J.A27037/13

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

JERI E. STUMPF AND DEBORAH J. STUMPF,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellants	:	
v.	:	
THE SPA AND POOL PLACE/CUE BALLS, INC. AND STEPHEN E. CONNELLY,	:	
Appellees	:	No. 765 MDA 2013

Appeal from the Judgment Entered April 10, 2013
In the Court of Common Pleas of Lancaster County
Civil Division No(s).: CI-05-05099

BEFORE: BENDER, P.J., WECHT, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED JANUARY 07, 2014**

Appellants, Jeri E. Stumpf and Deborah J. Stumpf, take this counseled appeal from the judgment[1] entered in the Lancaster County Court of Common Pleas following a *sua sponte* directed verdict in favor of Appellees, The Spa and Pool Place/Cue Balls, Inc. and Stephen E. Connelly. Judgment was entered in favor of Appellees and against Appellants on the directed verdict. Appellants concede that no issues were preserved for appeal and

* Former Justice specially assigned to the Superior Court.

[1] Appellants purport to appeal from the order directing the verdict. We note "the entry of judgment [is] considered to be a prerequisite to the exercise of this Court's jurisdiction." ***Johnston the Florist, Inc. v. TEDCO Const. Corp***. 657 A.2d 511, 514 (Pa. Super. 1995). Therefore, we have amended the caption.

aver that the trial court correctly determined that their failure to have an expert witness available to testify, as a matter of law, required the entry of a directed verdict in Appellees' favor. Nonetheless, Appellants contend the trial court was required to protect them from their own procedural and technical errors while they were proceeding *pro se* before it. We affirm.

The trial court summarized the facts of this case as follows:

> Appellants, . . . proceeding *pro se*, filed on June 16, 2005, a "Petition for Review (in the nature of a Complaint in Equity)" seeking payment for the allegedly negligent opening of their pool by Appellee[s]. Specifically, Appellants claimed that Appellee[s] breached the contract when it negligently installed the pool ladder without bumpers, which caused the ladder to puncture the pool's liner, resulting in the loss of 2000 gallons of water per day. Appellant's complaint sought monetary damages in "the amount of $30,000, or whatever it costs to repair all damage to [Appellants'] pool and spa," plus damages for "pain and suffering and emotional distress."
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> The *pro se* parties appeared for the scheduled jury trial on April 3, 2013. Before beginning voir dire, [the trial court] discussed several procedural issues with the parties and explained the burden of proof required of Appellants. Following an offer of proof[2] by Appellants, a directed

[2] The trial court opined:

> Before beginning jury selection in the instant case, I asked Appellants for an offer of proof as to how they would establish the breach of contract and/or negligence by Appellee[s], that is, by failing to place the bumpers on the ladder, "[Appellees] caused damage to the pool such that it was leaking and required repair." I made it very clear that it was Appellants' burden to prove that the ladder was installed by Appellee[s] without bumpers.

> verdict was entered on the record in favor of Appellee[s] and against Appellants. By Order dated April 10, 2013, judgment was entered in favor of Appellee and against Appellants. . . .

Trial Ct. Op. at 1-2, 5-6 (citations omitted). Appellants filed a timely *pro se* appeal and court-ordered Pa.R.A.P. 1925(b) statement of errors complained of on appeal.[3] The trial court filed a responsive opinion.

Appellants raise the following issue for our review:

> Did the court, in violation of Due Process rights guaranteed under the Fifth Amendment, as held in ***Turner v. Rogers***, 564 U.S. ___, 131 S.Ct. 2507, 180 L.Ed. 452 (2011), deny [Appellants] readily available procedural safeguards to protect *pro se* litigants from procedural and technical

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> In their pretrial conference memorandum, Appellants identified Don Walker, the former General Manager of Fox Pool of Lancaster, Inc., as their witness who would establish liability. When making their offer of proof at trial, however, Appellants indicated that they had no live witness but rather just a letter from Fox Pool. Appellants were instructed that such evidence was inadmissible hearsay and that a Fox Pool representative would need to testify regarding the contents of the letter to allow for cross examination by Appellee[s].
>
> It was Appellee[s'] position that the bumpers came off some time after the ladder was installed. . . . Appellants thought it "**very unlikely** that kids did it. It's **more likely** that [the ladder] wasn't installed properly. . . . Appellants conceded they had no witness who could testify as to who caused the ladder to be in the pool without the bumpers.

Trial Ct. Op. at 9-11 (citations and footnotes omitted).

[3] Appellants' counsel, Lawrence M. Cotter, Esq., entered his appearance on May 22, 2013, and filed the brief in the instant case on June 26, 2013.

> errors not addressing the merits and thereby denying [Appellants] a fair and full opportunity to be heard[?]

