

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

DUBOIS REGIONAL MEDICAL CENTER : IN THE SUPERIOR COURT OF
T/D/B/A PENN HIGHLANDS DUBOIS : PENNSYLVANIA

v.

ANNETTE FOLGUERAS, M.D.

Appellant

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No. 1438 WDA 2025

Appeal from the Order Entered October 13, 2025
In the Court of Common Pleas of Clearfield County
Civil Division at No: 2022-510-CD

BEFORE: McLAUGHLIN, J., KING, J., and BENDER, P.J.E.

MEMORANDUM BY BENDER, P.J.E.: **FILED: SEPTEMBER 3, 2026**

Annette Folgueras, M.D. (Appellant) appeals from the order denying her petition to open default judgment in this civil matter initiated by Dubois Regional Medical Center, t/d/b/a Penn Highlands Dubois (Appellee), for the return of an overpayment of severance pay. Upon review, we affirm.

The trial court summarized the pertinent history as follows:

The Parties entered into a written Physician Employment Agreement on September 24, 2020. Pursuant to that Agreement, [Appellant] commenced work as an anesthesiologist [with Appellee] on October 1, 2020. [Appellee] exercised its right to terminate its Agreement with [Appellant] without cause by letter dated April 15, 2021.

[Appellant] was entitled to 90 days severance pay following this termination of her employment. Unfortunately, [Appellee] overpaid. This mistake was caused by a clerical/processing error in its payment department. [Appellee] made repeated demand to [Appellant] for reimbursement. She failed to pay. [Appellee] filed a Complaint on April 25, 2022 to recover these overpayments

together with the balance due on a loan it made to [Appellant]. [Appellant] did not respond to the Complaint. [Appellee's] counsel sent [Appellant] the required 10 Day Notice pursuant to Pa.R.C.P. 237.1. [Appellant] still failed to file a response to the Complaint. [Appellee's] counsel then filed a Praecipe for Default Judgment. Judgment was entered in favor of [Appellee] and against [Appellant] by the Clearfield County Prothonotary on July 5, 2022 in the amount of \$214,770.52.

[Appellant] then did absolutely nothing in regard to this case for almost three years, until she filed a Petition to Open the Default Judgment for Lack of Personal Jurisdiction and Improper Service of Process on March 18, 2025. [Appellee] filed an Answer to [Appellant's] Petition on April 8, 2025 and an Amended Answer on May 6, 2025. The [c]ourt held an evidentiary hearing on August 15, 2025 and at the conclusion of the same ordered briefs. By Order [entered October 13], 2025 the [c]ourt denied [Appellant's] Petition to Open Judgment.

Trial Court Opinion, 12/9/25, at 1-2.

This timely appeal followed. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant presents the following issues for our review:

1. Whether the trial court committed legal error by holding that compliance with the "reasonably calculated to give actual notice" clause in 42 Pa.C.S. § 5323(a) is sufficient for valid out-of-Commonwealth service, thereby excusing strict compliance with one of the statute's five enumerated methods and applying a lowered standard to substituted service under Pa.R.C.P. 402(a)(2) and 404?
2. Whether the trial court erred as a matter of law and abused its discretion by denying the Petition to Open Default Judgment where substituted service on Murat Senelt was improper under Pa.R.C.P. 402(a)(2)(i), 404(1), and 42 Pa.C.S. § 5323(a), thereby depriving the court of personal jurisdiction and rendering the default judgment void *ab initio*?
3. In the alternative, whether the trial court abused its discretion by failing to apply the equitable three-prong test of **Cintas Corp.**

v. Lee's Cleaning Servs., Inc., 700 A.2d 915 (Pa. 1997) and **McCoy v. Public Acceptance Corp.**, 305 A.2d 698 (Pa. 1973) with the required liberality, where Appellant demonstrated prompt filing upon discovery, a reasonable excuse for non-response based on lack of actual notice, and a meritorious defense of fraudulent inducement and equitable estoppel?

Appellant's Brief at 4-5.

"Initially, we recognize that trial courts can apply legal or equitable principles in reviewing petitions to strike or open default judgments." **Wells Fargo Bank, N.A. v. Vanmeter**, 67 A.3d 14, 16-17 (Pa. Super 2013). "Since [petitions to open default judgments] relate to the trial court's exercise of its equitable powers, we will not disturb the trial court's denial of [a petition to open] absent a misapplication of the law or a clear abuse of discretion by the trial court." **Id.** at 17. "An abuse of discretion occurs when a trial court, in reaching its conclusions, overrides or misapplies the law, or exercises judgment which is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will." **Jacks Auto Parts Sales, Inc. v. MJ Auto Body and Repair LLC**, 305 A.3d 162, 166 (Pa. Super. 2023) (citation omitted). "Further, the party petitioning to open a judgment bears the burden of establishing such relief." **Id.** at 167.

