

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lawrence Brandon,	:
	:
Appellant	:
	:
v.	: No. 746 C.D. 2019
	: Submitted: July 16, 2021
Tax Claim Bureau, Director,	:
JoAnn Ranck	:

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE J. ANDREW CROMPTON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WOJCIK

FILED: September 10, 2021

Lawrence Brandon (Appellant) appeals, *pro se*, the order of the Cambria County Court of Common Pleas (trial court) denying his request to set aside the March 29, 2019 tax sale of the property located at 409 Cedar Street, Johnstown, Cambria County (Property), pursuant to the Real Estate Tax Sale Law (Tax Sale Law),¹ on the basis that he did not have standing to contest the sale. We affirm.

On April 16, 2019, Appellant filed a petition to set aside the tax sale of the Property, and to grant him a hearing to determine if the notice requirements of the Tax Sale Law had been satisfied prior to the sale because they “apply to interested parties, creditors and mortgagee[s.]” Certified Record Item 5 at 2. At the trial court hearing, Appellant asserted that the Property was owned by his late aunt,

¹ Act of July 7, 1947, P.L. 1368, *as amended*, 72 P.S. §§5860.101-5860.803.

Naomi Spears, and that his mother was the beneficiary of his late aunt's estate. N.T. 5/13/19² at 1-2. When counsel for the Tax Claim Bureau asserted that Appellant did not have standing to file his petition, Appellant stated: "Once my mother died, the Power of Attorney died." *Id.* at 4-5. Nevertheless, Appellant asserted that he had standing to contest the sale based on a power of attorney that was executed by his mother as the executrix of his late aunt's estate. *Id.* Ultimately, on May 14, 2019, the trial court issued an order denying Appellant's petition based on his lack of standing.

Appellant then filed the instant appeal of the trial court's order,³ outlining how the various provisions of the Tax Sale Law were violated in this case. *See* Appellant's Brief at iv, vi, 1-4. However, in his appellate brief, Appellant does not address his standing to file the petition in the first instance.⁴ As a result, he has waived any allegation of trial court error in this regard.⁵ Moreover, if we were to

² "N.T. 5/13/19" refers to the transcript of the trial court's May 13, 2019 hearing.

³ "A challenge to standing raises a question of law, therefore 'our standard of review is de novo, and our scope of review is plenary as we may examine the entire contents of the record.'" *In re Administrative Order No. 1-MD-2003*, 936 A.2d 1, 7 n.4 (Pa. 2007) (citation omitted).

⁴ *See Commonwealth v. Adams*, 882 A.2d 496, 498 (Pa. Super. 2005) ("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.") (citations omitted).

⁵ Pa. R.A.P. 2111(a)(4) provides that "[t]he brief of the appellant . . . shall consist of the following matters, separately and distinctly entitled and in the following order: Statement of the questions involved." In turn, Pa. R.A.P. 2116(a) states, in relevant part:

The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The statement will be

(Footnote continued on next page...)

address the merits of this issue, we would affirm the trial court’s order denying the petition based on that portion of the thorough and well-reasoned opinion of the Honorable Norman A. Krumenacker, III, in the matter of *Brandon v. Tax Claim Bureau, Jo Anne Ranck, Director* (C.P. Cambria, No. 2019-1175 Civil Division, filed August 5, 2019), addressing Appellant’s lack of standing to file the petition.

Accordingly, the trial court’s order is affirmed.

MICHAEL H. WOJCIK, Judge

deemed to include every subsidiary question fairly comprised therein. No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.

See also Faherty v. Gracias, 874 A.2d 1239, 1245 (Pa. Super. 2005) (“As the rule explicitly declares and our case law binds, this rule is ‘in the highest degree mandatory, admitting of no exception.’ Yet, [the] appellant’s argument does not even suggest how the trial court erred. This substantially impedes our ability to effectively review [the] appellant’s claims”) (citations omitted).

Additionally, Pa. R.A.P. 2111(a)(8) provides that “[t]he brief of the appellant . . . shall consist of the following matters, separately and distinctly entitled and in the following order: Argument for appellant.” In turn, Pa. R.A.P. 2119(a) states that “[t]he argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part . . . the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent.” *See also Commonwealth v. Spatz*, 716 A.2d 580, 585 n.5 (Pa. 1998), *cert. denied*, 526 U.S. 1070 (1999) (holding that the failure to develop an issue in an appellate brief results in a waiver); *Browne v. Department of Transportation*, 843 A.2d 429, 435 (Pa. Cmwlth. 2004) (“At the appellate level, a party’s failure to include analysis and relevant authority results in waiver.”).

