IN THE
DISTRICT OF COLUMBIA COURT OF APPEALS

Appeal No. 24-CV-0654

Robert Newton,

Appellant

v.

Annette Grajny (Dorfman), et al

Appellees

Appeal from the Superior Court for the District of Columbia
(The Honorable Yvonne Williams)
Case No. 2023 CAB 007227

BRIEF OF APPELLEES

---

*Rachel I. Viglianti, Esq. (DC Bar No.: 984340)
rviglianti@gleason-law.com
Barry A. Harris, Esq. (D.C. Bar No.: 1601214)
bharris@gleason-law.com
11 North Washington Street, Suite 400
Rockville, Maryland 20850
301-294-0737 (Fax)
Counsel for Medical Faculty Associates, Inc.,

Crystal S. Deese, Esq. (DC Bar No. 454759)
Benjamin S. Harvey, Esq. (DC Bar No. 999409)
2300 N Street NW, Suite 300
Washington, DC 20037
(T) (202) 457-1600
(F) (202) 457-1678
cdeese@jackscamp.com
bharvey@jackscamp.com
Counsel for The Neurology Center, P.A., Philip Pulaski, M.D., and Ezra Cohen, M.D.

The George Washington University, Charles Samenow, M.D., and Annette Dorfman, M.D.
GOODELL, DeVRIES, LEECH & DANN, LLP

K. Nichole Nesbitt, Esq. (DC Bar No. 469793)
knn@gdldlaw.com
Ifeanyi O. Ezeigbo, Esq. (DC Bar No. 1658663)
iezeigbo@gdldlaw.com
One South Street, 20th Floor
Baltimore, Maryland 21202
(T) (410) 783-4000
(F) (410) 783-4040
Counsel for Defendant District Hospital Partners, L.P., d/b/a The George Washington University Hospital

Rule 26.1(a) Corporate Disclosure Statement

Medical Faculty Associates, Inc., The George Washington University, District Hospital Partners, LP, and the Neurology Center do not have corporate subsidiaries.

Rule 28(a)(2) LIST OF PARTIES AND COUNSEL

The parties and their counsel in this matter are:

Parties	**Counsel**
Medical Faculty Associates, Inc., The George Washington University, Charles Samenow, M.D., and Annette Dorfman, M.D., *Appellees*	Rachel I. Viglianti, Esq. (DC Bar No.: 984340) rviglianti@gleason-law.com

	Barry A. Harris, Esq. (D.C. Bar No.: 1601214) bharris@gleason-law.com 11 North Washington Street, Suite 400 Rockville, Maryland 20850 (T) (301) 294-2110 (F)301-294-0737
The Neurology Center, P.A., Philip Pulaski, M.D., and Ezra Cohen, M.D., *Appellees*	Crystal S. Deese, Esq. (D.C. Bar No. 454759) cdeese@jackscamp.com Benjamin S. Harvey, Esq. (D.C. Bar No. 999409) bharvey@jackscamp.com 2300 N Street NW, Suite 300
District Hospital Partners, L.P., d/b/a The George Washington University Hospital, *Appellee*	K. Nichole Nesbitt, Esq. (D.C. Bar No. 469793) knn@gdldlaw.com Ifeanyi O. Ezeigbo, Esq. (D.C. Bar No. 1658663) iezeigbo@gdldlaw.com One South Street, 20th Floor Baltimore, Maryland 21202 (T) (410) 783-4000 (F) (410) 783-4040
Robert Newton *Appellant*	Chidinma Iwuji, Esq. Law Office of Chidinma Iwuji 419 7th Street, Suite 405 Washington, D.C. 20004

Dismissal of the original action was granted prior to trial, thus no counsel appeared in the trial court. However, the above defense counsel were involved in

Defendants' Motions to Dismiss. Counsel further certifies that no individual has filed an amicus brief in connection with this appeal.

These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

Dated: 24 April 2025

Respectfully submitted,

/s/ Rachel I. Viglianti
Rachel I. Viglianti, Esq. (DC Bar No.: 984340)
rviglianti@gleason-law.com
Barry A. Harris, Esq. (D.C. Bar No.: 1601214)
bharris@gleason-law.com
11 North Washington Street, Suite 400
Rockville, Maryland 20850
301-294-0737 (Fax)
Counsel for Medical Faculty Associates, Inc., The George Washington University, Charles Samenow, M.D., and Annette Dorfman, M.D.
GOODELL, DeVRIES, LEECH & DANN, LLP

/s/ K. Nichole Nesbitt
K. Nichole Nesbitt, Esq. (DC Bar No. 469793)
knn@gdldlaw.com
Ifeanyi O. Ezeigbo, Esq. (DC Bar No. 1658663)
iezeigbo@gdldlaw.com
One South Street, 20th Floor
Baltimore, Maryland 21202
(T) (410) 783-4000
(F) (410) 783-4040
Counsel for Defendant District Hospital Partners, L.P., d/b/a The George Washington University Hospital

