

No. 24 -

IN THE
Supreme Court of the United States

THOMAS M. GATZ, *PETITIONER*,

v.

THOMAS ZUPKO AND ARLETTA, HIS WIFE, 53
ZIEGLERS ROAD, RR2 PITTSTON TOWNSHIP, PA
18640

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

a. Is the PA quiet title § 5527.1. Section 5527.1 of the Judicial Code able to be executed for the respondent, ignoring an existing deed chain executed by the Lackawanna county commissioners in 1950 deeded (parcel #17507040005) said property title To the Petitioners grandmother Elizabeth Molnar (Gatz), then deed to the petitioners, via Elizabeth Molnar's (Gatz) executor Edward (Dell) Gatz April 19, 2021, prior to the order for advertisement signed by the court in case 20-cv-02626. (See Appendix E: Gatz Deed)

b. Is the PA quiet title § 5527.1. Section 5527.1 of the Judicial Code able to be executed and upheld for the respondent THOMAS ZUPKO AND ARLETTA, HIS WIFE (further referred to as Zupko's) when there was no adverse possession by the Zupko's, section (a) as the property was occupied by David T. Gatz, affirmed in Reed Road Associates v. Campbell 400 Pa. Superior Ct. 119 (1990) 582 A.2d 1373, additionally The lots are not contiguous to the Zupko's parcel section (b) Moore v. Duran 455 Pa. Superior Ct. 124 (1996) 687 A.2d 822 , since PA quiet title § 5527.1 sections a and b were not meet section (c) cannot be, section (d) one year notice was not given as the title was changed in April six months prior to the advertisement and quiet title order were signed, nor were the conditions meet for sections (e) , (f), (g) and (h) , also affirmed in Sutton v. Miller 405 Pa. Superior Ct. 213 (1991) 592 A.2d83.

c. Are the actions of the respondents Zupko's in conjunction with the county of Lackawanna and the state of Pennsylvania as per PA quiet title § 5527.1. Section 5527.1 of the Judicial Code, and 72 P.S 5566b(a) (b) a violation to the Petitioner rights under

US constitution's fourth amendment for illegal seizure or at the least the county of Lackawanna a government body Aiding and abetting the respondent Zupko's by stipulating to the Quiet title action while actively collecting taxes from the petitioner/defendants of 20-cv-02626 and the seizure Petitioners land and taxes.

d. Can a PA quiet title § 5527.1. Section 5527.1 of the Judicial Code able to be executed when the Petitioner or defendants were never notified in the Quiet title action 20-cv-02626, as Thomas M Gatz was the current owner of parcel 17507040005 when the order for notice by advertisement was signed by the court and the subsequent order granting title for parcel 17507040005 was signed by Judge Moyle in 20-cv-02626.

e. Can a PA quiet title § 5527.1. Section 5527.1 of the Judicial Code able to be executed and upheld when the Petitioner or defendants when the due diligence information submitted to the court was misleading the court to find in favor of the respondents and sign the order for notification by advertisement when the name defendants no longer had interest in the parcel 17507040005 only the Petitioner Thomas M Gatz?

f. Is the PA quiet title § 5527.1. Section 5527.1 of the Judicial Code able to be executed and upheld for the respondent Zupko's when :

1. Not a single letter was mailed to any defendants or respondent.

2. Service by sheriff was attempted during the worse epidemic in history of the US (COVID) and was not served upon the defendants or respondent.

3. The due diligence information submitted by the court was misleading the court in the Zupko's favor

ignoring the correct address found in their due diligence of Edward (Dell) Gatz, instead using a 25-year-old address where Edward (Dell) Gatz's daughter lives, but the correct address was intentionally ignored. (See Appendix G: Kimberl Murnin (Gatz) Affidavit and Appendix F: Dell Gatz Affidavit)

4. There was direct personal contact between Thomas Zupko and Edward (Dell) Gatz (named Defendant) during the Quiet title action with no mention of the 20-cv-02626 action, (See Appendix F: Dell Gatz Affidavit)

5. No validation of current ownership was submitted to the court via searches the County of Lackawanna tax and assessment and deed records was completed prior to requesting the court to sign the notice for service by advertisement/publication and the final Quiet title order was signed when the current ownership of the parcel #17507040005, was then and now DEEDED in the petitioners Thomas M Gatz name.

6. There are no checks and balances as a requirement in PA quiet title § 5527.1. Section 5527.1 of the Judicial Code to ensure a change in ownership prior to orders being signed as the court would not have signed the order for Advertisement and subsequent Quite title order, only relying on documents submitted to the court by the party executing the quiet title action, which they would never submit evidence showing other claims and deeds of ownership, tax records, etc. as is the case here.

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IV. Petition For Writ Of Certiorari

Thomas M. Gatz , respectfully petitions this court for a writ of certiorari to review the judgment of the Pennsylvania Court of Appeals.

V. Opinions Below

The opinion and decision by the Pennsylvania Court of Common Pleas and subsequent order by Judge Moyle in case 2020-VC-26. See Appendix C: Opinion of the Court Of Common Pleas of Lackawanna County N. 2020-CV-2626

The opinion and decision by the Pennsylvania Court of Appeals. denying Mr. Gatz's direct appeal is reported as Zupko, T., Pet. V. Molnar, No: 505 MAL 2023 (Pennsylvania App. October 5, 2023). See Appendix B: Opinion of the Superior Court No: 505 MAL 2023.

The Pennsylvania Supreme Court denied Mr. Gatz' petition for hearing on March 26, 2024. Appendix A: Decision of Pennsylvania Supreme Court of Appeals

VI. Jurisdiction

Mr. Gatz' petition for hearing to the Pennsylvania Supreme Court was denied on March 26, 2024. Mr. Gatz invokes this Court's jurisdiction under 28 U.S.C.

§1257, having timely filed this petition for a writ of certiorari within ninety days of the Pennsylvania Supreme Court's judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment IV:

The Constitution, through the Fourth Amendment, protects people from unreasonable searches and seizures by the government. The Fourth Amendment, however, is not a guarantee against all searches and seizures, but only those that are deemed unreasonable under the law.

