

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

GLTM PROPERTIES, LLC,

Appellee

v.

KAISER RIZVI, SARMIN RIZVI AND
FRAGRANCE MANIA, INC.,

Appellants

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1069 EDA 2013

Appeal from the Order Dated March 7, 2013
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 2012-29570

BEFORE: BOWES, OTT, and JENKINS, JJ.

MEMORANDUM BY BOWES, J.:

FILED APRIL 23, 2014

Kaiser Rizvi¹ has filed a *pro se* brief in this appeal from the March 7, 2013 order denying a motion for allowance to file an appeal *nunc pro tunc* from judgment entered by a magisterial district justice. The counseled

¹ In his brief, Kaiser Rizvi purports to represent the interests of his wife Sarmin Rizvi and his corporation, Fragrance Mania, Inc. However, he is not a licensed attorney and cannot pursue this appeal on their behalf. Non-lawyers may not represent parties before the courts. ***Kohlman v. Western Pennsylvania Hospital***, 652 A.2d 849 (Pa.Super. 1994); ***Commonwealth v. Carroll***, 517 A.2d 980, 981 (Pa.Super. 1986); ***see also Osei-Afriyie by Osei-Afriyie v. Medical College of Pennsylvania***, 937 F.2d 876 (3rd Cir. 1991) (father, who was not a licensed attorney, could not represent his children for purposes of pursuing malpractice action). Since Sarmin Rizvi has not filed a *pro se* or counseled brief, and since the corporation has not filed a counseled brief, the appeal is dismissed as to those Appellants. We will refer in the writing to Kaiser Rizvi as the sole Appellant.

motion was filed on behalf of Appellants, Kaiser and Sarmin Rizvi and Fragrance Mania, Inc. We affirm.

On November 20, 2012, Appellee GLTM Properties, LLC, instituted this action by filing a notice of entry of judgment against Kaiser and Sarmin Rizvi and Fragrance Mania, Inc. ("Fragrance"). Judgment was entered based upon an award by a magisterial district justice of \$5,272.52 on a non-residential lease in favor of Appellee. The record establishes that the Rizvis, as corporate officers of Fragrance, executed a lease between Appellee, as landlord, and Fragrance, as tenant. The lease contained a personal guaranty that provided, "KAISER RIZVI and SARMIN RIZVI represent that they are corporate officers and shareholders of Tenant, and that as an inducement to Landlord affording Tenant this Lease Agreement, they personally guaranty all obligations of Tenant." Plaintiff's Response to Defendants' Motion to Allow Appeal of the Judgment Entered on July 25, 2012, as a *Nunc Pro Tunc* Appeal at Exhibit A (Lease Agreement, 11/12/10), at § 16.17.

The judgment of the magisterial district justice was entered separately against each named defendant in this lawsuit. Notice of the judgment was sent on July 25, 2012, and that notice indicated, "ANY PARTY AGGRIEVED BY A JUDGMENT INVOLVING A NONRESIDENTIAL LEASE MAY APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF COURTS OF THE COURT OF COMMON PLEAS, CIVIL DIVISION." Notice, 7/25/12, at 1.

On December 24, 2012, the defendants filed a counseled motion for allowance of a *nunc pro tunc* appeal from the July 25, 2012 judgment entered by the magisterial district. The court conducted a hearing on the motion. Appellant, who was represented by Philip J. Berg, Esquire, at that time, was the sole witness at the hearing. Appellant admitted that Appellee was not paid rent due under the lease arrangement. Appellant also indicated that he appeared before the magistrate and that he was present when Appellee prevailed against all three defendants. N.T. Hearing, 3/7/13, at 8. Appellant maintained that judgment was improperly entered against him and his wife individually in that they executed the lease agreement solely in their capacity as officers of the corporation. On cross-examination, Appellant admitted that he read the lease before executing it and that it contained the personal guarantee outlined above.

Appellant also represented that, after the magistrate's decision, he went to the Norristown courthouse intending to file an appeal and was told that, in order to do so, he had "to pay the court fee plus \$5,268." *Id.* at 9. Since he did not have the money, Appellant did not file the appeal. Appellant admitted that he consulted with an attorney in September 2012, and was told at that time that he only had to pay \$250 plus a court fee in order to appeal from a magistrate's judgment. *Id.* at 22.

On March 7, 2013, the trial court denied the motion for allowance to appeal *nunc pro tunc*. Counsel filed the notice of appeal from the March 7,

2013 order, but Appellant has filed a *pro se* brief. He presents these issues for our review:

1. Whether a judgment entered incorrectly/illegally against individuals and a corporation should be open as corporate officers only signed lease?

2. Whether an unrepresentative individual not learned in the law should be allowed to open judgment incorrectly/illegally that was entered against corporation and individuals when judgment should have been only against corporation?

