

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

LATHA REDDY	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
THARP, KEVIN K. AND PEST PATROL,	:	
LLC	:	
	:	No. 214 MDA 2023
Appellant	:	

Appeal from the Order Entered January 10, 2023  
In the Court of Common Pleas of Centre County Civil Division at No(s):  
19-2185

BEFORE: LAZARUS, J., McLAUGHLIN, J., and STEVENS, P.J.E.\*

MEMORANDUM BY McLAUGHLIN, J.:

**FILED: JANUARY 22, 2024**

Kevin K. Tharp and Pest Patrol, LLC ("Appellants") appeal from the order denying the petition to strike the judgment. Appellants argue they did not receive original process and therefore the trial court lacked personal jurisdiction over them; a stipulation filed in the matter did not result in waiver of the service; the trial court prothonotary lacked the authority to enter the judgment; and the court erred in holding a pretrial conference. We affirm.

Latha Reddy filed a complaint in June 2019 alleging Pest Control, LLC and Kevin K. Tharp were in default under a promissory note and owed her \$109,631.28 ("Complaint"). Franklin County Sheriff's office attempted to serve the Complaint on multiple occasions but was unsuccessful. After this, there is no action on the docket for a lengthy period.

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\* Former Justice specially assigned to the Superior Court.

Reddy and Tharp entered into a Stipulation for Entry of Judgment and Agreement, dated August 6, 2019. The stipulation changed the caption from "Pest Control" to "Pest Patrol" and stated that Tharp and Pest Patrol had executed a Note and Guarantee in favor of Reddy for \$90,000, together with interest, as reflected in a September 2015 promissory note. Stipulation for Entry of Judgment and Agreement, filed July 16, 2020 ("Stipulation"). The Stipulation authorized the Prothonotary to enter a judgment for the amount set forth in Complaint and the parties agreed that Reddy would accept less than the full debt owed, that Tharp would make regular payments, and that if Tharp failed to make payments, Reddy could collect on the judgment.

The Stipulation provided:

1. The parties hereby agree and stipulate to the entry of judgment on behalf of Reddy and against [Tharp and Pest Patrol] in the Centre County action 2019-2185 in the amount set forth in the Complaint.
2. In order to satisfy the amounts owing to Reddy as reflected by the judgment, she is willing to settle for the principal sum of \$58,000.00 with no interest.
3. [Tharp and Pest Patrol], jointly and severally, shall pay the \$58,000.00, with no interest, as follows:
  - a. On the first day of the month following execution of this Agreement and stipulation for entry of judgment, Obligees shall pay to Reddy the sum of \$500.00 a month for the first four months, with each payment being made on the first day of each month.
  - b. On the first day of the fifth month following execution of this Agreement, [Tharp and Pest Patrol] shall pay the sum of \$1,000.00 a month, with this amount being paid for 56 consecutive months.

- c. Reddy shall provide a grace period of five days for all payments to be made hereunder.
- d. So long as there is no default in payment, then Reddy shall refrain from any efforts to collect the judgment in the within civil action.
- e. Upon timely payment of all amounts provided for herein, Reddy shall satisfy and discontinue with prejudice the judgment in the within civil action.
- f. In the event that any payment should be made untimely, meaning beyond the applicable five day grace period, then it shall be considered a breach of this Stipulation and Agreement, and the following shall be applicable.
  - i. Reddy shall be free to execute upon and collect the full amount of the judgment entered in the within action; and
  - ii. All payments made by [Tharp and Pest Patrol] to the date of the default shall be credited to the amount due and owing pursuant to the judgment entered of record.
- 4. [Tharp and Pest Patrol] hereby authorize the Prothonotary of Centre County to enter a judgment consistent with the terms of this Stipulation and Agreement in the amount set forth in the Complaint upon the filing of this Stipulation and Agreement along with a Praecipe to Enter judgment as filed by [Reddy's] attorney.
- 5. [Tharp and Pest Patrol] authorize the filing of a Praecipe by [Reddy's] attorney to correct the caption to "Pest Patrol, LLC."

