

COMMONWEALTH COURT OF PENNSYLVANIA

Sagamore Hills Homeowners Association v. Michelle Whitney and Kevin Ferrara

Sagamore Hills Homeowners Association · No. 1118 C.D. 2024 · Decided December 8, 2025

SUMMARY

The Commonwealth Court of Pennsylvania dismissed an appeal by Michelle Whitney and Kevin Ferrara from a judgment in favor of Sagamore Hills Homeowners Association for unpaid fees. The court held that the homeowners waived all appellate issues by failing to timely file a Pa.R.A.P. 1925(b) statement and that counsel’s calendaring error did not establish extraordinary circumstances or good cause for nunc pro tunc relief.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Matthew S. Wolf; Lori A. Dumas; Bonnie Brigrance Leadbetter
JURISDICTION	Commonwealth Court of Pennsylvania
DECIDED	December 8, 2025
DOCKET	1118 C.D. 2024
DISPOSITION	dismissed
PROCEDURAL POSTURE	Homeowners appealed from the denial of their motion for a new trial following a nonjury trial and verdict for the homeowners association. The Commonwealth Court treated the association's application to quash as an application to dismiss based on waiver resulting from the homeowners' failure to file a timely Pennsylvania Rule of Appellate Procedure 1925(b) statement.
STANDARD OF REVIEW	Whether appellate issues are waived under Pennsylvania Rule of Appellate Procedure 1925(b) is governed by the rule's strict-compliance requirements. Relief from an untimely statement requires extraordinary circumstances under Rule 1925(b)(2)(i) or good cause under Rule 1925(c)(2).
PRECEDENTIAL VALUE	published and precedential
PARTIES	Michelle Whitney, Kevin Ferrara v. Sagamore Hills Homeowners Association

TOPICS

appellate procedure

waiver

preservation of error

civil procedure

real estate

PRACTICE AREAS

appellate procedure

civil procedure

real estate

homeowners association law

QUESTIONS PRESENTED

1. Whether the homeowners waived all issues on appeal by failing to file a timely Rule 1925(b) statement.
2. Whether the trial court's supplemental Rule 1925(a) opinion accepted the untimely Rule 1925(b) statement or otherwise cured the waiver.
3. Whether counsel's incorrect calendaring of the Rule 1925(b) order constituted extraordinary circumstances or good cause for nunc pro tunc relief or an appellate remand.

HOLDINGS

1. Issues not raised in a timely filed Rule 1925(b) statement are waived on appeal under Pennsylvania's strict-compliance rule.
2. A trial court's supplemental Rule 1925(a) opinion addressing the merits does not cure waiver resulting from an untimely Rule 1925(b) statement unless the court expressly accepts the statement nunc pro tunc or as timely.
3. Counsel's failure to properly calendar the Rule 1925(b) deadline is attributable to counsel and does not constitute extraordinary circumstances or good cause warranting nunc pro tunc filing or appellate remand.

KEY QUOTATIONS

“Simply put, errors not raised in a timely filed 1925(b) Statement are waived on appeal.” (at 3)

“Waiver is not cured by the trial court’s filing of a Rule 1925(a) opinion addressing the merits of the issues on appeal.” (at 4)

FACTUAL BACKGROUND

The homeowners association brought a civil action to collect unpaid fees from Michelle Whitney and Kevin Ferrara. Following a one-day nonjury trial, the trial court entered judgment for \$523.47 plus interest and costs and awarded \$5,000 in attorney fees. After the trial court denied the homeowners' motion for a new trial, it ordered them to file a Rule 1925(b) statement by July 3, 2024, but counsel filed the statement more than 20 days late after incorrectly calendaring the court's order.

PROCEDURAL HISTORY

The trial court entered judgment for the homeowners association after a nonjury trial concerning unpaid fees, interest, costs, and attorney fees. After the trial court denied the homeowners' motion for a new trial, the homeowners appealed. The trial court ordered a Rule 1925(b) statement by July 3, 2024, but the homeowners

filed their statement more than 20 days late. The Superior Court transferred the appeal to the Commonwealth Court, which dismissed the appeal because the untimely statement waived all appellate issues and the homeowners showed neither extraordinary circumstances nor good cause for nunc pro tunc relief.

