NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

LOUIS G. MONBORNE	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
JAMES C. SMITH, JR.	:	No. 166 WDA 2026

Appeal from the Order Entered July 21, 2025
In the Court of Common Pleas of Indiana County Civil Division at No(s): 12469 CD 2008

BEFORE: PANELLA, P.J.E., KING, J., and LANE, J.

MEMORANDUM BY LANE, J.: **FILED: November 17, 2026**

Louis G. Monborne ("Monborne") appeals from the order granting the petition of James C. Smith, Jr. ("Smith"), to open the confessed judgment entered sixteen years earlier. We reverse.

The trial court summarized Smith's account of the factual history as follows:

> In 1991 or 1992, [Smith] began working for [Monborne] at a Sunoco gas station. . . . At the same time, [Smith] was . . . working on getting his [emergency medical technician ("EMT")] certification and had been working with Veterans Ambulance. [Monborne] was also the owner of LJL Trucking, . . . a trucking company with one or two tri-axle trucks that . . . haul[ed] coal and other . . . items. In . . .1995, [Smith], relying on his experience in working for Veterans Ambulance and as an EMT, approached [Monborne] with an idea to start a non-emergency medical transport company.
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> After discussions, [Monborne and Smith] launched "Med-Van Transport [("Med-Van")]". According to [Smith,] Med-Van . . . operated as a fictitious name under the LJL Trucking, Inc. corporate entity. [Smith] considers himself a co-founder of Med-

> Van . . . and was initially designated as the vice president[. Med-Van] initially operated as a nonemergency medical transport service[, and] later extended to an ambulance service. . . . All costs relating to the business start-up and subsequent vehicle purchases were paid by [Monborne] through LJL Trucking. . . .

Opinion and Order of Court, 7/21/25, at 2-3 (unnecessary capitalization omitted).

Smith testified about his role in Med-Van:

> [I]n the beginning stages of the company, he [worked] part time at the gas station and then would switch to a marketing/service position[] with Med-Van, calling facilities and hospitals in an attempt to grow the business. [Smith] testified that based on his actions[,] within a year the business had grown to over ten . . . vehicles. [Smith] was also involved in hiring employees, . . . billing[,] and invoicing for services rendered by Med-Van. [Smith] described himself as the [human resources] department and the marketing department for Med-Van. He also testified that the business grew quickly due to the many contracts he obtained. [By] 2010 the company was approaching [$]8 million [in revenue.] . . .

Id. at 3 (unnecessary capitalization omitted).

Smith then testified about the loan and loan documents at issue in this matter:

> In 2007, [Smith] was living in an apartment above the Sunoco gas station and was making approximately $57,000[] per year with Med-Van. He . . . was engaged to be married and was desirous of building a home. As such, [Smith] testified that he approached [Monborne] and requested a loan to build a home. ***He proposed that in lieu of bonuses he would apply those amounts to the loan. [Smith] testified that [Monborne] agreed to this proposition***[.]
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> [C]onstruction of the home began in April 2008. All of the bills for the construction were [submitted to] Med-Van . . . for payment. During this time, [Smith] continued to receive his

> regular monthly wages. The total cost of construction paid by Med-Van ended up being approximately $205,000[.]
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> In the fall of 2008, [Smith] and his fiancé[e] had a falling out, and she filed a partition action seeking one-half the value of the home. As a part of [the] litigation, financial information was sought from [both Smith and Med-Van/LJL Trucking.] In an effort to in some way memorialize the fact that [Monborne] had paid for the construction of the home and in an effort to protect [Smith's] home, [Monborne] and [Smith] signed an Agreement [(the "December 2008 Agreement")] dated December 4, 2008[.]

Id. at 4 (emphasis and paragraph break added and record citations omitted).

At the underlying hearings, Smith explained that in December 2008, he contacted an attorney, whom he and Monborne both knew, to prepare the December 2008 Agreement and promissory note.[1] Smith testified that he executed the promissory note so that Monborne could file it with the trial court and obtain a judgment lien, and thus "protect the property from" his ex-fiancée's partition claims.[2] N.T., 4/3/25, at 88; ***see also*** N.T., 1/7/25, at 45. Smith received notice of the judgment of $205,750.33 and understood "it was to be a lien against the property." N.T., 4/3/25, at 88. However, he also testified that he did not "know that a judgment would be filed [against him] in the Court of Common Pleas." N.T., 1/7/25, at 47-48.

