Pittsburgh Judge Applies 1925(b) Waiver in Pro Se Litigant's Appeal

The Legal Intelligencer

By Asher Hawkins
May 9, 2007

Pittsburgh native Rita Steinmetz says that contrary to what some in her community might think, there's nothing crazy about her. Pennsylvania Rule of Appellate Procedure 1925(b), however, clearly has Steinmetz plenty frustrated.

Steinmetz described herself in a recent interview as a 66-year-old mathematics instructor at a local community college who had no history of mental health problems when an incident at the Allegheny General Hospital emergency room nearly a decade ago ended with her being involuntarily committed to a psychiatric facility.

Her quest to clear her name, as she calls it, has ultimately brought her into contact with the state appellate rule whose application has befuddled even veteran practitioners from a wide variety of disciplines.

Steinmetz said that she went to the emergency room on the day her troubles began because she was experiencing pain following a recent neck surgery. When ER staff gave her some medication and told her to go home, Steinmetz said she "sarcastically" asked if she had to stab herself with a knife in order to receive medical treatment.

The next thing she knew, according to Steinmetz, she was "302'd" - involuntarily committed to a Canonsburg-area psychiatric hospital for 120 hours (as called for in the relevant section of the state's Mental Health Procedures Act) after Allegheny General Hospital staff contacted Allegheny County authorities about Steinmetz's stabbing comment.

During that process, Steinmetz claims, the ambulance team that transported her to the psychiatric facility manhandled her so roughly that her ankles were permanently damaged. Just as damaging, Steinmetz said, was the injury done to her reputation as a result of the incident.

"Anybody can be involuntarily committed - you don't have to be mentally ill," she said. "And once that stigma gets put on you, you lose credibility."

Steinmetz said she figured the path to clearing her name ran through the court system.

Like so many pro se litigants, Steinmetz's lawsuit cast an extremely wide net, including claims of medical malpractice and civil rights violations against Allegheny General Hospital and several of its staffers, the ambulance service, the psychiatric hospital and other defendants.

Steinmetz struck out in federal court following a successful summary judgment motion from the defense, according to the opinion. In Allegheny County Common Pleas Court, she was allowed to proceed with her medical malpractice claims only. After a trial earlier this year before Judge David N. Wecht, a jury found in favor of the defense.

"Steinmetz claims the trial court erred in allowing the defendants to assert the validity of the 302 involuntary commitment, and also erred in not allowing Steinmetz the opportunity to introduce evidence to refute that validity," Wecht wrote in his recent decision in Steinmetz v. Allegheny General Hospital.

In support of her arguments on appeal, Wecht wrote, Steinmetz filed on March 16 "a 27-page document containing 107 numbered paragraphs asserting trial court errors."

"The Superior Court should dismiss Steinmetz's appeal," Wecht continued. "She failed to comply with the requirements of [Rule] 1925(b), as well as the Superior Court's controlling case law regarding concise statements."

State court judges in Pennsylvania have previously ruled that the waiver provision of 1925(b) - which directs a litigant appealing a trial judge's ruling to file a "concise statement" of matters complained of on appeal - applies in everything from complex commercial disputes to personal injury actions to criminal matters.

Wecht's decision in Steinmetz indicates that pro se litigants are now expected to keep their 1925(b) statements "concise" or risk having their appeals thrown out altogether, according to a Philadelphia-based appellate practitioner who has studied the history of the rule and its related case law.

"It's not just a pro se issue," said **Charles Becker** of Reed Smith, who chairs the Philadelphia Bar Association's appellate courts committee. "It's also an issue for lawyers who don't regularly handle appeals."

Wecht's key citation in Steinmetz was to the widely read 2004 Superior Court decision in Kanter v. Epstein. The underlying attorney-fee dispute in that complex civil matter sparked a 100-plus-point appeal that was dismissed by the Superior Court as too lengthy in December 2004.

The case ultimately settled, and thus was never ruled on by the state's justices.

Kanter caused such an upheaval within Pennsylvania's appellate litigation community that a group of well-known attorneys from across the state, including Becker, began lobbying the Pennsylvania Supreme Court to both extend the filing deadline for 1925(b) statements and create a more detailed explanation within the rule's language of how long or short the statements should be.

The high court's Appellate Court Procedural Rules Committee has approved those recommendations, and the justices are expected to act on them in the near future.

But in the meantime, Kanter is controlling in cases involving allegedly prolix 1925(b) statements, and Becker said he believes Wecht made the right call in Steinmetz given "the four corners of [current] 1925(b) case law."

Steinmetz said that when Wecht officially notified her that she would need to file a 1925(b) statement, she went to the library to research the rule and its related case precedent, but doesn't recall coming across the Kanter opinion.

"I thought the purpose of the statement was for the judge to understand what I thought he did wrong," Steinmetz said, adding that she felt she needed to raise as many points as she did in order to preserve them on appeal.

"From [Wecht's] opinion, I don't know what I could have done to make [my 1925(b) statement] shorter."

The Supreme Court has recently granted allocatur in a case that could give the justices a chance to take retrospective action on the appellate morass created by confusion over the rule.

The high court is expected to hear oral arguments in Eiser v. Brown & Williamson Tobacco Corp. in Harrisburg later this month.

Eiser stems from a wrongful death action brought by the survivors of a South Philadelphia deli owner who died of lung cancer at age 54 after he smoked the defendants' low-tar cigarette brand.

Following an approximately two-week trial in the summer of 2003 before Philadelphia Common Pleas Judge Gary F. DiVito, a unanimous city jury returned a full defense verdict.

Eiser plaintiff attorney George Badey of Badey Sloan & DiGenova in Philadelphia has said that the complexity of the litigation resulted in a nearly 30-point 1925(b) statement that was effectively rejected as overly lengthy by a Superior Court panel.

The panel in Eiser - which consisted of Superior Court Judges John L. Musmanno and Susan Peikes Gantman and Senior Judge Patrick R. Tamilia - concluded in its January 2006 unpublished memorandum that the Eiser plaintiffs, through their 15-page 1925(b) statement, had "circumvented the meaning and purpose" of the rule.

In support of its holding, the Eiser panel cited to Kanter, which Musmanno authored.

A retrospective ruling from the justices might not do much for Steinmetz at this point.

"There are no lawyers in this area who will represent somebody in an involuntary commitment case," she said. "I can't afford an attorney, and am largely in debt because of this whole thing."

Steinmetz defense counsel Richard Kabbert of Dickie McCamey & Chilcote in Pittsburgh declined to comment on the 1925(b) issues raised by the case.