
BOROUGH OF BATH,
Petitioner,

v.

MICHAEL LONG,
Respondent.

: IN THE COURT OF COMMON PLEAS
NORTHAMPTON COUNTY,
:
PENNSYLVANIA
CIVIL DIVISION
:

NO. No. C-48-CV-2023-10559
:

ORDER

AND NOW, this ____ day of _____, 2024, upon consideration of Respondent Michael Long's Motion to Dismiss for Lack of Jurisdiction and Improper Service, and any responses thereto, it is hereby ORDERED and DECREED that:

1. The Motion is GRANTED.
2. The Borough of Bath's appeal docketed at C-48-CV-2023-10559 is DISMISSED for lack of jurisdiction due to the existence of a superseding Final Determination and improper service under Pa.R.C.P. 403.
3. The Borough of Bath's Praecipe for Pre-Trial Conference is VACATED as premature.

BY THE COURT:

J.

Michael Long, Pro Se
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(610)507-3721
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BOROUGH OF BATH,		
Petitioner,	:	NORTHAMPTON COUNTY,
	:	
v.	:	PENNSYLVANIA
	:	
MICHAEL LONG,	:	CIVIL DIVISION
Respondent.	:	
	:	
	:	NO. <u>No. C-48-CV-2023-10559</u>
	:	

**MOTION TO DISMISS BOROUGH'S DECEMBER 27, 2023, APPEAL AND
MAY 21, 2024, PRAECIPE OF READINESS FOR PREMATURITY AND
IMPROPER SERVICE**

AND NOW COMES Respondent Michael Long, acting pro se, hereby moves this Honorable Court to dismiss the appeal filed by the Borough of Bath on December 27, 2023, for the reasons set forth below. As the recipient of the Office of Open Records' (OOR) final determination partially granting access to certain records, Long has standing to file this motion to dismiss to protect his interest in the records at issue and to ensure that the Borough complies with the Right-to-Know Law and applicable court rules.

INTRODUCTION

1. This motion arises from a Right-to-Know Law request filed by Michael Long with the Borough of Bath. The Borough's appeal, filed on December

27, 2023, is both premature and procedurally defective. The OOR had agreed to reconsider its final determination at the time of the Borough's appeal, rendering the appeal premature. Additionally, the Borough failed to properly serve Long with the appeal documents as required by the Pennsylvania Rules of Civil Procedure. These procedural defects have prejudiced Long's interests and warrant dismissal of the Borough's appeal.

BACKGROUND

2. On November 3, 2023, the OOR issued a final determination in favor of the Respondent in Michael Long v. Bath Borough, OOR Dkt. AP 2023-1598.
3. On November 17, 2023, the Borough of Bath filed a request for reconsideration with the OOR.
4. On December 1, 2023, at 10:50 AM, the OOR issued its decision on the reconsideration request, partially granting and partially denying it.
5. On December 1, 2023, at 11:20 AM, the Borough filed its first appeal challenging the original final determination. This first appeal was filed as a separate case, No. C-48-CV-2023-9734.
6. On December 27, 2023, the Borough filed a second appeal challenging the OOR's decision on the reconsideration request, despite the fact that the reconsideration was still pending.

7. On June 5, 2024, the Respondent filed a motion to dismiss the Borough's first appeal on the grounds of lack of jurisdiction and procedural issues. This motion is currently pending before the court.

LEGAL ARGUMENT

A. Prematurity and Jurisdiction

8. The Borough's appeal, filed on December 27, 2023, was premature because the OOR had agreed to reconsider the final determination at the time of the appeal. An appeal can only be filed after a final determination has been issued.

9. In *Commonwealth v. Moir*, 766 A.2d 1253, 1254 (Pa. Super. Ct. 2000), the Superior Court held that appeals filed before the issuance of a final determination are considered premature and improper. This case is directly applicable here, as the Borough filed its appeal before the OOR issued a final determination on the reconsideration request.

10. The Pennsylvania Superior Court has consistently held that an appeal from an order that is not final is premature and must be quashed. See *Hionis v. Concord Twp.*, 973 A.2d 1030, 1040 (Pa. Super. Ct. 2009).

11. The OOR's decision to reconsider the final determination on December 1, 2023, meant that there was no final determination to appeal on December

27, 2023. The reconsideration process suspends the finality of the original determination until a new decision is rendered.

12. Pa. R.A.P. 1701(b)(3) states that the timely filing of a petition for reconsideration tolls the appeal period until the court decides the petition.

This rule applies here, as the Borough's reconsideration request suspended the finality of the OOR's original determination.

13. The Pennsylvania Commonwealth Court has held that the filing of a petition for reconsideration renders the underlying order non-final for purposes of appeal. See *Sossong v. Shinseki*, 63 A.3d 858, 862 (Pa. Commw. Ct. 2013).

14. The Borough's premature filing of the appeal warrants dismissal, as the court lacks jurisdiction to hear the case until a final determination has been issued.

