

IN THE SUPREME COURT OF PENNSYLVANIA

NO. 104 MAP 2022

FREDERICK E. OBERHOLZER, JR.
AND DENISE L. OBERHOLZER

Appellees

v.

SIMON AND TOBY GALAPO

Appellants

**REPLY BRIEF OF APPELLANTS
SIMON AND TOBY GALAPO**

On Appeal from the Order of the Court of Common
Pleas of Montgomery County, Civil Division, by the
Honorable Steven C. Tolliver, Sr., Dated January 3, 2020 and
Docketed on January 3, 2020 at C.C.P. Docket
No. 2016-11267

ANDREW J. KRAMER, ESQ.
I.D. NO. 52613
KANE PUGH KNOELL TROY & KRAMER, LLP
4 Sentry Parkway East, Suite 100
Blue Bell, PA 19422
(610) 275-2000

Counsel for Appellants, Simon and Toby Galapo

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I. ARGUMENT

Pursuant to Rule 2185 of the Pennsylvania Rules of Appellate Procedure,

Except as otherwise provided by this rule, the appellant shall serve and file appellant's brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve and file appellee's brief within 30 days after service of appellant's brief and reproduced record if proceeding under Rule 2154(a) (general rule).

Pa. R.A.P. 2185. In the instant matter, upon the granting of defendants' Petition for Allowance of Appeal, the Court set a briefing schedule. See Appendix A. Pursuant to this briefing scheduling, defendants' brief and reproduced record was due on December 5, 2022, and plaintiffs' brief was due thirty (30) days thereafter.

On November 15, 2022, defendants filed their first and only Application for Extension of Time to File Brief, wherein defendants requested a thirty (30) day extension of the December 5, 2022 deadline in order to allow the ACLU of Pennsylvania time to file an *amicus* brief. Plaintiffs' counsel did not respond to defendants' request, nor to the Court's numerous requests for plaintiffs' position. Therefore, a decision on defendants' application was delayed until December 1st. The application was granted and the deadline

for defendants' brief was moved to January 5, 2023. Defendants filed their brief on January 4, 2023.

Plaintiffs' brief was initially due on February 6, 2023. However, on February 3, 2023, plaintiffs filed their First Application for Extension of Time to File Brief and Supplemental Record. Defendants' counsel advised this Court that defendants would not be filing a response to the application. The application was granted on February 6, 2023 and the deadline for plaintiffs' brief was moved to February 24, 2023. See Appendix B.

A second application was filed on February 24, 2023, seeking to extend plaintiffs' deadline to March 10, 2023, to which defendants objected. The Court ultimately granted the application, but *only to the extent* that plaintiffs' brief was due on March 3, 2023. See Appendix C.

Nonetheless, on March 3, 2023, plaintiffs filed a Third Application for Extension of Time to File Brief and Supplemental Record, requesting that the Court extend the deadline once again to March 6, 2023. Again, defendants objected to this request. The Court the denied the Application and entered the following Order:

AND NOW, this 3rd day of March, 2023, Appellees' third application for extension of time is **denied**. Appellees' Brief remains due by March 3, 2023, and can be PACFiled by 11:59:59 p.m.

See Appendix D.

Plaintiffs did not file their brief by March 3, 2023 as required by the Court. Instead, plaintiffs filed their brief on March 6, 2023 at 5:59 p.m. The Office of the Prothonotary for the Supreme Court of Pennsylvania confirmed the untimely receipt of plaintiffs' brief by way of letter dated March 7, 2023. See Appendix E. Plaintiffs' failure to file a timely brief is particularly egregious given that Rule 2139¹ allows appellees to simply refile their brief filed with the Superior Court. Pa. R.A.P. 2139.

Pursuant to Rule 2188,

If an appellant fails to file his designation of reproduced record, brief or any required reproduced record within the time prescribed by these rules, or within the time as extended, an appellee may move for dismissal of the matter. If an appellee fails to file his brief within the time prescribed by these rules, or within the time as extended, he will not be heard at oral argument except by permission of the court.

¹ Pennsylvania Rule of Appellate Procedure 2139 states:

On appeals from the Superior Court or the Commonwealth Court, appellants may prepare new briefs in the Supreme Court according to these rules, setting forth also the order allowing the appeal, or may utilize the briefs, if available, used in the appellate court below (changing the cover, however), and adding thereto the order allowing the appeal, the opinion and dissenting opinions, if any, of the appellate court below (if reported, stating where) and such additional argument as may be desired. Appellee may also prepare a new brief or *may utilize the one used in the appellate court below*, if available, with such additional argument as may be desired.

Pa. R.A.P. 2139 (emphasis added).

Pa. R.A.P. 2188. Given plaintiffs' significant non-compliance with the Court's March 3, 2023 Order, defendants ask that this Court deny any request by plaintiffs to participate in oral argument.

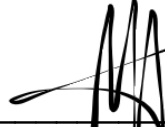
II. CONCLUSION

In light of the foregoing arguments, along with those submitted in defendants' initial Brief, defendants, Simon and Toby Galapo, respectfully request this Honorable Court vacate the Trial Court's September 12, 2019, and October 11, 2019, Orders and remand this matter for entry of judgment in defendants' favor.

Respectfully submitted,

KANE PUGH KNOELL TROY & KRAMER, LLP

BY: _____


ANDREW J. KRAMER, ESQ.
Attorney for Appellants / Defendants
Attorney I.D. No. 52613
510 Swede Street
Norristown, PA 19401-4807
610-275-2000 x 1115

CERTIFICATE OF WORD COUNT COMPLIANCE

I, ANDREW J. KRAMER, ESQUIRE, hereby certify this brief does not exceed 7,000 words as established by the word count from the word processing program, Word, used to prepare this brief.

DATE: 3/20/2023

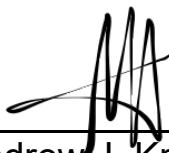


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Attorney I.D. No. 52613
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CERTIFICATE OF ACCURATE AND COMPLETE REPRESENTATION

Pursuant to the Supreme Court's requirements for electronic filings, it is averred that the material included electronically, is an accurate and complete representation of the paper version of the filing.

DATE: 3/20/2023



Andrew J. Kramer, Esquire
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(610) 275-2000

CERTIFICATE OF SERVICE

I, ANDREW J. KRAMER, ESQUIRE, hereby certify and state that on the 20th day of March, 2023, in accordance with Rule 121 of the Pennsylvania Rules of Appellate Procedure, I served a true and correct copy of the Reply Brief of Appellants Simon and Toby Galapo via first class mail to the following:

J. Stephen Woodside, Esquire
J. STEPHEN WOODSIDE, P.C.
111 Carmella Court
King of Prussia, PA 19406

Mark A. DiAntonio, Esquire
KILCOYNE & NESBITT, LLC
925 Harvest Drive, Suite 200
Blue Bell, Pa 19422



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APPENDIX A



Supreme Court of Pennsylvania

Amy Dreibelbis, Esq.
Deputy Prothonotary
Elizabeth E. Zisk
Chief Clerk

Middle District

601 Commonwealth Avenue, Suite 4500
P.O. Box 62575
Harrisburg, PA 17106
(717) 787-6181
www.pacourts.us

October 24, 2022

Amy Kirkpatrick, Esq.
Kane, Pugh, Knoell, Troy & Kramer, LLP
510 Swede Street
Norristown, PA 19401

RE: Oberholzer, F., et al v. Galapo, S., et al, Aplt's.
104 MAP 2022
Allocatur Docket No: 154 MAL 2022
Intermediate Appellate Court Docket No: 794 EDA 2020
Associated Case(s):
Trial Court Docket No: No. 2016-11267

Dear Attorney Kirkpatrick:

Enclosed please find a certified copy of an order for the above captioned matter.

Accordingly, your appeal has been docketed at 104 MAP 2022. Pursuant to Pa.R.A.P. 2185(a), **the briefs including the original and reproduced records are due on/or before the due date shown below:**

Participant Role	Participant Name	Paperbook Type	Copies	Due Date
Appellant	Galapo, Simon and Toby	Brief	15	12/05/2022
Appellant	Galapo, Simon and Toby	Reproduced Record	10	12/05/2022

Appellee/Respondent's brief is to be filed thirty (30) days after service of the brief for the appellant/petitioner. The moving party's brief is to be submitted with the reproduced record (unless excused or delay authorized in accordance with Pa.R.A.P. 2151(d) and 2154(b)), and a certificate of service.

Serve (2) copies (1 copy if proceeding *in forma pauperis*) on every other party to the proceedings. Pa.R.A.P. 2111(b) provides that copies of the lower court opinions must be appended to the appellant/petitioner's brief. These rules will be strictly enforced and no briefs shall be accepted for filing that do not comply with these requirements.

If this is a cross appeal, your attention is also directed to Pa.R.A.P. 2136 to determine which party is considered the appellant/respondent for the purpose of establishing the briefing schedule.

Reproduced records are not required to be filed for parties proceeding *In Forma Pauperis*.

If the Court's scheduling permits, one short extension for filing a brief may be granted upon request. Longer extensions and second requests will not be entertained

and will be denied.

Very truly yours,

Office of the Prothonotary

/s

Enclosure

cc: The Honorable Steven C. Tolliver, Judge

APPENDIX B

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

Frederick E. Oberholzer, Jr. and Denise L. Oberholzer,	:	No. 104 MAP 2022
	:	
	:	
Appellees	:	Application for Extension of Time
v.	:	
	:	
	:	
Simon and Toby Galapo,	:	
	:	
Appellants	:	

ORDER

AND NOW, this 6th day of February, 2023, Appellees' application for extension of time is **granted**. Appellees' Brief shall be filed on or before February 24, 2023.

Amy Dreibelbis

Deputy Prothonotary

A True Copy Amy Dreibelbis, Esquire
As Of 02/06/2023

Attest: *Amy Dreibelbis*
Deputy Prothonotary
Supreme Court of Pennsylvania

APPENDIX C

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

Frederick E. Oberholzer, Jr. and Denise L. Oberholzer,	:	No. 104 MAP 2022
	:	
	:	
Appellees	:	Application for Extension of Time –
v.	:	Second Request
	:	
Simon and Toby Galapo,	:	
	:	
Appellants	:	

ORDER

AND NOW, this 28th day of February, 2023, Appellees’ second application for extension of time is **granted only to the extent that** Appellees’ Brief shall be filed on or before March 3, 2023.

Amy Dreibelbis

Deputy Prothonotary

APPENDIX D

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

Frederick E. Oberholzer, Jr. and Denise L. Oberholzer,	:	No. 104 MAP 2022
	:	
	:	
Appellees	:	Application for Extension of Time – Third
v.	:	Request
	:	
Simon and Toby Galapo,	:	
	:	
Appellants	:	

ORDER

AND NOW, this 3rd day of March, 2023, Appellees’ third application for extension of time is **denied**. Appellees’ Brief remains due by March 3, 2023, and can be PACFiled by 11:59:59 p.m.

Amy Dreibelbis

Deputy Prothonotary

APPENDIX E



Supreme Court of Pennsylvania

Amy Dreibelbis, Esq.
Deputy Prothonotary
Elizabeth E. Zisk
Chief Clerk

Middle District

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March 7, 2023

RE: Oberholzer, F., et al v. Galapo, S., et al, Aplt's.
No. 104 MAP 2022
Lower Appellate Court Docket No: 794 EDA 2020
Trial Court Docket No: No. 2016-11267

Dear Attorney Woodside

This is to acknowledge receipt of your untimely Appellee's Brief and Supplemental Reproduced Record received in the above-captioned matter.

Please provide this office with your correct address as the address listed on your brief does not match your address listed in PACMS or with the Disciplinary Board. You can upload your correct address via the "Corrected PACFiling" entry on PACFile.

Thank you for your attention to this matter.

Very truly yours,

Office of the Prothonotary

/is

cc: Mark Alexander DiAntonio, Esq.
Amy Kirkpatrick, Esq.
Andrew Jay Kramer, Esq.