

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DANIELLE DiSALVIO : CIVIL ACTION  
 :  
 v. :  
 :  
 LOWER MERION SCHOOL DISTRICT, :  
 et al. : No. 00-5463

**MEMORANDUM ORDER**

**J.M. KELLY, J.**

**JUNE 17, 2002**

Upon conclusion of a jury trial which resulted in a favorable verdict for the Defendants in this case, Plaintiff, Danielle DiSalvio, filed a Motion for a New Trial under Fed. R. Civ. P. 59 and a Motion for Judgment as a Matter of Law (JMOL) under Fed. R. Civ. P. 50. Oral argument was held on this matter on June 17, 2002. At oral argument, Plaintiff withdrew her Motion for JMOL and argued for a new trial. Upon consideration of arguments heard at oral argument and the briefs filed, the Plaintiff's post-trial motion is dismissed.

Local Rule 7.1(e) provides:

Within fourteen (14) days after filing any post-trial motion, the movant shall either (a) order a transcript of the trial by a writing delivered to the Court Reporter Supervisor, or (b) file a verified motion showing good cause to be excused from this requirement. Unless a transcript is thus ordered, or the movant excused from ordering a transcript, the post-trial motion may be dismissed for lack of prosecution.

Plaintiff's counsel admitted at oral argument that she deliberately chose not to order a transcript despite being aware of the requirements of Rule 7.1(e) prior to the filing of the

post-trial motion. Moreover, Plaintiff's counsel offered no good cause to be excused from this requirement, arguing only that she did not order the transcript because she did not believe a transcript of the trial was necessary because the basis of her post-trial motion was the preclusion of certain evidence during the trial.

Despite Plaintiff's counsel's belief, a transcript is necessary when the complained of error concerns the preclusion of evidence. The complaining party must point to specific errors during trial, both for the benefit of the party responding to the post-trial motion and the Court, which must examine the complained of error within the specific context of the trial. The purpose behind this seemingly technical procedural requirement is to "aid the Court in making a determination based on the precise record of the case as evidenced by the transcript." See Notes to Rule 7.1(e). Plaintiff has failed to satisfy Rule 7.1(e). Therefore, under Rule 7.1(e), as amended in 1995, the Court has discretion to dismiss Plaintiff's post-trial motion for lack of prosecution.

In addition to violating Rule 7.1(e), Plaintiff's post-trial motion fails for another reason. Plaintiff's post-trial motion and the accompanying memorandum of law in support, filed on May 2, 2002, are completely devoid of specificity. Rather, the motion is a litany of general conclusions of law. The Court is

at a loss as to how either this Court or the Defendants are to respond to such generalities. On the morning of oral argument, almost a month and a half after the post-trial motions were originally filed, Plaintiff submitted to this Court a second version of a memorandum of law to support her post-trial motion. Defense counsel also received this version for the first time on the morning of oral argument. Plaintiff never sought leave to amend her memorandum of law in support of her post-trial motions nor did the Defendants have a chance to respond to it. Therefore, the Court will not consider the arguments advanced in the memorandum of law submitted on June 17, 2002.

It is hereby **ORDERED** that Plaintiff's Motion for New Trial (Doc. 76) is **DISMISSED** for lack of prosecution.

BY THE COURT:

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James McGirr Kelly, J.