

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	CASES CONSOLIDATED
	:	
v.	:	Nos. 307 C.D. 2023
	:	477 C.D. 2023
	:	
Ferrell Holdings, LLC,	:	
Appellant	:	Submitted: May 7, 2024

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE ELLEN CEISLER, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE WOLF

FILED: June 5, 2024

In these consolidated cases, Ferrell Holdings, LLC (Ferrell) appeals two orders issued March 7, 2023, by the Court of Common Pleas of Allegheny County (trial court). The trial court's orders dismissed Ferrell's summary appeal of two magisterial district court convictions due to its failure to appear before the trial court at a hearing scheduled for March 7, 2023. Concluding that Ferrell was not provided proper notice of the hearing, we vacate the trial court's orders and remand for further proceedings.

On February 19, 2021, Brian Wertz, in his capacity as Inspector for the City of Pittsburgh (Inspector Wertz), filed a private criminal complaint against Ferrell alleging violations of 34 Pa. Code §§ 403.62 and 403.81 for property it owns at 2812 Wadlow Street in Pittsburgh (Property). Reproduced Record (R.R.) 92a-94a. Ferrell was found guilty at a summary trial on April 5, 2021, and ordered to

pay \$5,101.33 in fees and costs. *Id.* at 97a-100a. On June 11, 2021, Inspector Wertz filed a second private criminal complaint against Ferrell again alleging violations of 34 Pa. Code §§ 403.62 and 403.81 at the Property, albeit in a different location. *Id.* at 4a-6a. Ferrell was found guilty at a summary trial on December 6, 2021, and ordered to pay \$5,101.33 in fees and costs. *Id.* at 17a-20a. On February 16, 2022, Ferrell appealed both convictions *nunc pro tunc* to the trial court. *Id.* at 2a, 90a.

One summary appeal hearing was initially scheduled for both appeals on May 3, 2022, as indicated in handwriting on the notice of appeal. R.R. 24a. On May 3, 2022, the trial court postponed the summary appeal hearing to September 13, 2022. R.R. 25a. On September 13, 2022, the trial court again postponed the summary appeal hearing to December 6, 2022. R.R. 26a. On December 6, 2022, the trial court postponed the summary appeal hearing for a third time to March 7, 2023. Original Record (O.R.) at 12-13. The trial court held the summary appeal hearing on March 7, 2023, at which Ferrell did not appear. The trial court entered the underlying orders dismissing Ferrell’s summary appeals for failure to appear pursuant to Pennsylvania Rule of Criminal Procedure 462(d).¹ R.R. 28a, 109a. Ferrell appealed to this Court.

On April 4, 2023, the trial court directed Ferrell to file a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) (Statement). R.R. 90a. In response, Ferrell asserted, *inter alia*, that the trial court erred in dismissing its appeals pursuant to Pennsylvania Rule of Criminal Procedure

¹ Chapter 4 of the Pennsylvania Rules of Criminal Procedure govern procedures in summary cases. Rule 462(d) provides: “If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.” Pa.R.Crim.P. 462(d).

462(d) because Ferrell was not given notice of the March 7, 2023 hearing date. R.R. 59a-64a. In the responsive Pa.R.A.P. 1925(a) opinion, the trial court states:

[Ferrell's] 1925(b) Statement alleges that this [c]ourt failed to provide [Ferrell] with a new hearing date. This is not accurate, since the date of "3-7-23" was handwritten on the postponement. [Ferrell] also claims the Court failed to provide notice via regular first-class mail. However, the record includes a copy of the Notice of Summary Appeal Hearing, which was mailed to [Ferrell] using the same mailing address that all the prior notices had been mailed to. In 1(e) and 1(g) of [Ferrell's] 1925(b) Statement[,], it is admitted that proper notice was provided for the hearing dates prior to the hearing date of March 7, 2023. Since the same notice procedure was followed for the hearing date of March 7, 2023, proper notice was also given for this date.

Trial Court's 1925(a) Opinion at 2-3.

Before this Court, Ferrell argues it did not receive notice of the March 7, 2023 hearing, and, thus, Ferrell's due process rights were violated by the trial court's dismissal of its appeal for failure to appear under Pennsylvania Rule of Criminal Procedure 462(d). Ferrell maintains that it appeared before the trial court for the first scheduled hearing on May 3, 2022, and was advised on that date that the matter was postponed for 90 days. Ferrell again appeared before the trial court on the rescheduled date of September 13, 2022, at which time the matter was postponed again to December 6, 2022. Ferrell appeared at the December 6, 2022 hearing but submits that unlike the prior postponements, it was not given notice of the new March 7, 2023 hearing date at that time, and subsequently did not receive notice of the new hearing date via mail prior to the March 7, 2023 hearing. Ferrell's Brief at 11.

The City responds that Ferrell received notice of the March 7, 2023 hearing by personal service and mail. City's Brief at 10-11. As for personal service, the City maintains a copy of the court's postponement notice that included the time, place, and date of the hearing was served on Ferrell's representative at the December 6, 2022 hearing. The City also maintains that the notice was mailed to Ferrell at its last known address. Finally, the City submits that Ferrell was on notice as the March 7, 2023 hearing date appeared on the docket.

This Court's independent review of the original record reveals no evidence that Ferrell was notified of the March 7, 2023 hearing date in accordance with applicable Pennsylvania Rules of Criminal Procedure. Pennsylvania Rule of Criminal Procedure 451 provides that "citations, summonses, and trial notices in summary cases may be served either personally upon the defendant or by mail to the defendant's last known address." Pa.R.Crim.P. 451. While the City argues that personal service was effected on Ferrell at the December 6, 2022 proceedings by the summary appeals staff, there is no transcript memorializing what occurred in those proceedings or confirming that Ferrell received notice of the third and final postponement on that date. As for service by mail, the City points to the "Notice of Summary Appeal Hearing." O.R. 13. The Notice directs Ferrell to appear for a summary appeal hearing on March 7, 2023, at 8:30 a.m. At the bottom of the Notice, Ferrell's primary address is listed. *Id.* However, the Notice contains no markers to indicate that it was sent to Ferrell by mail. Moreover, the docket entries in this case are devoid of evidence of service of the Notice, or any of the prior postponement orders. *See* Pa.R.Crim.P. 114(B)(1), (C)(2)(c) (requiring that all orders and court notices be promptly served on each party's attorney, or the party if unrepresented, and that the date of service be reflected on the docket entries).

In this appeal, the record below supports Ferrell. The Pennsylvania Rules of Criminal Procedure are “intended to provide for the just determination of every proceeding” and “shall be applied to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.” Pa.R.Crim.P. 101(a), (b). On this record, we cannot conclude that the procedural safeguards set forth in the Pennsylvania Rules of Criminal Procedure were applied. Accordingly, the trial court’s orders dated March 7, 2023 are vacated, and this matter is remanded to the trial court to hold a hearing on Ferrell’s summary appeals in accordance with the relevant procedural rules.²

MATTHEW S. WOLF, Judge

² Based on this disposition, we need not address Ferrell’s remaining issues.

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ORDER

AND NOW, this 5th day of June 2024, the Court of Common Pleas of Allegheny County's March 7, 2023 orders dismissing Ferrell Holdings, LLC's summary appeals pursuant to Pa.R.Crim.P. 462(d) are VACATED. This matter is REMANDED to the Court of Common Pleas of Allegheny County for further proceedings consistent with the foregoing opinion.

Jurisdiction relinquished.

MATTHEW S. WOLF, Judge