

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

George Levitsky and	:	CASES CONSOLIDATED
Marcia Levitsky h/w,	:	
Appellants	:	
	:	
v.	:	
	:	
Wallingford-Swarthmore	:	
School District and Township	:	Nos. 462-463 C.D. 2025
of Nether Providence	:	Submitted: July 24, 2026

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

OPINION BY
JUDGE COVEY¹

FILED: October 13, 2026

George Levitsky and Marcia Levitsky (collectively, Appellants) appeal from the Delaware County Common Pleas Court's (trial court) November 15, 2021 order (entered November 16, 2021) denying their Amended Petition for Permanent Injunction (Amended Petition) and March 4, 2025 order (entered March 10, 2025) denying their Post-Trial Motion.² There are two issues before this Court: (1) whether

¹ This matter was reassigned to the author on September 15, 2026.

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Technically, an “[a]ppeal lies from the judgment entered and not the denial of post-trial motions,” *id.*, and a “verdict did [sic] not become final for purposes of appeal until properly reduced to and entered as a formal judgment under [Pennsylvania Rule of Civil Procedure 227.4,] Pa.R.C[iv.]P. [] 227.4.” *Crystal Lake Camps v. Alford*, 923 A.2d 482, 488 (Pa. Super. 2007).

Your Towne Builders, Inc. v. Manheim Twp., 303 A.3d 1126, 1129 n.1 (Pa. Cmwlth. 2023) (quoting *Mitchell v. Milburn*, 199 A.3d 501, 504 n.3 (Pa. Cmwlth. 2018)). Because the trial court entered judgment on October 20, 2025, this Court will treat Appellants' appeal as an appeal from the trial court's entry of judgment.

this Court has jurisdiction; and (2) whether Appellants waived their appellate issues by failing to timely file their Post-Trial Motion. After review, this Court affirms the trial court's November 15, 2021 order (entered November 16, 2021) and March 4, 2025 order (entered March 10, 2025).

BACKGROUND

On October 26, 2017, Appellants filed in the trial court an Amended Complaint against Wallingford-Swarthmore School District (District) and the Township of Nether Providence (Township) (collectively, Appellees). Therein, Appellants alleged that they lived immediately adjacent to King Field, the District's football/athletic field, and that the noise, lights, and debris from the site constituted a private nuisance, public nuisance, and/or trespass against their interest. By February 7, 2018 order, the trial court sustained the Township's preliminary objections and dismissed the Township as a party in the proceeding. On January 17, 2020, Appellants filed a Petition for Preliminary and Permanent Injunction against the District. Thereafter, on November 19, 2020, Appellants filed the Amended Petition.

By November 15, 2021 order (entered November 16, 2021), after conducting a four-day hearing, the trial court denied the Amended Petition.³ On December 20, 2024, the trial court entered an order finding in favor of the District on all issues. On January 16, 2025, Appellants filed their Post-Trial Motion.⁴ On March 10, 2025, the trial court denied Appellants' Post-Trial Motion as untimely.

³ On December 16, 2021, Appellants appealed from the trial court's November 15, 2021 order (entered November 16, 2021) to this Court, which quashed the appeal as premature because the trial court's order was not a final order or an interlocutory order for which there exists an appeal as of right. *See Levitsky v. Wallingford-Swarthmore Sch. Dist.* (Pa. Cmwlth. No. 1429 C.D. 2021, filed Apr. 14, 2023).

⁴ On January 16, 2025, Appellants appealed from the trial court's December 20, 2024 order. On February 7, 2025, Appellants discontinued that appeal. *See* Pa. Cmwlth. No. 82 C.D. 2025.

On April 7, 2025, Appellants appealed to this Court.⁵ By August 20, 2025 Memorandum and Order, this Court directed:

Upon review, the trial court docket reflects that judgment has not been entered on the docket in the [trial court] as required by [Pennsylvania Rule of Appellate Procedure (Appellate Rule)] 301. *See Brown v. Phila. Coll[.] of Osteopathic Med.*, 760 A.2d 863, 865 n.1 (Pa. Super. 2000) (holding that an **appeal does not lie from order disposing of post-trial motions but rather from entry of judgment following disposition of post[-]trial motions**). Accordingly, [Appellants] shall cause entry of judgment in the [trial court] and shall file a certified copy of the docket entries showing entry of judgment with this Court no later than September 9, 2025, or **the appeal may be dismissed as premature**.