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[1] This same attorney, Dennis Previte, Esquire, represented Monborne in filing the 2008 complaint in confession of judgment and 2020 writ of revival.

[2] Smith also testified, however, that his "biggest concern" was protecting Med-Van and Monborne, as his ex-fiancée "was threatening to sue Med-Van." N.T., 1/7/25, at 48.

The terms of the December 2008 Agreement were as follows. The parties acknowledged that Monborne had loaned funds to Smith for the construction of a home; Smith agreed to execute a promissory note in the amount of $205,750.33 and in favor of Monborne, which authorized Monborne to confess judgment against him for all sums due; and Smith agreed to execute any additional agreements to acknowledge any additional sums loaned to him by Monborne. We note that aside from the references to a promissory note, the December 2008 Agreement did not specify the time and manner for any repayment by Smith.

On the same day, Smith also executed a promissory note in favor of Monborne. The promissory note stated that Smith "promises to pay" the sum of $205,750.33 "on demand" with interest. Promissory Note, 12/4/08, at 1.

On December 5, 2008, the day after the execution of the agreement and promissory note: (1) Monborne filed a complaint in confession of judgment; and (2) the trial court clerk entered the underlying confession of judgment in the amount of $205,750.33, in favor of Monborne and against Smith. As we discuss ***infra***, there was no further docket activity for twelve years.

Meanwhile, in January 2009, "in an attempt to provide documentation in the [fiancée's] partition action, [Smith] created another agreement [(the "April 2008 Agreement"), back-dating it] to April 2008, *i.e.*, [when] construction on the home began." Opinion and Order of Court, 7/21/25, at 4

(record citation omitted). Smith explained that he prepared the agreement because the attorneys in the partition action had asked for a document "to show [he] had a loan" from Monborne. N.T., 1/7/25, at 51; ***see also*** N.T., 4/3/25, at 96. The April 2008 agreement stated:

> As agreed by both parties involved (. . . Smith and . . . Monborne), the total amount loaned to . . . Smith will be paid back upon completion of the construction of the Home. At this time . . . Smith agrees to secure a Home Equity Loan and repay the amount loaned to Med-Van[3] within 45 days of the completion of construction.

Loan Agreement, 4/2/08, Trial Exhibit 1. Smith stated that he obtained the above "boilerplate" language from the Internet. N.T., 4/3/25, at 103. When asked why he did not just set forth the terms of his alleged agreement with Monborne, that Smith would repay the loan by foregoing raises and bonuses, Smith stated, "I'm not sure[.]" ***Id***. at 104.

The trial court summarized the ensuing factual and procedural history:

> [The two agreements,] although created after [Monborne] provided funds to [Smith], helped bring a resolution to the pending partition action[. T]he house construction was then completed by 2010.
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> After 2010, [Smith] remained employed at Med-Van for approximately ten . . . more years. During this time, [Smith] continued to market and work to expand the business, but, as [Smith] testified, his income remained "stagnant." However, other employees' income was higher and/or increased during this same time frame.

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[3] While the December 2008 Agreement designated ***Monborne*** as the lender, the April 2008 Agreement identified ***Med-Van*** as the lender.

> During this time, [Monborne] took no action on the [confessed] judgment and did not request [Smith] obtain a loan to pay the judgment amount in full. In 2019, based on the testimony of [Smith], Med-Van was doing [*sic*] close to [$12 million] in revenue. [Smith] claims that he was personally responsible for the contracts that had brought this revenue to the company. . . .

Opinion and Order of Court, 7/21/25, at 4-5 (paragraph break added).