/s/ Crystal S. Deese
Crystal S. Deese, Esq. (DC Bar No. 454759)
Benjamin S. Harvey, Esq. (DC Bar No. 999409)
2300 N Street NW, Suite 300
Washington, DC 20037
(T) (202) 457-1600
(F) (202) 457-1678
cdeese@jackscamp.com
bharvey@jackscamp.com
Counsel for The Neurology Center, P.A., Philip Pulaski, M.D., and Ezra Cohen, M.D.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES/RULES

STATEMENT OF JURISDICTION

This appeal is from a final judgment that disposes of all parties' claims. *See* D.C. Court of Appeals Rule 28(a)(5).

ISSUES PRESENTED[1]

1. Whether the trial court appropriately denied Mr. Newton's Motion for Leave to Late File Notice of Appeal.

2. Whether a *pro se* plaintiffs reliance on information provided by a Clerk of the Court constitutes good cause.

3. Whether a *pro se* Plaintiff can rely solely on the information in the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook ("handbook").

4. Whether the "extenuating circumstances" supporting a *pro se* Plaintiff's Motion for Leave to Late File an Appeal retain their legal merit upon subsequent retention of counsel.

RELEVANT FACTS

The facts of this case begin well before the filing of Mr. Newton's lawsuit against The Neurology Center, P.A., Philip Pulaski, M.D., Ezra Cohen, M.D., Medical Faculty Associates, Inc., The George Washington University, Charles

1 Mr. Newton's Statement of Issues appears to be related to the lower court denying his motion to late file his appeal. However, his arguments include arguments related to Judge Willams' Order dismissing Mr. Newton's case. Appellees have limited this brief to the Statement of Issues raised by Mr. Newton and Appellees in their briefs. Appellees have concurrently filed a Renewed Motion for Summary Affirmance, which is incorporated herein, should this Court deem it necessary to rule on Judge Williams' Order dismissing Mr. Newton's case. Appx 1, Renewed Motion for Summary Affirmance.

Samenow, M.D., Annette Dorfman, M.D, and District Hospital Partners, LP, d/b/a The George Washington University Hospital ("Appellees"). The timeline below is to help the Court fully understand the relevant facts of this case:[2]

- 02/1/2010: Mr. Newton began working for the Naval Audit Service.
- 10/29/2011: Mr. Newton presented to The George Washington University Hospital ("GWUH") Emergency Department with complaints of auditory hallucinations and paranoid delusions. He was evaluated by Annette Dorfman, M.D., and a Psychiatry Resident, Amanda Holloway, M.D. *See* Appx. 3 D.C. Compl. at ¶10.
- 12/5/2011: Ezra Cohen, M.D. and Philip Pulaski, M.D., evaluated Mr. Newton at The Neurology Center and performed an electroencephalogram (EEG). *Id*. at ¶16.
- **07/15/2015:** Mr. Newton filed a lawsuit in the Eastern District of Virginia, Alexandria Division, against Ray Mabus, Secretary of Navy alleging, *inter alia*, that:

    1. A condition of his employment was to allow the Navy to implant foreign objects in his body. *See* Appx. 2 Navy Compl. at ¶¶ 20, 22;

2 The facts presented regarding Mr. Newton's allegations against the Navy have been condensed in the interest of judicial efficiency. For an entire recitation of Mr. Newton's allegations, see Appx. 2 Navy Complaint.

2. 04/06/2010: An RFID was implanted in his mandible by agency personnel. *Id*. at ¶ 22;

3. 04/26/2010: An RFID was implanted during a dental visit. *Id*. at ¶ 23;

4. 10/29/2011: **GWUH implanted additional RFIDs. *Id*. at ¶¶ 30, 61, and FN 15.**

5. **12/5/2011: Doctors at the Neurology Center implanted something in his head. *Id*. at ¶ 62**.

6. 08/06/2012: The RFID implants caused Mr. Newton to become permanently disabled. *Id*. at ¶¶ 25, 29;

7. The aforementioned RFID/foreign objects were discovered by experts. *Id*. at ¶13;

8. 02/07/2015: Mr. Newton introduced evidence and expert witness reports, including a report from Ben Colodzin, Ph.D., who concluded that Mr. Newton had markers of advanced nanotechnology in his physical body. *Id*. at ¶106. *See* also Appx. 4 Colodzin Report p. 1;

- 01/05/2015: Mr. Newton filed a motion to seal the 2015 case stating that if the case "continued to be made available to the public, [it] could prejudice his future claims." Appx. 5, Mot. to Seal-Navy;

- THE CASE WAS DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; Appx. 6, Dismissal-Navy;

- **09/02/2023**: Mr. Newton sent a Notice of Intent to File Lawsuit;[3]

3 He sent the Notice for The George Washington University to Rachel I. Viglianti, Esquire, who is not the registered agent for GWU.

