[J-116-2009]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, GREENSPAN, JJ.

DANIEL BERG AND SHERYL BERG, H/W,	:	No. 72 MAP 2009
	:	
	:	Appeal from the Order of the Superior
Appellants	:	Court entered on November 12, 2008,
	:	reconsideration denied January 26, 2009,
	:	at No. 12 MDA 2008 affirming the Order of
v.	:	the Court of Common Pleas of Berks
	:	County, Civil Division, dated December 7,
	:	2007 at No. 98-813
NATIONWIDE MUTUAL INSURANCE COMPANY, INC.,	:	
	:	
	:	
Appellee	:	ARGUED: December 2, 2009

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MADAME JUSTICE TODD **DECIDED: October 22, 2010**

In this appeal by allowance, we consider whether an appellant's failure to personally serve on a trial judge a court-ordered statement of errors complained of on appeal, in accordance with Pa.R.A.P. 1925, results in waiver of all issues, where the court's order itself does not comply with Rule 1925.[1] For the reasons that follow, we reverse and remand this case for further proceedings.

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[1] Also before this Court are a number of supplemental motions, all of which were filed after this Court granted review in the matter, including: (1) an "Application to Supplement the Record" (treated as Application for Leave to File Post-Submission Communication) filed by Nationwide on December 2, 2009; and Appellants' "Response" thereto (treated as Answer to Application to Supplement the Record); (2) an "Amended Application to Supplement the Record" (treated as Leave to Amend Application of 12-02-09) filed by Nationwide on February 11, 2010; Appellants' "Reply" thereto (treated as Answer); Appellants' (continued…)

The relevant procedural history is as follows: In 1998, Appellants, Daniel and Sheryl Berg, filed an action against their automobile insurer, Nationwide Mutual Insurance Company, Inc. ("Nationwide"), for breach of contract, negligence, fraud, civil conspiracy, and violations of the Unfair Trade Practices and Consumer Protection Law ("UTPCPL")[2] and the bad faith statute,[3] arising out of Nationwide's handling of a first-party collision claim made by Appellants. Following a bifurcated trial, on December 17, 2004, a jury returned a verdict in favor of Appellants and against Nationwide in the amount of $295 on Appellants' UTPCPL, fraud, and civil conspiracy claims. On July 10, 2007, however, following a bench trial, the distinguished trial judge, the Honorable Albert A. Stallone, who served as the President Judge of the Berks County Court of Common Pleas from 2000 to 2003, directed a verdict in Nationwide's favor on Appellants' claims for treble damages under the UTPCPL and for punitive damages and attorney fees under the bad faith statute.

On December 28, 2007, Appellants filed a timely appeal to the Superior Court. On January 3, 2008, Judge Stallone issued an order directing Appellant to file a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) (hereinafter the "1925(b) Statement"). Judge Stallone's order provided:

> AND NOW, this 3rd day of January, 2008, it is hereby ORDERED and DECREED that the Appellants shall file with the Court, and a copy with the trial judge, a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P.

(…continued)
"Supplemental Reply" thereto (treated as an Application to Amend Answer to Amended Application); and Nationwide's "Answer" to Appellants' "Supplemental Reply" (treated as Answer); and (3) a "Second Amended Application to Supplement the Record" (treated as Leave to Amend Application of 12-02-09) filed by Nationwide on March 2, 2010, and Appellants' "Objection and Reply" thereto (treated as Answer). As the averments contained in these filings are not directly relevant to our disposition, all of the applications are hereby denied.

[2] 73 P.S. § 201-2(4)(xxi).

[3] 42 Pa.C.S.A. § 8371.

> 1925(b) within twenty-one (21) days of the issuance of this Order.

