DISTRICT OF COLUMBIA COURT OF APPEAL

24-CV-0654

Robert Newton

Appellant

v. 2023-CAB-007227

Annette Grajny (Dorfman), et al

Appellee

Appeal from the Superior Court of the District of Columbia, Civil Division

Hon. Yvonne Williams

BRIEF OF THE APPELLANT, ROBERT NEWTON

Chidinma Iwuji, # 478118
419 7th Street, NW, Suite 405
Washington, D.C. 20004
Cell: 571-276-2136
Office: 202-370-0202
Email: iwujicm@gmail.com
Appellant, Robert Newton

RULE 28(a)(2)(A) STATEMENT

That the Judges of this Court may evaluate the need for recusal, undersigned counsel submits. As presently advised, the following are the parties and counsels from the below trial proceedings and/or the present appellate proceedings.

Rachel I Viglianti Barry A. Harris	Medical Faculty Associates Inc., and Annette Grajny (Dorfman) M.D., Charles Samenow, M.D. The George Washington University
K. Nichole Nesbit Ifeanyi O. Ezeigbo	District Hospital Partners, LP d/b/a The George Washington University Hospital
Crystal S. Deese Benjamine S. Harvey	Neurology Center, PA, Philip Pulaski, M.D., and Ezra Cohen, M.D.

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I. STATEMENT OF ISSUES:

1. Whether the trial court abused its discretion in denying Appellant's motion for an extension of time to file an appeal from its order granting Appellee's motion for summary judgement and concluding that Appellant complaint was frivolous and delusional without evidence.
2. Whether the trial court's failure to provide proper notice of the dismissal order constitutes excusable neglect.

II. STATEMENT OF THE CASE

This case is a medical malpractice case in which the Appellant was implanted with manmade neurosensor with a radio frequency identification by the Appellees which was discovered when the Appellant went through exploratory surgery and analyzed by a forensic lab. One of these objects is still in the custody of the forensic lab and will be produced for viewing by anybody who cares to. Appellant filed his complaint Pro Se on November 27, 2023, after this discovery on September 10, 2020. This complaint was dismissed as being untimely and frivolous. Pursuant to **D.C. Code section 16-2802(b)**, Appellant served his pre suit notice letter on September 2, 2023. This paused the statute of limitation for an additional 90 days. The latest the Appellant would have filed his complaint would have been December 1, 2023, thereby filing the complaint before the expiration of the statute of limitation.

The second reason why the lower Court dismissed the Appellant's complaint is that it is frivolous. The Court cannot assume that a complaint is frivolous without ascertaining what evidence the complainant has to prove such complaint. What most Courts do is to dismiss the case without prejudice and give the Appellant an opportunity to put more meat on the bone, especially where the litigant is Pro Se. The lower court dismissed the Appellant's case and did not give him notice of dismissal whether by mail, email or e-service and Appellant has evidence that none of these medium of communication was used to communicate the dismissal to him until after the 30-day appeal period has expired. **See Appendix Pg. 5-6.** He only got notice when he went for a scheduled hearing on the case only to find out the hearing was vacated, again without communicating the vacation to him. He followed the advice of the Court clerk and went to the civil division clerk to try and reschedule the hearing. On getting there, he was told that the case was dismissed on March 11, 2024. The Appellant went for that hearing on April 12, 2024, by which time the 30-days has run. The clerk advised him that he can still file a notice of appeal within 30-day period since he just got notice of the order, that he should just note on the notice the date he knew about the order of dismissal. Appellant followed her advice.

III. STATEMENT OF FACTS

The Appellant filed his original complaint Pro Se on November 27, 2023. The initial conference was scheduled on March 1, 2024. The Appellant filed a response opposition to Appellees' joint motion to dismiss on February 28, 2024. On February 22, 2024, the Court issued an order continuing the initial scheduling conference to April 12, 2024.