August 20, 2025 Memorandum and Order (emphasis added). The trial court entered judgment on October 20, 2025.

DISCUSSION

Jurisdiction

Initially, “[i]t is well established that the failure to file an appeal within the requisite time period is jurisdictional.” *Best Courier v. Dep’t of Lab. & Indus.*, 220 A.3d 696, 700 (Pa. Cmwlth. 2019). Appellate Rule 903(a) mandates that a notice of appeal from a trial court’s order “shall be filed within 30 days after the entry of the order from which the appeal is taken.” Pa.R.A.P. 903(a). Importantly, Appellate Rule 341(a) declares: “[A]n appeal may be taken as of right from any **final order** of a . . . trial court.” Pa.R.A.P. 341(a) (emphasis added).

This Court has explained:

⁵ “This Court’s . . . review determines whether the trial court abused its discretion or committed an error of law and whether the trial court’s factual findings are supported by substantial evidence.” *Szabo v. Dep’t of Transp.*, 212 A.3d 1168, 1172 n.3 (Pa. Cmwlth. 2019).

Under [Pennsylvania Rule of Civil Procedure (Civil Rule)] 227.1, a party must file post-trial motions at the conclusion of a trial in *any* type of action in order to preserve claims that the party wishes to raise on appeal. In other words, **a trial court's order at the conclusion of a trial, whether the action is one at law or in equity, simply cannot become final for purposes of filing an appeal until the [trial] court decides any timely post-trial motions.**

Chalkey v. Roush, . . . 805 A.2d 491, 496 ([Pa.] 2002) (citing [Civil Rule] 227.1(a)) ([*italic*] emphasis in original). “**The requirement to file post-trial motions postpones the finality of a case-ending decision or order that otherwise would qualify as a final order triggering a right to appeal** under the final order rule embodied in [Appellate Rule] 341(a).” *Wolk v. Sch. Dist. of Lower Merion*, . . . 197 A.3d 730, 734-35 ([Pa.] 2018). “**Under [Civil] Rule 227.1, a party must file post-trial motions at the conclusion of a trial in any type of action in order to preserve claims that the party wishes to raise on appeal.**” *Goshen Valley III Condo. Ass'n v. Messick*, 299 A.3d 1064, 1068 (Pa. Cmwlth. 2023).

Gun Owners of Am., Inc. v. City of Phila., 311 A.3d 72, 79-80 (Pa. Cmwlth. 2024) (en banc) (bold emphasis added). “[I]t is the judgment resulting from [a Civil Rule 227.1 motion] that will constitute the appealable ‘final order’ in’ a case to which [Civil] Rule 227.1 applies.” *Wolk*, 197 A.3d at 737 n. 8 (quoting *Thomas A. Robinson Family Ltd. P’ship v. Bioni*, 178 A.3d 839, 844 (Pa. Super. 2017)). “In other words, one cannot both contend that the ‘[d]ecision/[o]rder’ in this case is a final order for appealability purposes and also one triggering the requirement to file a post-trial motion.” *Id.* Consequently, the trial court’s order could not “qualify as a final order triggering a right to appeal” until the trial court decided Appellants’

Post-Trial Motion.⁶ *Gun Owners of Am.*, 311 A.3d at 80 (quoting *Wolk*, 197 A.3d at 735).

The trial court entered the order denying Appellants' Post-Trial Motion on March 10, 2025. Thus, the appeal period could not begin until *after* March 10, 2025. Further, because a “verdict [does] not become final for purposes of appeal until properly reduced to and entered as a formal judgment under [Civil Rule] 227.4[.]” *Your Towne Builders, Inc. v. Manheim Twp.*, 303 A.3d 1126, 1129 n.1 (Pa. Cmwlth. 2023) (quoting *Mitchell v. Milburn*, 199 A.3d 501, 504 n.3 (Pa. Cmwlth. 2018)), and the trial court entered judgment on October 20, 2025, Appellants had 30 days from October 20, 2025, to file their appeal. Accordingly, Appellants' appeal filed April 7, 2025, although technically premature, was perfected on October 20, 2025, when the trial court entered judgment.⁷ Because the appeal was timely filed, this Court has jurisdiction to decide it.⁸

