NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

SUSANNE CLARK	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
CHRISTOPHER J. CLARK	:	
APPEAL OF: PERSILA VIKOREN MERTZ, M.D.	:	No. 1508 MDA 2025

Appeal from the Order Entered October 6, 2025
In the Court of Common Pleas of Lancaster County Civil Division at
No(s): CI-24-08934

BEFORE: KUNSELMAN, J., LANE, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY LANE, J.: **FILED NOVEMBER 06, 2026**

Persila Vikoren Mertz, M.D. ("Mertz"), appeals from the October 6, 2025 order which purported to grant the motion for reconsideration filed by Christopher J. Clark ("Clark") and vacate a prior order, entered on July 7, 2025, which granted Mertz's motion for a protective order and to quash the foreign subpoena that Clark sought to domesticate and serve on Mertz. After careful consideration, we conclude that the trial court lacked jurisdiction to enter the October 6, 2025 order. Accordingly, we vacate the October 6, 2025 order, and reinstate the July 7, 2025 order which granted Mertz's motion for a protective order and quashed the foreign subpoena.

---

* Retired Senior Judge assigned to the Superior Court.

Given the unusual nature of these proceedings, and the brief record before us, we limit our recitation of the relevant factual and procedural history to the following. Clark and his wife, Susanne Clark ("wife") are involved in a contested divorce proceeding in Connecticut.[1] In connection with the Connecticut divorce proceedings, Clark sought to obtain information and documentation pertaining to wife's interests, if any, in certain Pennsylvania trusts ("the Pennsylvania Trusts") established by Harold B. Vikoren, who was the late father of wife and her sister, Mertz.[2]

Having apparently lacked success in obtaining the information and documentation through the Connecticut divorce proceedings, Clark initiated the underlying miscellaneous docket action in Lancaster County for the sole purpose of domesticating and serving a foreign subpoena, issued by the Connecticut court overseeing the pending divorce proceedings, upon Mertz. ***See*** Praecipe to Domesticate Foreign Subpoena, 12/11/24. Through the subpoena, Clark sought to compel Mertz, who is the co-trustee of the Pennsylvania Trusts, to appear at a law firm in Philadelphia, present

---

[1] ***See Clark v. Clark***, FST-FA-21-6054348-S (Stamford/Norwalk Ct. Super. 2021).

[2] Clark concedes that he "has received approximately two dozen documents relating to the Pennsylvania Trusts" from other sources. Clark's Response, 10/7/26, at 3. Mertz has identified The Vanguard Group, Inc. as the entity which provided documentation regarding the Pennsylvania Trusts to Clark. ***See*** Mertz's Response, 10/13/26, at 4-5. Mertz further indicates that the Pennsylvania Trusts "have filed appeals in Connecticut to the Appellate Court regarding the production of documents from the Trusts . . .." ***Id***. at 4 n.1.

testimony, and produce documentation in relation to the Pennsylvania Trusts, as specified in forty-five enumerated topics set forth in a Schedule A attached to the subpoena. ***See*** Subpoena *Duces Tecum*, 12/11/24; ***see also*** Schedule A. In response, Mertz filed a motion wherein she requested a protective order and quashal of the foreign subpoena. ***See*** Motion, 1/20/25, at 2. Clark filed a response in opposition to the motion.

On July 7, 2025,[3] the trial court entered an order wherein it stated that "the Motion is GRANTED and the subpoena is quashed." ***See*** Order, 7/7/25. Notably, Clark did not appeal from this order.

Instead, on July 21, 2025, Clark filed a motion for reconsideration of the July 7, 2025 order. The trial court did not rule on the motion or expressly grant reconsideration on or by August 6, 2025, which was the thirtieth day after the entry of the July 7, 2025 order.