On March 22, 2024, the Appellant and his assistant went to the Court house to file his surreply to the Appellees motion to dismiss because he was having problems with the e-filing system. While

Appellant was filing his opposition, he inquired from Ms. Clark, who is one of the civil division clerks on duty that day, if there are any new filings in the docket and she answered no but confirmed that the next event on the docket is the hearing on April 12, 2024. Apparently, it is either the order of March 11, 2024, was docketed on April 12, 2024, or the clerk did not know her job. The first assumption seems to be more plausible because it was not e-filed. Appellant normally received e-service notification from the Court but a view of his email screen for the dates between February 29, 2024, through April 12, 2024, there were no emails or notifications from the Superior Court. **See Appendix Pg. 3-4,** screen shot of Appellant's two email addresses.

On April 12, 2024, Appellant went to the Court house to use the law library computer to do the remote hearing. As he was checking in with the Courtroom clerk, Mr. Lenny Rambert, when he was told by Mr. Rambert that the hearing has been cancelled and that he should go to the civil clerk's office and reschedule. The clerk did not know the case was dismissed because he told the Appellant to go and reschedule the hearing. Appellant went to the civil division's clerk's office with his assistant, Ms. Barbara West, and spoke to Ms. Clark, civil division clerk, regarding rescheduling the hearing as he was instructed by Mr. Rambert.

Ms. Clark told Appellant in the presence of Ms. Barbara West that his case has been dismissed and went ahead and printed the order for him. Ms. Clark also informed the Appellant that he had 30 days from that date, i.e., April 12, 2024, to file a notice of appeal but to explain on his notice of appeal form that he received the order late. **See Appendix Pg. 1-2, Ms. Barbara West's affidavit.**

The Appellant was not notified by the Court of the dismissal of his case or the cancellation of the scheduled hearing until April 12, 2024, when he was told that his case was dismissed. On April 12, 2024, the time for him to notice an appeal has expired. And there was no email from the Court to the Appellant attaching the dismissal order or order vacating the hearing. **See Appendix 5-6.** Appellant physically appeared in the Court on the scheduled date of hearing only to find out that his case has been dismissed. All this time Appellant was a Pro Se litigant. Appellant heard and received for the first time on April 12, 2024, that his case was dismissed and the order dismissing his case. He was advised by Ms. Clark who printed the order for him that he had 30 days from April 12, 2024; to file an appeal, Ms. Clark's advice was also confirmed by the notice of appeal form she handed to the Appellant.

On April 12, 2024, at approximately 3:00 pm, Appellant and his assistant, Ms. Barbara West, reviewed all of Appellant USPS Informed Delivery notifications starting from March 11, 2024, to April 12, 2024, and found none. Appellant and Ms. Barbara West also made inquiries with USPS Consumer Affairs as to any mails from the D.C. Superior Court during that period. Mr. Newton had signed up for informed delivery with USPS. This enables USPS to scan the envelopes of incoming mails and email you a capture of the envelopes they receive for a recipient on that day. At the request of Mr. Newton, USPS checked their system. And the result was none from D.C. Superior Court between March 11, 2024, through April 12, 2024. **See Appendix Pg . 7-70**

DCCA Rule 4 section 5 (A) (ii) states that Superior Court could extend the time for filing an appeal if that party shows excusable neglect or good cause. The Appellant has shown excusable neglect and good cause. First and foremost, it was not his fault that the clerk sent the email to the

wrong email address. **See Appendix Pg . 5** Secondly, he was a Pro Se litigant, and he followed the instructions given to him by Ms. Clark regarding time and how to appeal. Appellant is a Pro Se litigant who depended on the advice of the civil division clerk regarding time to appeal of which she told him is 30 days and because he did not get notice of the order at all, and it was the fault of the Court.

IV. STANDARD OF REVIEW

The D.C. Court of Appeals reviews the lower court's denial of motion for extension of time to file an appeal for abuse of discretion. This standard requires the lower court to make its decision based on a firm factual foundation. A trial Court' decision may be deemed an abuse of discretion if it lacks a valid reason or if the stated reason is not supported by a specific factual predicate. See ***In re Estate of Yates, 988 A.2d 466 (D.C. 2010); Ventura v. McDonalds Welburn Mgmt., 154 A.3d 103 (D.C. 2017), In re AK. V., 747 A.2d 570 (D.C. 2000)***

V. ARGUMENT.

In ***District of Columbia v. Watkins, 684 A.2d 395 (D.C. 1996)***, the court found that the failure to receive timely notice of the judgment due to the court clerk sending notice to the wrong address constituted excusable neglect. The court re-entered judgment allowing the District to file a timely appeal, emphasizing that the actual act of mailing notice to the proper address was essential for the computation of appeal time. Also, in ***District of Columbia v. Watkins, 684 A.2d 395 (D.C. 1996),*** This Court held that, "whereas here, it was established that the clerk of the court failed to mail notice of the entry of the order to the last known address of record of the

District, the trial court did not abuse its discretion in finding unique circumstances warranting setting aside its original order."

