

SUPREME COURT OF THE STATE OF DELAWARE

Chang v. Children's Advocacy Center of Delaware, Inc.

No. 13, 2017 · No. No. 13, 2017 · Decided April 25, 2017

SUMMARY

The Delaware Supreme Court dismissed Weih Steve Chang's appeal for failure to file the required opening brief and appendix by the court-ordered deadline. The court dismissed the appeal under Delaware Supreme Court Rule 29(b) and deemed Chang's pending motions moot.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Leo E. Strine, Jr., Chief Justice; James T. Valihura, Justice; Henry duPont Ridgely Vaughn, Justice
JURISDICTION	Delaware
DECIDED	April 25, 2017
DOCKET	No. 13, 2017
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the Superior Court's dismissal of a civil complaint; the Supreme Court dismissed the appeal for failure to prosecute after the appellant failed to file his opening brief and appendix by the court-ordered deadline.
PRECEDENTIAL VALUE	published
PARTIES	Weih Steve Chang v. Children's Advocacy Center of Delaware, Inc., et al.

TOPICS

[appellate procedure](#) [mootness](#) [civil procedure](#)

PRACTICE AREAS

[appellate procedure](#) [civil procedure](#)

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed for failure to prosecute after Chang failed to file his opening brief and appendix by the court-ordered deadline.
2. Whether Chang's pending motions to stay, recuse, and reconsider should be resolved after dismissal of the appeal.

HOLDINGS

1. An appeal may be dismissed under Delaware Supreme Court Rule 29(b) when the appellant fails to file the required opening brief and appendix by a clearly communicated court-ordered deadline.
2. A motion to stay, motion for recusal, and motion for reconsideration are moot after the underlying appeal is dismissed.
3. Mere denial of receipt is insufficient to rebut Delaware's rebuttable presumption that correctly addressed, stamped, and mailed matter was received.

KEY QUOTATIONS

“Chang’s failure to file the opening brief and appendix by the April 24 deadline warrants dismissal of this appeal for his failure to prosecute.” (¶ 7)

“Chang’s motion to stay, motion for recusal, and motion for reconsideration are moot.” (¶ 7)

FACTUAL BACKGROUND

The Clerk mailed Chang the brief schedule and a brief delinquency notice at his correctly addressed mailing address, and neither mailing was returned as undeliverable. Chang denied receiving the mailings, but did not file his opening brief and appendix by the original or extended deadline. He subsequently filed multiple motions to stay the appeal and other motions instead of filing the required brief and appendix.

PROCEDURAL HISTORY

The Superior Court dismissed Chang's civil complaint on December 9, 2016. Chang appealed, but failed to file his opening brief and appendix despite delinquency notices, a notice to show cause, and an extension until April 24, 2017. He instead filed motions to stay, recuse, and reconsider, and the Supreme Court dismissed the appeal under Delaware Supreme Court Rule 29(b).

DISPOSITION

dismissed

CASES CITED

- Straley v. Advance Staffing, Inc., 2009 WL 3451913, at *2 (Del. Oct. 27, 2009)
- Windom v. Ungerer, 903 A.2d 276, 282 (Del. 2006)

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