⁶ The Dissent maintains that Appellate Rules 902 and 903 indicate that the triggering event is governed by the entry of the final order (not the subsequent entry of judgment, which is now a purely ministerial act of the prothonotary). However, as explained above, the entry of judgment in and of itself is not the triggering event, but rather, “it is the judgment **resulting from [a Civil Rule 227.1 motion] that will constitute the appealable ‘final order’** in a case to which [Civil] Rule 227.1 applies.” *Wolk*, 197 A.3d at 737 n. 8 (emphasis added) (quoting *Bioni*, 178 A.3d at 844). “[O]ne cannot both contend that the ‘[d]ecision/[o]rder’ in this case is a final order for appealability purposes and also one triggering the requirement to file a post-trial motion.” *Id.*

⁷ Appellate Rule 905(a)(5) provides: “A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.” Pa.R.A.P. 905(a)(5). Appellate Rule 905(a)(5) “does not abrogate the requirements of finality[.]” but instead “perfect[s] a premature appeal ‘where an appeal is filed after a trial court makes a final determination, but before the official act of entering judgment has been performed.’” *Perry v. Erie Cnty.*, 169 A.3d 1232, 1238 (Pa. Cmwlth. 2017) (quoting *Pa. Orthopaedic Soc’y v. Indep. Blue Cross*, 885 A.2d 542, 546 (Pa. Super. 2005)).

⁸ The Dissent cites *Vietri v. Delaware Valley High School*, 63 A.3d 1281, 1288 (Pa. Super. 2013), for its declaration that “[i]t is beyond cavil that a post-trial motion that is infirm-whether for untimeliness or other reasons-does not toll the time for appeal.” However, *Vietri* involved the filing of post-trial motions that were not permitted. In the instant case, post-trial motions were required, and thus, the untimeliness of their filing goes to waiver as opposed to appealability. This Court notes that every case cited by the Dissent relative to this issue that referenced untimely post-

Waiver

Civil Rule 227.1(c) mandates “[p]ost-trial motions shall be filed within [10] days after . . . the filing of the decision in the case of a trial without jury.” Pa.R.Civ.P. 227.1(c). “Where a party fails to file timely post-trial motions after a bench trial, no issues are preserved for this Court to review.” *Coal Tubin’ PA, LLC v. Cambria Cnty. Transit Auth.*, 162 A.3d 549, 553 (Pa. Cmwlth. 2017) (quoting *Liparota v. State Workmen’s Ins. Fund*, 722 A.2d 253, 256 (Pa. Cmwlth. 1999)). Here, the trial court issued its decision on December 20, 2024; therefore, post-trial motions were required to be filed by December 30, 2024. Appellants filed their Post-Trial Motion on January 16, 2025. Accordingly, because Appellants’ Post-Trial Motion was untimely filed, Appellants waived their appellate issues.

CONCLUSION

For all of the above reasons, the trial court’s orders are affirmed.

ANNE E. COVEY, Judge

trial motions involved improper post-trial motions, i.e., not permitted, not untimely filed post-trial motions. Indeed, this Court could not find one case that involved untimely post-trial motions that declared they were a nullity as the Dissent proffers.

In addition, the Dissent attempts to equate a criminal post-sentence motion with a civil post-trial motion. However, unlike post-sentence motions, which are optional, post-trial motions are *required*. “The requirement to file post-trial motions postpones the finality of a case-ending decision or order that otherwise would qualify as a final order triggering a right to appeal under the final order rule embodied in [Appellate Rule] 341(a).” *Wolk*, 197 A.3d at 734-35. Accordingly, the same analysis does not apply.

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George Levitsky and	:	CASES CONSOLIDATED
Marcia Levitsky h/w,	:	
Appellants	:	
	:	
v.	:	
	:	
Wallingford-Swarthmore	:	
School District and Township	:	Nos. 462-463 C.D. 2025
of Nether Providence	:	

ORDER

AND NOW, this 13th day of October, 2026, the Delaware County Common Pleas Court’s November 15, 2021 order (entered November 16, 2021) and March 4, 2025 order (entered March 10, 2025) are affirmed.

ANNE E. COVEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

George Levitsky and Marcia Levitsky	:	CASES CONSOLIDATED
h/w,	:	
	:	
Appellants	:	
	:	No. 462 C.D. 2025
	:	No. 463 C.D. 2025
	:	
v.	:	
	:	Submitted: July 24, 2026
Wallingford-Swarthmore School	:	
District and Township of Nether	:	
Providence	:	

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge

**DISSENTING OPINION BY
JUDGE DUMAS**

FILED: October 13, 2026

Respectfully, I dissent. In my view, Appellants' untimely post-trial motion constitutes a legal nullity and, therefore, did not toll the appellate period, which commenced when the trial court in this matter issued a final order resolving all remaining claims against Appellants. Thus, rather than find Appellants' issues waived, I would quash Appellants' untimely appeal.