The Court denied the Appellant's motion for an extension of time to file a notice of appeal pursuant to **D.C. Ct. App. R. 4 (a) (5) (A**) in conjunction with **Superior Court Civ. R. 77(d) and D.C. Ct. App. R. 4 (a) (7) (B)**. The Appellant argues that pursuant to **Superior Court Civil Rule 77(d),** the Superior Court Clerk has a duty to mail notice of orders and judgments entered on the docket, failing to do so is a "mistake" which entitles Appellant to relief. Notwithstanding this duty, however, **Rule 77(d)(1)** also provides that "[l]ack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Rules for the District of Columbia Court of Appeals**." Super. Ct. Civ. R. 77(d)(1). District of Columbia Appellate Rule 4(a)(5)(A)(ii)** states that "[t]he Superior Court *may* extend the time for filing the notice of appeal if: ... that party shows excusable neglect or good cause." (emphasis added). Relying on ***District of Columbia v. Watkins,* 684 A.2d 395 (D.C.1996),** appellant argues that pursuant to the authority granted by **D.C.App. R. 4(a)(5)(A)(ii),** a "trial Court" may extend the time for appeal.

Also, the Court did not consider the fact that the Appellant was given a handbook which is supposed to be a guide for Pro Se litigant. And in this handbook, the 30-days appeal limitation time was included but provision of **Superior Court Rule of Civil Procedure section 77(d)** was not listed. Also, there is no provision in the handbook advising Pro Se litigants not to act on the advice of Court workers. Any ordinary person who is not an attorney will believe that Court worker will know the rules of the Court and their advice should be one to depend on.

The Honorable Court failed to consider the fact that the order dismissing the Appellant's case was issued on March 11, 2024, and Appellant went to the civil clerk office to file his surreply on

March 22, 2024. Appellant specifically asked the civil division clerk, Ms. Clark, if anything new was filed in the docket, and she answered no. She would have told him about the dismissal and the vacation of the hearing if it was docketed. Ms. Clark, the civil division clerk, did not find in these items in docket. The Appellant, in order to make sure his surreply was in fact docketed, two days later, went back to check the docket and there was no order of dismissal or order vacating the scheduled hearing on the docket, hence attending the scheduled hearing on April 12, 2024.

The Court's ruling that the Appellant's motion is untimely is disingenuous. The Court failed to acknowledge the part the Court played in the untimeliness of this motion. Appellant would not be in this situation if the Court officials had done their job. The Court wants the Appellant to be the person to continue to suffer for the incompetence of the Court staff and these doctors. The Court did not consider the whole mosaic of the circumstances leading to the Appellant filing motion for extension. Appellant is a registered e-file user, and he would have received notification if the order was e-served or docketed when it was issued as he had received earlier notices from the Court. If the Court e-served or docketed the order on March 11, 2024, or even on April 11, 2024, the Appellant would have received it unless the filer physically removed the Appellant from the service list. **See Appendix Pg. 3-4, id.** Appellant email screen shot for the times he received notice from e-service, the letter from USPS answering Appellant's inquiry regarding mail from the Court and affidavit of Ms. West, Appellant's assistant. These exhibits were filed with the motion for extension in the lower Court.