On October 6, 2025, ninety-one days after the July 7, 2025 order was filed, the trial court entered the underlying order which purported to grant the motion for reconsideration, vacate the July 7, 2025 order, and direct Mertz to appear for a deposition. Mertz then moved to intervene in the action, and

---

[3] The date of entry of an order is the day on which the clerk makes the notation in the docket that notice of entry of the order has been given as required by Pa.R.Civ.P. 236(b). ***See*** Pa.R.A.P. 108(b). Here, the order was dated July 5, 2025, but not entered on the docket (with service upon the parties noted on the docket pursuant to Rule 236) until July 7, 2025.

filed a notice of appeal from the October 6, 2025 order.[4] Mertz and the trial court then complied with Pa.R.A.P. 1925.[5]

Preliminarily, we must determine whether we have jurisdiction to address the appeal. Pennsylvania's Rules of Appellate Procedure place great importance on the concept of "final orders" to establish jurisdiction to hear an appeal. Generally, "an appeal may be taken as of right from any final order of a . . . trial court." Pa.R.A.P. 341(a). A "final order" is defined, in relevant part, as an order that "disposes of all claims and of all parties." Pa.R.A.P. 341(b)(1); ***see also Matlock v. Matlock***, 664 A.2d 551, 553 (Pa. Super. 1995) (holding that a final order is one which serves to put the litigant out of court either by litigation or disposing of the case entirely). The key inquiry in any determination of finality is whether there is an outstanding claim. ***See Levitt v. Patrick***, 976 A.2d 581, 588 (Pa. Super. 2009). Where an order disposes of all issues that were the subject of the matter, the order constitutes a final judgment as a matter of law. ***See id***.

---

[4] The trial court docket does not reflect any ruling by the trial court on Mertz's motion to intervene. In this Court, Mertz filed a motion to intervene, which this Court granted.

[5] This Court initially issued a rule to show cause as to why the appeal should not be quashed on the basis that it was not taken from a final order. Mertz responded to the rule, and the rule was thereafter discharged with an advisement to the parties that the issue of appealability may be revisited by the merits panel assigned to this matter.

Here, as indicated above, Clark initiated the underlying miscellaneous docket action for the ***sole*** purpose of domesticating and serving a foreign subpoena on Mertz. ***See*** Praecipe to Domesticate Foreign Subpoena, 12/11/24. The July 7, 2025 order granted Mertz's motion for protective order and quashed the foreign subpoena. In our view, the July 7, 2025 order ended the case because it disposed of all issues that were the subject of the matter (*i.e.*, the domestication and service of an foreign subpoena) and put Clark out of court by disposing of the action entirely. ***See Levitt***, 976 A.2d at 588; ***see also Matlock***, 664 A.2d at 553; ***Animal Legal Def. Fund v. Foster Poultry Farms***, 335 A.3d 377, 379 (Pa. Super. 2025) (where the petitioner initiated the action in a Pennsylvania trial court for the limited purpose of seeking the issuance of a foreign subpoena to obtain information from a Pennsylvania corporation to use in an ongoing California litigation, the Pennsylvania trial court prothonotary issued the foreign subpoena, and the trial court later quashed the foreign subpoena, this Court treated the quashal order as a final appealable order). Notably, neither party has claimed that the July 7, 2025 order did not dispose of all claims in the Pennsylvania action.[6] Consequently,

---

[6] Clark argues that the July 7, 2025 order is interlocutory and non-appealable because it did not dispose of the ongoing Connecticut divorce action between Clark and his wife. In support, he relies on ***Makarov v. Lukenda***, 856 A.2d 163, 164 (Pa. Super. 2004), which involved a personal injury action filed in New Jersey arising from a motor vehicle accident. Therein, the Lukendas sought to depose two physicians who provided treatment to the plaintiff in Pennsylvania; however, the physicians failed to appear for their scheduled
(Footnote Continued Next Page)

the July 7, 2025 order constitutes a final appealable order as a matter of law. ***See Levitt***, 976 A.2d at 588; ***see also Matlock***, 664 A.2d at 553.