In 2020, Smith resigned from employment with Med-Van. "A few weeks" later, on September 29, 2020, Monborne filed a praecipe for a writ of revival in the amount of $350,845.45. This was the second entry on the trial docket, following the entry of confessed judgment approximately twelve years earlier. In February 2021, four months after the writ of revival, an attorney entered his appearance on behalf of Smith but filed nothing of record. At the underlying hearings, Smith testified that after receipt of the writ of revival, he contacted an attorney, who "wrote a couple letters[and] submitted things [*sic*]," but Smith "ended up losing communication with him." N.T., 1/7/25, at 63. At this time, Smith also communicated with the attorney who prepared the December 2008 Agreement, but he did not explain what they discussed. ***See id***. at 63-64.

On April 3, 2024, three and one-half years after the writ of revival, Monborne filed a second writ of revival, in the amount of $399,065.44, plus interest and costs.

On April 15, 2024, Smith filed the underlying petition to open the confessed judgment, and after receiving leave from the trial court,

subsequently filed an amended petition to open.[4] Pertinently, with respect to any delay in filing, Smith averred his petition was "promptly and timely filed" in light of the April 3, 2024 writ of revival. Amended Petition to Strike and/or Open Judgment, 7/17/24, at unnumbered 3. Monborne filed an answer. He also filed a motion *in limine*, arguing that the parol evidence rule applied to bar evidence of any alleged oral agreement between the parties, which would alter or contradict the terms of their written agreements.

The trial court conducted hearings on Smith's petition in January and April 2025. Smith testified consistently with the trial court's summary above. Smith also estimated that by foregoing salary raises and bonuses, he repaid the loan by 2015 or 2016. ***See*** N.T., 4/3/25, at 123; ***see also*** N.T., 1/7/25, at 55. He claimed that at that time, however, he did not know there remained a judgment lien against his property. ***See*** N.T., 4/3/25, at 123-24. Smith also stated that from 2016 to 2018, he "approached . . . Monborne several times" to discuss the amount outstanding on the loan. ***Id***. at 124-25. Monborne confronted Smith, however, with Smith's prior deposition testimony that he had not discussed any specific amount due on the loan with Monborne, because they "were family," Smith "had no intention of leaving in 2020," and Smith "knew [he] had an obligation" and "the debt was to be paid." ***Id***. at 126-28 (unnecessary capitalization omitted).

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[4] Initially, Smith also sought to strike the confessed judgment, but later advised the trial court that he would only proceed on his petition to open.

Monborne testified that he agreed to loan money to Smith in 2008 to build a house, as Smith "had gone through a divorce" and a bankruptcy and could not "get a loan." N.T., 4/3/25, at 149. Monborne testified they agreed that "as soon as the [house] was done," Smith would obtain a mortgage, posting the house as collateral, and repay him in full. ***Id***. at 150. Monborne denied they had an agreement to repay the loan through reductions in Smith's salary or bonuses. ***See id***.

On July 21, 2025 the trial court entered the underlying order, granting Smith's petition to open the confessed judgment "to determine the amount, if any, still due to" Monborne.[5] Order, 7/21/25. The court found, *inter alia*, that Smith's petition was prompt. The court also ruled that the parol evidence rule did not apply, as "the incongruous language between the two [loan agreements], coupled with the parties' course of conduct, *i.e.* [Monborne's] failure to seek collection on the judgment until [Smith] resigned, create[d] enough ambiguity to overcome the parol evidence rule."[6] Opinion and Order of Court, 7/21/25, at 8.

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[5] Monborne cited this order with the date appearing in the text, July ***18***, 2025. However, we deem the order as filed on the date it was stamped and entered on the trial docket, July ***21***, 2025.

[6] ***See also Rudy v. Lesniak***, 343 A.3d 1261, 1268 (Pa. Super. 2025) (providing that "[o]nce a writing is determined to be the parties' entire contract, the parol evidence rule applies and evidence of any previous oral or written negotiations or agreements involving the same subject matter as the
(Footnote Continued Next Page)

Monborne filed a motion for reconsideration, which requested, in part, a certification that he may take an appeal by permission pursuant to 42 Pa.C.S.A. § 702(b).[7] However, before the trial court ruled on it, Monborne filed in this Court a Pa.R.A.P. 1311 petition for permission to appeal.[8] This Court granted Monborne's petition and permitted this appeal to proceed.