In ***Minor v. Springfield Baptist Church, 964 A.2d 205 (D.C. 2009)*** This Court held: "In order for this court to meaningfully review the court's exercise of discretion, unless the record otherwise indicates the basis for the trial court's ruling, the trial court must make findings of fact and explain

its reason(s) for either granting or denying a Rule 60(b) motion requesting relief for excusable neglect or good cause. ***See Johnson v. Lustine Realty Co., Inc., 640 A.2d 708, 709 (D.C.1994)*** (holding that trial court abused its discretion by not making the necessary inquiry and in failing to address two factors that bore directly on the Rule 60(b) motion, ***See Reid v. District of Columbia, 634 A.2d 423, 425 (D.C.1993)*** ("A review of the record indicates that in denying appellants' motion ..., the trial court did not consider the factors enumerated in Rule 60(b)(1) rule 60 (b) motion and summarily denied appellants motion. In the case at bar, the Judge did not make any findings of fact and did not establish the factors enumerated in ***Pioneer Investment Services Co. v. Brunswick Associates LTD, 507 U.S. 380 (1993)***,

Pursuant **D.C. App. R. 4, subd. II(a) (4)**, which states in pertinent part that "A judgment or order is deemed to be entered when it is entered in the civil docket by the clerk. When a judgment or final order is entered or decided out of the presence of the parties and counsel, and without previous notice to them of the court's decision, such judgment or order shall not be considered as having been entered, for the purpose of computing the time for filing a notice of appeal, until the third day after notice thereof has been mailed to the parties or counsel by the Clerk of the Superior Court. . . .", Appellant received the order dismissing his case on April 12, 2024 after physically appearing in Court for a scheduled hearing. Pursuant to **D.C. App. R. 4, subd. II(a) (4)**, his clock will start running from April 12, 2024, for the purpose of computing the time for filing a notice of appeal which will bring him to May 13, 2024, as the due date for the appeal. Appellant complied with the 30-days limitation time for appeal if this is the right interpretation of this rule, then Appellant's appeal is timely since he filed his appeal on May 10, 2024, with the motion for extension of time. The lower Court made its decision in the absence of parties and counsels. Court did not docket or e-file the order since Ms. Clark did not see it on the

docket on March 22, 2024, and Appellant did not see it on March 24, 2024. Appellant only had knowledge of the order on April 12, 2024.

Appellant disagrees with the Court's interpretation of **D.C. Sup. Ct R. 77(d)** which provides in pertinent part: "Reopening Time to Appeal. The Superior Court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied: (A) the court finds that the moving party did not receive notice under Superior Court Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry; (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Superior Court Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and (C) the court finds that no party would be prejudiced." Appellant believes that that order was entered into the docket on the day of the hearing on April 12, 2024. This is because if the order was entered into the docket before that date, he would have received notice from the Court as an e-service recipient. Secondly, the Appellant did not receive the order by mail, email or e-service within 21 days of issuance of the order.

Appellant filed his motion for extension with notice of appeal within 180 days of receipt of the order. Appellant believes that the provision in **D.C. Sup. Ct. R. 77 (d)(B)** which states: "or within 14 days after the moving party receives notice under Superior Court Rule of Civil Procedure 77(d) of the entry, whichever is earlier" refers to order to reopen the time to appeal and not the order from which the Appellant is appealing from. The Court interpreted it as referring to the original order sought to be appealed from. If this is the case; the 14 days rule does not apply to this case because Appellant motion for extension is not for extension of time to appeal after the Judge has reopened the time to appeal.

The Court failed to consider the prejudice provision of **D.C. Sup. Ct. R. 77 (d)(C)**, which the Court is mandated to consider. The rule provides that: "but only if all the following conditions are satisfied". The Court did not satisfy the prejudice condition as required by this rule. Obviously, the Appellant will be extremely prejudiced by the Court's denial of his motion for an extension of time to file appeal. It should be noted that this delay is not as a result of anything that the Appellant did.

