

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DONNELL GALES,

Appellee

v.

DEAN WILSON,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 3002 EDA 2013

Appeal from the Order entered September 25, 2013,
in the Court of Common Pleas of Philadelphia County,
Civil Division, at No(s): February Term 2012, No. 3333

BEFORE: SHOGAN, ALLEN, and OTT, JJ.

MEMORANDUM BY ALLEN, J.:

FILED APRIL 15, 2014

Dean Wilson, ("Appellant"), appeals from the trial court's order denying his post-trial motions following a non-jury verdict against Appellant and in favor of Donnell Gales ("Gales"). We affirm.

The trial court set forth the facts and posture of this case as follows:

[Appellant] appeals this court's September 25, 2013 Order which denied his Post Trial Motions. This matter arose on March 5, 2010, when [Gales] slipped and fell down the exterior front steps of 268 S. Alden Street, in Philadelphia (the "Premises"). [Appellant] was the owner of the Premises at all times material pertaining to this action. [Gales] filed a Complaint alleging that [Appellant] failed to maintain the steps, causing them to become cracked. The Complaint alleges that while [Gales] was leaving the Premises the steps crumbled, causing him to fall and become injured.

[Gales] entered Default Judgment in this matter on June 15, 2012. On June 27, 2012, [Appellant] filed a Motion to Vacate Default. While the Motion was pending, the matter proceeded to compulsory arbitration. [Appellant] failed to appear at the arbitration, and the Panel found in favor of [Gales]

and entered an award on October 25, 2012, in the amount of \$30,000.00. [Appellant] appealed the arbitration award. On January 18, 2013, the Honorable Leon Tucker granted the Motion to Vacate Default Judgment. Subsequently, [Appellant] filed a Motion to Remand to Arbitration, which was denied by this court on March 14, 2013.

The non-jury trial in this matter was conducted before this court on July 18, 2013, where the parties presented testimony and exhibits. Following the trial, this court found in favor of [Gales] and against [Appellant] in the amount of \$38,510.82. Following the decision, [Appellant] filed Post-Trial motions that raise various challenges to the court's finding.

Trial Court Opinion, 11/27/13, at 1-2 (unnumbered).

On July 29, 2013, Appellant filed post-trial motions. On August 30, 2013, Gales answered Appellant's post-trial motions. On September 18, 2013, Appellant replied to Gale's answer in opposition to Appellant's post-trial motions. On September 25, 2013, the trial court denied Appellant's post-trial motions and indicated, "final judgment is hereby entered accordingly." Order, 9/25/13. On October 8, 2013, Appellant filed a notice of appeal. Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant presents the following issues for our review:

- A. Whether the trial court erred or abused its discretion when it denied appellant's unopposed, pretrial motion to remand to arbitration program;
- B. Whether the trial court erred or abused its discretion when it held that [Gales] provided appellant notice of the condition of the exterior step sometime in February 2010;
- C. Whether the trial court erred or abused its discretion, as well as denied appellant his right of confrontation, when it admitted over appellant's objection the unauthenticated photographs, medical records, and bill presented by [Gales];

D. Whether the trial court erred or abused its discretion in failing to find [Gales] assumed the risk, or was comparatively negligent.

E. Whether the trial court erred or abused its discretion in failing to find [Gales] was contributorily negligent;

F. Whether the trial court erred or abused its discretion in awarding [Gales] \$38,510.82, when the stipulation agreement filed in this case limits monetary recovery to \$25,000.00.

Appellant's Brief at 3-4.

For ease of analysis, we begin by addressing Appellant's first and sixth issues, followed by a discussion of Appellant's second and fifth issues, and then Appellant's third and fourth issues.

We recognize:

Our appellate role in cases arising from non-jury trial verdicts is to determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of a jury. We consider the evidence in a light most favorable to the verdict winner. We will reverse the trial court only if its findings of fact are not supported by competent evidence in the record or if its findings are premised on an error of law. However, [where] the issue...concerns a question of law, our scope of review is plenary.