In her first two issues, Appellant argues that the trial court should have granted her petition to open the default judgment because the court lacked personal jurisdiction since she was deprived of appropriate service. Appellant asserts that she was not personally served with notice of Appellee's complaint and that substitute service was not effective because it did not satisfy the requirements under our rules of civil procedure. Specifically, she alleges she

did not receive service of the civil complaint because service was made upon Mr. Murat Senelt as he was exiting Appellant's residence. Appellant maintains that Mr. Senelt was not "a person in charge" and qualified to receive service. Rather, Appellant contends "Mr. Senelt was hired solely for menial tasks – feeding cats, watering plants, and checking appliances – with no broader authority over the residence or any managerial discretion. He had no keys (only garage access via code), did not reside there, and was not responsible for property decisions." **See** Appellant's Brief at 24. We disagree.

A court must have personal jurisdiction over a party to enter a judgment against it. [A]ction taken by a court without jurisdiction is a nullity. Because jurisdiction over a person is dependent upon proper service, the Pennsylvania Supreme Court has held that the rules relating to service of process must be strictly followed.

Dubrey v. Izaguirre, 685 A.2d 1391, 1393 (Pa. Super. 1996) (citing **Sharp v. Valley Forge Med. Ctr. & Heart Hosp., Inc.**, 221 A.2d 185, 187 (Pa. 1966)). "In the absence of valid service, a court lacks personal jurisdiction over a party and is powerless to enter judgment against him." **U.K. LaSalle, Inc. v. Lawless**, 618 A.2d 447 (Pa. Super. 1992). Therefore, "where the party seeking to open a judgment asserts that service was improper, a court must address this issue first before considering any other factors." **Digital Commc'ns Warehouse, Inc. v. Allen Invs., LLC**, 223 A.3d 278, 288 (Pa. Super. 2019). "When determining a petition to open a judgment, matters *dehors* the record filed by the party in whose favor the warrant is given, *i.e.*, testimony, depositions, admissions, and other evidence, may be considered

by the court.” ***Resolution Trust Corp. v. Copley Qu-Wayne Associates***, 683 A.2d 269, 273 (Pa. 1996) (citation omitted).

Pennsylvania courts may exercise personal jurisdiction over non-resident defendants under the Pennsylvania long-arm statute. Relevant to this matter, the statute provides:

(a) General rule.--A tribunal of this Commonwealth may exercise personal jurisdiction over a person . . . who acts directly, or by an agent, as to a cause of action or another matter arising from such person:

(1) Transacting any business in this Commonwealth. Without excluding other acts which may constitute transacting business in this Commonwealth, any of the following shall constitute transacting business for purpose of this paragraph:

(i) The doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object.

42 Pa.C.S. § 5322(a)(1)(i).

Here, Appellant has not challenged the applicability of the long arm statute, nor could she. It is undisputed that Appellant had entered into a contract to provide anesthesiologic services to Appellee and provided such services, thereby subjecting her to personal jurisdiction as described above.

In addition, under our long arm statute, service of process on persons outside this Commonwealth is governed by Pa.C.S. § 5323, which states in part:

(a) Manner of service. — When the law of this Commonwealth authorizes service of process outside this Commonwealth, the service, when reasonably calculated to give actual notice, may be made:

(1) By personal delivery in the manner prescribed for service within this Commonwealth.

(2) In the manner provided or prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.

(3) By any form of mail addressed to the person to be served and requiring a signed receipt.

(4) As directed by the foreign authority in response to a letter rogatory.

(5) As directed by a court.

(b) Proof of service. — Proof of service outside this Commonwealth may be made by affidavit of the individual who made the service or in the manner provided or prescribed by the law of this Commonwealth,

42 Pa.C.S. § 5323(a) and (b).

Likewise, Pennsylvania Rule of Civil Procedure 404 governs service outside the Commonwealth. That rule allows, *inter alia*, for service to be made outside of the Commonwealth consistent with the requirements in Pa.R.C.P. 402(a). **See** Pa.R.C.P. 404(1). Pennsylvania Rule of Civil Procedure 402 allows for original process to be served by handing a copy “at the residence of the defendant to an adult member of the family with whom he resides; but if no adult member of the family is found, then to an adult person in charge of such residence[.]” Pa.R.C.P. 402(a)(2)(i).