Order, 1/3/08.[4]

On January 17, 2008, at approximately 4:14 p.m., counsel for Appellants arrived at the Berks County Prothonotary's Office to file Appellants' 1925(b) Statement. Appellants' Brief at 7.[5] Counsel had three copies of the 1925(b) Statement time-stamped: one for the prothonotary; one for counsel's file; and one for the trial judge. Id. Appellants' counsel avers that he did not know the precise location of Judge Stallone's chambers because Judge Stallone was on senior status and thus had no permanent assignment of a chambers or courtroom; accordingly, Appellants' counsel asked the prothonotary for the location of Judge Stallone's chambers so that he could personally deliver the judge's copy of the 1925(b) Statement. Id. The prothonotary declined to specify a location where Judge Stallone could be found, and, instead, advised Appellants' counsel that the judge wanted only the "original" statement; that the judge was expecting the 1925(b) Statement; and that the prothonotary would deliver within ten minutes the 1925(b) Statement to the judge, who, it seems, was secreted away in the bowels of the Berks County Courthouse. Id. According to Appellants' counsel, the prothonotary refused to accept more than one time-stamped copy of the 1925(b) Statement, continually insisting that the "Court always wants 'the original.'" Appellants' Petition to Modify the Record, 3/27/08, at 4.

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[4] As we will discuss further below, this order failed to include certain language mandated by Rule 1925(b)(3).

[5] All of Appellants' assertions regarding what occurred at the prothonotary's office on January 17, 2008 were contained, and sworn and attested to under penalty of perjury, in Appellants' Petition to Modify the Record, discussed infra. This Court has the utmost trust in and respect for the lawyers who appear before us, as they are officers of the court, and we accord them the benefit of accepting their factual representations unless such representations are contradicted by the record. Moreover, although there is much dispute regarding the issue of whether and/or when Judge Stallone actually received a copy of Appellants' 1925(b) Statement, there have been no allegations that Appellants' counsel's representation of the events of January 17, 2008 is inaccurate.

On March 14, 2008, Judge Stallone filed a Statement in Lieu of Memorandum Opinion in which he stated that he had not been served with Appellants' 1925(b) Statement, and concluded that, as a result, all of Appellants' issues on appeal were waived and their appeal should be quashed. On March 27, 2008, Appellants filed a Petition to Modify the Record, seeking to introduce into the record a recitation of the events that transpired in the prothonotary's office on January 17, 2008, and to establish that Judge Stallone received Appellants' 1925(b) Statement minutes after it had been filed. On April 11, 2008, Judge Stallone filed a Supplemental Statement in Lieu of Memorandum Opinion, denying Appellants' Petition to Modify the Record, and stating "it was the responsibility of the Bergs, and not the Prothonotary, to serve a copy of the Concise Statement upon the trial judge." Supplemental Statement in Lieu of Memorandum Opinion, 4/11/08, at 4. Judge Stallone maintained that "[t]o date, the trial judge has never been served and, therefore, never actually received a copy of the Concise Statement from [Appellants], as required by this Court's January 3, 2008 Order," id. at 3, and again concluded Appellants had waived their appellate issues by failing to "serve a copy of their Concise Statement upon the trial judge either in person or by mail." Id. at 4. Judge Stallone did not address Appellants' contentions in their Petition to Modify the Record that the prothonotary declined to provide a location at which he could be found and refused to accept more than the one original copy of Appellants' 1925(b) Statement.

On November 12, 2008, the Superior Court affirmed the trial court's order on the basis that, by failing to serve the trial judge with a copy of their 1925(b) Statement, Appellants waived all issues on appeal. Subsequently, Appellants sought allowance of appeal with this Court, and, on August 19, 2009, we granted allowance of appeal as to the following issues:

> 1. Whether the Superior Court erred in finding waiver of all appellate issues for failing to serve the trial judge with a Statement of Errors Complained Of, pursuant to Appellate

> Rule 1925(b), when the trial judge's order directing a Statement of Errors to be filed, failed to include language mandated by paragraphs (b)(3)(iii) and (iv) of Appellate Rule 1925(b)?
>
> 2. Whether the Superior Court erred in finding waiver of all appellate issues for failing to provide the trial judge with personal service of the timely-filed Statement of Errors, when [Appellants] complied with the actual wording of the trial judge['s] Rule 1925(b) Order, which directed [Appellants] to file the Statement of Errors "with the Court, and a copy with the trial judge," and when the trial judge in fact received the Statement of Errors contemporaneously with its filing?