B. Improper Service

15. Proper service of legal documents is crucial to ensure that all parties are adequately notified and have the opportunity to respond. Failure to properly serve documents can result in the court lacking jurisdiction to hear the case.

16. The Borough failed to serve the Respondent by certified mail, return receipt requested, as required by Pa.R.C.P. 403. This rule mandates that service of legal documents must be executed in a manner that provides verifiable proof of delivery.

- 17.**In *City of Philadelphia v. Frempong*, 865 A.2d 314, 316 (Pa. Commw. Ct. 2005), the Commonwealth Court emphasized the importance of strict compliance with service requirements, stating that failure to adhere to these requirements can invalidate service and deprive the court of jurisdiction. This case underscores the necessity of serving legal documents by certified mail to establish proper service.
- 18.**The Pennsylvania Superior Court has held that service by regular mail alone is insufficient to satisfy the rules of civil procedure. See *Wilco Elec. v. Weco, Inc.*, 586 A.2d 956, 958 (Pa. Super. Ct. 1991).
- 19.**Proper service is a jurisdictional requirement, and failure to comply with the service rules can deprive the court of jurisdiction over the appeal.
- 20.**In *Green Acres Rehab. & Nursing Ctr. v. Sullivan*, 536 A.2d 515, 518 (Pa. Commw. Ct. 1988), the Commonwealth Court held that proper service is a jurisdictional requirement, directly supporting the argument that improper service can result in a lack of jurisdiction.
- 21.**The Pennsylvania Supreme Court has consistently held that proper service is a prerequisite to a court's exercise of personal jurisdiction over a defendant. See *Monumental Props., Inc. v. Pa. Riverview Indus. Co.*, 329 A.2d 812, 815 (Pa. 1974).

22.The Borough may argue that it substantially complied with the service requirements. However, Pennsylvania courts have consistently held that strict compliance with service rules is necessary to establish jurisdiction. In *City of Philadelphia v. Frempong*, 865 A.2d 314, 316 (Pa. Commw. Ct. 2005), the court emphasized that failure to adhere to service requirements can invalidate service and deprive the court of jurisdiction.

23.The Borough may claim that any errors in service were inadvertent. However, inadvertent errors do not excuse non-compliance with mandatory service requirements. In *Frycklund v. Way*, 15 A.3d 521, 525 (Pa. Commw. Ct. 2011), the court dismissed an appeal due to inadequate service methods, demonstrating that strict adherence to service rules is required.

24.The Borough's failure to properly serve the Respondent with the appeal documents is fatal to its appeal and warrants dismissal.

C. OOR's Authority to Partially Grant and Deny

25.The OOR's partial grant and denial of the reconsideration request falls within its discretionary authority under the Right-to-Know Law.

Administrative agencies have the authority to make determinations on access to records, including the power to reconsider and modify their decisions.

26.In *Dep't of Educ. v. Bagwell*, 131 A.3d 638, 648 (Pa. Commw. Ct. 2016), the Commonwealth Court affirmed the OOR's broad discretionary authority to

grant or deny access to records under the Right-to-Know Law. This case supports the OOR's ability to partially grant and deny reconsideration requests based on the specific circumstances of each case.

27.The Pennsylvania Supreme Court has recognized the discretionary authority of administrative agencies to make determinations on access to records, subject to judicial review. See *Bowling v. Office of Open Records*, 75 A.3d 453, 477 (Pa. 2013).

28.The OOR acted within its authority in partially granting and denying the reconsideration request, and the Borough's appeal fails to establish any abuse of discretion or error of law.

D. The Borough's First Appeal Did Not Preserve Appeal Rights

29.The Borough may argue that their first appeal, filed on December 1, 2023, preserved their appeal rights for the second appeal filed on December 27, 2023. However, this argument fails for several reasons.

30.The Borough's first appeal was filed approximately 30 minutes after the OOR accepted the Borough's reconsideration request. The acceptance of the reconsideration request rendered the original determination non-final, and any appeal filed thereafter would be premature.

31.In *Sulli v. Zoning Hearing Bd. of Moosic Borough*, 604 A.2d 776, 778 (Pa. Commw. Ct. 1992), the Commonwealth Court held that "an appeal may not

be taken from an order granting reconsideration, as it is not a final order."

This principle applies here, as the Borough's first appeal was filed after the OOR granted reconsideration, making it an improper and ineffective attempt to preserve appeal rights.

32.The Borough's second appeal specifically challenged the OOR's decision on the reconsideration request. This demonstrates that the Borough understood the need to file a new appeal after the reconsideration decision was issued, undermining any claim that the first appeal preserved their rights.

33.The original final determination was issued on November 3, 2023, and the Borough's second appeal was filed on December 27, 2023, which is outside the 30-day window for filing an appeal as mandated by Pa. R.A.P. 903(a). This rule requires that an appeal must be filed within 30 days after the entry of the order from which the appeal is taken. The Borough's second appeal was therefore untimely and did not preserve their appeal rights.