Our review of the record shows that on June 2, 2022, at 7:35 a.m., a copy of the complaint was served upon Senelt as he exited the garage at Appellant's residence in Ellicott City, Maryland.¹ **See** Respondent's Exhibit 4. The record further establishes a business and personal relationship existed between Appellant and Senelt.

Notably, Appellant and Senelt have owned, as joint tenants, a 25-acre parcel of land since September 2013. **See** Respondent's Exhibit 1. Also, Appellant is listed as a director on Senelt's "Articles of Incorporation" for a tax-exempt non-stock corporation under the name "Hidden Brook Equine Therapy Foundation, Inc." **See** Respondent's Exhibit 7. In addition, at the time of service, Appellant and Senelt jointly owned a 2018 Dodge Ram Truck.² **See** Respondent's Exhibit 2.

Further, Appellant testified that in April or May of 2022, she received an assignment to work as a "locums anesthesiologist" outside of Maryland. **See** N.T., 8/15/25, at 13. Appellant testified that Senelt had her permission to stay at her residence.³ **See id.** at 13-14. She further conceded that Senelt

¹ The affidavit of service sets forth the date, time and place of service. It also states that service was by personal delivery, and names Senelt as the person served. The affidavit identifies Senelt by age, ethnicity, gender, weight, height and hair color.

² It is also undisputed that Senelt entered and drove the truck after he received service of the complaint. **See** Respondent's Exhibit 4.

³ Appellant concedes that Senelt was able to enter and exit her residence as he had the access code to her garage. **See** Appellant's Brief at 24.

looks after her house when she's away. **See id.** at 22. Also, when asked "in addition to him watching over your house and owning real estate with you and a vehicle with you, you're also a business partner," Appellant replied, "Correct." **Id.** at 25.

On this record, we conclude that Senelt was the person in charge of Appellant's residence during her absence. As stated above, a litigant can properly serve original process by transmitting a hard copy of their complaint, *via* personal service, to an adult person in charge of the residence where a defendant resides. **See** Pa.R.C.P. 402(a)(2). Therefore, we agree with the trial court's determination that service was properly effectuated upon Appellant when the process server handed a copy of the complaint to Senelt as he exited Appellant's residence.⁴ Appellant's arguments to the contrary lack merit.

⁴ Appellant believes her case is analogous to ***Fisher v. Kemble Park, Inc.***, 142 A.2d 353 (Pa. Super. 1958), ***Grand Entertainment Group, Ltd. V. Star Media Sales, Inc.***, 988 F.2d 476 (3rd Cir. 1993), and ***Trzcinski v. Prudential Property and Casualty Ins. Co.***, 597 A.2d 687 (Pa. Super. 1991). In those cases, it was determined that an adult who accepted service at a place of business was not a person in charge such that service could be effectuated through them. This case is readily distinguishable because this matter involves service at Appellant's residence, and Senelt was in charge of Appellant's residence at the time of service. **See Fisher**, (holding that service on a janitor in a building owned by the defendant was not sufficient); **Grand Entertainment Group**, (finding that a receptionist who was located in the lobby of the building where the defendants rented space and who was not the defendants' employee was not a person in charge of the defendants' place of business); **Trzcinski**, (holding that the receptionist of a law firm that had represented the defendant in previous matters was not in charge of the defendant's regular place of business). **But see Drury v. Zingarelli**, 180 (Footnote Continued Next Page)

Finally, Appellant argues that the trial court abused its discretion in denying the petition to open the default judgment because she met all prongs of the tripartite test under **McCoy v. Public Acceptance Corp.**, 305 A.2d 698 (Pa. 1973). **See** Appellant's Brief at 30-36. She alleges she established prompt filing of the petition to open, asserted a reasonable excuse for failing to respond to the complaint, and set forth a meritorious defense to the action.

"To open a default judgment, the movant must promptly file a petition to that effect, must plead a meritorious defense to the claims raised in the complaint, and provide a reasonable excuse for not filing a responsive pleading." **Vanmeter**, 67 A.3d at 18. Importantly, "the trial court cannot open a default judgment based on the 'equities' of the case when the defendant has failed to establish all three of the required criteria." **Myers v. Wells Fargo Bank, N.A.**, 986 A.2d 171, 176 (Pa. Super. 2009).