Other circumstances surrounding this motion for extension which the Court did not consider are the fact that the Court did not consider the information the Appellant received from Ms. Clark, who is the civil division clerk who printed out the order on April 12, 2024, for the Appellant. She also gave the Appellant the notice of Appeal which also had 30 days limitation time for appeal in it. On the day Appellant filed his Pro Se Complaint, he was given "the hand book for people who represented themselves in civil case". The provision of **D.C. Ct. App. R. 4(a)(7)(B)** and **Superior Court Civil Rule section 77(d)**, which the Honorable Judge referred to in her order denying Appellant's motion for extension of time was not indicated in that handbook. The Appellant followed the instructions on this handbook to the letter while representing himself. He was never late in any of the filings and service required of him even though the Appellees have six attorneys the Appellant had to deal with. At the time of Ms. Clarks advice, the Appellant was still a Pro Se litigant and relied on the advice of Ms. Clark in believing that he had 30 days from the date he received the order to file notice of appeal. The Court of Appeal held in ***Gooch v. Skelly Oil Company, 493 F.2d 366, 369-70 (10th Cir. 1974),*** that "lack of knowledge of the entry of judgment occasioned by failure to receive the clerk's notice does not, without more, constitute grounds for a finding of excusable neglect". In the case at bar, the Appellant did take proactive actions. 1). on March 22, 2024, when he went to file his surreply, he asked the clerk if there were

any new filings in the docket to which she answered no. Two days later, Appellant searched the docket to make sure his surreply was docketed and viewed the docket but did not see the order dismissing his case. 2) he followed the advice of the civil division clerk that he had 30 days from the date he received the order to file his notice of appeal which he did within 28 days. 3) he followed the handbook he was given by the civil division clerk while litigating his case. All these actions show good faith.

In the case of ***Admasu v. 7-11 food store # 11731G/21926D,108 A .3D (D.C. 2015)***, the Court of Appeals agreed with the Appellant stating: "Admasu argues that his case meets the standard for excusable neglect and the Administrative Law Judge ("ALJ") abused her discretion in holding that there was no excusable neglect to warrant an extension of the fifteen-day deadline. We agree that the ALJ abused her discretion by not adequately considering all of the relevant factors for making a proper determination of excusable neglect. We remand the case for a determination consistent with this opinion". In the case at bar, the lower Court did not adequately consider all the relevant factors for making a proper determination of excusable neglect, e.g., Appellant's reliance on Ms. Clark's advice and the fact that he went to the civil division on March 22, 2024, and inquired from Ms. Clark if there were any new filing in the docket and Ms. Clark said no. **See Appendix Pg. 2** Also, the Court did not consider that appellant never missed a deadline on any of his filings.

In ***Pioneer Investment Services Co. v. Brunswick Associates LTD, 507 U.S. 380 (1993),*** the Supreme Court of the United States articulated factors that Courts should consider in determining excusable neglect as the following: The danger of prejudice to the non-moving party. In the instant case granting the motion for extension would not unfairly harm the Appellees because if the Court were to go by **Superior Court Rule of civil procedure section 77(d)** Appellant filed the motion only two weeks late using the shorter period established under the rule but is within the 180 period.

But the Appellant was following the advice of the civil division clerk, Ms. Clark. The Court in its order of denial stated that Appellees will be prejudiced because she saw Appellant's complaint as frivolous. The Court made this conclusion without making inquiry as to how Appellant was going to prove his case. That what happened to Appellant is rare or conspiratorial sometimes, does not mean that it does not happen. There was no evidence presented to the lower Court that the Appellant's case was conspiratorial or delusional. The specimen which was removed from the Appellant is still in the custody of the forensic lab that analyzed it to be a man-made foreign body. There is a reason why Maryland, California, Wisconsin etc. outlaw the placing of manmade devices on patients by doctors without their consent. This means it happens. **See Appendix Pg. 81-103, Doctor John Hall D.O.'s report**. A Defendant is not prejudiced by giving the Appellant his or her day in Court. This is what our judicial system is established for. Five physician experts cannot want to put their license, career and reputation on the line to testify to a conspiracy or a delusion. **See Appendix Pg. 74-80.** Out of the 5 experts, three have already prepared sworn affidavit in this case.

The length of delay, which in the present case as articulated in **Civ. R. 77(d)** is only two weeks, which cannot be said to cause any significant disruption to the Court's schedule or the case's progress. The Court's denial of the motion for extension of time was only based on the fact that the Court just wanted the case to go away. If it goes away, it will not need to progress.