DISPOSITION

dismissed

CASES CITED

- Sahutsky v. H.H. Knoebel Sons, 782 A.2d 996, 1001 n.3 (Pa. 2001)
- Commonwealth v. Castillo, 888 A.2d 775, 776, 780 (Pa. 2005)
- In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election, 843 A.2d 1223, 1234 (Pa. 2004)
- McKeown v. Bailey, 731 A.2d 628, 630 (Pa. Super. 1999)
- Anderson v. Centennial Homes, Inc., 594 A.2d 737, 739 (Pa. Super. 1991)
- Jenkins v. Fayette County Tax Claim Bureau, 176 A.3d 1038, 1042-43 (Pa. Cmwlth. 2018)
- Commonwealth v. Burton, 973 A.2d 428, 433 (Pa. Super. 2009)
- Commonwealth v. Hooks, 921 A.2d 1199, 1202 (Pa. Super. 2007)
- May v. Sharon, 546 A.2d 1256, 1258 (Pa. Super. 1988)

OPINION

PER CURIAM.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA Sagamore Hills Homeowners: Association: v.: No. 1118 C.D. 2024 Michelle Whitney and Kevin: Ferrara,: Appellants: Submitted: November 6, 2025 BEFORE: HONORABLE LORI A. DUMAS, Judge HONORABLE MATTHEW S. WOLF, Judge HONORABLE BONNIE BRIGANCE LEADBETTER, Senior Judge OPINION BY JUDGE WOLF FILED: December 8, 2025 Michelle Whitney and Kevin Ferrara (Homeowners) appeal from an order of the Court of Common Pleas of Clinton County (trial court) dated May 9, 2024, which denied Homeowners' Motion for a New Trial following a non-jury trial after which the trial court rendered a verdict in favor of Sagamore Hills Homeowners Association (HOA) in its action to collect unpaid fees from Homeowners.

Also before this Court is HOA's Application to Quash Appeal (Application), which we will treat as an application to dismiss this appeal for Homeowners' waiver of all issues on appeal by failing to file a timely Statement of Errors Complained of on Appeal, pursuant to Pa.R.A.P. 1925(b) (1925(b) Statement).¹ Upon review, we find 1 We find that dismissal, rather than quashal, is proper in light of our Supreme Court's observation that quashal "is usually appropriate where the order below was unappealable, the (Footnote continued on next page...) that Homeowners have waived all issues on appeal as a result of their failure to file a timely 1925(b) Statement.

Therefore, we grant the Application and dismiss Homeowners' appeal. I. BACKGROUND This case arose from a civil action by HOA to collect certain fees from Homeowners. On January 9, 2024, the trial court held a single day non-jury trial and on January 23, 2024, entered judgement against Homeowners for \$523.47, plus interest and costs, and \$5,000 in attorney's fees.

Homeowners filed a Motion for new trial on February 5, 2024, which was denied by the trial court following a hearing on May 9, 2024. Following such denial, Homeowners initiated an appeal to the Superior Court by a Notice of Appeal filed June 7, 2024.

On June 12, 2024, the trial court filed an order directing Homeowners to file and serve on the trial court, no later than 21 days from the entry of that order, a 1925(b) Statement. Reproduced Record (R.R.) at 14. Accordingly, their 1925(b) Statement needed to be filed and served on the trial court no later than July 3, 2024.

The trial court's order also informed Homeowners: "Any issue not properly included in the Statement timely filed and served... shall be deemed waived." Id. On July 16, 2024, the trial court filed its opinion pursuant to Pa.R.A.P. 1925(a) (1925(a) Opinion), noting that Homeowners had failed to file a 1925(b) Statement, and asking for their appeal to be dismissed.

Following the trial court's issuance of its 1925(a) Opinion, Homeowners filed an untimely 1925(b) Statement, laying out their issues raised on appeal, as well as stating that such Statement was untimely because "the court's June 12 order was inappropriately calendared in appeal was untimely, or the court otherwise lacked jurisdiction," but not when there has been "a waiver of the substantive claims that would be raised." *Sahutsky v. H.H.*

Knoebel Sons, 782 A.2d 996, 1001 n.3 (Pa. 2001) (cleaned up). 2 [counsel's] system, and counsel was not aware the deadline had been missed until she received the court's July 16 order on July 19, 2024." R.R. at 19. On August 1, 2024, the trial court filed a supplemental 1925(a) Opinion noting Homeowners' stated reason for their untimely filing of their 1925(b) Statement and addressing the merits of the errors they alleged.