- 10/17/2023: Mr. Newton's corrected Notice of Intent to File Lawsuit was received by Defendants. *See* FN 3;

- 10/29/2023 and 10/30/2023: Second corrected Notice of Intent to File Lawsuit was received by Defendants. *See* FN 3;

- **11/27/2023**: Mr. Newton filed his lawsuit in the Superior Court for the District of Columbia; *See* Appx. 3, D.C. Compl.

- 02/09/2024: District Hospital Partners, LP d/b/a The George Washington University Hospital filed a Motion to Dismiss Mr. Newton's Complaint;

- 02/12/2024: The Neurology Center, P.A., Philip Pulaski, M.D., Ezra Cohen, M.D., Medical Faculty Associates, Inc., The George Washington University, Charles Samenow, M.D., and Annette Dorfman, M.D., filed a joint motion to dismiss Mr. Newton's Complaint;

- 02/28/2024: Mr. Newton filed his opposition to Defendants' motion to dismiss;

- 03/06/2024: Defendants filed their Reply to Mr. Newton's opposition to their motion to dismiss;

- 03/11/2024: The Honorable Yvonne Williams GRANTED Defendants' motion to dismiss, and the Clerk entered it on the docket. *See* Appxs. 7 and 8, Judge Williams' Order-MTD and Register of Actions – 2023-CAB-007227.

- 3/11/24: The Court emailed and mailed a copy of the Order to the email address and physical address listed in the "Copies to" section of the March 11, 2024 Order, which match the email address and physical address on Plaintiff's February 28, 2024 Opposition to Motion to Dismiss. *Compare* 2/28/24 Opp. with 3/11/24 Order.

- 04/12/2024: Mr. Newton conceded that he was provided notice that the case was dismissed. *See* Plf. Mot. for Leave at ¶¶ 5-6;

- 05/10/2024: Chidinma Iwuji, Esquire, entered her appearance on behalf of Mr. Newton and filed a Motion for Leave to Late File Appeal. *See* Iwuji Praecipe; *see also* Motion for Leave;

- 05/24/2024: Defendants filed their opposition to Mr. Newton's motion for leave to late file notice of appeal;

- 06/20/2024: The Honorable Yvonne Williams DENIED Mr. Newton's Motion for Leave to Late File His Appeal. *See* Judge Williams' Order-Mot. for Leave.

STATEMENT OF THE CASE

This case is a frivolous medical malpractice case in which Mr. Newton alleges he was implanted with radio frequency identification sensors ("RFID") in 2011 by Appellees. It is the same case he tried to bring against the United States Navy in 2015, in which he implicated the same healthcare providers as he named in his Complaint that is the subject of this appeal. Mr. Newton's allegations in his

Complaint against the Navy and his allegations against Appellees, which Mr. Newton filed approximately 13 years apart, are identical. *See generally,* Appxs. 2 and 3, Navy Compl., and D.C. Compl.

The lower court dismissed Mr. Newton's case for multiple reasons. The Court determined that Mr. Newton was barred by the statute of limitations and that his allegations were frivolous. The Court entered its order and docketed the order on March 11, 2024. *See* Appxs. 7 and 8, Judge Williams' Order-MTD, and Register of Actions – 2023-CAB-007227.

Mr. Newton then retained an attorney, Chidinma Iwuji, Esquire, to file an appeal against the order of dismissal. On May 10, 2024, Ms. Iwuji filed a Motion for Leave to Late File Appeal. *See* Plf. Mot. for Leave.

ARGUMENT SUMMARY

Mr. Newton glosses over the factual flaws of his original case and presents a limited/narrow argument on appeal. Mr. Newton attempts to convince this Court that the Superior Court erred in denying his Motion for Leave to Late File Appeal in this case by alleging multiple irregularities that occurred, which prevented Mr. Newton from timely filing his Notice of Appeal.

Mr. Newton incorrectly states that, as a *pro se* plaintiff, he is allowed to rely upon the Clerk of the Court and the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* guide. However, there are two fatal flaws in

that statement. First, it is well settled in the District of Columbia that parties cannot rely on off the record communications with non-judicial employees who provide incorrect advice to constitute good cause. *See Frazier v. Underdue-Frazier*, 803 A.2d 443, 444 (D.C. 2002). Second, Mr. Newton did not file his Motion for Leave to Late File His Appeal as a *pro se* party. Mr. Newton hired Chidinma Iwuji, Esquire, an attorney, to file his motion for leave. Clearly Ms. Iwuji knew that the time to file an appeal had passed before she filed Mr. Newton's motion, otherwise she would have just filed the appeal. The law is clear. Mr. Newton's Motion for Leave was absolutely barred by statute and the judge had no discretion to grant the motion even if she had believed Mr. Newton proved good cause for not filing a timely appeal. Thus, Judge Williams' Order must be affirmed.

