

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher May,	:	
Appellant	:	
	:	
v.	:	
	:	
Unity Township and Frola Family	:	No. 1487 C.D. 2024
Trust of December 17, 2017	:	Submitted: November 6, 2025

BEFORE: HONORABLE CHRISTINE FIZZANO CANNON, Judge  
HONORABLE STACY WALLACE, Judge  
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION  
BY JUDGE FIZZANO CANNON

FILED: December 8, 2025

Christopher May (May) appeals from the October 8, 2024, order of the Court of Common Pleas of Westmoreland County (trial court). May asserts that the trial court erred in granting a nonsuit based on a verbal motion by Unity Township (Township or, when discussed in association with Cook Township, Unity Township) after May rested his case in the June 18, 2024, bench trial held in this matter. Upon review, we quash May's appeal for lack of jurisdiction.

### **I. Factual and Procedural Background**

May filed a complaint with the trial court in March 2018. Reproduced Record (R.R.) at 44-46.<sup>1</sup> The complaint averred that Dorsey Lane, also referred to as T-587, has been a Township public road since at least 1941 and that the Township

---

<sup>1</sup> Reproduced Record (R.R.) and Original Record (O.R.) references are to electronic pagination.

acknowledged receipt of liquid fuels money<sup>2</sup> from the Commonwealth to maintain it but had refused to do so despite multiple requests by May. *Id.* at 45. May, who lives at 120 Secluded Lane in the Township, asserted that the Township's neglect violated The Second Class Township Code (Code),<sup>3</sup> which requires townships to maintain roadways if they have been public roads for more than 21 years.<sup>4</sup> *Id.* May asked the trial court to order the Township to fulfill its obligation to maintain Dorsey Lane as a public road. *Id.* at 46.

In April 2024, the trial court issued an order scheduling a one-day civil bench trial on June 18, 2024. Original Record (O.R.) at 100. May, the Township, and the Frola Family Trust (Trust), which owns land over which Dorsey Lane passes, participated through counsel. R.R. at 3. At the outset, the trial court confirmed that the proceeding was a bench trial. *Id.* At the close of May's case in chief, Township counsel, joined by Trust counsel, asked the trial court for a nonsuit. R.R. at 24-25. Township counsel stated that May's own testimony reflected that the Township had not been maintaining the road for at least 21 years to render it a public road as defined in the Code. *Id.* The trial court suspended the trial, ordered briefing on the Township's motion for nonsuit, and advised that if the nonsuit was denied, the trial would reconvene. *Id.* at 25.

On October 7, 2024, the trial court issued an order granting the Township's motion for nonsuit. R.R. at 123. The order confirmed that the parties

---

<sup>2</sup> "Liquid fuels money" is tax revenue collected from a state sales tax on all liquid fuel sold in the Commonwealth and allocated to localities to fund road maintenance. *See Rosetta Oil, Inc. v. Commonwealth*, 655 A.2d 672, 674 (Pa. Cmwlth. 1995).

<sup>3</sup> Act of May 1, 1933, P.L. 103, *as amended*, 53 P.S. §§ 65101-68701.

<sup>4</sup> Section 2307(a) of the Code, added by Section 1 of the Act of November 9, 1995, P.L. 350, 53 P.S. § 67307(b).

convened for a bench trial on June 18, 2024, that May testified and rested his case, and that the Township, joined by the Trust, then verbally moved for a nonsuit. *Id.* The order stated that the nonsuit was granted “as the testimony and evidence presented by [May] failed to establish the requirements set forth in [Section 2307 of the Code] for declaration of a road as a public road.” *Id.*

On May’s appeal, the trial court issued an opinion pursuant to Rule of Appellate Procedure 1925(a). R.R. at 131-40. The trial court first stated *sua sponte* that May had not filed a post-trial motion seeking to remove the nonsuit, which resulted in waiver of his right to appeal because an order granting a nonsuit is not itself appealable. *Id.* at 133-34. The trial court added that if this Court reached the merits, the nonsuit should be upheld because May did not meet his burden to show that the roadway was a public road. *Id.* at 135. May timely appealed to this Court.

## **II. Issues**

May asserts that the trial court abused its discretion in granting the Township’s verbal motion for nonsuit and erred as a matter of law by imposing additional burdens on him that are not in the relevant statute or case law. May’s Br. at 8. The Trust and the Township assert that the appeal should be quashed for lack of jurisdiction because May failed to file a timely post-trial motion before taking an appeal and also oppose May’s appeal on the merits. We agree with the Township and the Trust that the appeal must be quashed.