The relevant procedural history is straightforward. Following lengthy litigation involving a property dispute, the trial court issued a final order resolving all remaining claims against Appellants on December 20, 2024. On January 2, 2025, Appellants filed a post-trial motion. On March 10, 2025, the trial court dismissed Appellants' post-trial motion as untimely filed. On April 7, 2025, Appellants appealed to this Court.

“[W]here a trial has taken place and timely post-trial motions have been filed pursuant to Rule 227.1, the appeal period does not begin to run until the trial court has issued a decision on the post-trial motions.” *Chaney v. Fairmount Park Real Est. Corp.*, 155 A.3d 648, 653 (Pa. Cmwlth. 2016) (quoting *Oak Tree Condo. Ass’n v. Greene*, 133 A.3d 113, 116 (Pa. Cmwlth. 2016)). Otherwise, an appeal must be filed within 30 days after the entry of the order from which the appeal is taken. *Id.*; see Pa.R.A.P. 903(a); see also *Chalkey v. Roush*, 805 A.2d 491, 496 (Pa. 2002) (“[A] trial court’s order at the conclusion of a trial . . . simply cannot become final for purposes of filing an appeal until the court decides any *timely* post-trial motions.”) (emphasis added); *Vietri v. Delaware Valley High Sch.*, 63 A.3d 1281, 1288 (Pa. Super. 2013) (“It is beyond cavil that a post-trial motion that is infirm—whether for untimeliness or other reasons—does not toll the time for appeal.”).¹

I further note the following. Appellate Rule 902 suggests that only a party’s failure to comply with the time requirements of Rule 903 affects the validity of the appeal but that an otherwise improper appeal “is subject to such action as the appellate court deems appropriate.” Pa.R.A.P. 902(b); see *Commonwealth v. Williams*, 106 A.3d 583, 587-88 (Pa. 2014) (explaining that the notice of appeal is self-perfecting and that any defects other than timeliness may be corrected at the discretion of the appellate court). Thus, when an appellant fails to file a post-trial motion, yet timely appeals, the Court has appellate jurisdiction, but all issues are waived. See, e.g., *Triple Crown Corp. v. Lower Allen Twp.*, 327 A.3d 748 (Pa. Cmwlth. 2024). Or, when a final order has been entered, yet the appellant has not reduced that order to judgment, this Court will permit the appellant to perfect her

¹ Superior Court decisions are not binding but may be cited for persuasive authority. See Pa.R.A.P. 126(b).

timely appeal by filing a praecipe for judgment in the lower court. *See, e.g., City of Phila. v. Hammond*, 322 A.3d 971, 974 n.5 (Pa. Cmwlth. 2024).

Rules 902 and 903 indicate that the triggering event is governed by the entry of the final order (not the subsequent entry of judgment, which is now a purely ministerial act of the prothonotary). *See generally Williams*, 106 A.3d at 587-89 (explaining the role of the prothonotary and clerk of courts). In other words, while the entry of judgment remains a prerequisite to this Court’s consideration of an otherwise timely appeal, it is a procedural step and not a jurisdictional one. *See id.*; *see also* Pa.R.A.P. 301, Note (discussing the 1986 amendment to the Rule); Pa.R.A.P. 902(b).

Finally, this approach is also consistent with criminal practice. It is well settled that an untimely post-sentence motion does not toll the appeal period. *See, e.g., Commonwealth v. Bilger*, 803 A.2d 199 (Pa. Super. 2002) (conceptualizing an untimely post-sentence motion as a legal nullity), *appeal denied*, 813 A.2d 835 (Pa. 2002); *Commonwealth v. Leon* (Pa. Super., No. 927 MDA 2024, filed May 14, 2025), 2025 WL 1394156; *see also* Pa.R.Crim.P. 720, Note (“If no timely post-sentence motion is filed, the defendant’s appeal period runs from the date sentence is imposed.”).

Here, Appellants’ post-trial motion was untimely filed. It was, therefore, a legal nullity and did not toll the appeal period. The court issued a final order on December 20, 2024. Appellants appealed on April 7, 2025, more than three months later. Accordingly, this Court lacked jurisdiction over the appeal, and it should be quashed.

LORI A. DUMAS, Judge