ARGUMENT

I. Judge Williams appropriately denied Mr. Newton's Motion for Leave to Late File Notice of Appeal.

Mr. Newton's Motion for Leave to Late File Appeal is time barred and borders on the frivolousness of his original Complaint. While Mr. Newton alleges multiple irregularities leading to him not being aware that the case was dismissed until April 12, 2024, which even if true, he cannot overcome case law, the Superior Court Rules of Civil Procedure, or the District of Columbia Appellate Rules. Thus, Judge Williams' Order denying Mr. Newton's Motion for Leave to Late File Appeal must be affirmed.

A. D.C. Court of Appeals Rule 4(a)(7)(B) barred Judge Williams from utilizing her discretion in her decision to deny Mr. Newton's motion.

The Superior Court entered an order denying Mr. Newton's Motion for Leave to Late File Appeal on March 11, 2024. The Order was docketed on the same date. *See* Appx. 8, Register of Actions – 2023-CAB-007227. Mr. Newton alleges that he was not notified by the Court that the case had been dismissed until April 12, 2024. *See* Plf. Mot. for Leave. He argues that the following irregularities caused him to miss the appeal deadline:

- When he went to file his response to Defendants' joint motion to dismiss his complaint, Ms. Clark, a civil clerk, incorrectly informed Mr. Newton that no new orders had been entered since February 22, 2024. *See* Plf. Mot for leave;
- On April 12, 2024, Ms. Clark informed Mr. Newton the case had been dismissed and provided Mr. Newton with the order and notice of the case dismissal. *Id*. at ¶¶ 5-7;
- The email containing the Order was sent to an incorrect email address. *Id*. at 9;
- On April 12, 2024, Mr. Newton alleges that "[t]he clerk advised him that he can still file a notice of appeal within 30-day (sic) 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."[4] *See* Plf. Brief at 5.

Based on the above alleged irregularities, Mr. Newton argues that Judge Williams abused her discretion when denying Mr. Newton's Motion to Late File His Appeal.

---

4 This argument was not raised in Mr. Newton's motion for leave to late file his appeal.

Mr. Newton incorrectly relies on D.C. Ct. App. R. 4 and *Dist. of Columbia v. Watkins*, 684 A.2d 395, (D.C. 1996), discussed *infra*, to support his claim for good cause. Rather than discuss D.C. Ct. App. R. 4 in its entirety, Mr. Newton provides selective citations to the Rule that benefit his argument. Mr. Newton relies on D.C. Ct. APP. R. 4(5)(A)(ii) to state that the lower court *could* extend the time for filing an appeal if there were excusable neglect and good cause. Plf. Brief at 7-8.

As with D.C. Super. Ct. R. Civ. P. 77, discussed *infra*, Mr. Newton misconstrues D.C. Ct. App. R. 4 by extracting its provisions from their intended context, thereby distorting the rules' fundamental legal principles. Mr. Newton relies on Rule 4(a)(5)(A)(ii) while ignoring the remainder of the Rule. Rule 4(a)(5), Extension of Time, states "(A) The Superior Court may extend the time for filing the notice of appeal if: (i) a party files the notice of appeal no later than 30 days after the time prescribed by Rule 4 (a) expires; *and* (ii) that party shows excusable neglect or good cause." *Id*. (emphasis added). This aspect of the Rule, while, on its own, precluded the lower Court from granting Mr. Newton's motion. Moreover, the remainder of the Rule focusing on civil appeals lends further support to prove that the lower court did not have discretion to grant Mr. Newton's motion.

D.C. Ct. App. R. 4(a)(6) clarifies that for the purpose of filing an appeal, an order signed outside the presence of the parties and counsel is considered to have been served on the fifth day (March 16, 2024) after the order was entered on the docket. Rule 4(a)(6)

read in conjunction with the entirety of Rule 4(a)(7), *prohibit* the lower court from granting Mr. Newton's motion for leave.

Rule 4(a)(7) states that a court may reopen the time to appeal for an additional 14 days,

> *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 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."

Rule 4(a)(7) (emphasis added).

Mr. Newton's argument that the phrase "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 "the order to reopen the time to appeal and not the order from which the Appellant is appealing from[,]" is nonsensical in and of itself and when the Rule is read in its entirety. Plf. Brief at 12 (internal quotation marks excluded). Appellees agree that Judge Williams could have, but was not required to, reopen the time for Mr. Newton to file an appeal had Mr. Newton: (1) filed a motion within 14 days of receiving notice of the order (April 26, 2024, 14 days after April 12, 2024) requesting the court reopen his time to appeal and (2) had good cause for missing the original appeal deadline.