Berg v. Nationwide, 126 MAL 2009 (Pa. filed August 19, 2009). Oral argument was held on December 2, 2009.[6]

We accepted allocatur in this case not to address factual disputes between the parties, but to consider the global legal issue regarding the impact of a trial court's arguably deficient Pa.R.A.P. 1925(a) order on the determination of an appellant's compliance and/or waiver of issues under Rule 1925(b). As that issue involves questions of law, our review is plenary. Commonwealth v. Hess, 570 Pa. 610, 614, 810 A.2d 1249, 1252 (2002). Rule 1925 was substantially amended in 2007; the version of Rule 1925 in effect at the time of the trial court's order provided, in relevant part:

> **(b) Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.**—If the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal ("Statement").
>
> (1) *Filing and service.*—Appellant shall file of record the Statement and concurrently shall serve the judge. Filing of

[6] Also on December 2, 2009, Nationwide filed its first application to supplement the record, triggering an onslaught of filings and correspondence among the parties and the trial judge. See supra note 1.

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 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).

(2) *Time for filing and service*.—The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing and service of the Statement. Upon application of the appellant and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental statement to be filed. In extraordinary circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement *nunc pro tunc*.

(3) *Contents of order*.—The judge's order directing the filing and service of a Statement shall specify:

(i) the number of days after the date of entry of the judge's order within which the appellant must file and serve the Statement;

(ii) that the Statement shall be filed of record;

(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);

(iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

(4) *Requirements; waiver*.

* * *

(vii) Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.

Pa.R.A.P. 1925(b) (emphasis added).[7]

[7] The effective date of the 2007 amendments was July 25, 2007. Rule 1925 was amended again on January 13, 2009, but those amendments pertained only to children's fast track (continued…)

Appellants offer several reasons why the Superior Court erred in holding their failure to effectuate personal service upon the trial judge of a copy of their 1925(b) Statement resulted in waiver of their claims on appeal. First, Appellants contend that they complied with "the express terms of the trial judge's abbreviated Rule 1925(b) Order," Appellants' Brief at 20, which instructed them to "file with the Court, and a copy with the trial judge," a 1925(b) Statement.

Second, Appellants aver they complied with Rule 1925(b)(1)'s requirement that the 1925(b) statement be served on the trial judge because Rule 1925(b)(1) provides that service shall be "in person," and Pa.R.A.P. 121(c) indicates that service may be made "by personal service, which includes delivery of the copy to a clerk or other responsible person at the office of the person served." Appellants maintain that, because the only address available for Judge Stallone was the address of the Berks County Courthouse at 633 Court Street, and because the prothonotary's office is a part of the courthouse, they properly served Judge Stallone by delivering a copy of their 1925(b) Statement to the prothonotary, "a responsible person." Appellants' Brief at 19.

Third, Appellants argue that, even if their compliance with Rule 1925(b) was "imperfect," Appellants' Brief at 15, they should not be subjected to the harsh penalty of waiver when the true purpose of Rule 1925(b) was satisfied because Judge Stallone obviously had received their 1925(b) statement, as evidenced by his attachment of the same as an exhibit to his Statement in Lieu of Memorandum Opinion, and because the trial court itself failed to comply with the requirements of Rule 1925(b). In this regard, Appellants point out that Judge Stallone's order (1) failed to specify that the 1925(b) statement must be *served* on the trial judge, as required under Rule 1925(b)(3)(iii); and (2)

(…continued)
appeals, see Pa.R.A.P. 1925(a)(2), and the manner of filing and service by mail, see Pa.R.A.P. 1925(b)(1), and are not relevant to the instant case.

failed to provide notice that any issues not included in the 1925(b) statement are waived, as required under Rule 1925(b)(3)(vii).[8]

Nationwide, conversely, argues that the trial court's failure to include in its Rule 1925(a) order the language required under subsections (b)(3)(iii) and (iv) does not excuse Appellants' failure to personally serve their 1925(b) Statement on the trial judge because: (1) Appellants were made fully aware of their obligation "to file a copy of [their Rule 1925(b) statement] with the trial court judge," Nationwide's Brief at 6; and (2) Appellants cannot claim they were prejudiced by the use of the word "file" instead of "serve," as their counsel's attempt to personally serve the trial judge with a copy of their 1925(b) Statement is evidence of their knowledge that personal service was required. Nationwide claims that Appellants relied, at their peril, on the prothonotary's assurances that their original 1925(b) Statement would be delivered to the trial judge, and notes that Appellants could have avoided any such reliance by serving the trial judge by mail. Nationwide urges this Court to apply the bright-line, automatic waiver rule set forth in Commonwealth v. Castillo, 585 Pa. 395, 888 A.2d 775 (2005). Upon review, we find merit to Appellants' first and third arguments, and, therefore, hold that the issues raised in their 1925(b) Statement are not waived. Accordingly, we do not reach Appellants' second argument regarding whether the prothonotary is a "responsible person" for purposes of personal service upon a trial judge.[9]

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[8] The Pennsylvania Bar Association and the Philadelphia Bar Association have filed a joint amicus brief in support of Appellants. Specifically, amici opine that the Superior Court's finding of waiver in the instant case is "inappropriately harsh," Amicus Brief at 2, where, *inter alia*, Appellants timely filed their 1925(b) statement in accordance with the trial court's order, and Appellants' failure to serve the trial judge personally, which resulted from the prothonotary's refusal to advise them of the trial judge's location, would not have impeded appellate review.

[9] While we do not find it necessary to rely on Appellants' second argument as a basis for disposition, we are compelled to address the position espoused by Justice Eakin in his Concurring Opinion, namely, that Appellants *served* the trial judge by *filing* a copy of their Rule 1925(b) statement with the prothonotary. Concurring Opinion at 2. Although Rule (continued…)

With regard to Appellants' first argument,[10] we note that, in determining whether an appellant has waived his issues on appeal based on non-compliance with Pa.R.A.P. 1925, it is the trial court's order that triggers an appellant's obligation under the rule, and, therefore, we look first to the language of that order.[11] In the instant case, the trial court's order instructed Appellants to "*file with the Court, and a copy with the trial judge*, a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) within twenty-one (21) days of the issuance of this order." Order, 1/3/08 (emphasis added). Despite any suggestion to the contrary, the express language of his order *did not* instruct Appellants to *serve* a copy of their 1925(b) Statement on the trial judge; rather, it directed Appellants to *file* copies of their 1925(b) Statement with the court and with the trial judge. Although the instruction to file a document with a trial judge is an oddity, we conclude Appellants substantially complied with this directive by presenting a copy to the prothonotary of Berks County.

(…continued)
1925(b)(1) provides that "[f]iling of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a)," Rule 121(a) states that papers required to be *filed* in an appellate court shall be filed with the prothonotary; Rule 121(a) does not suggest that *personal service* upon a trial judge may be accomplished in the same manner. Rather, it is Rule 121(c) that addresses the manner of service. To the extent Justice Eakin suggests that, in leaving a copy of their Rule 1925(b) statement with the prothonotary, Appellants complied with Rule 121(c), we strongly question whether the prothonotary constitutes the equivalent of a "clerk or other responsible person at the office of the person [i.e., judge] served." Indeed, if Rule 1925(b) contemplated that service upon a trial judge could be achieved by filing a copy of a Rule 1925(b) statement with the prothonotary, its requirement that an appellant "file of record the Statement and concurrently . . . serve the judge," Pa.R.A.P. 1925(b)(1), would be superfluous. Rather, Rule 1925(b) contemplates two distinct obligations: filing *and* service.

[10] Given our resolution of this issue, we need not address Nationwide's contention that the efforts Appellants' counsel took to personally serve the trial judge with Appellants' Rule 1925(b) Statement evidenced Appellants' awareness of their obligation under Pa.R.A.P. 1925(b). See supra note 5 and accompanying text.

[11] Indeed, absent an order by the trial court, an appellant has no obligation to file a Rule 1925(b) statement.

The equitable doctrine of substantial compliance gives a court latitude to overlook a procedural defect that does not prejudice a party's rights. In Womer v. Hilliker, 589 Pa. 256, 908 A.2d 269 (2006), we noted that "while we look for full compliance with the terms of our rules, we provide a limited exception under [Pa.R.C.P.] 126 to those who commit a misstep when attempting to do what any particular rule requires." Id. at 267-68, 908 A.2d at 276. We find that Appellants' counsel, by attempting to provide the prothonotary with two time-stamped copies of Appellants' 1925(b) Statement, with one to be served on the trial judge, substantially complied with the trial court's order to "file with the Court and a copy with the trial judge" their 1925(b) Statement. Appellants should not be penalized by the prothonotary's refusal to accept other than the original copy of the 1925(b) Statement from Appellants' counsel. [12]

Furthermore, pursuant to Rule 205.1 of the Rules of Civil Procedure, "[a]ny legal paper not requiring the signature of, or action by, a judge prior to filing may be delivered or mailed to the prothonotary, sheriff or other appropriate officer accompanied by the filing fee,

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[12] In his Dissenting Opinion, Justice Baer states that our decision in Commonwealth v. Lord, 553 Pa. 415, 719 A.2d 306 (1999), "placed the burden on litigants and their counsel to read and follow the requirements for perfecting an appeal properly under Rule 1925." Dissenting Opinion at 3. According to the dissent, if we do not penalize an appellant for failing to strictly adhere to the requirements of amended Rule1925(b), notwithstanding any failure by the trial court in adhering to the rule's requirements, we are "in danger of returning to where we started five years ago when Castillo and Schofield were decided: countenancing inconsistent application of Rule 1925's waiver provisions by the trial and intermediate appellate courts." Id. at 5. As the dissent itself recognizes, however, our decisions in Lord, supra, Castillo, supra, and Commonwealth v. Schofield, 585 Pa. 389, 888 A.2d 771 (2005), preceded the 2007 amendments to Rule 1925, which this Court "greatly expanded to clarify the requirements of trial judges in ordering, and litigants in submitting, Rule 1925(b) statements." Dissenting Opinion at 4. The amended rule requires that trial judges use specific language in a Rule 1925 order, in order to adequately advise an appellant of his obligations under the rule. To essentially ignore a trial court's failure to adhere to its obligations under Rule 1925, but sanction an appellant for his failure to follow the rule, is unjust and unreasonable, particularly where, as here, the trial court's misleading order led to the very noncompliance the dissent deems sanctionable.

if any." Pa.R.Civ.P. 205.1. Similarly, under Pa.R.A.P. 121, "[p]apers required or permitted to be filed in an appellate court shall be filed with the prothonotary." Pa.R.A.P. 121(a). As our rules of civil and appellate procedure both contemplate that papers may be *filed* with the court by delivering a copy with the court prothonotary, we hold that, by attempting to file an original and one copy of their 1925(b) Statement with the prothonotary, one for the court and one for the trial judge, Appellants substantially complied with the express terms of the trial court's order.

The fact that the express language of Judge Stallone's order instructed Appellants to *file* with the court a copy of their 1925(b) Statement distinguishes the cases Judge Stallone relied on, Forest Highlands Cemetery Ass'n v. Hammer, 879 A.2d 223 (Pa. Super. 2005), and Egan v. Stroudsburg Sch. Dist., 928 A.2d 400 (Pa. Cmwlth. 2007), to hold that Appellants' issues were waived as a result of their failure to personally *serve* him with their 1925(b) Statement. In Forest Highlands, the trial judge issued an order instructing the appellant "to file, within fourteen (14) days, a concise, written statement of the matters complained of on appeal, *and to serve a copy of the same upon this Court* pursuant to Rule 1925(b) of the Rules of Appellate Procedure." 879 A.2d at 228 n.4 (quoting order) (emphasis added). The appellant filed her 1925(b) statement with the prothonotary, but did not serve a copy of the statement on the trial court. In ruling that the appellant waived her issues on appeal, the Superior Court held that Rule 1925(b) is not satisfied when an appellant simply mails his or her 1925(b) statement to the presiding judge, nor is the rule satisfied when an appellant merely files a 1925(b) statement with the prothonotary, as it is not the trial court's responsibility to search the files of the prothonotary to locate the statement. Id. at 229.

Similarly, in Egan, the trial court directed the appellant "to file a Pa.R.A.P. 1925(b) statement of matters complained of on appeal within fourteen days, *and serve a copy on the trial court*." 928 A.2d at 401 (emphasis added). The appellant timely filed a 1925(b)

statement with the prothonotary, but did not serve it on the trial court. Citing Forest Highlands with approval, the Commonwealth Court determined that the appellant's failure to serve her 1925(b) statement on the trial court, as instructed, resulted in waiver of her issues on appeal.[13]

The instant case is factually distinguishable from both Forest Highlands and Egan. The appellants therein failed to serve copies of their 1925(b) statements on the trial court, despite the trial court's *express instructions* to do so. See also Commonwealth v. $776.00 U.S. Currency, 948 A.2d 912, 913 (Pa. Cmwlth. 2008) (appellant's failure to serve his Rule 1925(b) statement on the trial judge, despite order that directed appellant "to file of record and concurrently serve upon this court a concise statement of errors complained of on appeal" resulted in waiver of issues on appeal under amended Rule 1925). As discussed above, by contrast, in the instant case, Appellants substantially complied with the

[13] Both Forest Highlands and Egan were decided under the prior version of Rule 1925, which then provided, in relevant part:

> (a) General rule. Upon receipt of the notice of appeal the judge who entered the order appealed from, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order, or for the rulings or other matters complained of, or shall specify in writing the place in the record where such reasons may be found.
>
> (b) Direction to file statement of matters complained of. The lower court forthwith may enter an order directing the appellant to file of record in the lower court and serve on the trial judge a concise statement of the matters complained of on the appeal no later than 14 days after entry of such order. A failure to comply with such direction may be considered by the appellate court as a waiver of all objections to the order, ruling or other matter complained of.

Pa.R.A.P. 1925 (1988).

instructions set forth in the trial court's order, namely to *file* a copy of their 1925(b) Statement with the court and with the trial judge.[14]

In affirming the trial court's order, the Superior Court herein determined it was bound by this Court's decisions in Lord, 553 Pa. at 420, 719 A.2d at 309 (stating that, after that decision, any issues not raised in a court-ordered 1925(b) statement will be deemed waived); Commonwealth v. Butler, 571 Pa. 441, 446, 812 A.2d 631, 633-34 (holding that Lord applies to PCRA appeals); Castillo, 585 Pa. at 402, 888 A.2d at 780 (reiterating the bright-line rule of Lord that issues not raised in a court-ordered Rule 1925(b) statement are waived on appeal, even if addressed by the trial court); and Schofield, 585 Pa. at 393-94, 888 A.2d at 774-75 (holding that an appellant who served her 1925(b) statement on the trial judge, but did not file it of record in the lower court, failed to comply with the requirements of Rule 1925(b)). Lord, Butler, Castillo, and Schofield, however, all involved situations in which the appellant *failed to comply* with the directives of a trial court's order regarding the filing and/or service of a 1925(b) statement. As noted above, Appellants herein *substantially complied* with the express terms of the trial court's order;[15] thus, we disagree with the Superior Court's determination that these decisions compel a finding of waiver in

[14] In its Supplemental Statement in Lieu of Memorandum Opinion, the trial court cited Schaefer v. Aames Capital Corp., 805 A.2d 534 (Pa. Super. 2002), as additional authority for his determination that Appellants' issues were waived as a result of their failure to personally serve him with their 1925(b) Statement. Supplemental Statement in Lieu of Memorandum Opinion, 4/11/08, at 5 n.3. The trial court's order in Schaefer directed the appellant to file within 14 days a 1925(b) statement, "and *to serve* a copy upon this Court pursuant to Rule 1925(b) of the Rules of Appellate Procedure." Id. at 534 (emphasis added). Schaefer is distinguishable from the instant case on the same grounds that we have distinguished Forest Highlands and Egan.

[15] To the extent the Superior Court characterizes Judge Stallone's order as directing Appellants to *serve* a copy of their Rule 1925(b) Statement on the trial judge, see Berg v. Nationwide Mutual Ins. Co., Inc., 12 MDA 2008, at 3 (Pa. Super filed Nov. 12, 2008) ("in effort to comply with the trial judge's January 3, 2008 Rule 1925(b) Order directing the filing *and service* of a concise statement" (emphasis added)), such characterization is erroneous.

the instant case. As we conclude that Appellants substantially complied with the express terms of the trial court's order, we hold that their issues were not waived on appeal.[16]

Next, we consider Appellants' related argument that, even if their compliance with Rule 1925(b) was "imperfect," they should not be penalized with waiver, since Judge Stallone's order itself failed to comply with the requirements of Rule 1925(b)(3). Specifically, Judge Stallone's order did not specify that Appellants' 1925(b) Statement must be *served* on the trial judge, see Pa.R.A.P. 1925(b)(3)(iii), and did not specify that any issue not included in the statement shall be deemed waived, see Pa.R.A.P. 1925(b)(3)(iv).[17] Judge Stallone's failure to comply with the mandates of Rule 1925(b)(3),

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[16] We do not mean to suggest, as Justice Baer contends in his dissent, that the trial court's order "trumps Rule 1925(b)." See Dissenting Opinion at 7. We simply recognize the unique position in which Appellants were placed as a result of the trial court's failure to adhere to the specific requirements of Rule 1925(b), the same rule under which the dissent concludes Appellants' issues are waived. Moreover, with regard to the dissent's suggestion that, where a rule and order are in tension, "the careful practitioner either should comply with both" or "comply with the rule and seek clarification from the issuing judge of the order," id., the dissent fails to acknowledge that, under the unchallenged description of the events at the prothonotary's office, Appellants attempted to ascertain the location of the senior trial judge's chambers so that they could personally serve him with their Rule 1925(b) statement in full compliance with the rule. Appellants' efforts, however, were thwarted by the prothonotary's office, which refused to provide Appellants with a location for the trial judge, but assured Appellants that their Rule 1925(b) statement would be hand-delivered to the trial judge within ten minutes. Moreover, while the dissent suggests that Appellants, following their encounter with the prothonotary, still had a week within which they could have served the trial judge by mail, see Dissenting Opinion at 8, in light of the prothonotary's assurances, there would have been no reason for Appellants to suspect that the added step of service by mail was necessary. Finally, based on the strained relationship between the parties and the trial judge in the instant case, as evidenced by the correspondence to which we previously referred, helpful "clarification," id., from the trial judge was not likely to be forthcoming.

