

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

DENNIS G. HARMAN, ET AL,	:	
Plaintiff	:	
	:	
v.	:	No. 99-01,908
	:	
JAFLO, INC.,	:	
Defendant	:	

OPINION AND ORDER

The defendant has asked this court to reinstate its appeal from a district justice decision. The appeal was stricken by the Prothonotary for failure to file proof of service. The trend of the appellate courts has been toward a more liberal interpretation of the rules governing appeals from district justice judgments. Delverme v. Pavlinsky, 592 A.2d 746 (1991). Nonetheless, the party wishing to reinstate the appeal must show: (1) that the opposing party has suffered no prejudice from the error, and (2) that there is good cause for reinstating the appeal. Id. at 748.

Although there appears to be no prejudice to the other side, there also appears to be no good reason for the error—at least the defendant has offered none. Moreover, the Prothonotary clearly typed out the reason he struck the appeal on the Praecepto to Strike the Appeal: “Failure of appellant to file his proof of service as required under PRDJP 1005(B).” Had the defendant promptly filed a proof of service and offered a reason for its initial failure, this court would be inclined to reinstate the appeal. However, upon a search of the file, as well as the Prothonotary’s computer database, we have concluded that the defendant has

apparently *still* not filed proof of service.

We notice that the defendant's brief states that on 21 June 1999 it sent the Prothonotary's office a notarized Proof of Service of notice of Appeal and Rule to File Complaint. However, there is nothing in the record to verify that assertion. We cannot simply accept Exhibit C attached to the Motion to Reinstate Appeal, which appears to be a proof of service, because there is no evidence it was ever sent to the Prothonotary or ever received by his office. In fact, it appears to be written on the back of a Notice of Appeal, and the Notice of Appeal currently in the file is blank. Should the defendant provide proof that this notice was sent to the Prothonotary, along with a legitimate explanation for its initial failure to file a notice of appeal, the court would entertain a Motion to Reconsider this ruling.

The purpose of filing a proof of service is so the court is certain the other party has been notified. While filing such a notice late might easily be overlooked, failing to file one even after having the appeal struck for that very reason and even after filing a petition to reinstate the appeal, is not so easily overlooked.

The court is aware that the Rules of Civil Procedure should be liberally construed to secure the just, speedy and inexpensive determination of cases. Pa.R.Civ.P. No. 126. However, our legal system would not become faster, more just, or less expensive if litigants must be continually nagged to comply with the rules, even after they are told exactly what they did wrong.

ORDER

AND NOW, this _____ day of December, 1999, after argument, for the reasons stated in the foregoing opinion the defendant's Motion to Reinstate Appeal is denied.

BY THE COURT,

Clinton W. Smith, P.J.

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