

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IRIS B. ZEBROOK,)
) No. 583, 2002
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 SONIA VERMA,) C.A. No. 01A-10-007
)
 Plaintiff Below,)
 Appellee.)

Submitted: March 11, 2003
Decided: April 17, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices.

ORDER

This 17th day of April 2003, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. This is Iris V. Zebrook's direct appeal from a Superior Court decision that affirmed a decision from the Court of Common Pleas. The Court of Common Pleas dismissed an appeal from a Justice of the Peace Court judgment because Zebrook failed to properly perfect the appeal under Court of Common Pleas Civil Rule 72.3(b).

2. Sonia Verma, the appellee, brought a civil action against Zebrook in the Justice of the Peace Court No. 13 for the return of a down payment made in

connection with the purchase of real estate. The Justice of the Peace Court entered a judgment in favor of Verma by Order dated on May 23, 2001, after a trial on May 18, 2001.

2. On June 1, 2001, Zebrook filed a Notice of Appeal in the Court of Common Pleas. Zebrook then filed a certified copy of the record including the trial transcript on June 25, 2001, beyond the time permitted by the Court of Common Pleas in its statutes and rules.¹

3. On September 19, 2001, the Court of Common Pleas dismissed the appeal by Order. The Superior Court affirmed the decision on August 27, 2002. The Superior Court judge determined that the Court of Common Pleas properly dismissed Zebrook's appeal because the certified record was not filed timely and because Zebrook made no showing of excusable neglect.

4. Zebrook then filed a Motion for Reargument in the Superior Court. The Superior Court judge found that Zebrook's argument would require the Court to codify and make mandatory the practice of the Court of Common Pleas to send dunning letters to those appellants who have not followed clear and unmistakable requirements, under both statute and rule, to perfect their appeal.

¹ Del. Ct. of Common Pleas Civ. R. 72.3(b) (2002) (The appellant shall file a certified copy of the record of the proceedings below, not including the evidence, within ten days of the filing of the notice to appeal).

This Court of Common Pleas practice is, at most, a courtesy, not an automatic extension of time, and does not relieve Appellant from any requirements to file timely the notice of appeal or the certified copy of the record from the court below.²

5. In this appeal, Zebrook first argues that the Superior Court judge erred because “there was an established procedure to give two notices prior to the dismissal of any appeal.” However, Zebrook does not cite to this “established procedure” in her brief, nor could a rule be found to support this claim. Although it may be a common practice by the clerk, the Court will not mandate this “courtesy.” Requiring the Court of Common Pleas to send notices of deficient filings would constitute an unjustifiable administrative burden.

6. Zebrook next argues that the Superior Court judge erred as a matter of law by requiring her to prove excusable neglect when she had met the jurisdictional requirements for filing an appeal. The trial judge correctly determined that failure to follow the Court’s time requirements does not necessarily mean the Court loses jurisdiction. Rather, the Court’s rules state that the Court may grant exceptions to the time requirements if the party can show excusable neglect.³ There is no error when the Court follows its own procedures. The excusable neglect provision allows the Court to make exceptions to the rules.

² *Zebrook v. Verma*, C.A. No. 01A-10-007 (Sept. 19, 2002) (ORDER).

³ Del. Ct. of Common Pleas Civil Rule 6(b).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice