

BOROUGH OF BATH,
Petitioner,

v.

MICHAEL LONG,
Respondent.

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

NO. No. C-48-CV-2024-01039
:

**REPLY BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE
APPEAL NUNC PRO TUNC AND TO DISMISS PETITIONER'S APPEAL
FOR LACK OF JURISDICTION**

Respondent, Michael Long, pro se, respectfully submits this Reply Brief in support of his Motion for Leave to File Appeal Nunc Pro Tunc and to Dismiss Petitioner's Appeal for Lack of Jurisdiction.

I. INTRODUCTION

1. Respondent contends that he was prevented from filing a timely appeal due to erroneous instructions from court staff and improper service by the Petitioner.
2. This Reply Brief addresses the key issues regarding the timeliness of Respondent's cross-appeal and the propriety of Petitioner's service, emphasizing the need for fairness and adherence to procedural rules in the interest of justice.

II. ARGUMENT

A. Respondent Was Prevented From Timely Filing Due to Court Error

3. On February 12, 2024, the final day to file the appeal, Respondent arrived at the Northampton County Courthouse prepared to submit his appeal and pay any necessary fees.
4. Respondent was within the statutory deadline and exercised due diligence in attempting to file timely.
5. Respondent was erroneously informed by court staff that a filing fee was required from him, despite the fee having been previously satisfied by Petitioner.
6. Additionally, Respondent was incorrectly told that online filing was not available for this matter.
7. Had Respondent received accurate information, he would have filed his appeal on time.
8. The misinformation provided by court staff constitutes extraordinary circumstances beyond Respondent's control.
9. Pennsylvania courts have held that nunc pro tunc relief is appropriate when a delay in filing is caused by a breakdown in the court's operations. (*See Bass v. Commonwealth*, 485 Pa. 256, 401 A.2d 1133 (1979)).

B. Respondent's Cross-Appeal Was Timely Filed

10. Under the Pennsylvania Right-to-Know Law ("RTKL"), a party has 15 calendar days to file a cross-appeal after receiving notice of an appeal. (*See* 65 P.S. § 67.1301(a)).
11. Respondent received notice of Petitioner's appeal on February 16, 2024.
12. Pursuant to Pa.R.A.P. 121(a) and 121(e), when service is made by mail, three days are added to the prescribed period.
13. Therefore, Respondent had until March 3, 2024 (17 days after February 16, 2024), to file his cross-appeal.

14. Respondent filed his cross-appeal on March 1, 2024, within the allowable time frame.
15. Thus, Respondent's cross-appeal was timely filed, and any argument to the contrary is without merit.

C. Petitioner's Improper Service Prejudiced Respondent

16. Petitioner served the Notice of Appeal via first-class mail rather than certified mail, contrary to the requirements of Pa.R.A.P. 1514(c).
17. Pa.R.A.P. 1514(c) mandates that service of a petition for review shall be made by certified mail or as permitted by Pa.R.A.P. 121.
18. The failure to comply with the certified mail requirement renders Petitioner's appeal jurisdictionally defective. (*See City of Philadelphia v. Berman*, 863 A.2d 156, 160 (Pa. Cmwlth. 2004)).
19. The use of first-class mail delayed Respondent's receipt of the Notice of Appeal, hindering his ability to respond timely.
20. Additionally, Petitioner's inconsistent application of service methods—using email and certified mail in other cases but not in this instance—undermines procedural fairness.

D. Petitioner's Selective Application of Appellate Rules

21. Petitioner argues that Pa.R.A.P. 1514(c), requiring certified mail, does not apply to RTKL appeals because they are statutory appeals.
22. However, in their Brief in Support of Motion to Quash Cross-Appeal, Petitioner acknowledges the potential applicability of Pa.R.A.P. 1512(a)(2) regarding the timing of cross-appeals.
23. This selective application of appellate rules to suit Petitioner's interests is inconsistent and prejudicial.

24. Such inconsistency undermines procedural fairness and violates the principles of justice.

E. The Interests of Justice Require Granting Nunc Pro Tunc Relief

25. The RTKL is designed to promote transparency and accountability in government.

Denying Respondent the opportunity to appeal due to procedural errors beyond his control contravenes the spirit of the RTKL.

26. Granting nunc pro tunc relief ensures that the case is decided on its merits, serving the interests of justice. (*See Criss v. Wise*, 566 Pa. 437, 781 A.2d 1156 (2001)).

27. The public has a vested interest in ensuring that appeals related to RTKL determinations are adjudicated fairly and without procedural obstruction.

28. Denying Respondent's right to appeal due to errors by court staff and improper service by Petitioner would undermine public confidence in the RTKL process.

III. CONCLUSION

29. For the foregoing reasons, Respondent respectfully requests that this Honorable Court:

- a. **Grant his Motion for Leave to File Appeal Nunc Pro Tunc** due to court error;
- b. **Deem his appeal filed as of February 12, 2024;**
- c. **Dismiss Petitioner's appeal for lack of jurisdiction** due to defective service; and
- d. **Grant any other relief the Court deems just and proper**, including reasonable attorney's fees and costs.

Respectfully submitted,



/s/ Michael Long
Michael Long, Pro Se Respondent

Dated: October 15, 2024

CERTIFICATE OF SERVICE

1. I hereby certify that on October 15, 2024, a true and correct copy of the foregoing Reply Brief in Support was served upon the following via email:

J. Chadwick Schnee, Esq.
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A handwritten signature in black ink, appearing to be 'M Long', with a long horizontal line extending to the right.

/s/ Michael Long
Michael Long, Pro Se Respondent
Date: October 15, 2024