The reason for the delay. Appellant gave two reasons for the delay, i.e., lack of notice from the Court and reliance on the advice of Ms. Clark, civil division clerk, that he had 30 days from the date of receipt of the order to file notice of appeal and to note that he received the order late. But when Appellant retained undersigned counsel, undersigned counsel decided to file motion for

extension of time to late file notice of appeal because that will be a more proper approach. Appellant is a nonlawyer who depended on the advice he received from the clerk.

Whether the movant acted in good faith. The Appellant acted in good faith when he asked Ms. Clark on March 22, 2024, if there were any new filing on the docket which Ms. Clark answered no. Appellant acted in good faith when he checked the docket two days later, to make sure his surreply was docketed and also check the docket for new filing but did not see any. Appellant acted in good faith in relying on Ms. Clark's advice that he had 30 days from April 12, 2024, and filed the motion and notice on May 10, 2024. Appellant also followed the hand book given to him.

All these factors establish by the U.S. Supreme Court in ***Pioneer Investment Services Co. v. Brunswick Associates LTD***, id was not considered by the Court, i.e.1) Prejudice to the non-movant. 2) Length of time of the delay, assuming the lower Court's interpretation of D.C. Sup. Ct. R. 77 (d) is correct. 3) Reason for the delay and 4) Bad faith on the part of the movant.

The trial Court ignored the fact that Appellant was following the advice of Ms. Clark, and that Appellant followed her advice in good faith and that it was not unreasonable that he did. Hence the trial Court did not consider all the circumstances surrounding the late notice of appeal. The Court reasoned that it did not want to allow Appellant to prejudice the Appellees by further litigating what the Court assumed is a frivolous complaint. **See Appendix Pg.72, foot note 1** of the order denying Appellant's motion for extension. The purpose of the Court of Appeals is to review the decisions of the lower Court judges. The Court below was usurping the function of the Court of Appeals by preventing this Court from reviewing its decision. The Appellant has shown both excusable neglect and good cause.

The lower Court's order denying Appellant's motion for extension did not discuss any of the four factors listed by U.S. Supreme Court in **Pioneer Investment Services Co. v. Brunswick Associates LTD**, id the Supreme Court lay down four factors the Courts should consider in determining excusable neglect and good cause which were never discussed by the lower Court.

Judge Williams did not make finding on the excusable neglect and good cause. She did not discuss how her ruling complied with the factors established in ***Pioneer Investment Services Co. v. Brunswick Associates LTD, id,*** by U.S. Supreme Court. It will be highly prejudicial to the Appellant if his motion for extension of time to appeal the dismissal of his complaint is denied because the Appellant has been through a lot and lost a lot. He lost his job as an accounting auditor working with Naval Audit Service, was homeless for several years as he was searching for answers to his health problems and taking treatments which unveiled what had happened to him. The action of the Appellees rendered him completely disabled. His world was turned upside down. If there is any prejudice to the Appellees, it is nothing compared to what the Appellant has been through and is still going through.

The Appellees may argue that the Appellant filed his complaint outside the statute of limitation because they did that before the lower Court. The statute of limitation starts running in medical malpractice when the injury becomes known or should have been discovered with due diligence by the Appellant. The Appellant did not know the cause of his sickness until he started taking treatment from UCLA where investigative surgeries were performed on him and manmade devices were found and taken to forensic lab and analyzed. It was at this time the Appellant found out what was the cause of his ill health and who caused it. Under the discovery rule, this is the time the statute of limitation starts to run. In ***Bussineau v. President & Dir. of Georgetown, 518 A.2d 423 (D.C. 1986)***, the D.C. Court of appeal held "In sum, we make precise and explicit

what was perhaps imprecise but plainly implicit in *Burns* and subsequent cases. We reject the "cause in fact" rule and adhere to the following rule: for a cause of action to accrue where the discovery rule is applicable, one must know or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing". The Appellant received treatment from the Appellees and after a while started feeling ill. He did not know what was going on with him. He started speculating different reasons why what was happening to him could be happening. He went into internet research mode and found articles that made him suspect his employer as a possible suspect of his health issues because he testified against his employer before the U.S. Senate and also use their preferred doctors. As Appellant kept returning to his primary care physician, who referred him to do CT Scan of the head without contrast, CT Scan of Maxillofacial bones, Ex ray of thoracic spine, AP Lateral And Swimmers, Ex ray of the lumber spine 4 plus views, Ex ray of the cervical Spine 4 or 5 views, CT Humerus left without contrast, Ex ray of the Shoulder Left 2 plus views and CT of the chest without contrast. All these tests came back negative. This was in September of 2015. When Appellant found out that there was nothing wrong in these tests, he withdrew his lawsuit against his employer.