[17] We note that the Superior Court neither addressed nor acknowledged the deficiencies of the trial court's order under Rule 1925(b)(3). Likewise, the Superior Court did not address, in any meaningful way, Appellants' assertion in their petition to modify the record before the trial court that Appellants' counsel attempted to obtain a location for Judge Stallone so that (continued…)

particularly subsection (b)(3)(iii), resulted in a situation where Appellants were faced with contradictory instructions: Judge Stallone's order instructed Appellants to *file* their 1925(b) Statement with the court and with the trial judge, while the specific language of Rule 1925(b)(1) required Appellants to file of record and concurrently *serve* the trial judge with a copy of their 1925(b) Statement.[18]

We recognize that, although Judge Stallone's order did not instruct Appellants to *serve* a copy of their Rule 1925(b) Statement on the trial judge, his order did reference Pa.R.A.P. 1925(b), subsection (1) of which provides that an appellant shall "file of record the Statement and concurrently shall serve the judge." Pa.R.A.P. 1925(b)(1). We further recognize that Appellants did not concurrently serve the trial judge with their Rule 1925(b) Statement. However, as noted above, it is the trial court's order which triggers Rule 1925 in the first instance, and it was, therefore, reasonable for Appellants to attempt to follow the instructions — to *file* their 1925(b) Statement with the Court and a copy with the trial judge — set forth in the trial court's order. Under these circumstances, where the trial court's order is inconsistent with the requirements of Rule 1925(b)(3)(iii), we hold that the waiver provisions of subsection (b)(4)(vii) do not apply. Cf. Hess, 570 Pa. at 619 n.9, 810 A.2d at 1255 n.9 (where appellant provided support for contention that he did not receive notice of trial court's Rule 1925 order, appellant should not be penalized with waiver under strict rule of Lord: "the rule permitting the trial court to direct an appellant to file a 1925(b) statement

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(…continued)
he could personally serve him with Appellants' 1925(b) Statement, but was not provided with such a location.

[18] Nationwide argues that Appellants cannot allege prejudice as a result of the absence of an instruction in the trial court's order that their 1925(b) Statement must be served on the trial judge, since Appellants assert that their counsel did, in fact, attempt to personally serve the trial judge with their 1925(b) Statement. Our decision is based, in part, however, on Appellants' substantial compliance with the express terms of the trial judge's order.

and providing that failure to do [so] results in waiver may not be employed as a trap to defeat appellate review" (citation omitted)).[19]

While we conclude that the specific facts of this case compel a departure from the strict application of waiver contemplated by Rule 1925(b), we note that the case *sub judice* illustrates the importance of the trial court's adherence to the requirements set forth in Pa.R.A.P. 1925(b)(3). Although the amendments to Rule 1925(b) were intended, in part, to address the concerns of the bar raised by cases in which courts found waiver because a Rule 1925(b) statement was either too vague or so repetitive or voluminous that it did not enable the judge to focus on the issues likely to be raised on appeal, see Pa.R.A.P. 1925 Comment, compliance by *all* participants, including the trial court, is required if the amendments and the rule are to serve their purpose.

For the reasons set forth above, we hold that the issues raised in Appellants' 1925(b) Statement were not waived, despite the fact that the statement was not personally served on the trial judge, where personal service was attempted by counsel and thwarted by the prothonotary, and where the court's Rule 1925(a) order specified "filing" and not "service." Accordingly, we reverse the order of the Superior Court and remand this matter to the Superior Court, for remand to the trial court for preparation of an opinion addressing the issues raised in Appellants' 1925(b) Statement.

Order reversed. Case remanded.

Former Justice Greenspan did not participate in the decision of this case.

Mr. Justice McCaffery joins the opinion announcing the judgment of the Court.

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[19] As noted, although the trial court's order failed to meet the requirements of Rule 1925(b)(3)(iii) and (iv), it is the trial court's failure to comply with subsection (b)(3)(iii) that we find directly implicated in the instant case. Therefore, we save for another day the effect of a trial court's failure to comply with subsection (b)(3)(iv), namely, the failure to specify in its Rule 1925(a) order that any issue not included in an appellant's Rule 1925(b) statement shall be deemed waived.

Mr. Chief Justice Castille files a concurring opinion.

Mr. Justice Eakin files a concurring opinion.

Mr. Justice Saylor files a concurring and dissenting opinion.

Mr. Justice Baer files a dissenting opinion.