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JoAnn Ranck	:

ORDER

AND NOW, this 10th day of September, 2021, the order of the Cambria County Court of Common Pleas dated May 14, 2019, is AFFIRMED.

MICHAEL H. WOJCIK, Judge

IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY, PENNSYLVANIA
CIVIL DIVISION

LAWRENCE BRANDON,

Petitioner,

vs.

TAX CLAIM BUREAU, DIRECTOR
JOANNE RANCK,

Respondent.

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No. 2019-1175

Opinion Pursuant to Rule of
Appellate Procedure 1925(a)(1)



PROthonotary CAMBRIA
COUNTY, PA

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FILED FOR RECORD

**Opinion Pursuant to Rule of Appellate
Procedure 1925(a)(1)**

Krumenacker, P.J.: Lawrence Brandon (Brandon) appeals from the Court's Order entered May 14, 2019, denying for lack of standing his Petition to Set Aside Tax Sale (Petition) filed April 16, 2019.¹ Brandon's Petition sought to have set aside the March 29, 2019, tax sale of property located at 409 Cedar Street located in the city of Johnstown. A hearing on the Petition was held May 13th at which time Brandon argued that: the property had been owned by his aunt Naomi W. Spears (Spears); upon Spears death the property passed to his mother who was Spears' sister; and he held power of attorney for his mother. Brandon offered no evidence to substantiate his claims and the Court's review of the Cambria County Register of Wills file for the estate of Spears at docket number 11-04-1074 failed to support his claims. Accordingly, the May 14th Order was entered finding that Brandon lacked standing in this matter and denying his Petition.

¹ The Court notes that Brandon's Notice of Appeal added Naomi W. Spears (Spears) as a co-petitioner to the caption of this matter, however Spear's was not a named party in the Petition nor in the Court's May 14th Order.

Brandon filed a timely Notice of Appeal and was ordered to file a Concise Statement of Errors Complained of on Appeal (Concise Statement) pursuant to Pennsylvania Rule of Appellate Procedure 1925(b) within twenty-one (21) days by Order dated June 19, 2019. Pa. R.A.P. 1925. Brandon filed a timely Concise Statement raising these five allegations of error:

- 1) The sale violated 72 P.S. § 5860.613(a).
- 2) The sale violated 72 P.S. § 5860.610.
- 3) The sale violated 72 P.S. § 5860.607(a).
- 4) The sale violated 72 P.S. § 5860.602.
- 5) As power of attorney for Spears' heir he had standing to pursue this action.

For the following reasons the appeal should be dismissed and the Court's May 14th Order should be affirmed.

DISCUSSION

Initially the Court notes that the transcript of the May 13th hearing has not been requested by Brandon and thus has not been transcribed. Absent this transcript there is no record of the arguments or evidence presented at the hearing on the Petition thus the Commonwealth Court is prevented from rendering appropriate review of this appeal. Accordingly, Brandon has waived any issues on appeal. Commonwealth v. Geatti, 35 A.3d 798 (Pa. Cmwlth. 2011) (defendant's failure to request a transcript from the Court of Common Pleas as part of his appeal meant the appellate court could not conduct an appropriate review of the issues raised by defendant and resulted in waiver of those issues).

Rule of Appellate Procedure (RAP) 1911 makes it abundantly plain that it is the responsibility of Brandon, as the appellant, to order all transcripts necessary for the

disposition of his appeal. See, Pa. R.A.P 1911; Commonwealth v. Williams, 552 Pa. 451, 456, 715 A.2d 1101, 1103 (1998); Geatti, 35 A.3d 798. See also, Gorniak v. Gorniak, 504 A.2d 1262 (Pa. Super. 1986) (dismissing appeal where appellant did not comply with Rules of Appellate Procedure and provide transcript). With regard to the duty to request transcripts RAP 1911 states, in part:

(a) General rule. **The appellant shall request any transcript required under this chapter** in the manner and make any necessary payment or deposit therefor in the amount and within the time prescribed by Rules 4001 *et seq.* of the Pennsylvania Rules of Judicial Administration.