The instant appeal was transferred to this Court by order of the Superior Court on August 26, 2024.² On September 3, 2024, HOA filed the Application, contending that Homeowners' appeal should be quashed, as they waived all substantive issues on appeal by failing to file a timely 1925(b) Statement or show good cause for such failure. This Court responded with an order, dated October 31, 2024, directing the parties to address the issue of waiver in their principal briefs.

II. ISSUES We need not summarize either party's arguments as to the merits of the instant appeal to reach our disposition, but we briefly discuss their positions as to waiver. Homeowners contend that the trial court's supplemental 1925(a) Opinion granted, sua sponte, an extension of time for the filing of their 1925(b) Statement and thus accepted it as timely.

Therefore, they essentially argue that the issue of waiver is moot. HOA mirrors those arguments contained in its Application, contending that Homeowners' failure to file a 1925(b) Statement for other than good cause results in the waiver of all issues they raise on appeal. 2 This Court has jurisdiction over appeals from final orders in certain cases involving non-profit corporations, such as a homeowners association, pursuant to 42 Pa.C.S. § 762(a)(5)(ii).

3 III. DISCUSSION In *Commonwealth v. Castillo*, 888 A.2d 775 (Pa. 2005), our Supreme Court emphasized a "bright-line rule" requiring strict compliance with a trial court's order to file a 1925(b) Statement. *Id.* at 776.

In overruling a Superior Court decision which addressed issues raised in an untimely 1925(b) Statement, the Supreme Court expressed disapproval of intermediate appellate court decisions that "addressed issues that should have been deemed waived." *Castillo*, 888 A.2d at 780. Simply put, errors not raised in a timely filed 1925(b) Statement are waived on appeal.

Where an appellant fails to file a timely 1925(b) Statement or timely request an extension for the filing of same, two possible avenues of redress exist: They may request that an untimely filing be accepted by the trial court nunc pro tunc under Rule 1925(b)(2)(i) due to "extraordinary circumstance[.]" Alternately, they may request an appellate court remand to the trial court for a 1925(b) Statement to be filed nunc pro tunc upon application to such appellate court and a showing of "good cause" for their failure to file or untimely filing of a 1925(b) Statement under Rule 1925(c)(2).

The official note to Rule 1925(b)(2) describes when "extraordinary circumstances" have been found: In general, nunc pro tunc relief is allowed only when there has been a breakdown in the process constituting extraordinary circumstances. See, e.g., *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1234 (Pa. 2004) ("We have held that fraud or the wrongful or negligent act of a court official may be a proper reason for holding that a statutory appeal period does not run and that the wrong may be corrected by means of a petition filed nunc pro tunc.")[.]

Courts have also allowed nunc pro tunc relief when "non-negligent circumstances, either as they relate to appellant or his counsel" occasion delay. *McKeown v. Bailey*, 731 A.2d 4 628, 630 (Pa. Super. 1999). However, even when there is a breakdown in the process, the appellant must attempt to remedy it within a "very short duration" of time. *Id.* Pa.R.A.P. 1925, Note, Subparagraph (b)(2). "[G]ood cause" is not defined by Pa.R.A.P.

1925(c)(2) but has been defined elsewhere as "a substantial reason, one that affords a legal excuse." *Anderson v. Centennial Homes, Inc.*, 594 A.2d 737, 739 (Pa. Super. 1991). Here, like the Superior Court in *Castillo*, we are unable to consider issues raised in Homeowners' untimely filed

1925(b) Statement. Homeowners have shown neither extraordinary circumstances nor good cause to warrant relief under Rule 1925(b)(2)(i) or (c)(2).

As a preliminary matter, the fact that the trial court issued a supplemental 1925(a) Opinion following its receipt of Homeowners' late-filed 1925(b) Statement does not undo the waiver, contrary to Homeowners' contention. This Court has held that "[w]aiver is not cured by the trial court's filing of a Rule 1925(a) opinion addressing the merits of the issues on appeal." *Jenkins v. Fayette County Tax Claim Bureau*, 176 A.3d 1038, 1042 (Pa.

