



non pros entered. Five months elapsed before plaintiffs filed their petition to open the judgment of non pros, which the court denied.

The procedure for seeking relief from a judgment of non pros is governed by Rule 3051 of the Pennsylvania Rules of Civil Procedure, which provides:

**Rule 3051. Relief from Judgment of Non Pros**

(a) Relief from a judgment of non pros shall be sought by petition. All grounds for relief, whether to strike off the judgment or to open it, must be asserted in a single petition.

(b) If the relief sought includes the opening of the judgment, the petition shall allege facts showing that

- (1) the petition is timely filed,
- (2) there is a reasonable explanation or legitimate excuse for the inactivity or delay, and
- (3) there is a meritorious cause of action.

PA R.C.P. Rule 3051. All three factors listed in paragraph (b) must be present in order to open a non pros judgment. Petrone v. Whirlwind, Inc., 444 Pa. Super. 477, 664 A.2d 172 (Pa. Super. 1995).

The first hurdle the plaintiffs face is to explain why it took them five months to file their petition. In their petition they allege the following facts. On March 26, 2001, Frederick Brown, Esquire, counsel for the plaintiffs was notified by plaintiff Fikret Rafiev that Mr. Fikret's mother died in Azerbaijan, and that Mr. Rafiev would be unavailable for trial. Mr. Brown requested a continuance and was instructed to provide any sort of proof to the court that his client was unavailable (airline tickets, hotel reservations, etc.). None was provided. Mr. Brown then informed the court that Mr. Rafiev was ill and unable to appear. The court then requested a doctor's note as verification. At the time of trial on March 27, 2001, no such note had been produced. The following exchange took place on the record.

MR. BROWN: Frederick Brown on behalf of the plaintiffs.

MR. GOLDBERG: Cy Goldberg for the defendant.

THE COURT: Okay. I was told that the plaintiffs were unable to substantiate either health problems or the loss of a loved one in another country.

MR. BROWN: Okay.

THE COURT: And as a result I was told that this case would be dismissed for failure to prosecute. If my information is wrong, then please advise me.

MR. BROWN: I have no additional information.

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THE COURT: So the case will be nol-prossed at this time. Thank you for coming in.

MR. GOLDBERG: Thank you, Judge.

MR. BROWN: Thank you, Your Honor.

Trial transcript, March 27, 2001, at 2-3.

Plaintiffs claim in their petition that Mr. Brown thought the the case was being continued and that he would be receiving a new trial date. The record clearly indicates otherwise. Plaintiffs further aver that because Mr. Brown left his firm in May of 2001, and this matter was transferred to current counsel, that current counsel had no way of knowing the matter had been dismissed. A review of the court docket reveals that not only was the judgment of non pros recorded on March 29, 2001, notice was sent to all parties on the same date pursuant to Rule 236

of the Pennsylvania Rules of Civil Procedure. Moreover, at any time new counsel could have reviewed the docket himself to verify the status of this matter.

In consideration of all of the above, the court found that the plaintiffs' petition had not been timely filed, and that there was no adequate excuse for the five month delay. Since the plaintiffs have not met the first requirement of Rule 3051, the remaining issues need not be reached.

For all of the foregoing reasons, this court's order of September 28, 2001, denying the plaintiffs' petition to open the judgment of non pros, was proper and should be affirmed.

By the Court:

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Myrna Field, J.