Monborne presents one issue for our review:

> Did the trial court commit a reversible error of law in granting a petition to open a 16-year-old confessed judgment that the judgment debtor admits was correct when and as entered, where the judgment debtor's untimely petition to open did not assert any meritorious defenses that would have precluded the entry of the confessed judgment nor demonstrate the existence of any admissible evidence that would require the case to be submitted to a fact finder?

Monborne's Brief at 4 (unnecessary capitalization omitted).

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contract is almost always inadmissible to explain or vary the terms of the contract").

[7] ***See*** 42 Pa.C.S.A. § 702(b) (providing that "[w]hen a court . . . in making an interlocutory order . . . shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order"). Here, the trial court's order was not a final order, as it did not dispose of the claims between the parties. ***See*** Pa.R.A.P. 341(a) (providing that generally, "an appeal may be taken as of right from any final order"), (b) (defining a "final order" as one that "disposes of all claims and of all parties").

[8] ***See*** Pa.R.A.P. 1311(a)(1)-(2) (providing generally that "[a]n appeal may be taken by permission from an interlocutory order . . . for which certification pursuant to 42 Pa.C.S. § 702(b) was denied").

Monborne avers the trial court erred in finding Smith satisfied any of the three requirements for opening a confessed judgment, including a prompt filing, and thus erred in granting the petition to open. We consider the applicable standard of review: "A petition to open judgment is an appeal to the equitable powers of the court. As such, it is committed to the sound discretion of the hearing court and will not be disturbed absent a manifest abuse of discretion." ***PNC Bank v. Bluestream Tech., Inc.***, 14 A.3d 831, 835 (Pa. Super. 2010) (citations omitted). "Judicial discretion requires action in conformity with law on facts and circumstances before the trial court after hearing and consideration. Consequently, the court abuses its discretion if, in resolving the issue for decision, it misapplies the law or exercises its discretion in a manner lacking reason." ***Neducsin v. Caplan***, 121 A.3d 498, 506 (Pa. Super. 2015) (citations omitted).

This Court has stated:

> The trial court may open a confessed judgment "if the petitioner (1) ***acts promptly***, (2) alleges a meritorious defense, ***and*** (3) can produce sufficient evidence to require submission of the case to a jury." Generally, the court will dispose of the rule on petition and answer, along with other discovery and admissions. Pa.R.[Civ.]P. 2959(e).[9]
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> When determining if the petitioner acted promptly, "the courts are not bound by an inflexible time frame. The crucial factor in determining whether a petition is timely is not the specific

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[9] ***See*** Pa.R.Civ.P. 2959(e) (providing that a trial "court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence").]

> time which has elapsed but rather the reasonableness of the explanation given for delay."

Id. at 506 (some emphasis added and some citations omitted).[10]

The Pennsylvania Rules of Civil Procedure define a "judgment" as generally, "a judgment, order or decree requiring the payment of money entered in any court." Pa.R.Civ.P. 3020.

> Meanwhile, a judgment lien is born when the Prothonotary enters the judgment in the judgment index, which "create[s] a lien on real property located in the county, title to which at the time of entry is recorded in the name of the person against whom the judgment is entered." Pa.R.[Civ].P. 3023(a).
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> * * * *
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> A judgment continues as a lien against real property for five years and the lien expires at that time unless the judgment has been discharged or the lien is revived. Pa.R.[Civ.]P. 3023(c). A judgment lien may be revived by, *inter alia*, filing a writ of revival. ***See*** Pa.R.[Civ.]P. 3025.

Hoopes v. Hadley, 315 A.3d 844, 848 (Pa. Super. 2024) (some citations omitted).