Stipulation.

Tharp allegedly made sporadic payments from August 2019 until February 2020. In July 2020, Reddy filed the Stipulation and a praecipe to enter judgment. The Prothonotary entered judgment against Appellants for

\$109,631.28, the amount stated in the Complaint. Notice of the judgment went to Tharp's address.

Shortly after the entry of judgment, in July 2020, the court held a pretrial conference. It entered an order stating Reddy and her counsel had attended the conference and that it was the court's "understanding that th[e] matter [would] be resolved shortly." Order, July 17, 2020.

Approximately a year and nine months later, in April 2022, Appellants filed a petition to strike the judgment. They claimed the Sheriff had not served them with the Complaint and therefore the court did not have jurisdiction over Tharp or Pest Patrol. They argued the Stipulation was purportedly "signed on August 6, 2019, but not filed until July 16, 2020[, and n]one of the signatures on said document are witnessed or notarized." Petition to Strike at ¶ 6. Appellants maintained that "[n]either defendant Kevin Tharp, nor anyone associated with defendant Pest Patrol, LLC ever saw, nor signed, such a document." *Id.* at ¶ 7. They claimed Tharp was unaware of the litigation until December 2021, when Reddy served and filed the documents in Franklin County for collection of the judgment. Appellants claimed that "[b]ecause the defendants have never been properly served with the [C]omplaint, and because their purported signatures on the [Stipulation] are forgeries, [Appellants] are entitled to have the judgment stricken." *Id.* at 13.

In response, Reddy maintained Tharp had signed the Stipulation and that she and Tharp had exchanged text messages about it. She also filed a request for production of exemplars of Tharp's signature and documents

containing his signature.<sup>1</sup> The court ordered Tharp to provide exemplars and 10 documents of relatively equal importance containing his signature. Tharp provided the exemplars but did not produce the documents.

At a hearing, Tharp maintained he had not been served with the Complaint and the court lacked jurisdiction. He further claimed he did not sign the Stipulation and, even if he did, it was “patently unfair” to treat that as a waiver of jurisdiction. N.T., 10/21/2022, at 8. Tharp testified that he first learned of the litigation and the judgment entered against him in January 2022. ***Id.*** at 12-13. He testified that he had not seen the Stipulation before his attorney showed him the document and stated the signatures for Tharp and Pest Patrol on the document were not his signatures. ***Id.*** at 14. On cross-examination, when shown screen shots of text messages between one of his phone numbers and Reddy’s phone number, he testified that he did not send any of the text messages. ***Id.*** at 25-26. He also said he did not recall writing two \$5,000 checks payable to Reddy. ***Id.*** at 31. On redirect examination, he testified that he did not write the checks and that Reddy still had checks for the bank account. ***Id.*** 33-34.

Reddy then testified that the screen shots of text messages from her phone contained messages between her and Tharp between July 21, 2019, and August 7, 2019. ***Id.*** at 37. She explained the messages were about the

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<sup>1</sup> Reddy filed a petition to dismiss the petition to strike the judgment or, in the alternative, to compel compliance with Plaintiff’s discovery requests and for an award of attorney fees.

agreement they had reached regarding the civil action. She stated that Tharp originally sent a signed version of the Stipulation by phone, but the signature did not look like his, so they met in person for him to sign. ***Id.*** at 38, 42. She stated they met in person on August 6, 2019, at an abandoned mill in Lewistown. ***Id.*** at 47. She said that Tharp had made some payments toward the debt after he signed the Stipulation, including in October 2019, December 2019, and February 2020, and had given her two checks of \$5,000 each dated March 29, 2021. ***Id.*** at 46, 49.

A forensic document examiner, Sandra Miller Raudabaugh, testified that she compared the submitted materials and opined that Tharp “probably did write the . . . signatures appearing on” the Stipulation. ***Id.*** at 62.

The trial court denied the petition to strike. Tharp filed a timely notice of appeal.

