

no longer an available issue because the defendant did not rest following the overruling of the demurrer, and elected to put on a defense. *Commonwealth v. Cristina*, 481 Pa. 44, 391 A. 2d 1307 (1978); *Commonwealth v. Short*, 278 Pa. Super. 581, 595, 596 (1980).

As a practical matter, we find no merit to the defendant's contention. We are well acquainted with the familiar canard that lawyers should not assume the bench knows any law but we do not accept that old joke as binding legal authority. In our judgment the Commonwealth was entitled to assume the Court was familiar with the Act under which the prosecution was brought, and was capable of determining the substances identified by the expert witnesses were controlled substances the sale of which would constitute the crime of delivery.

Therefore, the third post-trial motion will be dismissed.

ORDER OF COURT

NOW, this 17th day of September, 1982, the post-trial motions of Carl Lee Knable, Jr. are dismissed.

The Probation Department of Fulton County will proceed with the preparation and filing of a Pre-Sentence Investigation Report. Sentence is deferred until the filing of the same.

Upon the filing of the Pre-Sentence Investigation Report the defendant shall appear for sentencing upon the call of the District Attorney.

Exceptions are granted the defendant.

FOOSE v. ROHRER, C.P. Franklin County Branch, A.D. 1982 - 81

Assumpsit - Appeal from District Justice - Use of Mail/Notice Receptacle in Recorder's Office

1. The Court does not have discretion to strike a judgment of non-pros where the party obtaining the judgment has strictly complied with the Rules of Civil Procedure.

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PLEASE NOTE!!!

TO: All Attorneys

It has been noted by the Court that the wrong extension number is being used for the Legal Reference Service of Franklin-Fulton Counties on the Notice to Defend and Claim Rights as used in divorce actions. The correct extension number is 213.

From the Chambers of
Hon. George C. Eppinger, P.J.

ANNOUNCEMENT

The Dickinson School of Law Continuing Legal Education Office will sponsor a seminar on "Income and Estate Tax Consequences of IRA's and Corporate Retirement Plan Distributions" on four consecutive Thursday evenings, commencing on October 28, 1982.

For more information, call (717) 243-5529.

BAR NEWS ITEM

Sally Mrvos, Clerk of the United States Court of Appeals for the Third Circuit, has sent us the following information, with request that we publish same verbatim (if there are any questions, the address of the Court of Appeals is 21400 United States Courthouse, Independence Mall West, 601 Market Street, Philadelphia, Pa. 19106; Phone number: (215) 597-2995):

NEW RULE GOVERNING
THE NUMBER OF BRIEFS

New section (h) added to Third Circuit Rule 21(2)(A) as follows:

Unless otherwise required by the Court, ten (10) copies of each brief shall be filed with the Clerk and two (2) copies served on counsel for each party separately represented. Where hearing or rehearing by the Court in banc is ordered, the parties will be directed to file sufficient copies for the Court's use.

Effective September 8, 1982.

2. Attorneys may not assume that the use of the mail/notice receptacles in the Register and Recorder's office is a satisfactory substitute for compliance with the Rules of Civil Procedure.

3. Placement of a letter in the mail/notice receptacle does not constitute service on opposing counsel.

Donald L. Kornfield, Esq., Counsel for Plaintiff

Deborah K. Hoff, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., September 23, 1982:

On March 18, 1982, the defendant filed in the Office of the Prothonotary a Notice of Appeal from the judgment of District Justice Ingels dated February 18, 1982. The notice together with a praecipe to enter rule to file a complaint and rule to file was served upon the plaintiff by certified mail on March 20, 1982. On April 12, 1982, counsel for the defendant filed her praecipe for judgment of non pros for failure of the plaintiff to file a complaint. A notation on the docket indicates notice of the judgment was given to the plaintiff by the Prothonotary on April 12, 1982.

Counsel for the defendant alleges the writing of a letter to counsel for the plaintiff on April 2, 1982 proposes settlement discussions and stating, "Until I hear from you, I will assume that you will keep the time for filing of the complaint open. If this is incorrect, please advise." Counsel for the plaintiff then deposited his letter in the receptacle assigned to defendant's counsel in the Register and Recorder's Office. Defense counsel did not check her mail/notice receptacle in the Register's Office for a substantial period of time, and consequently did not receive or become aware of the letter of plaintiff's counsel until some time after the entry of the judgment of non pros.

The plaintiff failed to inform his attorney of the receipt of the Prothonotary's notice of the entry of the judgment of non pros. Counsel for the plaintiff having received no response to his letter of April 2nd, and having made no additional effort to contact counsel for defendant, filed plaintiff's complaint on April 26, 1982. Counsel for the defendant filed a preliminary objection in the nature of a motion to strike on May 14, 1982. Counsel for the plaintiff presented his petition for a rule to issue upon the defendant to show cause why the judgment of

non-pros and the preliminary objections should not be dismissed. Defendant's reply was filed June 14, 1982. Argument on the matter was heard on September 2, 1982.

Counsel for the plaintiff contends the Court has discretion to make the rule absolute, strike the judgment of non pros, and dismiss the defendant's preliminary objection. Plaintiff's counsel has failed to support his contention with any legal authority, and we have found none. We must conclude that counsel for the defendant strictly complied with the Rules of Civil Procedure in every respect. The defendant is, therefore, entitled to his judgment non pros, and the Court does not have the discretion asserted by the plaintiff.

Counsel for the plaintiff erred in assuming placement of his letter to counsel for the defendant in the mail/notice receptacle maintained in the Register and Recorder's Office constituted service upon counsel. There is no duty on the part of attorneys to investigate the receptacle assigned to each member of the bar, and attorneys may not assume the use of the receptacles is a satisfactory substitute for compliance with the Rules of Civil Procedure.

The defendant's preliminary objection in the nature of a motion to strike will be sustained, and the plaintiff's petition dismissed.

ORDER OF COURT

NOW, this 23rd day of September, 1982, the plaintiff's rule to show cause is discharged, his petition dismissed and the defendant's preliminary objection in the nature of a motion to strike is sustained.

Exceptions are granted the plaintiff.

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