On appeal, Monborne first avers that the court erred in finding Smith's petition to open, filed sixteen years after the 2008 entry of confessed judgment, was prompt. Monborne contends that the trial court offered no

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[10] We note that "[i]f written notice [of a writ of execution] is served upon the petitioner pursuant to [Pa.R.Civ.P.] 2956.1(c)(2) or . . . 2973.1(c), the petition to strike the judgment shall be filed within thirty days after such service[, u]nless the defendant can demonstrate that there were compelling reasons for the delay[.]" ***Driscoll v. Arena***, 213 A.3d 253, 256 (Pa. Super. 2019) (*en banc*). Here, Monborne has not filed a writ of execution, and thus this thirty-day deadline does not apply.

rationale why it excused Smith's delay of sixteen years, "particularly where [Smith's claims] were available to him in December 2008" and Smith claimed to have "paid off the judgment by 2015 or 2016." Monborne's Brief at 27-28. Monborne cites Superior Court decisions, which held that delays of sixty-three days, fifty-five days, and forty-seven days were "not considered as acting promptly." Monborne's Brief at 26 (*citing* ***Castings Condominium Ass'n v. Klein***, 663 A.2d 220, 223 (Pa. Super. 1995) (collecting cases)). Monborne points out that Smith "admitted he received notice in December 2008 that . . . judgment had been entered against him," but his amended petition to open did not cite "any 'new' facts." Monborne's Brief at 25 (unnecessary capitalization omitted).

Monborne also challenges the trial court's reasoning that Smith filed the petition to open twelve days after the 2024 writ of revival. Monborne first points out the "critical distinctions" between a judgment, judgment lien, and writ of revival of a judgment lien. ***Id***. at 23. He maintains that a writ of revival of a judgment lien is "different" from a judgment, and here, Smith sought only to open the 2008 judgment, and did not raise any challenge to Monborne's judgment lien or the two writs of revival of a judgment lien. Additionally, Monborne contends there is no authority providing "that a judgment creditor's filing to revive a judgment lien . . . 'restarts the clock' for the judgment debtor to petition to strike or open the underlying judgment." ***Id***. at 28. Finally, Monborne asserts that his own "decision[,] not to demand

repayment . . . within 45 days of completion of the construction of [Smith's] home," nor Monborne's lack of litigation before the September 2020 first writ of revival, "invalidate[d] or support[ed] a defense to the entry or amount of the December" 2008 judgment. ***Id***. at 29.

The trial court first reasoned that Smith did not challenge the "validity of the original judgment amount," $205,750.33, entered on December 8, 2008. Opinion and Order of Court, 7/21/25, at 11. Instead, Smith was "challenging . . . the amount that is now alleged due based on the [first] writ of revival ($350,845.45) that was filed on September 29, 2020, twelve . . . years after the original judgment date."[11] ***Id***. The court then found Smith's petition to open was prompt under the following circumstances:

> In the present case, the original judgment was entered on December 5, 2008. The court finds that [Smith's] explanation, *i.e*., that he is not challenging that original amount, and that he remained employed with [Monborne] for ten . . . years after the judgment was entered without any action on the judgment by [Monborne], sufficient to explain the delay in action as to the original judgment.
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> Importantly, after [Smith] left employment with [Monborne] and [Monborne] filed a Writ of Revival in September 2020, [Smith] engaged legal counsel and attempted to take action to address his claims. The court notes that during this time frame the country was in the middle of the [COVID]-19 pandemic, and that engagement in various activities was limited. By way of example, during the early stages of the pandemic, many legal offices were required to be closed. Based on the equities and circumstances present during the [COVID]-19 pandemic, coupled with the fact that [Smith] acted within twelve . . . days of [Monborne's] 2024

[11] As summarized above, Monborne subsequently filed a second writ of revival, in April 2024 in the amount of $399,065.44.

> Praecipe for Writ of Revival . . . , and that [Smith's] challenge is not to the underlying judgment, but to the amount now allegedly owed, the court finds that [Smith] has made some showing of promptness given the circumstances of the case. Accordingly, the court finds that [Smith] acted promptly.

Opinion and Order of Court, 7/21/25, at 12-13 (paragraph break added and unnecessary capitalization omitted).