Mr. Newton concedes that he received a copy of the Order on April 12, 2024. Plf. Brief at 6 (stating the clerk printed the order for Mr. Newton on April 12, 2024). *See also* Plf. Appx. at 1 ¶ 4, Sworn Affidavit of Barbara West (stating the clerk handed Mr. Newton a copy of the order). As noted, *supra*, Rule 4(a)(7) only allows a judge to grant a Motion for Leave to Late File Appeal if *all* the conditions listed in the Rule are met. Per Rule 4(a)(6), Mr. Newton was provided notice on March 16, 2024. However, whether Mr. Newton received notice of the order prior to April 12, 2024, is irrelevant because he admits notice on April 12, 2024, and still failed to file a timely Notice of Appeal by April 26, 2024. The clerk handed Mr. Newton the Order on April 12, 2024. *See* Plf. Appx. at 1 ¶ 4, Sworn Affidavit of Barbara West. Thus, Judge Williams would have had discretion to reopen the time for Mr. Newton to file a Motion for Leave to Late File His Appeal had the motion been filed by April 26, 2024, 14 days after Mr. Newton had definitively received the order. After that 14-day period expired, Judge Williams was barred from granting Mr. Newton's motion.

Additionally, Judge Williams found that Appellees would be prejudiced by allowing Mr. Newton to late file his appeal. Judge Williams held that "[Mr. Newton's] Complaint is frivolous and insufficient to state any claim upon which relief may be granted[,]" thus granting Mr. Newton's motion "would undoubtedly prejudice Defendants by permitting [Mr. Newton] to further litigate his frivolous Complaint in the

District of Columbia Court of Appeals." Appx. 7, Judge Williams' Order-MTD at FN 1.

B. D.C. Superior Court Rule of Civil Procedure 77 does not provide Mr. Newton with an avenue to late file his appeal.

Mr. Newton 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…." (emphasis in original). Plf. Brief at 9. To further support his argument, Mr. Newton relies on *Dist. of Columbia v. Watkins*, 684 A.2d 395, (D.C. 1996), which required the court clerk to mail an order to the last known address of the parties. When the clerk inadvertently mailed the Order to an incorrect address, the Court held that that constituted excusable neglect. However, the facts of *Watkins* are not on point with the facts of the instant case or the Rules of Civil Procedure that apply in this case.

The *Watkins* case went to trial in 1993 and went to the Court of Appeals in 1996. The *Watkins* Court denied Defendant's post-trial motion for judgment notwithstanding the verdict and docketed the order on October 5, 1993. The clerk sent the order to the Defendant's old address. Defendant did not learn of the order until December 21, 1993, when Mr. Watkins' attorney called to inquire about payment of the judgment. At that time, the Courts were required to mail Orders to the parties. Mr. Newton argues that the Clerk's failure to mail a copy of the Order to

his last known address is equivalent to what occurred in *Watkins*. As noted, *supra*, Mr. Newton argues that D.C. Super. Ct. R. Civ. P. 77(d) requires the clerk to mail the order to his last known address. This is an incorrect interpretation of the law. D.C. Super. Ct. R. Civ. P. 77(d)(1) provides that service must be made as provided by Rule 5(b). In 2022, the D.C. Superior Court's e-filing system went live. Rule 5(b)(2)(E) was updated to incorporate e-service as a way to serve the parties. *Id*. Rule 5(b)(2)(E) states that "[a] paper is served under this rule by…(E) sending it to a registered user using the court's electronic-filing system…." *Id*. While the Rule says service is not effective if the filer or sender learns that it did not reach the person served, Mr. Newton has provided no proof that he did not receive the Order. Mr. Newton was a registered user of the e-filing system and had been receiving filings via the e-filing system. *See* Appx: 9, D.C. Complaint package extract at 17-19, 21-22 (showing e-filed date stamps for Mr. Newton's filings that he filed prior to the order dismissing the case). *See also*, Plf. Brief at 5. As Mr. Newton was a registered user of the Court's e-filing system, the clerk was not required to mail Mr. Newton the order dismissing the case.

