

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

CHARLOTTE OLIPHANT-JOHNS,

No. 28 EM 2019

Petitioner

v.

GOOD DEAL REMODELING,

Respondent

ORDER

PER CURIAM

AND NOW, this 1st day of July, 2019, the Petition for Leave to File Petition for Allowance of Appeal *Nunc Pro Tunc* is DENIED.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CHARLOTTE OLIPHANT-JOHNS,

No. 28 EM 2019

Petitioner

v.

GOOD DEAL REMODELING,

Respondent

ORDER

PER CURIAM

AND NOW, this 12th day of August, 2019, the "Motion for: Reconsideration Application Request or Petition" is DENIED.

A True Copy
As Of 08/12/2019

Attest: 
Patricia A. Johnson
Chief Clerk
Supreme Court of Pennsylvania

C.

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CHARLOTTE OLIPHANT-JOHNS : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

Appellant

v.

GOOD DEAL REMODELING : No. 1131 EDA 2017

Appeal from the Order Dated February 17, 2017
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 160901913

BEFORE: BENDER, P.J.E., BOWES, J., and PANELLA, J.

MEMORANDUM BY PANELLA, J.

FILED FEBRUARY 01, 2019

Appellant, Charlotte Oliphant-Johns, appeals *pro se* from the order of the Philadelphia Common Pleas Court, which denied her motion to reinstate her appeal of an adverse Municipal Court decision in this breach of contract dispute, for failure to comply with multiple provisions of the case management order.¹ The trial court concluded that Appellant failed to demonstrate good cause for her omissions. We affirm.

In the underlying case, Appellant Oliphant-Johns brought a small claims suit against defendant/Appellee, Good Deal Remodeling, alleging breach of contract in the performance of a kitchen-remodeling project. Appellant had

¹ An order denying a motion to reinstate an appeal is a final order for purposes of appeal. **See Anderson v. Centennial Homes, Inc.**, 594 A.2d 737, 739 n. 2 (Pa. Super. 1991).

accepted Appellee's bid to renovate her kitchen at a quoted price of \$7,000. She made an initial down payment of \$5,200. After a year, Appellant was dissatisfied with the work (or lack of it) and sued for \$12,000.

After a hearing, the Municipal Court decided in favor of Appellee. Appellant timely appealed to the Court of Common Pleas. However, she failed to serve a copy of her notice of appeal and the case management order, as specified in the case management order itself. She also failed to file a complaint as specified in the case management order, and required by the rules of civil procedure. The trial court struck the appeal on the praecipe of Good Deal Remodeling, and, after a hearing, denied Appellant's motion to reinstate the appeal. This timely appeal followed.

Appellant raises two questions for our review. We reproduce them verbatim:

1. May I have an authority read over my complaint and evidence in support of my claim submitted to small claims court first filing. The Lower Court looked upon it as trivial.
2. Are Pennsylvania consumer protection laws real laws that are enforceable to the extent, enough to exert their influence on this High Court to help bring me to justice?

Appellant's Brief, at unnumbered page 4.

Preliminarily, we recognize that Appellant appeals *pro se*, and has represented herself through most of the previous proceedings. However, Appellant still has the burden of proving her case on appeal under traditional legal principles.

While this court is willing to liberally construe materials filed by a *pro se* litigant, we note that appellant is not entitled to any particular advantage because she lacks legal training. As our supreme court has explained, "any layperson choosing to represent [herself] in a legal proceeding must, to some reasonable extent, assume the risk that [her] lack of expertise and legal training will prove [her] undoing."

O'Neill v. Checker Motors Corp., 567 A.2d 680, 682 (Pa. Super. 1989)

(brackets in original, citations omitted).

In this appeal, Appellant's brief is substantially non-compliant with our Rules of Civil Procedure. For example, neither of Appellant's questions actually present a proper claim of trial court error or abuse of discretion. This is a Court of error correction. Even though Appellant's dissatisfaction with the remodel is self-evident, her brief fails to focus on any legal issues which would entitle her to relief. In particular, she does not address the reasons for the decision of the trial court, namely, her failure to prove good cause for not complying with the requirements stated in the case management order. It is our duty to be impartial. We cannot become Appellant's counsel.

"When issues are not properly raised and developed in briefs, when the briefs are wholly inadequate to present specific issues for review a Court will not consider the merits thereof." **Commonwealth v. Rivera**, 685 A.2d 1011, 1013 (Pa. Super. 1996) (citation omitted).

Moreover, Appellant's claims do not merit legal relief. After losing her case in Municipal Court, Appellant filed a notice of appeal but as already noted, failed to serve a copy of her notice of appeal or file a complaint. After her

appeal was stricken, Appellant moved to reinstate her appeal, which the court denied. We review the trial court's denial of reinstatement for an abuse of discretion. **See *Shin v. Brenan***, 764 A.2d 609, 610 (Pa. Super. 2000). "An abuse of discretion is more than an error of judgment; it occurs when 'the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.'" ***Id.*** (citation omitted).

Here, Appellant simply fails to plead or prove an abuse of discretion. On independent review, we find none. It was the role of the Municipal Court sitting as fact finder to weigh the evidence presented and accept all, part or none of it, as well as to assess the credibility of the witnesses. **See *Ruthrauff, Inc. v. Ravin, Inc.***, 914 A.2d 880, 888 (Pa. Super. 2006). On the available record, it is apparent that the trial court gave Appellant a full and fair hearing on her claims. We understand that Appellant is dissatisfied with the result. Nevertheless, without proof of trial court error or abuse of discretion, she is not entitled to a re-trial. Appellant had the burden to prove her case at the first trial. To prevail on appeal, she had to prove an error of law or an abuse of discretion. She did not do this. Appellant's claims do not merit relief.