...

(c) Form. The request for transcript may be endorsed on, incorporated into or attached to the notice of appeal or other document and shall be in substantially the following form:

[Caption]

A (notice of appeal) (petition for review) (other appellate paper, as appropriate) having been filed in this matter, the official court reporter is hereby requested to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Signature

(d) Effect of failure to comply. If the appellant fails to take the action required by these rules and the Pennsylvania Rules of Judicial Administration for the preparation of the transcript, the appellate court may take such action as it deems appropriate, which may include dismissal of the appeal.

Pa. R.A.P.1911(a), (c), (d) (emphasis added).

In addition to the requirements contained in RAP 1911 itself, the rule mandates that the request and payment be made in the manner and time set forth in Rules of Judicial Administration (RJA) 4001 to 4016, governing Court Reporters and Transcripts, that in turn require compliance with relevant local Rules. Pa. R.A.P 1911(a). See also, Geatti, 35 A.3d at

799–800 (“[RAP 1911] also requires, in plain language and on its face, compliance with the Pennsylvania Rules of Judicial Administration.”)

Relevant here is RJA 4007 which in part provides that “[a]ll requests for transcripts shall be set forth on a standardized form provided by the Court Administrator.” Pa. R.J.A. 4007. This request form requires the requestor to specify, *inter alia*: the presiding judge; the date or dates of the proceedings requested; the proceeding requested to be transcribed; and requires the transcript or transcripts requested be specifically identified. This specificity is particularly necessary in counties such as Cambria where court reporters are not assigned to a single judge but rotate on a daily basis making it imperative that a party’s request be specific to allow the court to identify which court reporter is responsible for preparing the requested transcripts.

As our Superior Court explained in Commonwealth v. Preston, 904 A.2d 1 (Pa. Super. 2006) (*en banc*):

With regard to missing transcripts, the Rules of Appellate Procedure require an appellant to order and pay for any transcript necessary to permit resolution of the issues raised on appeal. Pa.R.A.P.1911(a). ... When the appellant or cross-appellant fails to conform to the requirements of Rule 1911, any claims that cannot be resolved in the absence of the necessary transcript or transcripts must be deemed waived for the purpose of appellate review. Commonwealth v. Williams, 552 Pa. 451, 460, 715 A.2d 1101, 1105 (1998). It is not proper for either the Pennsylvania Supreme Court or the Superior Court to order transcripts nor is it the responsibility of the appellate courts to obtain the necessary transcripts. Id.

Id. at 7. Unless it is clear that the transcript is missing due to an inadvertent oversight by court personnel or other breakdown in the judicial process, it is not proper for a court to order transcripts that it requires to prepare a RAP 1925 opinion or resolve an appeal issue where an appellant has not done so as required by RAP 1911. See, Williams, 552 Pa. at 460, 715 A.2d at 1105.

Brandon's Notice of Appeal was filed June 10, 2019, and indicated that he is appealing from the denial of his Petition. Brandon's Notice of Appeal reads

REQUEST FOR TRANSCRIPT

Notice is hereby given that Lawrence Brandon and Naomi W. Spears, Appellants above Named, hereby [sic] appeal to the Commonwealth Court of Pennsylvania from the order entered in this matter May 14, 2019. Pa. R.A.P. Rule 904 (c) request for transcript for said order.

Id. Here, Brandon's Notice of Appeal does not contain the request for transcript language required by RAP 1911 and no request has been filed under RJA 4007 for the transcript of the May 13th hearing.

In Commonwealth v. Gillen, 798 A.2d 225 (Pa. Super. 2002), our Superior Court held that an issue is waived for appeal purposes if the relevant transcript was not specifically ordered prepared by an appellant. Id. The defendant in Gillen argued on appeal that the trial court had erred in not granting his motion to suppress various statements, but failed to request any specific transcripts instead for the appeal and only filed a request using only the RAP 1911(c) general request language. Id. In holding that he had waived the suppression issue on appeal by not specifically requesting the suppression hearing transcript the Superior Court explained that

We find Appellant's suppression issues to be waived.

