

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
KENTUCKY, LOUISVILLE DIVISION

Cole Brite, Kelli Brite, and Ross Brite v. St. Francis DeSales High
School, Anastasia Quirk, and Lance Hammond

Brite · No. 3:25-cv-364-RGJ · Decided May 26, 2026

SUMMARY

The United States District Court for the Western District of Kentucky denied the Brites’ motion for a nunc pro tunc order concerning an allegedly timely filed notice of appeal. The court held that payment of the filing fee and initiation of the electronic filing process did not complete the filing absent a system-generated Notice of Electronic Filing. It concluded that counsel’s failure to complete the filing and monitor the docket did not constitute excusable neglect or justify nunc pro tunc relief.

CASE DETAILS

COURT	United States District Court for the Western District of Kentucky, Louisville Division
JURISDICTION	United States District Court for the Western District of Kentucky, Louisville Division
DECIDED	May 26, 2026
DOCKET	3:25-cv-364-RGJ
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved for a nunc pro tunc order stating that their counsel timely filed a notice of appeal. The district court denied the motion.
STANDARD OF REVIEW	The opinion does not identify a formal appellate standard of review. It applies the requirements governing nunc pro tunc orders and extensions of the notice-of-appeal deadline.
PRECEDENTIAL VALUE	Unknown; memorandum opinion and order from a federal district court
PARTIES	Cole Brite, Kelli Brite, Ross Brite v. St. Francis DeSales High School, Anastasia Quirk, Lance Hammond

TOPICS

- appellate procedure
- appellate jurisdiction
- civil procedure
- standard of review

PRACTICE AREAS

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the court could enter a nunc pro tunc order deeming a notice of appeal timely filed when counsel initiated the electronic filing process and paid the filing fee but did not receive a system-generated Notice of Electronic Filing.
2. Whether counsel's failure to complete the electronic filing process and monitor the docket constituted excusable neglect or otherwise justified relief from the appeal deadline.

HOLDINGS

1. A document filed through the court's electronic filing system is not considered filed for purposes of the Federal Rules until the filing party receives a system-generated Notice of Electronic Filing with a hyperlink to the electronically filed document. Payment of the filing fee alone does not complete the filing.
2. A nunc pro tunc order cannot be used to backdate an uncompleted filing or create a substantive right to appeal; it may correct only clerical mistakes or omissions so that the record reflects events that actually occurred.
3. Counsel's failure to complete an electronic filing and to monitor the docket before the appeal deadline does not constitute excusable neglect warranting relief from the notice-of-appeal deadline.

KEY QUOTATIONS

“Nunc pro tunc orders fix clerical mistakes in old orders. Nunc pro tunc orders do not revise the substance of what has transpired, backdate events, or give rise to new substantive rights, including resetting the statute of limitations.” (Section II)

“The burden rests with the attorney, here Plaintiff’s counsel, to ensure the filing process is completed.” (Section III)

“Therefore, a failure to do so cannot constitute “excusable neglect” by counsel.” (Section III)

FACTUAL BACKGROUND

Plaintiffs' counsel attempted to file a notice of appeal electronically on April 5, 2026, and the filing fee was charged to counsel's credit card. The electronic filing process was not completed, however, and no system-generated Notice of Electronic Filing with a hyperlink to the document was issued. Counsel did not discover the problem until after the April 18 deadline, when Defendants reported that they had not received a notice of appeal.

PROCEDURAL HISTORY

The district court issued an order on Defendants' motion to dismiss on March 18, 2026. Plaintiffs' counsel allegedly initiated an electronic notice-of-appeal filing on April 5, 2026, and paid a filing fee, but no Notice of

Electronic Filing was generated and the filing was not completed. Counsel learned after the April 18, 2026 appeal deadline that Defendants had not received a notice of appeal and then sought a nunc pro tunc order. The court denied relief because the electronic filing was not complete and counsel failed to monitor the docket or timely seek an extension under Federal Rule of Appellate Procedure 4(a)(5).

DISPOSITION

other

CASES CITED

- Bowles v. Russell, 551 U.S. 205, 214 (2007)
- Young v. Kenney, 949 F.3d 995, 996 (6th Cir. 2020)
- Hayes v. Allstate Insurance Co., Inc., 2 F. App'x 470, 471-72 (6th Cir. 2001)
- Patterson v. Chrysler Group, LLC, 845 F.3d 756, 761 (6th Cir. 2017)
- Crangle v. Kelly, 838 F.3d 673, 680 (6th Cir. 2016)
- Glynne v. Wilmed Healthcare, 699 F.3d 380, 383-84 (4th Cir. 2012)
- United States v. Powers, 2025 WL 3091694, at *2 (E.D. Ky. Nov. 5, 2025)
- Roman Catholic Archdiocese of San Juan v. Feliciano, 589 U.S. 57, 65 (2020)
- Cook v. United States, 246 F. App'x 990, 994 (6th Cir. 2007)
- Yeschick v. Mineta, 675 F.3d 622, 629-30 (6th Cir. 2012)
- Henken v. IW Trust Funds, 568 F. Supp. 3d 870, 875-76 (S.D. Ohio 2021)
- Nancy J.C. v. Commissioner of Social Security, 2023 WL 4533696, at *5-*6 (S.D. Ohio July 13, 2023)
- In re Casey, 329 B.R. 43, 46 (Bankr. S.D. Ohio 2005)
- Kuhn v. Sulzer Orthopedics, Inc., 498 F.3d 365, 371 (6th Cir. 2007)

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