## **III. Discussion**

A nonsuit may not be granted unless, viewing all the evidence and all reasonable inferences arising from it in the light most favorable to the plaintiff, the

factfinder could not reasonably conclude the elements of the cause of action have been established. *Commonwealth v. Ortho-McNeil-Janssen Pharms., Inc.*, 52 A.3d 498, 504 (Pa. Cmwlth. 2012). Relatedly, Pennsylvania Rule of Civil Procedure 227.1 states that a nonsuit may be removed “[a]fter trial and upon the written Motion for Post-Trial Relief filed by any party.” Pa.R.Civ.P. 227.1(a)(3). Such post-trial motions “shall be filed within ten days after . . . notice of nonsuit or the filing of the decision in the case of a trial without jury.” Pa.R.Civ.P. 227.1(c)(2).

Regarding appealability, which implicates jurisdictional concerns, our Superior Court has stated:

Historically, Pennsylvania law has held that the entry of compulsory nonsuit is not the ruling that is immediately appealable; *rather, the appeal lies from the trial court’s denial of the motion to remove the compulsory nonsuit*. In other words, the adversely affected party has the right to appeal only after that party has filed a motion to remove the compulsory nonsuit, and the trial court has denied it.

. . . .

[E]ntry of a compulsory nonsuit is proper if trial on the case has begun and the plaintiff has presented evidence. Likewise, the entry of a compulsory nonsuit pursuant to Rule 230.1 is appropriate, where the court considers the plaintiff’s offer, in concise summary form, of evidence to be submitted at trial. *In these scenarios, the plaintiff must file a written motion to remove the nonsuit, and the court must deny the motion, before the plaintiff can appeal.*

*Murphy v. Int’l Druidic Soc’y*, 152 A.3d 286, 289-90 (Pa. Super. 2016) (emphasis added and citations omitted).<sup>5</sup> There, the trial court entered a nonsuit against the

---

<sup>5</sup> “In general, Superior Court decisions are not binding on this Court, but they offer persuasive precedent where they address analogous issues,” such as questions pertaining to the application of the Rules of Civil Procedure. *Lerch v. Unemployment Comp. Bd. of Rev.*, 180 A.3d 545, 550 (Pa. Cmwlth. 2018).

plaintiff after hearing part of the plaintiff's evidence at trial, reviewing a summary of the remainder of the proposed evidence, and determining that the proffered evidence was insufficient; the plaintiff failed to file post-trial motions seeking to remove the nonsuit. *Id.* at 292. Instead, the plaintiff filed a notice of appeal from the order entering the compulsory nonsuit, "which is not an appealable order." *Id.* The Superior Court concluded that it lacked jurisdiction to consider the plaintiff's issues on the merits and quashed the appeal. *Id.*

This Court has taken the same approach. In *Coal Tubin' PA, LLC v. Cambria County Transit Authority*, 162 A.3d 549 (Pa. Cmwlth. 2017), a commercial tenant on county transit authority property sought to set aside the authority's sale of another building on the property because the sale did not serve a public use. *Id.* at 552. Following a bench trial, the trial court dismissed the case without issuing a final judgment; the plaintiff did not file post-trial motions and appealed directly to this Court. *Id.* This Court considered appealability *sua sponte* due to jurisdictional implications, concluded that the plaintiff waived all issues for appeal by failing to file post-trial motions, and stated: "The venerable purpose of the post-trial motion procedure is to permit the trial court to correct its own errors before appellate review is commenced." *Id.* at 554 (quoting *Motorists Mut. Ins. Co. v. Pinkerton*, 830 A.2d 958, 964 (Pa. 2003)). As such,

[u]nder Rule 227.1, a party must file post-trial motions at the conclusion of a trial in any type of action in order to preserve claims that the party wishes to raise on appeal. If an issue has not been raised in a post-trial motion, it is waived for appeal purposes. Moreover, this Court has consistently ruled: "Where a party fails to file timely post-trial motions after a bench trial, no issues are preserved for this Court to review." Consequently, when [Coal Tubin'] failed to file post-trial motions within ten days following

the trial court's order, the issues it sought to raise in its [Rule 1925(b) Statement] were waived.

*Id.* at 553 (quotation marks and citations omitted). Our Supreme Court has explained that Rule 227.1 applies in non-jury proceedings that are in the nature of a trial or otherwise dispose of all pending claims and the trial court issues an order or decision to that effect, such that the parties should be aware of the need for post-trial motions. *Wolk v. Sch. Dist. of Lower Merion*, 197 A.3d 730, 740-41 (Pa. 2018). The applicability of Rule 227.1 should be “apparent on its face” to guard against the “heavy consequence of waiver.” *Id.* at 741. However, Rule 227.1 does not apply in the context of pretrial orders disposing of preliminary objections, motions for judgment on the pleadings or for summary judgment, or other proceedings that “do not constitute a trial.” *State Farm Fire & Cas. Co. v. JPC Grp., Inc.*, 157 A.3d 1, 6 (Pa. Cmwlth. 2017) (discussing note to Rule 227.1).

