

# DeVeaux v. City of Philadelphia

Common Pleas Court of Philadelphia County, Pennsylvania, Civil Trial Division

February 23, 2006, Decided

NO. 3103

## Reporter

2006 Phila. Ct. Com. Pl. LEXIS 121 \*

CURTIS DeVEAUX VS. CITY OF PHILADELPHIA

## Subsequent History: [\*1]

Affirmed without opinion by DeVeaux v. City of Philadelphia, 916 A.2d 745, 2007 Pa. Commw. LEXIS 92 (Pa. Commw. Ct., Feb. 20, 2007)

**Prior History:** COMMONWEALTH COURT. NO. 79 CD 2006.

DeVeaux v. City of Phila., 2005 Phila. Ct. Com. Pl. LEXIS 526 (2005)

**Judges:** JAMES MURRAY LYNN, J.

**Opinion by:** JAMES MURRAY [\*2] LYNN

## Opinion

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BY: James Murray Lynn, J.

### **I. FACTS AND PROCEDURAL HISTORY**

On September 22, 2005, the above captioned matter was tried before the undersigned, sitting without a jury. Plaintiff, Curtis DeVeaux, filed a civil action against Defendants, City of Philadelphia under the Pennsylvania Religious Freedom Act. A finding in favor of the Defendant, City of Philadelphia and against Plaintiff,

Curtis DeVeaux was entered by the Court. Motions for Post-Trial Relief were not filed. Notice under Pa.R.C.P. Rule 236 was given.

On October 20, 2005, Plaintiff filed a Notice of Appeal to the Commonwealth Court. On November 4, 2005, this Court ordered Plaintiff, the moving party, to file a Concise Statement of Matters Complained of on Appeal pursuant to Rule 1925(b) of the Rules of Appellate Procedure within fourteen (14) days. Plaintiff failed to file a Statement of Matters Complained of on Appeal and on December 5, 2005 this Court filed an Opinion pursuant to Rule of Appellate Procedure 1925(a). In the interim, on December 2, 2005, Plaintiff filed a Praecept to Discontinue Appeal in [\*3] the Commonwealth Court.

Post-Trial Motions were denied by this Court on December 8, 2005 as untimely. Defendant filed a response on December 9, 2005. Plaintiff filed a Notice of Appeal to the Commonwealth Court on January 9, 2006 from the December 8, 2005 Order denying post-trial relief as untimely and the September 22, 2005 Order entering judgment in favor of Defendant.

For purposes of the record, the Plaintiff, employed by Defendant as a firefighter alleged a violation of the Pennsylvania Religious Freedom Protection Act (RFPA), 71 P.S. § 2402 et seq., and the Pennsylvania Constitution. Plaintiff is a practicing Muslim and a part of his religious beliefs requires him to grow a beard. On February 2, 2005, Plaintiff was suspended from his job without pay for refusing to shave his beard as required by Fire Department Directive # 13. Based upon the arguments of counsel, the briefs and case law submitted to the Court, as well as the evidence submitted and stipulated to, this Court found in favor of the Defendant and against Plaintiff.

Plaintiff filed a timely Notice of Appeal, however, on December 2, 2005, filed a Praecept to Discontinue Appeal. Additionally, [\*4] Plaintiff untimely filed Post-Trial Motions, seventy-one (71) days following the decision of the Court. In his Post-Trial Motion Plaintiff

argues that he is entitled to entry of judgment in his favor pursuant to Pa. R.C.P. 227.1(a)(2) as the Defendant failed to meet its dual burden of establishing (1) that the application of Directive # 13 to Plaintiff serves a compelling interest of Defendant and (2) that there is no less restrictive means of furthering any compelling interest the Defendant may have than requiring Plaintiff to shave his beard. In the alternative, Plaintiff argues that he is entitled to a new trial pursuant to Pa. R.C.P. 227.1(a)(1) as this Court erred in (1) refusing to allow Plaintiff to introduce evidence of the Defendant's conduct in permitting him to continue in active service despite knowledge that he had a beard, and (2) refusing to take judicial notice of or otherwise permit Plaintiff to introduce evidence of the District of Columbia's practice and experience in permitting its firefighters to serve with beards. Lastly, Plaintiff argues that this Court should consider the merits of his [\*5] Post-Trial Motion despite its filing more than ten (10) days after notice of the filing of the decision because the Defendant cannot allege any prejudice as a result of the late filing.

## **II. DISCUSSION**

Pennsylvania Rules of Civil Procedure Rule 227.1(c)(2) requires that Motions for Post-Trial Relief be filed within ten (10) days of the Court's finding in a non-jury trial. In this case, this Court found in favor of Defendant on September 22, 2005. This Order was docketed on September 26, 2005. Therefore, the latest Plaintiff should have filed Post-Trial Motions was October 6, 2005. Yet, Plaintiff did not file a Motion for Post-Trial Relief until December 2, 2005, clearly and unequivocally well beyond the statutory deadline of ten (10) days.

In his Post-Trial Motion addressing the lateness of his filing Post-Trial Motions, Plaintiff argues that there is no prejudice to the Defendant as a result of the delay in filing Post-Trial Motions, as the judgment did not change the position of the parties. Therefore, according to Plaintiff, there is no reason for this Court to not decide his motion on the merits. Plaintiff's argument is misguided [\*6] and without merit.

Rule 227.1(c)(2) is not jurisdictional with its ten (10) day time limitation; however it is a mandatory and unambiguous rule. According to Plaintiff, this Court erred in refusing to consider his Post-Trial Motion as there is no specific showing of prejudice to Defendant. Given the mandate of rule 227.1(c)(2), litigants must provide a "legally cognizable excuse" for the delay in

failing to comply with the rule. In the instant case, Plaintiff offered no excuse except to say "the judgment did not change the position of the parties" and cited two cases in support of his position, *Millard v. Nagle*, 402 Pa. Super. 376, 381, 587 A.2d 10, 12 (1991) and *Leffler v. Hutter*, 696 A.2d 157, 166-67 (Pa. Super. 1997).

The instant matter however is distinguishable from *Leffler, supra*, in that the Court in *Leffler* found that the trial court abused its discretion in refusing to allow the filing a cross Motion for Post-Trial Relief where the party was *one day late*. [emphasis added]. Here, Plaintiff filed his Post-Trial Motions more than sixty (60) [\*7] days past their due date offering nothing more than "the position of the parties has not changed as a result of the verdict." Despite the contention of the Plaintiff, this case is also distinguishable from *Millard*, in that the trial court there already had before it timely Post-Trial Motions when it was asked to determine untimely post-trial supplements. Here, Plaintiff was not filing a supplement that was rejected by the court but a first filing that was untimely.

## **III. CONCLUSION**

It is clear from this Court's review of the facts presented at trial that the evidence to support the verdict was overwhelming. While Plaintiff is correct in his statement that the position of the parties has not changed, society's need for the finality of judgments fairly reached must be protected. Plaintiff has not provided this Court with a plausible and legitimate excuse for not filing Post-Trial Motions within the time allotted by the Rules of Civil Procedure.

BY THE COURT:

JAMES MURRAY LYNN, J.

DATE: 2/23/06

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