Tharp raises the following issues:

1. Was it an error of law for the trial court to disregard defective service of original process and lack of personal jurisdiction over [Tharp and Pest Patrol]?
2. Was it an error of law and an abuse of discretion by finding that the Prothonotary had the proper authority to enter a judgment against [Tharp and Pest Patrol]?
3. Was it an error of law and an abuse of discretion for the trial court to hold a pre-trial conference on July 25, 2020, without notifying [Tharp and Pest Patrol]?

Tharp’s Br. at 3.

Appellants argue that, because they were not served with original process, the trial court did not have personal jurisdiction over Appellants and

it had no authority to enter judgment. They argue the lack of service of original process is a fatal defect on the face of the record and the court erred in not striking the judgment. Appellants point out that the record shows no one personally served the Complaint, and that Reddy admits service did not occur. They maintain that Reddy did not establish a good faith effort to effectuate service because, they allege, she only attempted service once and Tharp had no actual notice of the lawsuit, and they claim they were prejudiced by the entry of judgment without their knowledge.

We review the grant or denial of a petition to strike judgment *de novo*. **Green Acres Rehab. and Nursing Ctr. v. Sullivan**, 113 A.3d 1262, 1267 (Pa.Super. 2015). “A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record,” and a court may grant the petition “only for a fatal defect or irregularity appearing on the face of the record.” *Id.* (quoting **Midwest Fin. Acceptance Corp. v. Lopez**, 78 A.3d 614, 622–23 (Pa.Super. 2013)). “A fatal defect on the face of the record denies the prothonotary the authority to enter judgment.” *Id.* (citing **Erie Ins. Co. v. Bullard**, 839 A.2d 383, 388 (Pa.Super. 2003)). Where “a prothonotary enters judgment without authority, that judgment is void *ab initio*.” *Id.* (citation omitted). “When deciding if there are fatal defects on the face of the record for the purposes of a petition to strike a judgment, a court may only look at what was in the record when the judgment was entered.” **Cintas Corp. v. Lee's Cleaning Servs., Inc.**, 700 A.2d 915, 917 (Pa. 1997).

“Generally, courts acquire personal jurisdiction by service of process that satisfies Pa.R.C.P. 402.” **Sharpe v. McQuiller**, 206 A.3d 1179, 1184 (Pa.Super. 2019). “However, effective service of process is not the only means by which a court acquires *in personam* jurisdiction.” **Id.** Rather, a court may also obtain personal jurisdiction “through waiver or consent.” **Id.** (citing **Cox v. Hott**, 371 A.2d 921, 923 (Pa.Super. 1977)). Accordingly, courts have held “that a defendant manifests the intent to submit to the court’s jurisdiction when the defendant takes ‘some action (beyond merely entering a written appearance) going to the merits of the case, which evidences an intent to forego objection to the defective service.’” **Id.** (quoting **Cathcart v. Keene Industrial Insulation**, 471 A.2d 493, 499 (Pa.Super. 1984)).

The trial court concluded that it had jurisdiction because Tharp had waived service and submitted to the court’s jurisdiction by entering into the Stipulation for entry of judgment. Trial Court Opinion (“1925(a) Op.”), filed Jan. 10, 2023, at 3. It reasoned that in the Stipulation, Reddy agreed not to proceed with the civil action unless Tharp failed to make payments and Tharp agreed that the Prothonotary could enter judgment against him and Pest Patrol. **Id.** The court found the Stipulation established Tharp’s intent to put himself under the court’s jurisdiction and waived the need for service. **Id.** It further found that a judgment entered by stipulation carries the same force and effect as a judgment entered upon a verdict and should not be interfered with in the absence of fraud. **Id.**



We agree with the trial court. Although proper service did not occur, Tharp and Pest Patrol waived service when they entered into the Stipulation, and submitted to the court's jurisdiction.<sup>2</sup> **See Sharpe**, 206 A.3d at 1184.

