

2014 PA Super 50

GREATER ERIE INDUSTRIAL
DEVELOPMENT CORPORATION

Appellee

v.

PRESQUE ISLE DOWNS, INC.

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 77 WDA 2012

Appeal from the Order Entered December 14, 2011
In the Court of Common Pleas of Erie County
Civil Division at No.: 14436-2009

BEFORE: BENDER, P.J., FORD ELLIOTT, P.J.E., BOWES, J., GANTMAN, J.,
DONOHUE, J., ALLEN, J., LAZARUS, J., OTT, J., and WECHT, J.

CONCURRING OPINION BY GANTMAN, J. FILED: March 11, 2014

I concur in the result of the majority's disposition, which affirms the order granting summary judgment, on the basis of Appellant's untimely filed Rule 1925(b) statement and consequent waiver of all issues. I agree with the majority that the trial court's Rule 1925(b) order was clearly stated and plainly valid as duly filed with the requisite notice requirements of civil Rule 1925(b) orders.

I write separately to emphasize the majority's point that the date of mailing or service appearing on the document itself is not necessarily definitive for purposes of the timeliness of the Rule 1925(b) statement in the civil context. **See** Pa.R.A.P. 1925(b)(1) (stating: "*Filing and service.*—Appellant shall file of record the Statement and concurrently shall

serve the judge. Filing of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a) and shall be complete on mailing if appellant obtains a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified, in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c)". Nothing in the record indicates Appellant obtained a United States Postal Service Form 3817, a Certificate of Mailing, or other similar United States Postal Form sufficient to verify the date the statement was mailed to the court so that date could operate as the filing date. Absent any error in the Rule 1925(b) order or the trial court's docket, and with no available exception to waiver, Appellant's issues are waived. Further, I agree a remand at this time would be an unwarranted waste of more judicial resources, which this case has already unfairly consumed.¹ Accordingly, I concur in the result reached by the majority disposition.

¹ This case has been before the Court for quite some time, initially disposed of by a three-judge panel on the merits (affirmed), later granted *en banc* reargument, then briefed and argued before an *en banc* panel, only to succumb to a waiver analysis.