Cmwlth. 2018). Nor does the supplemental 1925(a) Opinion expressly accept Homeowners' 1925(b) Statement nunc pro tunc or accept it as timely. Rather, it simply notes the stated reason for the untimely filing of Homeowners' 1925(b) Statement and notes that the supplemental opinion is responsive to same.

As stated in *Jenkins*, this alone is insufficient to cure waiver. Further, the reasons stated for the late filing do not constitute "extraordinary circumstances" or "good cause" to warrant nunc pro tunc filing or remand as contemplated by Rules 1925(b)(2)(i) and (c)(2), respectively. Homeowners' counsel represented in her 1925(b) Statement that "the court's June 5 12 order was inappropriately calendared in our system, and counsel was not aware the deadline had been missed until she received the court's July 16 order on July 19, 2024." R.R. at 19.

As stated in the note to Rule 1925(b)(2), extraordinary circumstances may encompass "non-negligent circumstances" related to an appellant's counsel. Pa.R.A.P. 1925, Note, Subparagraph (b)(2) (quoting *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999)).

The circumstances in the instant case, however, are clearly not "non-negligent" on the part of Homeowners' counsel. See, e.g., *Commonwealth v. Burton*, 973 A.2d 428, 433 (Pa. Super. 2009) (holding that counsel's failure to file a timely 1925(b) statement is per se ineffective assistance of counsel in a criminal case).³ In the absence of extraordinary circumstances, we now turn to whether counsel had good cause for her failure to file a timely 1925(b) Statement.

In *Commonwealth v. Hooks*, the Superior Court found that an appellant had good cause for the late filing of a 1925(b) Statement where the appellant was unaware of the trial court's 1925(b) order, due to the trial court's failure to properly serve its order on the appellant. 921 A.2d 1199, 1202 (Pa. Super. 2007).

The instant case is distinguishable in that it was not the trial court's error, but rather counsel's, that caused the untimely filing. Incorrectly calendaring an order is an error. Indeed, in crafting Rule 1925(c)(2), our Supreme Court contemplated the complete failure to file or timely file a 1925(b) Statement by an appellant's counsel and decided to create a lifeline for appellants in certain cases: namely those where a statutory right to counsel exists, such as "post- conviction relief, juvenile, parental termination, or civil commitment proceedings[.]" Pa.R.A.P.

1925, Note, Subparagraph (c)(2). No such lifeline exists in this case. See *May v. Sharon*, 546 A.2d 1256, 1258 (Pa. Super. 1988) (“While it is true that in some instances counsel will be appointed for a plaintiff in a civil action, generally it is a situation involving broad policy considerations implicating a state interest of a civil rights nature such as a fair housing violation, sexual or other job discrimination or where liberty interests are implicated.”).

6 attributable to counsel and distinguishable from counsel not receiving or being aware of an order due to a trial court’s failure to serve such order. In *Jenkins*, this Court found that an appellant lacked good cause for the late filing of a 1925(b) Statement where such appellant was waiting for receipt of a hearing transcript and subsequently filed their 1925(b) Statement four days late.

Jenkins, 176 A.3d 1038, 1043. In the instant case, Homeowners’ reason for the late filing is less compelling than that in *Jenkins* and their 1925(b) Statement was over 20 days late. While not directly analogous, we nevertheless find *Jenkins* persuasive insofar as we find the cause for the late filing in the instant case to be even less excusable than that in *Jenkins*, where we found no “good cause” existed for the late filing.

IV. CONCLUSION For the foregoing reasons we are constrained to dismiss Homeowners’ appeal.

MATTHEW S. WOLF, Judge 7 IN THE
COMMONWEALTH COURT OF PENNSYLVANIA Sagamore Hills Homeowners: Association:
v.: No. 1118 C.D. 2024 Michelle Whitney and Kevin: Ferrara,: Appellants: ORDER AND NOW,
this 8th day of December 2025, upon consideration of the Application to Quash Appeal
(Application) filed by Sagamore Hills Homeowners Association, which the Court treats as an
application to dismiss, the Application is GRANTED, and the above-captioned appeal is
DISMISSED. _____ MATTHEW S. WOLF, Judge