34.Additionally, the Borough's second appeal was premature because it was filed before the OOR issued its final determination upon reconsideration. According to Pa. R.A.P. 1701(b)(3), a notice of appeal should await the disposition of post-trial motions, and any appeal filed before the final determination is considered premature.

35.In light of these factors, the Borough's potential argument that their first appeal preserved their appeal rights fails. The premature filing of the first appeal, the specific challenge to the reconsideration decision in the second appeal, and the clear rules governing the timely filing of appeals all demonstrate that the Borough's second appeal should be dismissed as premature.

E. Prematurity of the Borough's May 21, 2024, Praeceptum of Readiness

36.The Borough's praecipe of readiness, filed on May 21, 2024, is premature because it disregards the jurisdictional defects in the Borough's appeal and inappropriately seeks disposition on the merits before the threshold issues of improper service and premature filing are resolved.

37.According to Pa.R.C.P. No. 212.1, a certificate of readiness may only be filed when the case is at issue and all preliminary objections have been resolved. The Borough's praecipe of readiness fails to meet these criteria as the underlying appeal itself is premature and procedurally defective.

38.Filing a praecipe of readiness before resolving jurisdictional issues undermines the procedural integrity of the case. The Pennsylvania Rules of Civil Procedure emphasize the importance of resolving all preliminary matters before proceeding to trial.

39.In *Thompson v. Cortese*, 41 A.3d 855, 860 (Pa. Commw. Ct. 2012), the

Pennsylvania Commonwealth Court highlighted that premature filing, including appeals and praecipes, are legally void and ineffective. The court emphasized that such filings waste judicial resources and delay the resolution of cases.

40.Northampton County Local Rule N212 requires that all discovery be

completed and all preliminary matters resolved before a case can be certified as ready for trial. The Borough's praecipe of readiness does not comply with this requirement, as the appeal itself is still under jurisdictional challenge.

41.The Borough may argue that it substantially complied with the requirements

for filing a praecipe of readiness. However, Pennsylvania courts have consistently held that strict compliance with procedural rules is necessary to establish jurisdiction and proceed to trial. In *City of Philadelphia v.*

Frempong, 865 A.2d 314, 316 (Pa. Commw. Ct. 2005), the Commonwealth

Court emphasized that failure to adhere to procedural requirements can invalidate filings and deprive the court of jurisdiction.

42.The Borough may claim that any errors in filing the praecipe of readiness

were inadvertent. However, inadvertent errors do not excuse non-

compliance with mandatory procedural requirements. In *Frycklund v. Way*,

15 A.3d 521, 525 (Pa. Commw. Ct. 2011), the Commonwealth Court

dismissed an appeal due to inadequate procedural compliance, demonstrating that strict adherence to procedural rules is required.

CONCLUSION

43.For the reasons stated above, Respondent Michael Long respectfully requests that this Honorable Court grant his motion to dismiss the Borough of Bath's appeal filed on December 27, 2023. The appeal is premature and procedurally defective due to improper service, and the OOR acted within its authority in issuing its decision on the reconsideration request. The Borough's appeal should be dismissed in its entirety.

WHEREFORE, Respondent Michael Long respectfully requests that this Honorable Court:

1. Dismiss the Borough of Bath's appeal filed on December 27, 2023, as premature, since the OOR's reconsideration process was still ongoing, and no final determination was available for appeal;
2. Dismiss the Borough of Bath's praecipe of readiness filed on May 21, 2024, as it disregards the jurisdictional defects and improperly seeks disposition on the merits before resolving the threshold issues of improper service and premature filing;

3. Affirm the OOR's authority to partially grant and partially deny the Borough's petition for reconsideration, as such action was within the agency's discretionary authority and should be deferred to by this Court;
and
4. Grant such other and further relief as this Court deems just and proper.

Sincerely,

Michael Long
Pro Se Respondent

220 Creek Road
Bath, PA 18014
(610) 507-3721

June 9, 2024

VERIFICATION

I, Michael Long, hereby verify that the statements made in the foregoing MOTION TO DISMISS BOROUGH'S DECEMBER 27, 2023, APPEAL AND MAY 21, 2024, PRAECIPE OF READINESS FOR PREMATURITY AND IMPROPER SERVICE are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

/s/ Michael Long
Michael Long
Pro Se Respondent

Date: June 9, 2024

CERTIFICATE OF SERVICE

I certify that on June 9, 2024, I served the foregoing Opposition upon counsel for
Petitioner by way of email:

J. Chadwick Schnee, Esq.

Schnee Legal Services, LLC

74 E. Main St. #648

Lititz, PA 17543

Via email: chadwick@schneelegal.com

/s/ Michael Long
Michael Long

Date: June 9, 2024