Having determined that the July 7, 2025 order was a final appealable order, we must next consider whether the instant appeal was timely filed. ***See Krankowski v. O'Neil***, 928 A.2d 284, 285 (Pa. Super. 2007) (holding that because the timeliness of an appeal implicates our jurisdiction, we may not

---

depositions. The New Jersey court issued an order granting the Lukendas leave to request a foreign subpoena in a Pennsylvania court. The Lukendas then filed a petition in a Pennsylvania trial court seeking the issuance of a foreign subpoena to depose the physicians. The Pennsylvania trial court ***denied the petition to issue a foreign subpoena***, noting that the doctors had already been deposed several times in unrelated matters concerning their treatment methods and practice policies, making the current request at least partly cumulative. On appeal, the ***Makarov*** Court concluded that the trial court's order could not qualify as a collateral order under Pa.R.A.P. 313. While the ***Makarov*** Court observed that "[g]enerally, discovery orders are not appealable as they do not dispose of the litigation," the Court did not consider whether the order in question operated to dispose of the limited Pennsylvania litigation, such that the order was a final, appealable order pursuant to Rule 341(b)(1). ***Id***. at 164.

In this case, the Connecticut court issued a foreign subpoena, Clark initiated this limited miscellaneous action for the sole purpose of domesticating and serving the foreign subpoena, and the trial court ***quashed the foreign subpoena***, effectively placing Clark out of court. Given that the trial court ***quashed*** the existing foreign subpoena rather than merely ***declining to issue a foreign subpoena***, we conclude that ***Makarov*** is factually distinguishable, and that ***Animal Legal Def. Fund*** is more factually aligned with this matter. We further conclude that ***Makarov*** is legally distinguishable in that the Court did not consider whether the order disposed of the limited Pennsylvania litigation such that it was final and appealable pursuant to Rule 341(b)(1). Given that the Court in ***Animal Legal Def. Fund*** accepted that the order quashing the foreign subpoena was a final, appealable order that effectively ended the limited Pennsylvania action, we find that it provides persuasive authority that the July 7, 2025 order is a final, appealable order.

address the merits of the underlying issue raised by an appellant before determining whether the appeal was timely filed). Pertinent to this issue, Pennsylvania Rule of Appellate Procedure 903(a) provides that "[e]xcept as otherwise prescribed by this rule, the notice of appeal . . . shall be filed within [thirty] days after the entry of the order from which the appeal is taken." Pa.R.A.P. 903(a). Pursuant to Pa.R.A.P. 105(b), this Court may not enlarge time for filing a notice of appeal. Accordingly, this Court may quash the appeal if it is untimely filed beyond the thirty-day time limitation proscribed by Rule 903(a). ***See Costlow v. Costlow***, 914 A.2d 440, 442 (Pa. Super. 2006) (quashing an appeal filed beyond thirty-day time limitation).

Notably, the mere filing of a motion for reconsideration does ***not*** toll the time period for taking an appeal. ***See Gardner v. Consol. Rail Corp.***, 100 A.3d 280, 283 (Pa. Super. 2014). Instead, the thirty-day appeal period is tolled only by a timely order expressly granting reconsideration of the final appealable order within thirty days after the entry of the final order. ***See id***. Thus, "[i]f a trial court fails to grant reconsideration expressly within the prescribed [thirty] days, it loses the power to act upon both the petition [for reconsideration] and the original order." ***Valley Forge Center Associates v. Rib-It/K.P., Inc***., 693 A.2d 242, 245 (Pa. Super. 1997); ***see also Mfrs. & Traders Tr. Co. v. Greenville Gastroenterology, SC***, 108 A.3d 913, 916 (Pa. Super. 2015) (holding that "[a] court lacks the authority to grant reconsideration of a final order more than [thirty] days after its entry"); 42

Pa.C.S.A. § 5505 (providing that "a court upon notice to the parties may modify or rescind any order within [thirty] days after its entry . . . if no appeal from such an order has been taken or allowed"). Consequently, where there has been no appeal filed within thirty days after the entry of a final order, nor any ruling expressly granting a motion for reconsideration filed within that timeframe, "the trial court [can] no longer grant the petition for reconsideration of the [final] order, nor [does] it have the power to change that order." ***Gardner***, 100 A.3d at 283.