Order affirmed.

President Judge Emeritus Bender joins the memorandum.

Judge Bowes concurs in the result.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CIVIL

OLIPHANT-JOHNS

SEPEMBER TERM, 2016
NO. 01913

v.

1131 EDA 2017

GOOD DEAL REMODELING

2016 JAN 10 PM 3:19

OFFICE OF JUDGE
FIRST JUDICIAL DISTRICT
PHILADELPHIA, PA

OPINION

Plaintiff-appellant Charlotte Oliphant-Johns appeals the Court's order dated February 17, 2017, which denied her motion to reinstate her appeal of a Municipal Court decision because she did not demonstrate good cause for failing to comply with the case management order. The Court did not abuse its discretion in denying Ms. Oliphant-Johns's motion to reinstate her appeal. The Court accordingly respectfully requests that the Superior Court affirm its decision for the reasons set forth below.

FACTS

On August 19, 2016, a judgment was entered in the underlying breach of contract case before the Philadelphia Municipal Court in favor of defendant Good Deal Remodeling and against plaintiff Charlotte Oliphant-Johns. *See* Notice of Appeal from Municipal Court filed September 16, 2016. Ms. Oliphant-Johns filed an appeal in the Philadelphia Court of Common Pleas on September 16, 2016. *See* Notice of Appeal filed September 16, 2016. A case management order was issued the same day. *See* Case Management Order filed September 16, 2016. This order required Ms. Oliphant-Johns to serve a copy of her notice of appeal and the standing case management order on the opposing party pursuant to Rule 1001(d) of the Philadelphia Civil Rules and to file a complaint in conformity with the Pennsylvania Rules of

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Civil Procedure. *Id.* at ¶¶4-5. It further provided that “failure to timely file your complaint may result in the appeal being dismissed for lack of prosecution pursuant to Pennsylvania Rule of Civil Procedure 1037(a).” *Id.* at ¶5. Ms. Oliphant-Johns neither served her notice of appeal and the accompanying case management order on defendant Good Deal Remodeling nor filed a complaint. *See Docket* generally.

On October 27, 2016, Good Deal Remodeling filed a praecipe to strike the appeal because of Ms. Oliphant-Johns’s failure to file an affidavit of service pursuant to Philadelphia Civil Rule 1001(e) and for failure to file a complaint within 20 days of filing her notice of appeal pursuant to Philadelphia Civil Rule 1001(f)(1)(i). *See Praecipe to Strike Appeal* filed October 27, 2016. Ms. Oliphant-Johns filed a motion to reinstate the appeal, asserting that she: was unaware that she had to file a complaint within 20 days of filing her appeal; had a good underlying cause of action; was elderly; appeared *pro se*; and had no litigation experience. She further argued that Good Deal Remodeling would not be prejudiced from reinstatement of her appeal. *See Motion to Reinstate Appeal* filed November 22, 2016 at ¶6(a)-(d); Notes of Testimony (“N.T.”) dated February 17, 2017 at 8:9-21. The Court denied this motion after a hearing, due to Ms. Oliphant-Johns’s failure to comply with the case management order. *See Order* dated February 17, 2017. Ms. Oliphant-Johns then appealed this decision to the Superior Court on March 21, 2017. *See Notice of Appeal* filed March 21, 2017.

DISCUSSION

The Superior Court will not reverse a trial court’s denial to reinstate an appeal absent an abuse of discretion. *Shin v. Brenan*, 764 A.2d 609, 610 (Pa. Super. 2000). The Court may reinstate an appeal of a Municipal Court opinion upon a showing of good cause. *Anderson v. Centennial Homes, Inc.*, 594 A.2d 737, 739 (Pa. Super. 1991). Although “good cause” has not

been precisely defined, a movant must show a legally sufficient reason for why the appeal should be reinstated. *Id.* The determination of whether the movant shows good cause is within the trial court's sound discretion. *Id.*

Further, a showing of lack of prejudice suffered by the opposing party from the failure to adhere strictly to the rules is an important factor to consider when determining whether an appeal should be reinstated. *Delverme v. Pavlinsky*, 592 A.2d 746, 748 (Pa. Super. 1991). Although Pennsylvania Rule of Civil Procedure 126 states that the trial court may disregard "any defect or rule of procedure which does not affect the substantial rights of the parties," good cause cannot be shown by "simply stating that the instant noncompliance did not substantially affect the rights" of the appellee. *Anderson*, 594 A.2d at 740; Pa.R.C.P. 126 (1975).

While *pro se* litigants are entitled to the same rights and privileges afforded to any represented party, their *pro se* status does not entitle them to special status. *First Union Mortg. Corp. v. Frempong*, 744 A.2d 327, 333 (Pa. Super. 1999). "Any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing." *Id.* at 337 (citations omitted).

Ms. Oliphant-Johns failed to demonstrate good cause to reinstate her appeal. Neither her status as a *pro se* litigant nor her unfamiliarity with litigation and the rules of civil procedure constitutes a legally sufficient reason supporting reinstatement of her appeal. See *First Union Mortg. Corp. v. Frempong*, 744 A.2d 327 (Pa. Super. 1999). Further, Ms. Oliphant-Johns's argument that she did not know of the rules is insufficient justification as the case management order put her on notice of her obligations as the appellant and the possible consequence of dismissal of her appeal for failure to comply with the order. See Case Management Order at ¶¶4-5. Yet, Ms. Oliphant-Johns failed to adhere to this order and subjected herself to the

consequences. Thus, as good cause was not established, the Court did not err in denying Ms. Oliphant-Johns's motion.

CONCLUSION

For the foregoing reasons, this Court respectfully requests that the Superior Court affirm its decision in this matter.

Abe F. Fox
J.

January 10, 2018