Here, the trial court *sua sponte* stated that this Court should quash May's appeal for lack of jurisdiction because he failed to file written post-trial motions challenging the trial court's order granting the Township's verbal motion for a nonsuit after May rested his case in the bench trial. R.R. at 131-32 (quoting *Murphy*). The Township echoes the trial court's reasoning, stating that May's evidence was clearly insufficient and that his failure to file written post-trial motions challenging the nonsuit, as required by Rule 227.1, leaves this Court with no appealable final order upon which to exercise jurisdiction. Township's Suppl. Br. at 1-2. The Trust joins the Township's brief and supplemental brief in their entirety. Trust's Br. at 4.

May argues that this case differs from *Murphy* where the trial court granted nonsuit in open court during the plaintiff's case in chief after having the plaintiff summarize her proposed evidence. May's Br. at 3. Here, May asserts, the

trial court suspended the June 2024 bench trial after May's case in chief, gave the parties 60 days to complete briefing on both the facts and legal issues in this case, and then took additional time before issuing its October 2024 order granting nonsuit. *Id.* at 4. In May's view, the trial court's order was a full, final, and appealable determination on the merits that the trial court mislabeled as an order granting a nonsuit; therefore, post-trial motions challenging the nonsuit were not necessary. *Id.* at 5.

May cites *Rivera v. Home Depot*, 832 A.2d 487 (Pa. Super. 2003), where the trial court entered a nonsuit before trial began and the Superior Court concluded: "It is true that the trial court's ruling should have been considered a summary judgment ruling; however, it was called the grant of a compulsory nonsuit." *Id.* at 490. However, the Superior Court declined to quash in *Rivera* because the plaintiffs followed the proper procedure of filing post-trial motions asking to strike the nonsuit and then appealing the trial court's denial of that motion. *Id.* at 488. Here, May did not file post-trial motions at all; as such, *Rivera* is inapplicable.

May also cites *Valentine v. Martin Elfant Incorporated Real Estate* (Pa. Super., No. 3565 EDA 2016, filed May 29, 2018), 2018 WL 2410325 (unreported), where, as in *Rivera*, the trial court granted a nonsuit before trial began and the Superior Court noted that the trial court should have styled its order as one granting summary judgment. However, as *Valentine* is an unreported opinion of the Superior Court issued prior to May 2, 2019, Section 65.37(B) of the Superior Court's Internal Operating Procedures forbids citation of that opinion in this context. *See* 210 Pa. Code § 65.37(B) (mandating that "[a]n unpublished memorandum decision filed prior to May 2, 2019, shall not be relied upon or cited by a Court or a party in any

other action or proceeding” except in instances not at issue here). Accordingly, we will not consider May’s argument concerning *Valentine* in this matter.

Here, unlike in *Rivera*, the trial court’s order granting a nonsuit did not take place prior to trial. The proceedings in June 2024 were clearly a bench trial and not a hearing on a motion for summary judgment or any other pretrial proceeding. May rested his case before the trial court considered the Township’s verbal motion for nonsuit. As such, it cannot be said that the trial court’s October 8, 2024, order constituted either a full, final, and appealable merits determination after consideration of all evidence presented by the parties or a “misabeled” disposition of a pretrial evidentiary matter. Rather, the order was what it stated it was: an interlocutory grant of nonsuit based on the trial court’s determination that May had not presented sufficient evidence at trial to support his claims.

Our rules and precedent clearly state that a trial court’s order granting a nonsuit in accordance with Rule 230.1 is not an appealable final order and that a plaintiff’s failure to file post-trial motions seeking to remove the nonsuit in accordance with Rule 227.1 will result in waiver of the plaintiff’s appeal rights. *Coal Tubin’*, 162 A.3d at 553-554; *Murphy*, 152 A.3d at 289-90. May was required to file written post-trial motions within 10 days of the trial court’s October 8, 2024, order granting the nonsuit. The trial court’s suspension of the trial and acceptance of briefs on the nonsuit before the Township and Trust presented any trial evidence did not change the matter’s procedural posture or turn the trial court’s order granting the nonsuit into a final and appealable determination. Therefore, May’s failure to file post-trial motions seeking to remove the nonsuit resulted in waiver of his issues on appeal and this Court must quash his appeal for lack of jurisdiction.



#### **IV. Conclusion**

In light of May's failure to file written post-trial motions seeking to remove the trial court's October 8, 2024, grant of the Township's verbal motion for a nonsuit, this Court lacks jurisdiction to consider the merits of May's appeal, which is quashed.

---

CHRISTINE FIZZANO CANNON, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Christopher May,	:	
	:	
Appellant	:	
	:	
v.	:	
	:	
Unity Township and Frola Family	:	No. 1487 C.D. 2024
Trust of December 17, 2017	:	

**ORDER**

AND NOW, this 8<sup>th</sup> day of December, 2025, Christopher May's appeal of the October 8, 2024, order of the Court of Common Pleas of Westmoreland County is **QUASHED**.

---

CHRISTINE FIZZANO CANNON, Judge