

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

KENNETH P. NEWMAN,	:	
Plaintiff	:	
	:	
v.	:	NO. 99-01,740
	:	
OAKRIDGE KENNELS, ET AL.,	:	
Defendant	:	

OPINION and ORDER

The defendant, Oakridge Kennels, has filed a statement of objection to District Justice McGee’s denial of its objection to a levy in satisfaction of a judgment. Oakridge Kennels’ sole complaint is that an order of execution issued by District Justice McGee on 7 September 1999 was improperly issued because it had filed an appeal at the time the order was signed, which acted as a supersedeas.

Pa.R.C.P.D.J. No. 1008(A) sets forth exactly when an appeal acts as a supersedeas: “Receipt by the district justice of the copy of the notice of appeal from the judgment shall operate as a supersedeas.” It is the burden of the appellant to show this court that the district justice received a copy of the notice of appeal by 7 September 1999, the date the execution order was signed, and Oakridge Kennels has failed to carry this burden.

The sole evidence in support of Oakridge Kennels’ position is a Proof of Service notarized on 8 September 1999 and filed on 15 September 1999.¹ That document, an affidavit, states that the District Justice was served by personal

¹ There are numerous problems with this notice, not the least of which is that it was filed nearly three months after the appeal was filed. Nonetheless, since the plaintiffs have not taken action to strike the complaint, the timeliness of the filing of the Proof of Service is not before us.

service, but it does not state when. The spot designated for stating the time of service was left blank.² Therefore, there is a distinct possibility that the district justice was served on 8 September 1999, after the order of execution was signed.³

Oakridge Kennels could have prevented the execution by simply serving the district justice with the order of appeal on time, as the rules provide. Even its three month delay would not necessarily have sabotaged its attempt to stay the execution if Oakridge Kennels had merely served the district justice before the execution order was signed. This was not done, and therefore Oakridge Kennels' objections must be denied.

² Similarly, although the affidavit states that the plaintiffs were served by regular mail, it does not state when that was done. Moreover, the plaintiffs testified that they never received the notice of appeal, and this court finds their testimony to be credible. The plaintiffs, however, have presented no evidence that the district justice was never served, and therefore we must accept the affidavit's statement that District Justice McGee was served at some point.

³ The court realizes that the order of execution was received by the constable on 9 September 1999, but we believe the relevant date is the date the order was executed.

ORDER

AND NOW, this _____ day of December, 1999, for the reasons stated in the above opinion, the defendant's objections pursuant to Pa.R.C.P.D.J. No. 1016 are denied.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Ronald Travis, Esq.
Mr. and Mrs. Kenneth Newman
521 County Route 49
Middletown, NY 19058
District Justice McGee
Gary Weber, Esq., Lycoming Reporter