Appellants' Brief at 1.

Appellants contend that the trial court did not err as a matter of law in *sua sponte* directing the verdict in favor of Appellees based upon the court's finding that they required a witness from Fox Pools to introduce the Fox Pools report into evidence.[4] ***Id.*** at 5. Appellants state: "But the issue of this

[4] We note that Appellants' averment, that the trial court did not err in *sua sponte* directing a verdict prior to trial in Appellees' favor, is inaccurate. The Pennsylvania Rule of Civil Procedure 226(b) provides: "At the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of **any party**." Pa.R.C.P. 226(b) (emphasis added). Instantly, the trial court violated Rule 226(b) because it entered a directed verdict *sua sponte*. ***See Mohan v Easton Radiology Assoc.***, 911 A.2d 505, 505 (Pa. 2006) (*per curiam*) (holding Superior Court erred in finding trial court's *sua sponte* entry of directed verdict was harmless error because its determination was premised on issue also raised *sua sponte* by trial court).

In the case *sub judice*, Appellants concede that no issues were preserved for appellate review. The Pennsylvania Supreme Court opined: "Issues not preserved for appellate review may not be considered by an appellate court, **even where the alleged error involves a basic or fundamental mistake**. Although the Superior Court may have been well-intentioned in correcting the trial court's error, **we cannot permit the Superior Court to raise issues *sua sponte*.**" ***Arthur v. Kuchar***, 682 A.2d 1250, 1254 (Pa. 1996) (emphasis added). Our Pennsylvania Supreme "Court has consistently held that an appellate court cannot reverse a trial court judgment on a basis that was not properly raised and preserved by the parties." ***Steiner v. Markel***, 968 A.2d 1253, 1256 (Pa. 2009). ***See also Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.***, 507 A.2d 1, 11 (Pa. 1986) (holding Superior court erred in *sua sponte* reversing directed verdict where no party raised issue on appeal). Finally, in ***Lattanze v. Silverstrini***, 448 A.2d 605, 607 n.7 (Pa. Super. 1982), we declined to address the issue of whether the trial court had the power to direct a verdict *sua sponte* because the appellant did not raise the issue on appeal.

case is not whether the trial court is correct in the application of law, because in all instances it was unquestionably correct. It is also not deniable that the *pro se* [Appellants] didn't preserve any issues for appeal." ***Id.*** Nonetheless, they argue the trial court "was required to have sufficient procedural safeguards to protect [Appellants] from their own *pro se* procedural and technical errors, including preserving issues for appeal . . . . ***Id.*** at 6.

Appellants cite ***Turner***, ***supra***, in support of their claims. We hold their reliance upon ***Turner*** is unavailing. In ***Turner***, the United States Supreme Court addressed the issue of "whether the Due Process Clause grants an indigent defendant . . . a right to state-appointed counsel at a civil contempt proceeding, which may lead to his incarceration." ***Turner***, 131 S.Ct. at 2515-16. As the trial court opined: "In the instant action, Appellants were neither indigent nor involved in a civil contempt proceeding nor facing a possible term of incarceration, so ***Turner*** is inapplicable." Trial Ct. Op. at 7. Additionally, the Sixth Amendment of the United States Constitution, which guarantees an accused in a criminal prosecution the assistance of counsel for his defense, "does not govern civil cases." ***Turner***, 131 S.Ct. at 2516.

Furthermore, this Court has held:

> [A] *pro se* litigant [ ] "'is not entitled to any particular advantage because [ ]he lacks legal training.' Further, 'any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.'"

Kovalev v. Sowell, 839 A.2d 359, 367 n.7 (Pa. Super. 2003). A *pro se* litigant must "comply with relevant rules of procedural and substantive law." ***Jones v. Rudenstein***, 585 A.2d 520, 522 (Pa. Super. 1991). This Court opined:

> [The a]ppellant apparently labors under the **false** assumption that by proceeding *pro se* he is absolved of all responsibility to comply with procedural rules, and that the appellee and/or the court had some affirmative duty to walk him through the procedural requirements, or to ignore the procedural requirements, in order to reach the merits of his claim. Such is not the case. . . .

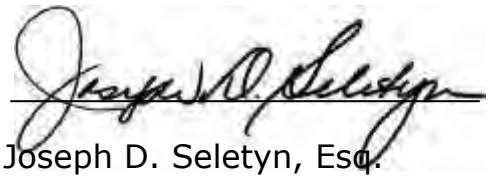
Id.

Appellants' claim that the trial court should have provided procedural safeguards to protect them from procedural and technical errors is without merit. ***See Kovalev***, 839 A.2d at 367 n.7; ***Jones***, 585 A.2d at 522.

Judgment affirmed.

Wecht, J. concurs in the result.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/7/2014