Amendment Four to the Constitution was ratified on December 15, 1791. It protects the American people from unreasonable searches and seizures. The official text is written as such:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

VIII. Statement Of The Case

The County Of Lackawanna and the County of Lackawanna stipulated to the Quiet title action 20-cv-02626 for the Zupkos, when a deed chain from their county of Lackawanna commissioners deeded the parcel #17507040005 (307 Keiser Ave, old forge , pa)

to Elizabeth Molnar (Gatz) and via her executor Edward (Dell) Gatz to the respondent Thomas M. Gatz, while the county was actively and knowingly collecting taxes from the defendants and the respondent in this action stipulated to the Quiet title action 20-cv-2626, the county of Lackawanna knowing fully well they were actively participating in the seizure of parcel #17507040005 with ZUPKO'S (Zupko's) in 20-cv-02626 therefore seizing a house from the petitioner and defendants is US Const. amendment. IV prohibits, additionally taxes paid since 1950 to 2024 by the defendants and petitioner actively taking moneys from said defendants and petitioner via issued taxes bills from the county of Lackawanna for parcel #17507040005 therefore seizing money is US Const. amendment. IV violation and it prohibits. Parcel #17507040005 is currently deeded to Thomas M. Gatz and current tax bills are still being sent and paid by Thomas M Gatz as they have been since 1950 by the petitioner's father Davit T. Gatz. The taxes paid by the Petitioner and defendant David T. Gatz in 20-cv-02626 (the Petitioners deceased father who attempted in 2020 to deed parcel #17507040005 to the petitioner and David T. Gatz was the tax payer since 1950, on said property, but he was not the executor case), as the Petitioners ultimately was correctly deeded via Elizabeth Molnar's (Gatz) executor Edward (Dell) Gatz on April 19, 2021, which the Commonwealth Court of Pennsylvania stated the deed of the petitioner was not legitimate, but still took the taxes for Seventy-three years and are still accepting the taxes paid by the Petitioners to date and refuse to return and of the taxes paid on parcel #17507040005

as per 72 P.S 5566b(a) (b) as per their response in 24-cv-1161.

The Zuko's stated in the court of common pleas and also in superior court of Pennsylvania, they were paying taxes on parcel #17507040005 as the defendants and the petitioners have been paying the taxes on parcel #17507040005 since 1950, the County of Lackawanna has been collecting taxes on the same parcel therefore illegally seizing money from two separate parties which is violation US Const. amendment. IV and is prohibited and Frick v. Pennsylvania, 268 U.S. 473 (1925).

The petitioner had no knowledge of the 20-cv-02626 quiet title action as until the petitioner's realtor was contacted two months after the order granting title was signed by Judge Moyle in 20-cv-02626, saying ownership of the house and parcel of land it on was taken by the Zupko's, leaves the petitioner no recourse as the Pennsylvania as per PA quiet title § 5527.1. Section 5527.1 of the Judicial Code is clearly able to used by the respondents is an unconstitutional manner, without any notice and acknowledgement of the deed chain imitated by the County Of Lackawanna county Commissioners deeding the parcel to Elizabeth Molnar (Gatz), then deed to Thomas M. Gatz. The evidence to presented to the courts was misleading at best, ignored the Deed chain initiate by the County of Lackawanna to Elizabeth Molnar (Gatz) and subsequently the deed of the respondent.

The Zuko's used PA quiet title § 5527.1. Section 5527.1 of the Judicial Code ignoring an existing deed chain executed by the Lackawanna county commissioners in 1950 deeded (parcel #17507040005) said property title To the Petitioners grandmother

Elizabeth Molnar (Gatz) via Elizabeth Molnar's (Gatz) executor Edward (Dell) Gatz and (April 19, 2021), prior to the order for advertisement is signed by the court in case 20-cv-02626 (August 2021 after ownership of parcel #17507040005 changed to the petitioner) and the Title search submitted by the respondent submitted a random deed chain of 80 parcels, none were identified with the parcel #17507040005 ID and documents submitted to the court don't reflect the correct Deed ownership additionally tax payments since 1950 on parcel #17507040005 by the Petitioners father David T. Gatz, not a single tax payment was made by the respondents and refuses to return any taxes as per 72 P.S 5566b(a) (b), whereby the county of Lackawanna must refund taxes paid in the past three years when a request is filed , which was denied by Lackawanna county and the Lackawanna tax claim bureau. (see Appendix H: Molnar-Gatz taxes paid since 1950's by David T. Gatz)

The PA quiet title § 5527.1. Section 5527.1 of the Judicial Code was executed by the Zupko's , when the Petitioner or defendants were never notified in the Quiet title action 20-cv-02626, as Thomas M Gatz was the current owner of parcel 17507040005 when the order for notice by advertisement was signed by the court and the subsequent order granting title for parcel 17507040005 was signed by Judge Moyle in 20-cv-02626, not a single certified piece of mail was ever mailed by the respondent or defendants in 20-cv-02626, nor was the Petitioner severed by any means nor any of the defendants in 20-cv-02626, additionally the due diligence information submitted to the court was misleading the court to find in favor of the respondents. no due diligence was used to find the

defendants in their quiet title action 20-cv-02626, point in fact the respondent THOMAS ZUPKO shook the hand of the defendant Edward (Dell) Gatz during THOMAS ZUPKO's mothers funeral while this quiet title action 20-cv-02626 was in progress (See Appendix F: Dell Gatz Affidavit) and the due diligence documents submitted to the court in 20-cv-02626 had not used the correct address information Edward (Dell) Gatz but they used a 25 year old address, which is the currently the address to Kim Murnin (Gatz), but service was not executed on her, even though she stated she was Edward (Dell) Gatz's daughter and gave them the correct address and sheriff marked the services as bad address. Affidavits were submitted to the court verifying these actions of the respondents by the named defendants in 20-cv-02626. (See Appendix G: Kimberl Murnin (Gatz) Affidavit and Appendix F: Dell Gatz Affidavit)

In Moore v. Duran 455 Pa. Superior Ct. 124 (1996) 687 A.2d 822 the court found there was evidence of adverse possession as the Zupkos never occupied parcel 17507040005 or stepped foot on it as David T Gatz would have evicted them since 1997 and the petitioner would have done the same since April, 2021, affirmed Reed Road Associates v. Campbell 400 Pa. Superior Ct. 119 (1990) 582 A.2d 1373, additionally the Zupko's prior owned land parcel is not adjacent to parcel 17507040005 which doesn't meet the criteria for a legitimate PA quiet title § 5527.1. Section 5527.1 (a) or (b), also affirmed in Sutton v. Miller 405 Pa. Superior Ct. 213 (1991) 592 A.2d83.