This Court may exercise its appellate jurisdiction to consider whether the trial court lacked the jurisdictional authority to grant a motion for reconsideration more than thirty days after the order at issue was entered. ***See id***. at 282-83; ***see also Response Indus. v. Commonwealth of Penn. State Health Lancaster Med. Ctr.***, 304 A.3d 755 (Pa. Super. 2023) (unpublished memorandum) (relying on ***Gardner*** to hold that this Court may exercise its appellate jurisdiction to determine that "the trial court had no jurisdiction to vacate its final order striking [a] mechanics' lien claim more than [thirty] days after the order was entered," and ruling that it was "constrained to vacate the court's [subsequent] order [granting reconsideration and] direct the trial court to reinstate its [prior] order").[7]

---

[7] Unpublished, nonprecedential memoranda decisions of the Superior Court, filed after May 1, 2019, may be cited for their persuasive value. ***See*** Pa.R.A.P. 126(b).

Here, when Clark filed his motion for reconsideration, he was required to simultaneously file a notice of appeal on or before August 6, 2025, to preserve his right to appeal the July 7, 2025 order in the event that the trial court failed to expressly grant his motion for reconsideration by August 6, 2025. ***See Cheathem v. Temple University Hospital***, 743 A.2d 518, 521 (Pa. Super. 1999); ***see also*** Pa.R.A.P. 1701(b)(3)(i), (ii). As Clark failed to file a timely notice of appeal within thirty days following the entry of the July 7, 2025 order, and the trial court did not expressly grant reconsideration within that thirty-day period, the trial court lost the power to act upon the motion for reconsideration and was divested of jurisdiction to rescind or vacate the July 7, 2025 order. ***See Valley Forge***, 693 A.2d at 245; ***see also*** 42 Pa.C.S.A. § 5505.

Consequently, the trial court's subsequent October 6, 2025 order, entered ninety-one days after the entry of the July 7, 2025 order, was a legal nullity because the trial court no longer had jurisdiction to rule on the motion for reconsideration or to vacate the July 7, 2025 order. ***See Valley Forge***, 693 A.2d at 246 (holding that when the trial court did not expressly grant reconsideration within thirty days after the entry of the final order and thereafter purported to rule on the motion for reconsideration beyond the thirty-day period, "the lack of jurisdiction render[ed] the August 28 Order denying VFCA's petition for reconsideration a nullity, as the trial court did not have the power to enter it, and VFCA's instant appeal from this nugatory Order

is improper"); ***see also Gardner***, 100 A.3d at 283 (holding that where the trial court purported to rule on a motion for reconsideration more than thirty days after the final order had been entered, the "order is invalid since it was entered after the trial court was divested of jurisdiction to act in this case").

In sum, as the trial court lacked jurisdiction to enter the October 6, 2025 order, it is a legal nullity. ***See Valley Forge***, 693 A.2d at 246. Therefore, we vacate the October 6, 2025 order, and reinstate the July 7, 2025 order which granted Mertz's motion for a protective order and quashed the foreign subpoena.[8]

Order of October 6, 2025 vacated. Order of July 7, 2025 reinstated.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/06/2026

[8] Because Clark failed to file a timely notice of appeal from the July 7, 2025 order, he failed to preserve his appellate rights in relation to the final order entered in this matter. ***See Valley Forge***, 693 A.2d at 246; **see also *Gardner***, 100 A.3d at 282-83 (holding that "[t]he failure to file a timely appeal from a final order results in that order becoming *res judicata* on the issue decided therein").