Mr. Newton provides screenshots of his emails to support his claim that he did not receive the order. However, he does not provide the full context of his emails. Plf. Appx. at 3-4. The emails from Plf. Appx. page 3 shows a focused inbox for an unknown email address. It does not show his entire inbox or his deleted items, junk,

or other folders where emails may be stored, nor does it show any filings received from the e-filing system, despite his admission that he was receiving filings from the e-file system prior to the Order in question. Plf. Brief at 5. Additionally, another unknown email address on Plf. Appx. page 4, shows only those emails containing "Matthew.Banaitis@dcsc.gov." *See* Plf. Appx. page 4 (search bar showing the search term "Matthew.Banaitis@dcsc.gov.") Nonetheless, Mr. Newton provides the evidence that the order was emailed and mailed to him on March 11, 2024. As an exhibit to his motion in the lower court, Mr. Newton provided an email from Danielle V. Godwin, Judge Williams Law Clerk that confirmed the order was mailed to the address listed for him on the order and emailed a copy to johnjddoe24@outlook.com, the email address he was using for this case. Appx. 10, Godwin Email. The fact that another email went to the incorrect address and bounced back to the court is immaterial.

As Mr. Newton has provided no proof that he did not receive the Order dismissing his case, he cannot prove good cause or excusable neglect, and Judge Williams' ruling must be affirmed.

II. Mr. Newton lacked good cause and excusable neglect to support his motion.

Assuming arguendo, that this Court determines that Judge Williams had discretion to grant Mr. Newton's motion for leave, Mr. Newton did not and cannot

prove he had good cause for Judge Williams to grant his motion. Mr. Newton relies on three factors to support his claim for good cause. First, Mr. Newton relies on the claim that he did not receive the order of dismissal until April 12, 2024, which has been fully briefed, *supra*. Second, Mr. Newton relies on the misinformation he claims the civil clerk provided him, and finally, Mr. Newton relies on "inaccurate information" in the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook. None of these provide good cause for Mr. Newton missing the deadline to file a Motion for Leave to Late File His Appeal; thus, Judge Williams' ruling must be affirmed. Mr. Newton, through counsel, did not raise alleged reliance on alleged advice from the civil clerk, or the *Representing Yourself in Civil Appeal Handbook* in his motion for leave to late file his notice of appeal. *See* 05/10/2024 Motion for Leave. Failure to raise factual issues when litigating in the trial court allows the issue to be properly disregarded on appeal. *See D.C. v. Helen Dwight Reid Educ. Found.*, 766 A.2d 28, 31 (D.C. 2001); *Pajic v. Foote Props., LLC*, 72 A.3d 140, 145 (D.C. 2013); *Thompson v. United States*, 322 A.3d 509, Nos. 20-CO-0294, 22-CO-0312 (D.C. Sept. 5, 2024); *see also Johnson v. Fairfax Vill. Condo. IV Unit Owners Ass'n*, 641 A.2d 495, 502 (D.C. 1994) ("Issues not raised first in the trial court generally will not be considered on appeal.").

Further, it seems clear that Mr. Newton did not rely on any information provided to him by the Clerk or within the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook.

Had Mr. Newton relied on the information contained within the handbook and the information allegedly provided to him by the clerk, Mr. Newton would have filed an appeal within 30 days of definitively receiving notice of the Order. Had he done that and then hired Ms. Iwuji, he would have an argument that he relied on the aforementioned advice of the clerk and/or the handbook.[5] However, he did not. Rather than file an appeal, Mr. Newton hired Ms. Iwuji to file a motion to late file appeal. He did not retain Ms. Iwuji to handle an appeal on the merits of the case. He simply retained her to late file his appeal. *See* Plf. Mediation Statement (stating Ms. Iwuji does not know if this case is appropriate for mediation because the only relief being sought is for Mr. Newton to late file his appeal.)

A. *A party's r*eliance on information provided by a court clerk does not constitute extraordinary circumstances that equate to good cause or excusable neglect for missing a deadline.

Mr. Newton claims "extraordinary circumstances" because the civil clerk, Ms. Clark informed him, on March 22, 2024, that no new orders were filed since

5 Appellees are not conceding that his reliance on the Clerk and handbook would constitute good cause for Mr. Newton to late file his appeal, this argument is strictly to prove Mr. Newton did not rely on the aforementioned sources.

February 22, 2024. *See* Plf. Mot. for Leave at ¶ 4. *See also* Plf. Appx. 1, West Aff. ¶ 3 (providing the alleged date of the conversation). Mr. Newton also alleges that Ms. Clark told him he had 30 days from the date of notification to file his appeal. Nonetheless, Mr. Newton did not actually rely on information allegedly provided to him by Ms. Clark because Mr. Newton never filed an appeal. Assuming arguendo, that Mr. Newton did rely on information from Ms. Clark, the case law does not support Mr. Newton's claim. The Court of Appeals has held that "only official judicial action occasions the justifiable reliance required by the unique circumstances doctrine."[6] *Frazier v. Underdue-Frazier*, 803 A.2d 443, 444 (D.C. 2002). While Mr. Newton identified the clerk unlike the appellant in *Frazier*, the ultimate ruling does not change based on identifying the specific court employee because "the unique circumstances doctrine is limited to judicial actions or statements, which are matters of record[,]" and "do not include misinformation provided by nonjudicial personnel. *Id*. Plainly stated, Mr. Newton's reliance on the

