

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RUDOLPH BAILEY, SR.,)
)
Plaintiff Below - Appellant,)
)
v.) C.A. No. 05A-04-006
)
ACME/ASCO/ALBERTSON'S, INC.,)
)
Defendant Below - Appellee.)

Submitted: August 19, 2005
Decided: August 21, 2005

UPON RECONSIDERATION OF DEFENDANT-APELLEE'S
MOTION TO DISMISS
DENIED – PRIOR OPINION VACATED.

Rudolph Bailey, Sr., *pro se.*

Thomas S. Bouchelle, Esquire, Newark, Delaware, Attorney for the Defendant
Below - Appellee.

ABLEMAN, J.

Upon reconsideration of Defendant/Appellee's Motion to Dismiss this appeal from a judgment of the Court of Common Pleas, it appears that the July 28, 2005 opinion of this Court erroneously stated that Plaintiff-Appellant failed to file his opening brief within the applicable deadline. In fact, according to an August 19, 2005 letter to the Court from the Prothonotary, Plaintiff-Appellant did file his opening brief on time. The brief was then misplaced by a clerk and reported to the Court as not filed. Because Plaintiff-Appellant filed his opening brief within the applicable deadline, and the delay was solely the fault of the Prothonotary, Defendant-Appellee's Motion To Dismiss is **DENIED**. The July 28, 2005 order is hereby **VACATED**. Defendant-Appellee's Answering Brief shall be due 20 days from the issuance of this opinion, with Plaintiff-Appellant's reply brief due 10 days thereafter.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

cc: Rudolph V. Bailey, Sr.
Thomas S. Bouchelle, Esquire
Prothonotary