The fundamental tool for appellate review is the official record of what happened at trial, and appellate courts are limited to considering only those facts that have been duly certified in the record on appeal. To ensure that the appellate courts have all necessary records, the Pennsylvania Rules of Appellate Procedure provide for the transmission of certified records from trial courts to appellate courts.

...

[Pa.R.A.P.1911] makes it clear that appellants must order all transcripts necessary to decide the appeal, and that the Superior Court may take any action it deems appropriate, including dismissal of the appeal, if the appellant does not order the necessary transcripts.

Commonwealth v. Williams, 552 Pa. 451, 456-457, 715 A.2d 1101, 1103-1104 (1998) (citation omitted).

In the case *sub judice*, the notes of testimony from Appellant's suppression hearing were not included in the certified record.

...

As we find the suppression transcript is necessary for our review, and Appellant has failed to provide us with the necessary transcript, we find the suppression issues to be waived.

Gillen, 798 A.2d at 229 (some citations omitted).

Here, no transcript request was filed and thus the court reporter assigned to the May 13th hearing did not prepare that transcript. It was neither the court reporter's obligation to prepare the transcript absent a request and payment nor the Court's duty to order the transcript be prepared absent a request from Brandon. Rather it was Brandon's obligation under the Rules to order the transcript necessary in his appeal. Since Brandon has failed to have the necessary transcript prepared it is not possible for this Court or the Superior Court to address the issues raised on appeal and they must be deemed waived. See, Commonwealth v. Lesko, 609 Pa. 128, 237-38, 15 A.3d 345, 410 (2011) (Rules of Appellate Procedure contemplate that the parties, who are in the best position to know what they actually need for appeal, are responsible to take affirmative actions to secure transcripts and other parts of the record; defendant's indigence does not absolve the defendant and his lawyer of his obligation to identify and order that which he deems necessary to prosecute his appeal); Commonwealth v. Houck, 102 A.3d 443 (Pa. Super. 2014) (where the appellant has not made the transcript of

the proceedings at issue a part of the certified record, any claims that cannot be resolved in the absence of the necessary transcript or transcripts must be deemed waived for the purpose of appellate review); Geatti, 35 A.3d 798 (Pa. Cmwlth. 2011) (defendant's failure to request a transcript from the Court of Common Pleas as part of his appeal meant the appellate court could not conduct an appropriate review of the issues raised by defendant and resulted in waiver of those issues).

Further, even if the transcript had been prepared there would be no merit to Brandon's issues on appeal. As noted above, the Court did not reach the merits of Brandon's Petition in denying it but rather concluded that Brandon lacked standing to file the Petition. A party seeking judicial resolution of a controversy must, as a prerequisite, establish that he or she has standing, or a stake, in maintaining the action. See, Nye v. Erie Ins. Exch., 504 Pa. 3, 5, 470 A.2d 98, 100 (1983); William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 192, 346 A.2d 269, 280 (1975). In Pennsylvania, the doctrine of standing "is not a senseless restriction on the utilization of judicial resources; rather, it is a prudential, judicially-created tool meant to winnow out those matters in which the litigants have no direct interest in pursuing the matter". In re Hickson, 573 Pa. 127, 821 A.2d 1238, 1243 (2003). For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the legal action has, in fact, been "aggrieved." Pittsburgh Palisades Park, LLC v. Commonwealth, 585 Pa. 196, 888 A.2d 655, 659 (2005).

Standing has been explained by the Pennsylvania Supreme Court as follows:

The question of standing is rooted in the notion that for a party to maintain a challenge to an official order or action, he must be aggrieved in that his rights have been invaded or infringed. This principle was thoroughly considered in Wm. Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975) where this court confirmed that to have standing, a party must (a) have a substantial interest in the subject-matter of the litigation; (b) the interest must

be direct; and (c) the interest must be immediate and not a remote consequence.