6 While extraordinary circumstances/excusable neglect and the unique circumstances doctrine are not identical, they are substantially similar to be interchangeable in this situation. Excusable neglect is a term to describe "inadvertence, mistakes, carelessness, or other intervening circumstances beyond a party's control. Cornel Law School Legal Information Institute. https://www.law.cornell.edu/wex/excusable_neglect. Last accessed May 17, 2024. Extraordinary circumstances are "situations that are unexpected, unusual, and beyond the control of a person or organization." LSD.law. https://www.lsd.law/define/extraordinary-circumstances. Last accessed May 17, 2024.

information from the clerk does not meet the standard for extraordinary circumstances or excusable neglect.

Mr. Newton further alleges that the clerk provided him with "the notice of Appeal (sic) which also had 30 days limitation (sic) for appeal in it." Plf. Brief at 13. While Appellees are unsure of what Mr. Newton is alleging to have been provided by the clerk, elsewhere, he references an appeal form that the clerk provided him on April 12, 2024. Plf. Brief at 7. Form 1, *Notice of Appeal Tax, Civil, Family Court – (Except Juvenile Cases), and Probate*, downloaded from the Superior Court of the District of Columbia's website, does not provide any information regarding the timing in which a party must file an appeal. Appx. 11, Form 1. Thus, Mr. Newton was likely referring to the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook, discussed *infra*.

B. Mr. Newton's reliance, inaccurate reliance, or lack of reliance on the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook does not constitute extraordinary circumstances that equate to good cause or excusable neglect for missing a deadline.

Mr. Newton argues that the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook had incomplete information, and as a *pro se* party, he could rely on the information in the handbook. However, the handbook explains that *pro se* parties must follow the rules of the court. Appx. 12,

Representing Yourself in a Civil Appeal Handbook. Furthermore, Mr. Newton did not rely on the handbook.

i. *Pro se* parties must follow the same rules as parties represented by counsel.

Pro se parties are required to follow the Rules of Civil Procedure and cannot expect special treatment from the court. *MacLeod v. Georgetown Univ. Med. Ctr.*, 736 A.2d 977, 979 (D.C. 1999). *See also* Appx. 13, Superior Court of the District of Columbia *Handbook for People Who Represent Themselves in Civil Cases* at 7 (stating that "the same rules apply to parties who do not have lawyers as to the parties who do have lawyers."), Appx. 12, District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook (stating "[t]he Rules control the whole appeal process and if you don't follow them you can ruin your appeal[, a]nd don't expect special treatment just because you're representing yourself, ***everyone*** has to follow the Rules." (emphasis in original)). However, *pro se* parties are not expected to entirely fend for themselves. *MacLeod*. Indeed, the District of Columbia Courts have taken multiple steps to assist *pro se* parties. *Id*. One example is the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook, which "set[s] forth basic information to aid the *pro se* litigant…." *Id*. at FN 5.

The District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook is designed for *pro se* parties who find themselves in the appeals process. Nonetheless, Judges are not required to supplement the handbook when a specific problem arises during trial or appeal that is not discussed in the handbook. *MacLeod*, *supra*. Finally, the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook, specifically, states on the bottom of page one: "**BUT REMEMBER, THE COURT'S RULES CONTROL AND YOU SHOULD ALWAYS FOLLOW THEM, NO MATTER WHAT THIS GUIDE SAYS.**"

District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook (emphasis in original). Appx. 12.

ii. Mr. Newton did not rely on, or accurately rely on, the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook.

Assuming *arguendo*, that Mr. Newton relied on the District of Columbia Court of Appeals *Representing Yourself in a Civil Appeal* handbook, he failed to accurately interpret the handbook. As discussed, *supra*, Mr. Newton alleges that one reason he failed to file a timely appeal is because the clerk provided him with "the notice of Appeal (sic) which also had 30 days limitation (sic) for appeal in it." Plf. Brief at 13. Assuming that Mr. Newton was referring to the District of Columbia

Court of Appeals *Representing Yourself in a Civil Appeal* handbook, his argument is analytically indefensible.

The handbook explicitly states that "[y]ou have to file an appeal within 30 days after the Superior Court enters a final judgment. Don't be late!" Appx. 12 Representing Yourself in a Civil Appeal Handbook at 3. While Mr. Newton claims he was not provided with the order until April 12, 2024, the Order he was handed on April 12, 2024, dismissing the case, was dated March 11, 2024. Thus, if Mr. Newton relied on the handbook, he would have been required to file his appeal by April 10, 2024, because the handbook does not say 30 days from receipt of notice. Thus, his reliance on the handbook to argue that he had until May 10, 2024, to file his appeal is devoid of logical merit. While Mr. Newton claims he relied on the handbook, the facts show otherwise. As Mr. Newton did not rely on the handbook, he cannot utilize reliance on the handbook as good cause to late file his Notice of Appeal, and Judge Williams' order must be affirmed.