The trial court's conclusions of law on appeal originating from a non-jury trial are not binding on an appellate court because it is the appellate court's duty to determine if the trial court correctly applied the law to the facts of the case.

Wyatt, Inc. v. Citizens Bank of Pennsylvania, 976 A.2d 557, 564 (Pa. Super. 2009) ***citing Wilson v. Transp. Ins. Co.***, 889 A.2d 563, 568 (Pa. Super. 2005) (citations omitted).

Initially, we find that Appellant has waived his first and sixth issues. Appellant's first issue challenges the trial court's order denying Appellant's motion to remand the case to arbitration. Appellant's argument on this issue cites a single case, which concerns service of process. See Appellant's Brief at 8-10. Appellant has failed to cite any case law specifically supporting his argument that the trial court abused its discretion in not remanding this case for a second arbitration. *Id.* Appellant's failure to adequately support his argument effects waiver of this issue, and we decline to reach it. **See *J.C.B. v. Pennsylvania State Police***, 35 A.3d 792, 797 (Pa. Super. 2012) (appellant's issue waived for failure to fully develop it); **see also *Giant Food Stores, LLC v. THF Silver Spring Development, L.P.***, 959 A.2d 438, 444 (Pa. Super. 2008) ("Appellant's issue on appeal is waived because [Appellant] has failed to set forth in its appellate brief any citation to legal authority pertaining to [Appellant's] argument.").

Likewise, Appellant's sixth issue is waived for lack of substantiation. In his sixth issue, Appellant contends that the trial court "erred and abused its discretion in awarding [Gales] \$38,510.82, when the stipulation agreement [Gales] filed limits monetary recovery of \$25,000.00." Appellant's Brief at 15. In response to this claim, the trial court reasoned, "[t]here is no language limiting a verdict to \$25,000.00. The parties are free to ask this court to mold the verdict to coincide with their stipulation. They have not done so. Therefore, this argument must fail." Trial Court's Opinion, 11/27/13, at 6 (unnumbered). Within his brief, Appellant dedicates

a mere four (4) lines of argument to this issue. Appellant's Brief at 15. In his scant discussion, Appellant fails to cite any authority to support his claim of trial court error. *Id.* Appellant's failure to develop this argument results in waiver. ***See J.C.B., supra; see also Giant Food Stores, LLC, supra.***

Appellant's second and fifth issues concern the trial court's determinations regarding notice provided by Gales to Appellant, and Gales' contributory negligence. Appellant's second issue challenges the trial court's determination that Gales "provided appellant notice of the condition of the exterior step." Appellant's Brief at 10. Appellant contends that Gales "failed to put forth any verbal or written evidence to support his allegations that he notified appellant of the condition of the exterior steps, and that appellant didn't act within a reasonable time." *Id.* Appellant's contention is in stark contrast to the trial court's observations that "[t]he record supports that [Appellant] had received violations from the [City of Philadelphia] [D]epartment of License[s] and Inspection[s] regarding the steps, [and that] [Appellant] admitted to having received and understood the same." Trial Court Opinion, 11/27/13, at 5 (unnumbered). Appellant's fifth issue contends that the trial court "erred and abused its discretion in failing to find [Gales] assumed the risk, or that [Gales] was comparatively negligent." Appellant's Brief at 14. The trial court emphasized that it "did not find evidence sufficient to find that [Gales] was comparatively negligent." Trial Court Opinion, 11/27/13, at 6 (unnumbered).

Appellant's third and fourth issues challenge the trial court's admission, over Appellant's objections, of "unauthenticated photographs ... introduced by [Gales]" and "unauthenticated medical records and bill presented by [Gales]." Appellant's Brief at 12. In rebutting Appellant's claims of error, the trial court explained:

[Appellant] alleges that the photographs admitted as P4 were not authenticated because the person who took them was not there to testify. This court does not agree. The photos were not only dated, but there was testimony from both [Gales] and [Appellant] himself that the photos were a fair and accurate representation of the steps in question. [Appellant] also fails to cite any rule of evidence which requires the photographer be present to authenticate photographs. Further, with regards to the medical bills and records, [Gales] filed a stipulation pursuant to Pa.R.C.P. 1311.1, which permits him to present such records without the necessity of live testimony. Therefore, [Appellant's] arguments pertaining to evidence must fail.