After careful review of the record, we determine the trial court abused its discretion in finding Smith promptly filed the petition to open judgment. First, the evidence of record does not support the court's rationale that Smith "is not challenging [the] validity" or "original amount" of the 2008 confessed judgment. ***Id***. at 11, 13. While Smith may not have contested the amount of the underlying loan, he testified that he believed he repaid the loan in full by 2015 or 2016. ***See*** N.T., 4/3/25, at 123; ***see also*** Amended Petition to Strike and/or Open Judgment, 7/17/24, at unnumbered 5 (seeking to open the judgment to address "the ***principal amount***, interest calculation, and all other relief sought"). In any event, whether Smith agreed with the amounts of the loan, 2008 confessed judgment, or 2024 second of writ of revival, without more, has no bearing on whether his petition to open was prompt.

Additionally, the record does not support the trial court's discussion of the COVID-19 pandemic. Importantly, in discussing his course of conduct after receiving the September 2020 writ of revival, Smith did not refer to the

pandemic at all, let alone claim any pandemic-related reason for failing to file a response to the writ of revival.[12] ***See*** N.T., 1/7/25, at 62-64.

Next, we disagree with the trial court's consideration that Smith filed the petition to open twelve days after the second writ of revival of April 2024. ***See also*** Amended Petition to Strike and/or Open Judgment, 7/17/24, at unnumbered 3 (arguing that the petition was "promptly and timely filed" "[c]onsidering" that Smith received the writ of revival on April 3, 2024). The trial court did not cite, and we have not discovered, any authority that a praecipe for a writ of revival is relevant to whether a petition to open the earlier confessed judgment was prompt. A writ of revival acts merely to revive an already existing judgment lien that has expired due to the passage of five years' time. ***See Hoopes***, 315 A.3d at 848.

Finally, the trial court reasoned that Smith "remained employed with [Monborne] for ten . . . years after the judgment was entered without any action on the judgment by" Monborne. Opinion and Order of Court, 7/21/25, at 13. We emphasize, however, Smith's testimony that: (1) notwithstanding his present claim that he did not know he had a judgment against him in the

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[12] Instead, the only reference to "COVID" in the notes of testimony was Smith's testimony that he "helped prepare the PPP [*sic*]" and that Med-Van's gross revenues in 2020 "were approaching $12 million" before "COVID hit." N.T., 4/3/25, at 131. Furthermore, the Pennsylvania Supreme Court had ceased the general statewide judicial emergency in June 2020, approximately four months before the issuance of the first writ of revival. ***See In re Gen. Statewide Judicial Emergency***, 234 A.3d 408 (Pa. 2020) (declaring the general statewide judicial emergency to cease on June 1, 2020).

Court of Common Pleas, and regardless of his intentions in the partition litigation, he signed the 2008 promissory note with the intent for Monborne to obtain a judgment lien against the property; (2) he received notice of the December 5, 2008 judgment of $205,750.33; and (3) he believed he repaid the loan in full in 2015 or 2016. While Smith argues that he did not challenge the 2008 entry of judgment because he continued to work for Monborne and Monborne had not taken action on the judgment, Smith offered no explanation why he did not seek to open the judgment once he believed he repaid the loan in full in 2015 or 2016, or indeed at any time in the subsequent eight or nine years before he filed the instant petition in 2024. As Monborne points out, Smith presented no defense that would have arose after the alleged full repayment of the loan in 2015 or 2016.

Although Smith consulted with an attorney in 2020 or 2021 following the first writ of revival and notice of the increased amount of $350,845.45, Smith similarly offered no explanation why he did not take further action after this attorney allegedly ended communication, nor after Smith had communication with the attorney who prepared the initial December 2008 documents, including the complaint in confession of judgment. Given the lack of discussion by Smith, we conclude the trial court abused its discretion in finding he acted promptly in filing the petition to open. ***See Neducsin***, 121 A.3d at 506; ***see also PNC Bank***, 14 A.3d at 835. We reiterate that sixteen years had passed since the filing of the judgment.

Having determined that Smith failed to establish the first prong in seeking to open a confessed judgment — acting promptly — we need not reach the merits of Monborne's remaining arguments on appeal, which address the other two prongs — whether Smith raised a meritorious defense and whether he could have presented sufficient evidence to require submission of the case to a jury. ***See Neducsin***, 121 A.3d at 506.

For the foregoing reasons, we reverse the order granting Smith's amended petition to open the confessed judgment.

Order reversed. Jurisdiction relinquished.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

11/17/2026