III. Mr. Newton cannot claim the protection or grace afforded to a *pro se* party.

"Pro se is a Latin term meaning for oneself." Us District Court for the District of Columbia Pro Se Non-Prisoner Handbook at 2 (internal quotation marks omitted). Plainly stated, a *pro se* litigant is a litigant who represents him or herself in litigation.

Mr. Newton *was* a *pro se* litigant when he filed his lawsuit in the Superior Court. However, as soon as he hired Ms. Iwuji, an attorney, he was no longer a *pro se* litigant. While the timing of Mr. Newton retaining Ms. Iwuji is unknown to Appellees, one thing is clear, Mr. Newton did not file a Notice of Appeal as a *pro se* party, thus he cannot claim that he can rely on the alleged misinformation from the clerk and the handbook because he is *pro se*. Following Mr. Newton's retention of Ms. Iwuji, she did not file an appeal on Mr. Newton's behalf. Rather, she filed a motion to late file an appeal and attached a Notice of Appeal to the motion. Clearly, Mr. Newton was not *pro se* when he filed his motion that is the subject of this appeal, and as a represented party, he cannot allege any misinformation provided to him was good cause to late file his Notice of Appeal.[5]

CONCLUSION

The Superior Court's Order denying Mr. Newton's Motion for Leave to Late File Appeal must be affirmed. First and foremost, Judge Williams was barred from granting Mr. Newton's motion by D.C. Ct. App. R. 4 and D.C. Super. Ct. R. Civ. P. 77(d) and therefore could not have abused her discretion.

Assuming, arguendo, this Court determines that Judge Williams did have the discretion to grant Mr. Newton's Motion, Mr. Newton was unable to provide good cause as to why he was not able to timely file a Notice of Appeal.

WHEREFORE, the foregoing considered, the undersigned respectfully asks this Honorable Court to affirm the ruling of the Superior Court that Mr. Newton is prohibited from late filing an appeal in this case.

Dated: Respectfully submitted,

/s/ Rachel I. Viglianti
Rachel I. Viglianti, Esq. (DC Bar No.: 984340)
rviglianti@gleason-law.com
Barry A. Harris, Esq. (D.C. Bar No.: 1601214)
bharris@gleason-law.com
11 North Washington Street, Suite 400
Rockville, Maryland 20850
301-294-0737 (Fax)
Counsel for Medical Faculty Associates, Inc., The George Washington University, Charles Samenow, M.D., and Annette Dorfman, M.D.
GOODELL, DeVRIES, LEECH & DANN, LLP

/s/ K. Nichole Nesbitt
K. Nichole Nesbitt, Esq. (DC Bar No. 469793)
knn@gdldlaw.com
Ifeanyi O. Ezeigbo, Esq. (DC Bar No. 1658663)
iezeigbo@gdldlaw.com
One South Street, 20th Floor
Baltimore, Maryland 21202
(T) (410) 783-4000
(F) (410) 783-4040
Counsel for Defendant District Hospital Partners, L.P., d/b/a The George Washington University Hospital

/s/ Crystal S. Deese
Crystal S. Deese, Esq. (DC Bar No. 454759)
Benjamin S. Harvey, Esq. (DC Bar No. 999409)
2300 N Street NW, Suite 300
Washington, DC 20037
(T) (202) 457-1600
(F) (202) 457-1678
cdeese@jackscamp.com
bharvey@jackscamp.com
Counsel for The Neurology Center, P.A., Philip Pulaski, M.D., and Ezra Cohen, M.D.

CERTIFICATE OF SERVICE

I hereby certify that that, on this 24th day of April 2025, a copy of Appellees Brief was electronically filed and served via the Court's electronic filing system upon:

Chidinma Iwuji, Esq.
Law Office of Chidinma Iwuji
419 7th Street, Suite 405
Washington, D.C. 20004
Counsel for Appellant

Crystal S. Deese, Esq. Benjamin S. Harvey, Esq.
2300 N Street NW, Suite 300
Washington, DC 20037
Counsel for The Neurology Center, P.A., Philip Pulaski, M.D., and Ezra Cohen, M.D.

K. Nichole Nesbitt, Esq.
Ifeanyi O. Ezeigbo, Esq.
One South Street, 20th Floor
Baltimore, Maryland 21202
Counsel for Defendant District Hospital Partners, L.P., d/b/a The George Washington University Hospital

/Barry A. Harris
Barry A. Harris