Trial Court's Opinion, 11/27/13, at 4 (unnumbered).

We cannot meaningfully review Appellant's second, third, fourth, and fifth issues because the certified record does not contain a copy of the trial transcript. **See *Delcamp v. Delcamp***, 881 A.2d 853, 854 (Pa. Super. 2005) ("A transcript, containing a record of the proceedings in a matter, is vital to review...[and] [a]n effective review is not possible until a transcript is obtained[.]"). It is of no moment that Appellant is proceeding *pro se* in this appeal. **See *Wilkins v. Marsico***, 903 A.2d 1281, 1284-1285 (Pa. Super. 2006) (internal citations omitted) ("Although this Court is willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefit upon the appellant. To the contrary, any person choosing to

represent himself in a legal proceeding must, to a reasonable extent, assume that his lack of expertise and legal training will be his undoing.”).

An appellate court may not review that which an appellant, despite bearing the burden to so include, has failed to remit within the certified record. ***Commonwealth v. Powell***, 956 A.2d 406, 423 (Pa. 2008). In ***Powell***, our Supreme Court denied review of the admissibility of an autopsy photograph, and explained:

An appellate court is “limited to considering only those facts that have been duly certified in the record on appeal.” *Commonwealth v. Williams*, 552 Pa. 451, 715 A.2d 1101, 1103 (1998). The Rules of Appellate Procedure place the burden on the appellant to ensure that the record contains what is necessary to effectuate appellate review, and they provide procedures to address gaps or oversights in the compilation and transmission of the record. See generally Pa.R.A.P. Ch. 19.

Id. at 423 (Pa. 2008); ***compare Commonwealth v. Almodorar***, 20 A.3d 466, 467 (Pa. 2011) (appeal remanded for supplementation of the record where appellant requested inclusion of correct transcript and took steps to monitor such inclusion but an incorrect transcript from unrelated petitioner’s hearing was included in record by the clerk of courts and “the absence of the correct transcript from the certified record on appeal is attributable to an ‘extraordinary breakdown in the judicial process,’ and not to [appellant’s] actions”).

Here, while the record contains a transcript order form requesting the transcription of a June 10, 2013 trial, we note that the non-jury trial in this action *was conducted on July 18, 2013*. The record is devoid of a transcript

order form for the July 18, 2013 non-jury trial. Furthermore, the certified record does not contain any transcripts, nor does it contain any documentation indicating that Appellant paid for the transcription of the non-jury trial, monitored its delivery, or ensured its inclusion in the certified record. There is no evidence that the lack of transcript is a result of an “extraordinary breakdown in the judicial process.” ***Commonwealth v. Almodorar, supra.***

Appellant’s failure to include a copy of the trial transcript in the certified record defeats our meaningful review of Appellant’s second, third, fourth, and fifth issues; *i.e.*, whether the trial court erred in making the legal determinations that Appellant had notice of the defective steps and that Gales did not assume the risk or was negligent, or that the trial court erred in admitting the photographs of the steps and Gales’ medical records and bills.

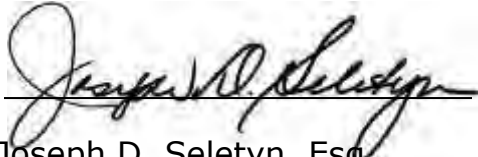
In sum, we find that Appellant waived his first and sixth issue due to lack of development and substantiation. We further find that Appellant’s second, third, fourth, and fifth issues are waived due to Appellant’s failure to include the trial transcript in the certified record, the absence of which impedes our meaningful review. We therefore affirm the trial court’s order denying Appellant’s post-trial motions following a non-jury trial verdict in favor of Gales and against Appellant.

Order affirmed.

Judge Shogan and Judge Ott concurs in the result.

J-S21026-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/15/2014