In his second issue, Tharp alleges the court erred in finding the Prothonotary had authority to enter judgment. He maintains that if the Stipulation served as acceptance of service, the Prothonotary lacked authority because the judgment was not a default judgment and therefore a judge had to enter the judgment.<sup>3</sup>

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<sup>2</sup> Although he claimed not to have signed the Stipulation below, Tharp does not claim fraud in his appellate brief. Moreover, whether fraud occurred would go beyond the face of the record, and would have had to have been raised in a petition to open the judgment. **Resolution Tr. Corp. v. Copley Qu-Wayne Assocs.**, 683 A.2d 269, 273 (Pa. 1996) (noting that "if the truth of the factual averments contained in [the] record are disputed, then the remedy is by a proceeding to open the judgment and not to strike").

In any event, the trial court found as a fact that Tharp had signed the stipulation. **See** 1925(a) Op. at 4. In the court's view, "there [was] an abundance of evidence that [Tharp] did indeed sign it." **Id.** at 3. It noted Tharp relied solely on his uncorroborated testimony that he did not sign it. However, Reddy had introduced text messages between her and Tharp about the Stipulation, as well as her own testimony and that of an expert document examiner, establishing Tharp signed the Stipulation. It further noted that Tharp failed to comply with the order requiring him to provide documents with his signature and that after the parties signed the Stipulation, Tharp made payments as contemplated by it. The court therefore concluded that "Tharp did sign the Stipulation and waived the need for service." **Id.** at 4.

<sup>3</sup> Tharp argues that the Complaint had not been reinstated and therefore expired when not served. As stated above, Appellants waived the service requirement when they entered the Stipulation and submitted to the court's jurisdiction.

In response, Reddy points out that in the Stipulation, Tharp agreed the Prothonotary could enter judgment. She maintains Rule 1037(b) and case law support the Prothonotary's authority in this case.

"[P]arties may bind themselves by stipulations" as long as the stipulations do not affect the court's subject matter jurisdiction, "and provided that the stipulations are not in contravention of peremptory statutory requirements." **Marmara v. Rawle**, 399 A.2d 750, 753 (Pa.Super. 1979) (*en banc*); **see also Tindall v. Friedman**, 970 A.2d 1159, 1165 (Pa.Super. 2009) (citation omitted) ("[P]arties may bind themselves, even by a statement made in court, on matters relating to individual rights and obligations, so long as their stipulations do not affect the court's jurisdiction or due order of business."). Therefore, in Pennsylvania, "whatever does not [a]ffect the jurisdiction, or due order of business and convenience of the court is capable of arrangement between the parties or their counsel, and an agreement by them will become the law of the case." **Marmara**, 399 A.2d at 753 (quoting **Foley Brothers, Inc. v. Commonwealth**, 163 A.2d 80, 84 (Pa. 1960)). "[C]ourts employ a contracts-law analysis to interpret stipulations, so that the intent of the parties is controlling." **Tindall**, 970 A.2d at 1165 (citation omitted).

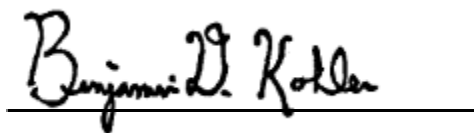
Here, in the Stipulation, the parties agreed to the entry of judgment against Tharp and Pest Patrol for the amount set forth in the Complaint. The agreement to enter judgment did not expand or reduce the court's subject matter jurisdiction and did not constitute the parties' attempt to determine

the court's "due order of business and convenience." Accordingly, the Prothonotary properly entered judgment. ***See id.***

In their final issue, Appellants contend the court erred by allowing a pretrial conference to proceed without notice to, and the presence of, Appellants and when a judgment had already been entered. They claim Appellants were unaware of the conference and no attorney represented them. They argue the court should have looked into the issue of service and realized judgment had already been entered. Tharp did not raise this issue before the trial court, and therefore waived it. Pa.R.A.P. 302 ("Issues not raised in the trial court are waived and cannot be raised for the first time on appeal.").

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 1/22/2024