
BOROUGH OF BATH,
Petitioner,

v.

MICHAEL LONG,
Respondent.

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

NO. No. C-48-CV-2023-9734
:

ORDER

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

1. The Motion is GRANTED.
2. The Borough of Bath's appeal is DISMISSED for lack of jurisdiction.
3. The Borough's Praecipe for Pre-Trial Conference is VACATED; and
4. The Prothonotary shall serve a copy of this Order upon all parties and their counsel of record.

BY THE COURT:

J.

Michael Long, Pro Se
220 Creek Road
Bath, PA 18014
(610)507-3721
Michael.Long479@gmail.com

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BOROUGH OF BATH,		
Petitioner,	:	NORTHAMPTON COUNTY,
	:	
v.	:	PENNSYLVANIA
	:	
MICHAEL LONG,	:	CIVIL DIVISION
Respondent.	:	
	:	
	:	NO. <u>No. C-48-CV-2023-9734</u>
	:	

MOTION TO DISMISS FOR LACK OF JURISDICTION

NOW comes Respondent Michael Long, pro se, and respectfully moves this Honorable Court to dismiss the Petitioner Borough of Bath's appeal for lack of jurisdiction. In support thereof, Respondent states as follows:

BACKGROUND

1. On November 3, 2023, the Pennsylvania Office of Open Records ("OOR") issued a Final Determination in the matter docketed at Michael Long v. Bath Borough, OOR Dkt. AP 2023-1598.

2. On November 17, 2023, the Borough of Bath filed a Petition for Reconsideration of the OOR's November 3, 2023, Final Determination.
3. On December 1, 2023, the OOR partially granted the Borough's Petition for Reconsideration.
4. Subsequently, on January 12, 2024, the OOR issued a Final Determination upon Reconsideration, which superseded the initial Final Determination.
5. On December 1, 2023, the Borough filed the instant appeal, challenging the OOR's November 3, 2023, Final Determination, despite the pending reconsideration.
6. On May 31, 2024, the Borough filed a Praecipe for Pre-Trial Conference in this matter, requesting that the case be placed on a list for a pre-trial conference under local rule N212(B)(c)(1).

LEGAL ANALYSIS

7. The Pennsylvania Rules of Appellate Procedure govern the jurisdiction and procedures for appeals from government units like the OOR. Specifically, Pa.R.A.P. 1701(b)(3) addresses the effect of a reconsideration order on a previously filed appeal.

8. Under Rule 1701(b)(3)(i), if an application for reconsideration is timely filed with the government unit, and Rule 1701(b)(3)(ii), if the government unit expressly grants reconsideration within the prescribed time limits, then any previously filed notice of appeal or petition for review is rendered "inoperative."
9. Here, the Borough filed a timely petition for reconsideration on November 17, 2023, which the OOR partially granted on December 1, 2023. However, the Borough improperly filed this appeal on December 1, 2023, challenging the now inoperative November 3, 2023, Final Determination. Rule 1701(b)(3) required the Borough to file a praecipe striking the inoperative appeal, but it failed to do so. See Pa.R.A.P. 1701(b)(3) (requiring the filing of a praecipe to strike an inoperative appeal).
10. With the OOR's grant of reconsideration, the operative final order became the January 12, 2024, Final Determination upon Reconsideration, not the earlier November 3rd Determination. As established by Pa.R.A.P. 341, an appeal properly lies only from a final operative order.
11. By appealing the inoperative November 3rd order instead of the operative January 12th order, the Borough failed to invoke this Court's appellate jurisdiction under Rule 341. Proceeding with litigation on this improper

appeal, including the premature request for a pre-trial conference, is therefore jurisdictionally defective.

CONCLUSION

12. In conclusion, the Borough of Bath's appeal is improper as it challenges an inoperative order. The OOR's January 12, 2024, Final Determination upon Reconsideration is the valid final order in this matter and should be the operative order for any appeal. As the Borough appealed from an inoperative order pursuant to Pa.R.A.P. 1701(b)(3) and failed to comply with procedural requirements by not filing the required praecipe, this Court lacks jurisdiction and must dismiss the appeal. Pa.R.A.P. 341 makes clear that appellate jurisdiction cannot be invoked without a final operative order.

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

1. Dismiss the Borough of Bath's appeal for lack of jurisdiction; and
 2. Vacate the Borough's premature Praecipe for Pre-Trial Conference;
- and

3. Grant any other relief that this Honorable Court deems just and proper.

Respectfully submitted,

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/s/ Michael Long

June 4, 2024

Michael Long
Pro Se Respondent
220 Creek Road
Bath, PA 18014
(610) 507-3721

Verification

I, Michael Long, verify that the statements made in this MOTION TO DISMISS FOR LACK OF JURISDICTION are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

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/s/ Michael Long

Michael Long

June 4, 2024

Certificate of Service

I certify that on June 4, 2024, I served a true and correct copy of the foregoing Motion to Dismiss upon counsel for the Petitioner via email:

J. Chadwick Schnee, Esq.
Schnee Legal Services, LLC
74 E. Main St. #648
Lititz, PA 17543
chadwick@schneelegal.com

A handwritten signature in black ink, appearing to be 'M Long', written over a horizontal line.

/s/ Michael Long

Michael Long

June 4, 2024