A “substantial” interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. Wm. Penn Parking Garage, Inc., *supra*, 464 at 192, 346 A.2d at 282. A “direct” interest requires a showing that the matter complained of caused harm to the party’s interest. Upper Bucks County Vocational-Technical School Education Ass’n v. Upper Bucks County Vocational Technical School Joint Comm., 504 Pa. 418, 422, 474 A.2d 1120, 1122 (1984). An “immediate” interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it, Wm. Penn Parking Garage, Inc., *supra*, 464 Pa. at 197, 346 A.2d at 283, and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question. Upper Bucks County Vocational-Technical School Education Ass’n, *supra*, 504 Pa. at 423, 474 A.2d at 1122

South Whitehall Township Police Serv. v. South Whitehall Township, 521 Pa. 82, 86-87, 555 A.2d 793, 795 (1989) (quoting Franklin Township v. Commonwealth, Dep’t of Env’tl. Resources, 500 Pa. 1, 4, 452 A.2d 718, 719 (1982)).

Thus, the inquiry into standing ascertains whether a party is the proper party entitled to make the legal challenge to the matter involved. In re Trust Under Agreement of Keiser, 392 Pa. Super. 146, 572 A.2d 734, 736 (1990). A person who has no stake in the matter has no standing to obtain judicial resolution of his challenge to the matter. Id. Further, “[s]tanding must exist at the time of and throughout the legal proceeding;” Tishok v. Department of Education, 133 A.3d 118, 124 (Pa. Cmwlth. 2016). Relevant here is section 607 of the Real Estate Tax Sale Law (Law) which provides that objections or exceptions to a tax sale “may be filed by any owner or lien creditor.” 72 P.S. § 5860.607. Thus only an owner of property or a lien creditor has standing to petition to set aside a judicial tax sale. Plank v. Monroe County Tax Claim Bureau, 735 A.2d 178, 181 (Pa. Cmwlth. 1999) (only an owner or a lien creditor at

the time of the sale may file objections or exceptions to a tax sale). Section 102 of the Law defines “owner” as

the person in whose name the property is last registered, if registered according to law, or, if not registered according to law, the person whose name last appears as an owner of record on any deed or instrument of conveyance recorded in the county office designated for recording and in all other cases means any person in open, peaceable and notorious possession of the property, as apparent owner or owners thereof, or the reputed owner or owners thereof, in the neighborhood of such property....

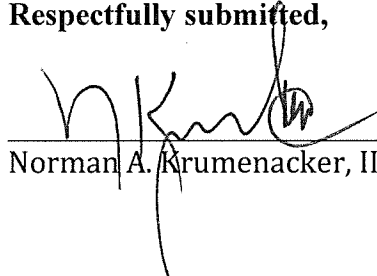
72 P.S. § 5860.102.

Brandon asserts that he has standing relative to the property as he holds power of attorney from his mother, who is the owner of the property having inherited it from Spears. Brandon failed to present evidence (1) that his mother inherited the property from Spears and (2) that he was acting as her agent in accordance with her grant of power of attorney. While Brandon, both at the May 13th hearing and in his Concise Statement, asserts these facts these assertions cannot be accepted without supporting evidence. As noted above, the Court reviewed the Register of Wills file relative to Spears’ estate and found no evidence to support Brandon’s assertions. Since Brandon bore the burden of establishing his standing to challenge the sale, his failure to produce evidence in support of his claims was fatal to his Petition and there was no error in denying it on that basis. See, First Horizon Home Loan Corporation v. Adams County Tax Claim Bureau, 847 A.2d 774 (Pa. Cmwlth. 2004) (mortgagee who was neither owner nor lienholder at time of tax sale, because it deeded the property to HUD prior to the tax sale, lacked standing to attack tax sale); Appeal of Yardley, 166 Pa. Cmwlth. 596, 646 A.2d 751 (1994) (only owners or lienholders may file objections to tax sale; shareholder of corporate property owner lacked standing to attack tax sale); In re Petition of Crouthamel, 48 Pa. Cmwlth. 507, 412 A.2d 645 (1980) (one who is neither owner nor lienholder on the

date of tax sale lacks standing to object to it; challenger did not acquire an ownership interest until after the tax sale). See also, U.S. Bank Nat. Ass'n v. Powers, 986 A.2d 1231 (Pa. Super. 2009) (homeowner who sought to set aside sheriff's sale of real property located near her home was not a "party in interest," as required to challenge validity of sheriff's sale, and thus homeowner did not have standing to challenge sheriff's sale where homeowner had no recorded ownership interest in the property).

For the foregoing reasons this appeal should be dismissed and the Court's May 14th Order should be affirmed.

Respectfully submitted,



Norman A. Krumenacker, III, P.J.

August 5, 2019.