorba a continuance, we affirm the trial court's order entering judgment against Csorba and dismissing her appeal.

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**PER CURIAM**

**ORDER**

AND NOW, this 19<sup>th</sup> day of March, 2015, the order of the Court of Common Pleas of Allegheny County, Criminal Division, dated January 28, 2014, is affirmed.