IX. Reasons For Granting The Writ

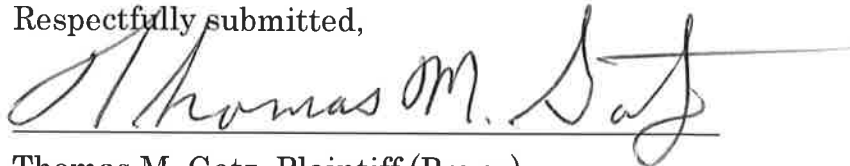
The use foundation of PA quiet title § 5527.1. Section 5527.1 is significantly flawed and in this case violated the respondent Thomas M. Gatz' fourth amendment rights, as the County of Lackawanna aided and abetted the Zupko's in 20-cv-02626 seizure by stipulating to a quiet title action, where the county of Lackawanna Titled the Parcel 17507040005 via the county commissions to Elizabeth Molnar (Gatz) and via her executor to the respondents Thomas M Gatz., as there are no checks and balances in the process and only relies on the documents submitted to the court where only reflects the position of the person(s), the Zupko's whom initiating the Action 20-cv-02626, using bad addresses fully knowing the current address of Edward (Dell) Gatz. The statue needs to be found unconstitutionally as it doesn't require a letter via first class mail to be sent to all defendants, checking of current tax records, checking if the title has been transferred to the petitioner or any process to ensure the court makes the correct determination and subsequent orders.

X. Conclusion

For the foregoing reasons, Mr. Gatz respectfully requests that this Court issue a writ of certiorari to review the judgment of the Pennsylvania Supreme Court of Appeals.

DATED: Sunday, August 18, 2024

Respectfully submitted,

A handwritten signature in black ink that reads "Thomas M. Gatz". The signature is written in a cursive, flowing style. The first name "Thomas" is written in a larger, more prominent script, followed by "M." and "Gatz". A horizontal line is drawn across the bottom of the signature.

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APPENDIX A
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT V.

No. 505 MAL 2023

THOMAS ZUPKO AND ARLETTE ZIJPKO,
HIS WIFE Defendants, Appellees

versus

ESTATE OF ELIZABETH MOLNAR, ELIZABETH
GATZ, DECEASED, EDWARD D. GATZ,
INDIVIDUALLY AND AS ADMINISTRATOR OF
THE ESTATE OF ELIZABETH MOLNAR,
STEPHEN BARBICH, JOHN MOLNAR, DAVID
GATZ, SOPHIE GATZ, PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES F/K/A
PENNSYLVANIA DEPARTMENT OF PUBLIC
WELFARE, LACKAWANNA COUNTY TAX CLAIM
BUREAU, OLD FORGE BOUOROUGH, THEIR
AND EACH OF THEIR DEVICES, ASSIGN AND
ANY AND ALL PARTIES CLAIMING RIGHT, TITLE
OR INTEREST FROM OR THROUGH THEM

Petition of: Thomas M. Gatz, Plaintiff – Appellant

ORDER

PER CURIAM

AND NOW, this 26th day of March, 2024, the
Petition for Allowance of Appeal is DENIED.

A true copy Elizabeth E. Fisk as of FILED 03/26/2024 Chief Clerk Supreme Court of Pennsylvania
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APPENDIX B
IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT V.

J-A13038-23

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

No. 986 MDA 2022

THOMAS ZUPKO AND ARLETTE ZUPKO,
HIS WIFE Defendants, Appellees
versus

THOMAS ZUPKO AND ARLETTE ZUPKO,
HIS WIFE Defendants, Appellees
versus

ESTATE OF ELIZABETH MOLNAR, ELIZABETH
GATZ, DECEASED, EDWARD D. GATZ,
INDIVIDUALLY AND AS ADMINISTRATOR OF
THE ESTATE OF ELIZABETH MOLNAR,
STEPHEN BARBICH, JOHN MOLNAR, DAVID
GATZ, SOPHIE GATZ, PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES F/K/A
PENNSYLVANIA DEPARTMENT OF PUBLIC
WELFARE, LACKAWANNA COUNTY TAX CLAIM
BUREAU, OLD FORGE BOUOROUGH, THEIR
AND EACH OF THEIR DEVICES, ASSIGN AND
ANY AND ALL PARTIES CLAIMING RIGHT, TITLE
OR INTEREST FROM OR THROUGH THEM

APPEAL OF: THOMAS M. GATZ IN THE
SUPERIOR COURT OF PENNSYLVANIA

No. 986 MDA 2022

Appeal from the Order Entered June 14, 2022

In the Court of Common Pleas of Lackawanna
County Civil Division at No(s): 2020-02626

BEFORE: BOWES, J., LAZARUS, J., and
STEVENS, P.J.E.*

MEMORANDUM BY STEVENS, P.J.E.: FILED:
SEPTEMBER 6, 2023

Judgement entered Joseph D. Seletyn, Esq Prothonotary DATE: 09/06/2023

* Former Justice specially assigned to the Superior
Court.