3. Whether any delay in filing appeal should be set aside when unrepresented parties were misled by the need for paying significant amount when appealing case; whereas when counsel was hired, filed appeal based upon an incorrect/illegal judgment that was entered and there was no need to post high sum?

Appellant's brief at 4.

Before reaching the merits of the appeal, which involve the first two contentions on appeal, we preliminarily must address the final one, which is whether Appellant was improperly denied the right to appeal *nunc pro tunc* from the judgment entered by the magisterial district justice. Whether to grant a request for allowance of an appeal *nunc pro tunc* is committed to the sound discretion of the trial court. ***Fischer v. UPMC Northwest***, 34 A.3d 115 (Pa.Super. 2011). Such an appeal will be granted if the delay in filing the appeal was "caused by extraordinary circumstances involving fraud or some breakdown in the court's operations through a default of its officers." ***Id.*** at 120 (citation omitted). A breakdown in the court's operation occurs where court personnel were negligent, operated improperly, or unintentionally misled a party. ***Id.*** Alternatively, an appeal *nunc pro tunc*

may be granted when the appeal was untimely filed due to “non-negligent circumstances related to appellant, appellant's counsel, or an agent of appellant's counsel.” ***Id.*** at 120 n.2 (citation omitted). Reinstatement of appellate rights will be reinstated under the latter scenario only if, *inter alia*, “the appellant filed the notice of appeal shortly after the expiration date.”

Id.

The present case involves both set of circumstances. Appellant did not timely institute an appeal from the magistrate’s judgment purportedly after he was given incorrect information by a clerk at the courthouse. However, he consulted an attorney in September 2012 and received the correct facts. Then, there was a second time lapse in that he did not file a petition to reinstatement his appeal from the magistrate’s judgment until December 24, 2012, two months after speaking with the lawyer.

Appellant claimed that he did not file a timely appeal from the magistrate’s judgment since he was told incorrectly by an individual in the courthouse that he had to pay more than \$5,000 to appeal. In this respect, the trial court specifically found that Appellant was not credible when he stated that someone at the courthouse falsely informed him that he had to pay the entire judgment in order to appeal. Trial Court Opinion, 6/4/13, at 3. It based this credibility determination on the fact that Appellant was unable to provide any specifics about the date of the conversation, its details, or with whom he spoke. It therefore concluded that Appellant had

failed to establish that a breakdown of the court's operations occasioned the delay in filing an appeal.

Additionally, there was a significant delay between the time when Appellant was given the correct information about the amount that he had to pay to appeal and when Appellant filed the petition seeking reinstatement of his appellate rights. In this respect, the trial court held that Appellant did not successfully establish that non-negligent circumstances caused that delay. It noted that "counsel was retained in this matter in September of 2012, yet the motion to appeal *nunc pro tunc* was filed December 24, 2012. Counsel offers no non-negligent reason for the delay in filing." ***Id.***

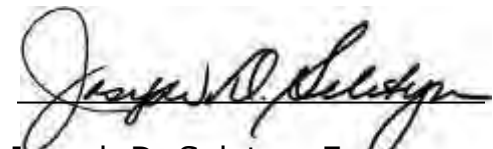
The trial court, which heard and observed Appellant at the hearing, found Appellant not credible when he said he was misinformed at the courthouse about the filing requirements for an appeal from the magisterial district justice. We must accept that determination, which is supported by the record. ***Ferko-Fox v. Fox***, 68 A.3d 917, 928 (Pa.Super. 2013) ("This Court must defer to the trial court's determinations regarding the credibility of witnesses at the hearing."). Hence, Appellant did not establish a breakdown in the court's operation. Additionally, Appellant neglects to offer a non-negligent reason for his failure to file an immediate request for reinstatement of his appellate rights in September 2012, when he consulted with a lawyer. Thus, the trial court did not abuse its discretion in refusing

Appellant's request to file an appeal *nunc pro tunc* from the magisterial district justice.

Finally, we observe that Appellant has failed to cite any legal authority whatsoever in his brief. Indeed, his argument speaks to the merits of the underlying judgment rather than the actual ruling that we must examine on appeal, which is the trial court's failure to allow him to file a late appeal. Hence, he has waived his arguments on appeal. ***In re Estate of Whitley***, 50 A.3d 203, 209 (Pa.Super. 2012) (citations omitted) ("The argument portion of an appellate brief must include a pertinent discussion of the particular point raised along with discussion and citation of pertinent authorities. This Court will not consider the merits of an argument which fails to cite relevant case or statutory authority. Failure to cite relevant legal authority constitutes waiver of the claim on appeal."). However, the failure to file a timely appeal precludes consideration of the merits.

Sarmin Rizvi and Fragrance Mania, Inc. are dismissed as Appellants due to their failure to file a brief. Order affirmed as to Kaiser Rizvi.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/23/2014