Regarding the first prong of the test, "[t]he timeliness of a petition to open a default judgment is measured from the date that notice of the entry of the default judgment is received." **U.S. Bank Nat'l Ass'n v. Watters**, 163 A.3d 1019, 1028 (Pa. Super. 2017). "In cases where the appellate courts have found a 'prompt' and timely filing of the petition to open a default judgment, the period of delay has normally been less than one month." **Kelly v. Siuma**, 34 A.3d 86, 92 (Pa. Super. 2011) (citation omitted).

A.2d 104 (Pa. Super. 1962) (holding that service on the defendant's visiting mother-in-law was proper even though the mother-in-law did not permanently reside with the defendant).

Here, the record reveals that default judgment was entered against Appellant on July 5, 2022, and the Prothonotary sent the required notice under Pa.R.C.P. 236 on that date. Nevertheless, Appellant contends that she learned of the judgment, and consequently the existence of this lawsuit, in October of 2022. Measuring from October 2022, the date that Appellant alleges she received notice of the entry of default judgment, her petition to open was filed approximately twenty-nine months later, on March 15, 2025. Taking into consideration this extended period of delay of over two years, we conclude Appellant did not establish that she promptly filed her petition to open the default judgment.

Concerning the second element, a petition must provide a reasonable explanation for the default. **See *McFarland v. Whitham***, 544 A.2d 929, 930 (Pa. 1988) (stating that an appellant must provide a “justifiable” explanation for failure to respond to a complaint in a timely manner under the second prong of the tripartite test). Regarding this prong, “whether an excuse is legitimate is not easily answered and depends upon the specific circumstances of the case. The appellate courts have usually addressed the question of legitimate excuse in the context of an excuse for failure to respond to the original complaint in a timely fashion.” ***Myers***, 982 A.2d at 176 (citation omitted).

Appellant’s explanation for her failure to file a timely responsive pleading is that “she had no notice of the lawsuit.” Petition to Open, 3/19/25, at 11 ¶ 59. She posits that “she wasn’t served personally and Mr. Senelt never gave

her the papers or informed her of the lawsuit in Clearfield County.” ***Id.*** We conclude that this excuse is deficient. Appellant does not deny that Senelt was served with Appellee’s complaint, which contained a notice to defend. Considering our above discussion about Senelt being in charge and properly receiving service, this excuse is disingenuous. Moreover, Appellant never answered the complaint after she allegedly learned of the default judgment in October 2022. Appellant asserts that instead of responding to the instant complaint, she chose to file a discrimination claim in Federal Court. ***See*** Petition to Open, 3/19/25, at 11 ¶ 58. She concedes she took no action until she was advised that her Federal claim did not open the instant judgment. ***See id.***

To the extent Appellant claims she had a settlement agreement with Appellee, we agree with the trial court’s conclusion: “If she truly believed that she had a settlement agreement with [Appellee], then the proper way to assert that agreement as a defense would be by answering the Complaint and raising the settlement as New Matter. She did not do this.” Trial Court Opinion, 12/9/25, at 9-10. Therefore, it is our determination that Appellant offered no reasonable excuse or explanation for her failure to file a timely response to Appellee’s complaint. Aside from Appellant’s cryptic allegation that Appellee deceived her by offering her one year of severance pay, the petition to open is devoid of any specific and clear facts to establish a meritorious defense. ***See*** Petition to Open, 3/19/25, at 11 ¶ 60. Upon review

of the record, we conclude the trial court correctly found no meritorious defenses. As the trial court observed:

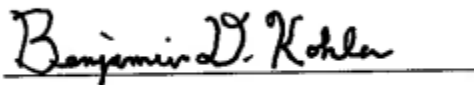
[Appellant] uses her story of a purported settlement in an attempt to show that if permitted to open the judgment, she could assert a “meritorious defense.” However, [Appellant] did not offer one shred of documentary evidence, much less a fully developed, signed written settlement agreement with the hospital in support of this claim[; to] the contrary, she asserts that it was done on a handshake in a five-minute exit interview. This statement was denied by the credible testimony of [Appellee’s] two vice presidents who met with [Appellant] at the exit interview.

Trial Court Opinion, 12/9/25 at 10. Because the determination of what constitutes a meritorious defense rests with the trial court, we find no error of law or abuse of discretion.

In summary, Appellant’s petition to open was untimely and lacked the requisite showing that Appellant had a meritorious defense to the underlying action and a reasonable explanation for her failure to file a responsive pleading. We discern no abuse of discretion or error by the trial court in denying Appellant’s petition to open the default judgment. Accordingly, we affirm the order of the trial court.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 9/3/2026