Thomas M. Gatz, appeals pro se from the June 14, 2022 order denying his motion to open and/or strike¹ the October 1, 2021 default judgment entered in favor of Appellees, Thomas Zupko and Arlette Zupko, in this quiet title action. This default judgment permanently enjoined and restrained the Estate of Elizabeth Molnar, a/k/a Elizabeth Gatz, deceased, Edward D. Gatz, individually and as Executor of the Estate of Elizabeth Molnar, Stephen Barbich, John Molnar, David Gatz, Sophia Gatz, Lackawanna County Tax Claim Bureau and Old Forge Borough, their heirs, devisees, assigns and any and all parties claiming right, title or interest from or through them generally (collectively, “Defendants”), from asserting any title, claim or interest in the subject property. After careful review, we affirm.

The trial court summarized the relevant facts and procedural history of this case as follows:

[Appellees] Thomas Zupko and Arlene Zupko, husband and wife, (hereinafter “Zupko”) filed the instant Action to Quiet Title on July 9, 2020 relating to real estate and improvements identified as Lackawanna County Tax Parcel No. 17507-040-005 and more commonly known as 307 Casper Street, Old Forge, PA. [Casper Street was subsequently renamed Keyser Avenue and is also referred to in Old Forge, Pennsylvania as Milwaukee Avenue.] The Quiet Title Complaint alleges Zupko lawfully acquired the property by way of deed of Carol Klein Kaplan, Judith Klein Premselaar, Jonathan Myers and David Myers dated November 9, 1995 and recorded November 17,

¹ Appellant’s pro se “petition” is styled as a “Motion to Dismiss” the October 1, 2021 default judgment, but

the trial court treated it as a motion to open and/or strike. See trial court opinion, 6/14/22 at 5.

1995 in the Lackawanna County Recorder of Deeds Office at Deed Book 1528 Page 765 et seq.

On January 23, 1961, Elizabeth Molnar a/k/a Elizabeth Gatz, in order to secure the payment of public welfare assistance, executed a certain Financing Statement wherein she pledged a “[t]wo-story, six room frame dwelling house...known as 307 Milwaukee (Keyser) Avenue, Old Forge, PA, located on land owned by Louis Birnbaum[.]”^[fn1] The Financing Statement was recorded in the Lackawanna County Recorder of Deeds Office at Mortgage Book 470 Page 261. According to Zupkos’ Complaint, in addition to acquiring the subject property in fee by the aforementioned 1995 deed, Zupkos have also adversely possessed the property for approximately twenty-four (24) years.

Following the filing of the Complaint, the Pennsylvania Department of Human Services notified counsel that it does not have a lien on or claim to the subject property. Furthermore, counsel entered stipulations with the Lackawanna County Tax Claim Bureau and Borough of Old Forge wherein they agreed to Entry of

Judgment for Zupkos. Counsel for Zupkos obtained a special order of court to serve the remaining Defendants by publication on May 26, 2021. Notice was published on May 28, 2021. Accordingly, on October 1, 2021, [the trial] court entered an order granting default judgment and permanently enjoining and restraining the Defendants from asserting, any title, claim or interest in the subject premises.

On February 16, 2022, [Appellant], an alleged descendant and heir of Elizabeth Molnar a/k/a Elizabeth Gatz, filed a pro se Motion to Intervene in the matter as well as a nunc pro tunc Motion to Dismiss the court's order of October 1, 2021. In support of his motion, [Appellant] produced for the court's review a Deed dated April 19, 2021 purportedly conveying a property known as 307 Keyser Street, with a Tax Map Number of 17507-040-005, from the Estate of Elizabeth Molnar (by Edward D. Gatz, administrator of said estate), to Thomas M.

Gatz.^[fn2] Said deed was recorded at the Lackawanna County Recorder of Deeds on June 11, 2021 at Instrument No. 202113101.

[Appellant] alleges in his Motion to Dismiss that he is the sole owner of the subject property as a result of the April 19, 2021 deed. Furthermore, he contends that Zupkos made no attempts to investigate the current ownership of the property and failed to serve him with notice of their Action to Quiet Title.

^[fn1] Notably, the correct owner of the property at that time was Harold Birnbaum, [Zupkos'] predecessor in title.

^[fn2] Notably, Elizabeth Molnar died on January 29, 1977.

Trial court opinion, 6/14/22 at 1-3 (footnotes in original).

On May 5, 2022, the trial court held a hearing on Appellant's "motion to dismiss." Following this hearing, the trial court entered an order and opinion on June 14, 2022 denying Appellant's motion. Appellant filed a pro se notice of appeal on July 8, 2022. The trial court did not direct Appellant to file a concise statement of errors complained of on appeal,

in accordance with Pa.R.A.P. 1925(b). The trial court filed a Rule 1925(a) opinion on August 30, 2022, adopting the analysis set forth in its prior June 14, 2022 opinion.

Prior to any consideration of the merits of Appellant's appeal, we must first determine whether his brief complies with the Pennsylvania Rule of Appellate Procedure.

It is well settled that parties to an appeal are required to submit briefs in conformity, in all material respects, with the requirements of the Rules of

Appellate Procedure, as nearly as the circumstances of the particular case will admit. Pa.R.A.P. 2101. "This Court may quash or dismiss an appeal if the appellant fails to conform to the requirements set forth in the Pennsylvania Rules of Appellate Procedure." *In re Ullman*, 995 A.2d 1207, 1211 (Pa.Super. 2010) (citation omitted), appeal denied, 20 A.3d 489 (Pa. 2011).

We will not advocate or act as counsel for an appellant who has not substantially complied with our rules. *Bombar v. W. Am. Ins. Co.*, 932 A.2d 78, 93 (Pa.Super. 2007) (citation omitted). Moreover, Appellant's status as a pro se litigant does not absolve him from responsibility for compliance with the rules. See *Commonwealth v. Adams*, 882 A.2d 496, 498 (Pa.Super. 2005) (stating, "any person choosing to represent himself in a legal proceeding must ... assume that his lack of expertise and legal training will be his undoing.").

Here, our review reveals that Appellant's pro se brief falls well below the standards delineated in our Rules of Appellate Procedure. Preliminarily, we observe that Appellant's brief does not contain a

“Statement of Questions Involved,” in direct violation of Pa.R.A.P. 2116(a). Appellant’s failure to include a statement of the questions involved is particularly troubling as this requirement defines the specific issues this court is being asked to review. See e.g., *Smathers v. Smathers*, 670 A.2d 1159, 1160 (Pa.Super. 1996).

