

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)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE WEIH STEVE CHANG, § § No. 13, 2017 Plaintiff Below, § Appellant, § Court Below—Superior Court of the § State of Delaware v. § § C.A. No. K16C–07–020 CHILDREN’S ADVOCACY § CENTER OF DELAWARE, INC., et § al., § § Defendants Below, § Appellees. § Submitted: April 24, 2017 Decided: April 25, 2017 Before STRINE, Chief Justice; VALIHURA and VAUGHN, Justices.

ORDER This 25th day of April 2017, it appears to the Court that: (1) The appellant, Weih Steve Chang, filed this appeal from the Superior Court’s order of December 9, 2016, dismissing his civil complaint. Chang’s opening brief and appendix were due to be filed by February 23, 2017. When the brief and appendix were not filed, the Clerk issued a brief delinquency notice advising Chang that the brief and appendix must be filed within seven days or a notice to show cause would issue.

When Chang did not file the brief and appendix as directed in the brief delinquency notice, the Clerk issued a notice by certified mail directing Chang to show cause why the appeal should not be dismissed. (2) Chang filed a response to the notice to show cause on March 20.

In the response, he contended that he had not received the brief schedule and brief delinquency notice. (3) In Delaware, there is a rebuttable presumption that mailed matter, correctly addressed, stamped and mailed, was received by the party to whom it was addressed.¹ Mere denial of receipt is insufficient to rebut the presumption.² In this case, the record reflected that the brief schedule and brief delinquency notice were correctly addressed to Chang.

Neither mailing was returned as undeliverable. (4) After considering Chang’s response to the notice to show cause, the Court issued an order on March 24 granting Chang an extension of time until April 24 to file the opening brief and appendix.

The Court advised Chang that the record did not support his assertion that he had not received the brief schedule and brief delinquency notice, and that if he failed to file the brief and appendix by April 24, the appeal would be dismissed without further notice.

(5) Chang did not file the opening brief and appendix by the April 24 deadline. Instead, on April 24, Chang filed a motion seeking a stay of this appeal pending the Superior Court’s decision on an application for certification of an interlocutory appeal that Chang filed on April 20. Chang also filed a motion for 1 *Straley v. Advance Staffing, Inc.*, 2009 WL 3451913, at *2 (Del.

Oct. 27, 2009) (citing *Windom v. Ungerer*, 903 A.2d 276, 282 (Del. 2006)). 2 *Id.* 2 recusal and a motion for reconsideration of a prior unsuccessful request for court- appointed counsel. (6) Chang’s motion to stay filed on April 24 marks the third time he has sought a stay of this appeal.

The first motion to stay, which was filed on March 17, was denied in the March 24 order that granted Chang an extension of time until April 24 to file the opening brief and appendix. The

second motion to stay, which was filed on April 18, was denied in an order issued on April 19.

(7) Chang was informed in the March 24 order that his failure to file the opening brief and appendix by April 24 would result in the dismissal of his appeal without further notice. Also, in a letter dated April 19 from the Clerk, Chang was advised that the opening brief and appendix must be filed, without fail, on or before April 24. 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.

NOW, THEREFORE, IT IS ORDERED, that the appeal is DISMISSED under Supreme Court Rule 29(b). Chang's motion to stay, motion for recusal, and motion for reconsideration are moot.
BY THE COURT: /s/ Leo E. Strine, Jr. Chief Justice 3