

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
(302) 255-0664

Mitchell M. Buck
511 South Clayton Street
Apartment 1
Wilmington, Delaware 19805
Appellant

Scott G. Wilcox, Esquire
Whiteford, Taylor & Preston, LLC
1220 North Market Street
Suite 608
Wilmington, Delaware 19801
Attorney for Appellee Cassidy Painting, Inc.

Re: Mitchell M. Buck v. Cassidy Painting, Inc.
C.A. No. N10A-03-010 RRC

Submitted: March 11, 2011
Decided: March 28, 2011

On Appeal from a Decision of the Division of Unemployment
Insurance Appeals.
APPEAL DISMISSED.

Dear Mr. Buck and Mr. Wilcox:

Appellant Mitchell M. Buck (“Employee”) filed Notice of Appeal from the January 27, 2010 decision of the Division of Unemployment Insurance Appeals (the “Board”) holding that Employee had been discharged from Cassidy Painting, Inc. (“Employer”) for just cause and, consequently, that

Employee was disqualified from receipt of unemployment benefits.¹ Employee's Notice of Appeal was filed March 18, 2010, and a briefing schedule was issued by this Court on September 9, 2010.

Under the briefing schedule, Employee's Opening Brief was to be filed by September 29, 2010, Employer's Answering Brief was to be filed by October 19, 2010, and Employee's Reply Brief was to be filed by November 3, 2010. On October 13, 2010, Employer wrote this Court and advised that Employee's Opening Brief had not been filed. A "Final Delinquent Brief Notice" was sent to Employee on November 8, 2010. In turn, Employee submitted a handwritten letter on November 17, 2010, stating, *in toto*, as follows (all errors in original):

I continue this case because the company set me up to fail, they took me off a job when they know my car broke down, that I had know way of getting to, the job Forman of that job at that time, I ask to ride with him he told me no, so I show up at the shop from the bus to plead with them to keep me on the job and send, one of the guys with cars but they would not, so I ask them to send me to one of the jobs, that on a bus rout until I save enough money to get my car fix I work for this company off & on for about 20 years, with the economy being the way it is, they would at lease lay me off or keep me on the job site when I was working in the Hereing at the Board I found why the Forman on that job would knot let me ride with him, whith I didn know, he told the boss behind my back that I got paint on his truck, he didn't tell me, to give a chance to defend myself.

Employer then filed its Answering Brief on December 22, 2010. In essence, Employer contends that the Board's decision was supported by substantial evidence and free from legal error.² Employer also noted that Employee's letter, even if treated as an Opening Brief, "consists of a simple restatement of the facts of the case" and does not allege a lack of substantial evidence or the existence of legal error in the Board's decision.³

¹ This decision arose from Employer's appeal from the Delaware Department of Labor Referee's decision of October 2, 2009 holding that Employer had not met its burden of establishing just cause and that Employee was entitled to unemployment benefits.

² Employer's Answ. Br. at 2.

³ *Id.*

Employee did not file a Reply Brief despite having been ordered to do so; a “Final Delinquent Brief Notice” was sent to Employee on February 16, 2011, but Employee did not respond.

Superior Court Civil Rule 72(i) provides:

Dismissal may be ordered for untimely filing of an appeal, for appealing an unappealable interlocutory order, for failure of a party diligently to prosecute the appeal, for failure to comply with any rule, statute, or order of the Court or for any other reason deemed by the Court to be appropriate.

In this case, Employee’s “Opening Brief” was submitted only after a Final Delinquent Brief Notice was issued; it was submitted nearly two months past the date established in the briefing schedule issued by this Court. Further, it is apparent that Employee made no efforts to comply with Superior Court Civil Rule 107 when completing his “Opening Brief.”⁴ It must also be noted that Rule 107(b) precludes an extension for the time of filing briefs, even if all parties consent, “unless the Court enters an order upon a showing of good cause for such enlargement.” In this case, no good cause was shown, and no such order was entered.

When appropriate, this Court will provide *pro se* litigants some degree of latitude in preparing and presenting their cases.⁵ However, this case exceeds the bounds of any appropriate leniency; as explained by the Supreme Court of Delaware:

⁴ Rule 107 requires, *inter alia*, that briefs submitted to the Superior Court contain a statement of the questions involved, and an “Argument” section, with subsections dedicated to each question involved. As stated, Employee’s “Opening Brief” did nothing more than recite his version of the facts underlying his termination of Employment; no “questions involved” or “argument” pertaining to such questions were included.

⁵ See, e.g., *In re Estate of Hall*, 882 A.2d 761 (Del. 2005) (“While this Court allows a *pro se* litigant leeway in meeting the briefing requirements, the brief at the very least must assert an argument that is capable of review.”); *Vick v. Haller*, 522 A.2d 865, *1 (Del. 1985) (“A *pro se* complaint, however inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers. . . .”); *Alston v. State*, 2002 WL 184247, *1 (Del. Super. Ct. 2002) (“While procedural requirements are not relaxed for any type of litigant (barring extraordinary circumstances or to prevent substantial injustice), the Court may grant *pro se* litigants some accommodations that do not affect the substantive rights of those parties involved in the case at bar.”).

Litigants, whether represented by counsel or appearing *pro se*, must diligently prepare their cases for trial or risk dismissal for failure to prosecute. There is no different set of rules for *pro se* plaintiffs, and the trial court should not sacrifice the orderly and efficient administration of justice to accommodate an unrepresented plaintiff. It is only in cases such as this, where it was reasonable for the *pro se* litigant to have been waiting for the trial court to take action following a remand, that we find dismissal for failure to prosecute inappropriate.⁶

In this case, it was not reasonable for Employee to fail to file his Opening Brief in compliance with this Court's order, fail to comply with this Court's rules regarding briefing, and fail to file a Reply Brief altogether. Consequently, there is "no different set of rules" for Employee, and this Court will not "sacrifice the orderly and efficient administration of justice to accommodate" Employee.⁷

Given that Employee's "Opening Brief" was submitted significantly beyond the deadline set forth in this Court's briefing schedule and sets forth no issues or argument, but rather is merely a conclusory recitation of Employee's version of events, it is manifest that Employee has failed to "diligently" prosecute this appeal.⁸ Employee's complete disregard of the requirements of Rule 107 and his unexplained failure to comply with the briefing schedule or file a Reply Brief confirms that he has failed diligently to prosecute this appeal. Pursuant to Rule 72(i), this Court may *sua sponte* dismiss an appeal "for failure of a party diligently to prosecute the appeal."⁹ Given the foregoing, dismissal pursuant to Rule 72(i) is warranted in this case.

⁶ *Draper v. Med. Ctr. of Del.*, 767 A.2d 796, 799 (Del 2001).

⁷ *Id.*

⁸ Super. Ct. Civ. Rule 72(i).

⁹ *See also Gebhart v. Ernest DiSabatino & Sons, Inc.*, 264 A.2d 157, 159 (Del. 1970) ("The authority of the Superior Court to dismiss a plaintiff's action, for failure to prosecute or to comply with its Rules or orders, is clear."); *Hohn v. Coe*, 1998 WL 1029286 (Del. Super. Ct. 1998) (dismissing an appeal from a decision of the Court of Common Pleas, pursuant to Rule 72(i), where the Appellant failed to file an opening brief within the time prescribed Rule 72(g) and failed to request additional time to file.).

Accordingly, for the reasons stated above, Employee's appeal is **DISMISSED** for failure to diligently prosecute the appeal.

IT IS SO ORDERED.

Very truly yours,

RRC/rjc

oc: Prothonotary

Unemployment Insurance Appeals Board