Appellant’s brief also does not contain a separate section specifying a statement of jurisdiction; a separate section specifying the order or

determination sought to be reviewed; nor a statement of both the scope of review and the standard of review. See Pa.R.A.P. 2111(a)(1), (2), (3). Additionally, Appellant’s “Statement of [the] Case” is comprised of only one sentence and is entirely devoid of citation or references to the record in violation of Rules 2119(b) and (c).

The “Argument” section of Appellant’s brief is confusing and presents vague, largely conclusory allegations of error as to why the quiet title action should be dismissed. See Appellant’s brief at 2-11.2. Most significantly, Appellant’s brief fails to include a single citation to any case law or relevant legal authority, nor any meaningful discussion and analysis of prior precedent and how it is applicable to his case, in violation of Rules 2119(a). See Pa.R.A.P. 2119(a) (stating that the argument shall include “such discussion and citation of authorities as are deemed pertinent.”).

This Court has long recognized that “[t]he failure to develop an adequate argument in an appellate brief may result in waiver of the claim under Pa.R.A.P. 2119.” *Milby v. Pote*, 189 A.3d 1065, 1079 (Pa.Super. 2018) (citation, internal quotation marks, and

brackets omitted), appeal denied, 199 A.3d 340 (Pa. 2018). “[A]rguments which are not appropriately developed are waived.” *Egan v. USI Mid-Atl., Inc.*, 92 A.3d 1, 17 (Pa.Super. 2014) (citation omitted). “The Rules of Appellate Procedure state

2 We note that Appellant’s brief does not contain pagination. For the ease of our discussion, we have assigned each page a corresponding number.

unequivocally that each question an appellant raises is to be supported by discussion and analysis of pertinent authority. Failure to do so constitutes waiver of the claim.” *Giant Food Stores, LLC v. THF Silver Spring Dev., L.P.*, 959 A.2d 438, 444 (Pa. Super. 2008) (citation omitted), appeal denied, 972 A.2d 522 (Pa. 2009).

Given the substantial defects in Appellant’s brief, we could dismiss his appeal for failure to comply with our Rules of Appellate Procedure. In *re Ullman*, 995 A.2d at 1211. Based on our foregoing discussion, we could also find Appellant’s claims waived. See *McEwing v. Lititz Mut. Ins. Co.*, 77 A.3d 639, 647 (Pa. Super. 2013) (stating, “where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived.”) (citation omitted); *Egan*, 92 A.3d at 17. However, in light of the fact that this case proceeded to oral argument, we will briefly address the merits of Appellant’s cognizable issue on appeal. As best we can discern from his defective brief, the crux of Appellant’s claim is that Appellees made no attempts to investigate the current ownership of the property and failed to properly serve him with notice of their action to quiet title. Appellant’s brief at 2-4. Thus, Appellant avers that the trial court should have granted his motion to open and/or strike the October 1, 2021 default judgment. *Id.* We disagree.

“A petition to strike a judgment and a petition to open a judgment are separate and distinct remedies.” *U.S. Bank National Association v. Watters*, 163 A.3d 1019, 1027 (Pa. Super. 2017) (citation omitted), appeal denied, 170 A.3d 973 (Pa. 2017). “A petition to open a judgment seeks to re-open a case following a default

judgment in order to assert a meritorious defense; a motion to strike a judgment is the remedy sought by one who complains of fatal irregularities appearing on the face of the record.” Id. at 1027-1028 (citations and internal quotation marks omitted).

Pennsylvania Rule of Civil Procedure 237.3 governs the opening of default judgments and provides, in relevant part, that a court must open the judgment where a party files a petition to open within ten days of its entry. See Pa.R.C.P. 237.3(b)(1). However, where a party fails to file a petition to open within ten days after the entry of judgment we apply the following three-prong test:

[A] default judgment may be opened when the moving party establishes three requirements: (1) a prompt filing of a petition to open the default judgment; (2) a meritorious defense; and (3) a reasonable excuse or explanation for its failure to file a responsive pleading. If a petition to open a default judgment fails to fulfill any one prong of this test, then the petition must be denied.

U.S. Bank, 163 A.3d at 1028 (citations and internal quotation marks omitted). Instantly, the trial court found that Appellees’ action to quiet title complied with the Pennsylvania Rules of Civil Procedure and the parties were properly served by publication. Specifically, the trial court reasoned as follows: In the instant matter, [Appellees] filed the Motion for Special Order Directing Service by Publication on May 26, 2021. The motion outlined the extensive efforts made by counsel to effectuate personal service of the Complaint. Attached to the motion were various exhibits, including various failed attempts at service by the Lackawanna County and Berks County Sheriffs’ Departments, copies of unclaimed certified

mail, and an affidavit signed by counsel for [Appellees] detailing a diligent and exhaustive search of internet databases, assessment records, telephone records, and Freedom of Information Act Requests attempting to locate the heirs of Elizabeth Molnar. The court finds that [Appellees'] counsel's efforts were sufficient under Pa.R.C.P. 430 to warrant service by publication. [Appellees'] counsel published notice on May 28, 2021.