Meanwhile, Appellant health was taking a turn for the worst. His primary care physician decided to refer him for medical treatment from other states. His primary care physician referred him to Dr. Hall in Texas and Dr. Staninger in California. Dr. Hall check Appellant's prior imaging and found nothing. The Appellant went on to California to seek treatment from Dr. Staninger. Dr. Staninger conducted her own testing and found nothing, but she referred the Appellant to UCLA. At UCLA, the doctors did exploratory surgery on Appellant's forearm where he was developing

a tumor like lump at the exact spot where he was injected during the EKG test by Dr. Dorfman. The doctors at UCLA removed the tumor which they diagnosed as a Lipoma on May 8, 2015.

After the tumor was removed, Appellant was not getting any better and so he went back to Dr. Staninger who decided to test him for environmental exposure of toxins. Dr. Staninger found heavy metals and radiation poisoning in the Appellant's body which could come from any source. Dr. Staninger requested that the Appellant's primary care physician refer him for blood work which Appellant did at Quest diagnostic in California on May 16, 2025. Dr. Staninger dictated the presence of double-stranded DNA antibodies which she stated suggested genetic toxicology reaction. All these findings did not suggest the source of Appellant's illness. The Appellant, instead of getting better was getting worse as he continued to treat with Dr. Staninger in California and Dr. Hall in Texas and returning to his primary care physician in Virginia. As these doctors are unable to find the cause of Appellant's illness over the years. Dr. Staninger decided to have a second look at the lump that was removed from the Appellant's arm by sending it to a forensic laboratory for analysis. Fortunately, UCLA keeps any specimen removed from the human body for 10 years. It was at the forensic laboratory that they found out that in the lump tissue was embedded manmade non biological device. This happened on September 10, 2020. Subsequently, other non-biological manmade devices were found on other parts of Appellant's body where he was injected by these Appellees.

The Appellant served his notice of intent to sue on the Appellees on September 2, 2023, which extended the statute of limitation for additional 90 days which gives the Appellant to December 1, 2023, to file his complaint. Appellant filed his complaint on November 27, 2023, four days earlier because he had a doctor's appointment on the last day within which he should file the complaint.

Under the discovery rule, the statute of limitation for Appellant's claim will start running from December 1, 2023, and Appellant filed his claim on September 27, 2023, though four days early as a result of a medical appointment on the expiration of the 90 days. The Appellant due diligence resulted in his finding that the Appellees committed medical malpractice on him, and he suffered damages and as result of their negligence. The Court in ***Bussineau*** held that "the facts of the case and the analysis engaged in by the court make it clear that we required a finding of more than mere knowledge of injury and cause-in-fact to begin the statute of limitations running on a negligence claim". As in Bussubeau, the Appellant in the case at bar, had no expertise concerning the cause of his type of injury, he relied on the doctors to find out what was going on with him.

VI. CONCLUSION

There is ample evidence on the face of the Order denying appellant's motion for extension of time to file an appeal from the lower courts order granting appellee's motion for summary judgement that the court did not consider all the factors surrounding the delay in appellant's notice of appeal. The lower court's two page order did not do findings of fact for its ruling. From the face of the Order, Judge Williams did not establish the facts propounded in the U.S. Supreme Court case of ***Pioneer Investment Services Co. v. Brunswick Associates LTD, id.*** Based on the foregoing, her Order of denial should be revered.

Respectfully submitted,

_____/s/_____

Chidinma Iwuji, Esq. Bar #478118
Law Office of Chidinma Iwuji
419 7th Street, Suite 405
Washington, D.C. 20004

Tel: (571)-276-2136
Email: iwujicm@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was served on the attorneys for the Appellees through the D.C. Court of Appeals e-filing system this 24th day of March 2025.

_____/s/_____

Chidinma Iwuji, Esq.