Trial court opinion, 6/14/22 at 5 (citation omitted). The trial court further held that Appellant's motion to open the default judgment was patently untimely; he provided no meritorious defense in said motion; and he "failed to indicate any reasonable excuse for the delay in filing a response." Id. at 6-7. Following our thorough review, we find that the trial court's conclusions are supported by the record and discern no abuse of its discretion in reaching this decision. Accordingly, for all the foregoing reasons, we affirm the June 14, 2022 order denying Appellant's motion to open the default judgment.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq. Prothonotary

Date: 9/6/2023

APPENDIX C
IN THE COURT OF COMMON PLEAS OF
LACKWANNNA COUNTY

No. 2020-CV-2626

THOMAS ZUPKO AND ARLETTE ZUPKO,
HIS WIFE Plaintiffs

versus

ESTATE OF ELIZABETH MOLNAR, ELIZABETH
GATZ, DECEASED, EDWARD D. GATZ,
INDIVIDUALLY AND AS ADMINISTRATOR OF
THE ESTATE OF ELIZABETH MOLNAR,
STEPHEN BARBICH, JOHN MOLNAR, DAVID
GATZ, SOPHIE GATZ, PENNSYLVANIA
DEPARTMENT OF HUMAN SERVICES F/K/A
PENNSYLVANIA DEPARTMENT OF PUBLIC
WELFARE, LACKAWANNA COUNTY TAX CLAIM
BUREAU, OLD FORGE BOUOROUGH, THEIR
AND EACH OF THEIR DEVICES, ASSIGN AND
ANY AND ALL PARTIES CLAIMING RIGHT, TITLE
OR INTEREST FROM OR THROUGH THEM

Defendants

MAURI B. KELLY LACKAWANNA COUNTY 2022 JUN 14 A 11:01 Clerk of Judicial Records Civil Division
--

OPINION

MOYLE, J.

I. FACTUAL AND PROCEDURAL HISTORY

Plaintiffs Thomas Zupko and Arlette Zupko, husband and wife, (hereinafter "Zupko") filed the instant Action to Quiet Title on July 9, 2020 relating to real estate and improvements identified as Lackawanna County Tax Parcel No. 17507-040 005 and more commonly known as 307 Casper Street, Old Forge, PA. The Quiet Title Complaint alleges Zupko lawfully acquired the property by way of deed of Carol Klein Kaplan, Judith Klein Premseelaar, Jonathan Myers and David Myers dated November 9, 1995 and recorded November 17, 1995 in the Lackawanna County Recorder of Deeds Office at Deed Book 1528 Page 765 et seq.

On January 23, 1961, Elizabeth Molnar a/k/a Elizabeth Gatz, in order to secure the payment of public welfare assistance, executed a certain Financing Statement wherein she pledged a "[t]wo-story, six room frame dwelling house... known as 307 Milwaukee (Keyser) Avenue, Old Forge, PA, located on land owned by Louis Birnbaum". The Financing Statement was recorded in the Lackawanna County Recorder of Deeds Office at Mortgage Book 470 Page 261. According to Zupkos' Complaint, in addition to acquiring the subject property in fee by the aforementioned 1995 deed, Zupkos have also adversely possessed the property for approximately twenty-four (24) years.

Following the filing of the Complaint, the Pennsylvania Department of Human Services notified counsel that it does not have a lien on or claim to the subject property. Furthermore, counsel entered stipulations with the Lackawanna County Tax Claim Bureau and Borough of Old Forge wherein they agreed to Entry of Judgment for Zupkos. Counsel for Zupkos obtained a special order of court to serve the

remaining Defendants by publication on May 26, 2021. Notice was published on May 28, 2021. Accordingly, on October 1, 2021, this court entered an order granting default judgment and permanently enjoining and restraining the Defendants from asserting any title, claim or interest in the subject premises.

1 Notably, the correct owner of the property at that time was Harold Birnbaum, Plaintiffs' predecessor in title.

On February 16, 2022, Thomas M. Gatz, an alleged descendant and heir of Elizabeth Molnar a/k/a Elizabeth Gatz, filed a pro se Motion to Intervene in the matter as well as a nunc pro tune Motion to Dismiss the court's order of October 1, 2021. In support of his motion, Mr. Gatz produced for the court's review a Deed dated April 19, 2021 purportedly conveying a property known as 307 Keyser Street, with a Tax Map Number of 17507-040-005, from the Estate of Elizabeth Molnar (by Edward D. Gatz, administrator of said estate), to Thomas M. Gatz.² Said deed was recorded at the Lackawanna County Recorder of Deeds on June 11, 2021 at Instrument No.202113101.

Mr. Gatz alleges in his Motion to Dismiss that he is the sole owner of the subject property as a result of the April 19, 2021 deed. Furthermore, he contends that Zupkos made no attempts to investigate the current ownership of the property and failed to serve him with notice of their Action to Quiet Title. Accordingly, Mr. Gatz seeks to dismiss the court's order of October 1, 2021 and the accompanying Complaint in Quiet Title. The court heard oral argument on May 5, 2022 and the matter is ripe for disposition.

DISCUSSION

On February 16, 2022, Mr. Gatz filed a Motion to Make an Appearance as well a Motion to Dismiss. He essentially makes the same averments in both pleadings. Namely, he contends that Zupko made "no real attempts" to investigate the current

² Notably, Elizabeth Molnar died on January 29, 1977.

ownership of the property and thus failed to notify the current owner of the property regarding the Quiet Title Complaint.

Initially, the court will consider whether Mr. Gatz, as a descendant of Elizabeth Molnar, received proper service of process of the Zupkos' Complaint. See

U.S. Department of Housing v. Dickerson, 358 Pa.Super. 23 (1986) (A Petition to Open Default Judgment cannot be reviewed where a party did not receive proper service as the court is without authority to enter judgment). Pa.R.C.P. 410 states in pertinent part:

Rule 410. Real Property Actions

(a) In actions involving title to, interest in, possession of, or charges or liens upon real property, original process shall be served upon the defendant in the manner provided by Rule 400 et seq.

(c) If service is made pursuant to an order of court under Rule

430(a), the court shall direct one or more of the following methods of service:

(I) publication as provided by Rule 430(b) ...Pa.R.C.P. 410.Pa.R.C.P. 430 further provides:Rule 430. Service Pursuant to Special Order of Court. Publication

(a) If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been

made to determine the whereabouts of the defendant and the reasons why service cannot be made.

(b)(1) If service of process by publication has been authorized by rule of civil procedure or order of court, the publication shall be by advertising a notice of the action once in the legal publication, if any, designated by the court for the publication of legal notices and in one newspaper of general circulation within the county. The publication shall contain the caption of the action and the names of the parties, state the nature of the action and conclude with a notice....

(2) When service is made by publication upon the heirs and assigns of a named former owner or party in interest, the court may permit publication against the heirs or assigns generally if it is set forth in the complaint or an affidavit that they are unknown.

Pa.R.C.P. 430. In the instant matter, Zupko filed the Motion for Special Order Directing Service by Publication on May 26, 2021. The motion outlined the extensive efforts made by counsel to effectuate personal service of the Complaint. Attached to the motion were various exhibits, including various failed attempts at service by the Lackawanna County and Berks County Sheriffs' Departments, copies of unclaimed certified mail, and an affidavit signed by counsel for Plaintiffs detailing a diligent and exhaustive search of internet databases, assessment records, telephone records, and Freedom of Information Act Requests attempting to locate the heirs of Elizabeth Molnar. The court finds that Plaintiffs' counsel's efforts were sufficient under Pa.R.C.P. 430 to warrant service by publication.

Plaintiffs' counsel published notice on May 28, 2021. See Proof of Publication filed on 8/5/2021.

Since the court has determined that the parties were properly served, we turn our review to Mr. Gatz's petition. As stated previously, Mr. Gatz filed both a "Motion to Make An Appearance" and a "Motion to Dismiss". Based on the contents, we will treat his application as a Motion to Open/Strike the Judgment entered by this court on October 1, 2021. "A petition to open a default judgment and a petition to strike a default judgment seek distinct remedies and are generally not interchangeable." *Green Acres Rehabilitation and Nursing Center v. Sullivan*, 113 A.3d 1261, 1270 (Pa. Super.2015); *Stauffer v. Hevener*, 881 A.2d 868,870 (Pa. Super. 2005). A petition to open a default judgment "is an appeal to the equitable powers of the court," whereas a petition to strike a default judgment "should be granted where a fatal defect or irregularity appears on the face of the record." *Green Acres Rehabilitation and Nursing Center*, supra (quoting *Graziani v. Randolph*, 856 A.2d 1212, 1223 (Pa. Super. 2004), app. denied, 583 Pa. 663,875 A.2d 1075 (2005)).

A default judgment may be opened when the moving party establishes three requirements: (1) a prompt filing of a petition to open the default judgment; (2) a meritorious defense; and (3) a reasonable excuse or explanation for its failure to file a responsive pleading. *U.S. Bank, N.A. v. Watters*, 2017 WL 1407440, at 7 (Pa. Super.2017) (quoting *Smith v. Morrell Beer Distributors, Inc.*, 29 A.3d 23, 25 (Pa. Super.2011)). Rule of Civil Procedure 237.3(a)(2) states:

"[i]f the petition is filed within ten days after the entry of a default judgement on the docket, the court

shall open the judgment if one or more of the proposed preliminary objections has merit or the proposed answer states a meritorious defense."Pa.R.C.P. 237.3(a)(2).

The court entered judgment on October 1, 2021. Mr. Gatz filed his motion on February 16, 2022. Clearly, this was not a prompt filing. Furthermore, Mr. Gatz references in his petition a deed wherein his grandmother's estate purports to convey its interest in the subject premises. In support of their opposition to Mr. Gatz's motion, Zupkos produced an affidavit of Maria Brower, a professional, independent title searcher. Ms. Brower indicated that she performed an extensive review of the subject property's chain of title. Based on that review, she was unable to locate any record, deed or other document wherein the Estate of Elizabeth Molnar a/k/a Elizabeth Gatz had any interest in the subject property. Absent any interest in the property, the special warranty deed produced and recorded by Mr. Gatz is void ab initio. Thus, the court finds no meritorious defense in the averments contained in Mr. Gatz' motion.

Finally, as we have previously determined that the parties were properly served with notice of the Zupko's Action to Quiet Title, Mr. Gatz has failed to indicate any reasonable excuse for the delay in filing a response. Accordingly, the Motion to Dismiss is DENIED.

Appendix D

DEED

For Land Purchased By the County at Treasurers
Sale

Whereas the county Treasurer of Lackawanna County has heretofore advertised and posed for public sale, non-payment of taxes, the land hereinafter described and

Whereas the said land was purchased at said sale by the County Commissioners of Lackawanna County and

Whereas said sale was duly confirmed by the Court of Common Pleas of Lackawanna County as by reference to the records of said court will more fully and at large appear and

Whereas a deed of conveyance for said land, inter alia, by the County Treasurer to the County Commissioners as aforesaid has been duly acknowledged and entered in the County Treasurer's Deed Book ...3... at page ... 253.. in the office of the prothonotary of Lackawanna County and

Whereas the grantee hereinafter named offered to purchase from the County Commissioners all their right, title and interest in and to the said land for the consideration hereinafter mentioned which said offer the county Commissioners believe it to be in the public interest to accept, to the end that delinquent taxes may be collected and the [payment of future taxes may be encouraged.

Now, therefore, in consideration of the sum of \$.98.78.,in the hand paid, the receipt whereof is hereby acknowledged, the County Commissioners Oof Lackawanna County have remised, released and

quitclaimed and do, by these presents, remise, release and quitclaim unto Elizabeth Molnar, Her heirs and assigns all those certain premises situate in the 2nd ward of the Borough of Old Forge, Lackawanna County, Pennsylvania, known and designated as XXXXXXXXXXXXXXXXXXXX according to the assessment Map and/or assessment records for said ward or municipality and situate upon street called and known as 307 Keyser Street, being the premises heretofore assessed to Elizabeth Molnar.

It is understood and agreed, by the acceptance of this indenture, that there is no representation or warranty of title and that this indenture is made subject to rights of redemption, if any, that may now or hereafter remain in any former owner person of interest in said premises.

The Chief clerk of the County Commissioners is hereby authorized and empowered to appear before any officer authorized to take the acknowledgement of deeds and to acknowledge this indenture to be the act and deed of the county of Lackawanna for the purposes herein set forth.

In witness whereof this deed has been executed this ...4th... day of ..May.., 1950.

COUNTY OF LACKAWANNA

Attest:

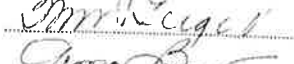


.....
Chief Clerk

By


.....

Approved prior to execution:


.....
Chairman, Lackawanna County Real Estate Board


.....

.....
County Commissioners

Appendix E

Lackawanna County Tax ID Parcel #17507-040-005

THIS DEED, made this 19th day of April, 2021, BETWEEN, The Estate of Elizabeth Molnar, an adult individual, of Lackawanna County, Pennsylvania, being executed by Edward D. Gatz (Son of Elizabeth Molnar (Gatz)), and the administrator of the estate of Elizabeth Molnar (Gatz), Date of Death: January 29, 1977 (hereinafter called the Grantor)

a n d

Thomas M. GATZ, of Berks County, Pennsylvania, (hereinafter called the Grantee(s)),

W I T N E S S E T H:

That in consideration of One Dollar (\$1.00) and other valuable consideration in hand paid, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey to the said Grantee,

ALL THAT CERTAIN lot or piece of ground, Situated in the Borough of Old Forge, County of Lackawanna, Commonwealth of Pennsylvania, bounded and described according to a DEED of conveyance for said land, inter alia, by the County Treasure to the County Commissioners as foresaid has been duly acknowledged and entered in the County Treasures' DEED Book 3 at page 253, dated May 4, 1950, Known as 307 Keyser Street.


BEGINNING at the point of curve on Keyser Ave, 197 feet long, 163 feet wide, 210 feet long, by 160 feet wide returning to the point of origin on Keyser Avenue. This is a transfer from a

Grandmother to her Grandson and therefore is exempt from Pennsylvania Realty Transfer Tax (72 P.S. § 8102-C.3(6)). AND the said Grantor hereby covenants and agrees that he will specially warrant the premises hereby conveyed.

IN WITNESS WHEREOF, the said Grantor has executed or caused these presents to be duly executed the day and year first above written, for the Estate of Elizabeth Molnar (Gatz)

SEALED AND DELIVERED

In the Presence of the administrator of the estate of Elizabeth Molnar (Gatz):


Edward D. Gatz
Administrator of the Estate of Elizabeth Molnar

Edward D. Gatz (Administrator of the Estate of Elizabeth Molnar)
2727 Ledge Drive
Clark Summit, pa, 18411

STATE OF Pennsylvania
COUNTY OF Lackawanna

On this, the _____ day of _____, 2021,
before me, the undersigned officer, personally
appeared Edward D. Gatz, the administrator of the
Estate of Elizabeth Molnar (Gatz), an adult
individual, known to me (or satisfactorily proven) to
be the person whose name is subscribed to the within
instrument, and acknowledged that he executed the
same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto
set my hand and official seal.



Camilla D. Kearney
Notary Public

Notary Public

The address of the within named Grantees is:

Thomas M. Gatz
1856 e. main st.
Douglassville, Pa 19518

Thomas M. Gatz

LACKAWANNA COUNTY
Certified Property Identification
MUNI: 220
MAY 10, 2021
PIN: 17507 040 005
USE: ASSESS VAL 5000.00
CLERK: HL

Appendix F : Dell Gatz Affidavit

AFFIDAVIT OF DELL GATZ

State of Pennsylvania

ss.

County Of Lackawanna

I, DELL GATZ (EDWARD OR DELFORD), being sworn, depose and say:

1. I am DELL GATZ resided at 119 spring street, Clarks Green, Pa 18411, where my daughter Kimberly Munin (Gatz) currently resides.

2. I DELL GATZ live at 2729 Ledge drive, Clarks Summit, Pa 18411, which other notifications regarding 307 keyser/casper ave. were able to find their way to my residence.

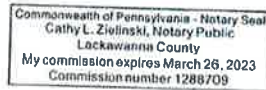
3. I DELL GATZ have known Thomas Zupko since grade school and recently attended the funeral of his mother, where I shook his hand and had passing conversations with him and can't believe the documentation presented to this court that Thomas Zupko does have the ability to contact me or knows where I live as the mere mention of his name by Thomas Gatz on May 5 2022 brought a flood of interactions with Thomas Zupko over the past years.

4. I DELL GATZ to my knowledge have received all notification from all authorities in regards to 307 keyser/casper ave., with the exception of this notification presented to the court.


EDWARD (DEL) GATZ

Subscribed and sworn to before me this 6 day of ^{JUNE} ~~May~~ 2022.


Notary Public



Appendix G: Kimberl Murnin (Gatz) Affidavit
AFFIDAVIT OF KIMBERLY MURNIN (GATZ)

State of Pennsylvania

ss.

County Of Lackawanna

I, KIMBERLY MURNIN (GATZ) am the daughter of
Edward (Del) Gatz, being sworn, deposed and say:

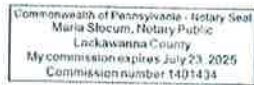
1. I am KIMBERLY MURNIN (GATZ) am the
daughter of Edward (Del) Gatz and reside at
119 spring street, Clarks Green, Pa 18411.
2. I KIMBERLY MURNIN (GATZ) on or before
07/31/2020 I spoke with the Sherriff at 119
spring street, Clarks Green, Pa 18411,
informed the sheriff that I am the daughter of
Edward (Del) Gatz, I gave the sherrif Dell's
phone number told him he lives at 2729 Ledge
drive, Clarks Summit, Pa 18411.

3. I felt no need to inform my father at the time, as I gave the sheriff my father's phone number and address and assumed the sheriff would do his job and call my father or go to 2729 Ledge drive, Clarks Summit, Pa 18411, to discuss whatever he needed to discuss or serve.


KIMBERLY MURNIN (GATZ)

Subscribed and sworn to before me this September 19, 2022 day of ~~May 2022~~ ms. Notary Public


Notary Public



Appendix H: Molnar-Gatz taxes paid since 1950's by
David T. Gatz

I have 50 plus cancel checks of David T. Gatz and Thomas M. Gatz paying taxes on parcel #17507040005 from the 1950's to 2024 showing taxes were paid of the Parcel in question, I will provide copies of the checks, but I didn't attach them in this document, as my first submission was reject for non-conformity and I'm not sure how to present that mush evidence without copying and pasting images.