

Docket # 26-00207

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IN THE SUPERIOR COURT OF PENNSYLVANIA

JAMIE BRENSINGER and JEANNIE BRENSINGER,	:	756 MDA 2026
	:	
Appellees,	:	Berks County Docket No. 26-207
vs.	:	
	:	
PARKWAY POOLS AND PATIO, LLC,	:	
Appellant.	:	

OPINION, J. BENJAMIN NEVIUS, J.

June 22, 2026

Defendant/Appellant, Parkway Pools and Patio, LLC (“Appellant”), appeals from the Trial Court’s Order of April 22, 2026, denying Appellant’s Motion for Leave to File Appeal Nunc Pro Tunc (the “Nunc Pro Tunc Application”) from a judgment entered in Magisterial District Court. The Trial Court submits that Appellants have failed to (a) preserve an adequate record for appellate review, and (b) develop a sufficient record establishing its right to relief in any event. As such, the Trial Court’s Order should be affirmed.

I. FACTS AND PROCEDURAL HISTORY

Plaintiffs/Appellees, Jamie Brensinger and Jeannie Brensinger (“Appellees”), initiated this action against Appellant on September 17, 2025, by civil complaint in Magisterial District Court No. MDJ 23-3-03. [See MDJ Docket No. MJ-23303-CV-256-2025]. On November 12, 2025, Magisterial District Judge Steven Chieffo (“MDJ Chieffo”) entered a money judgment in favor of Appellees and against Appellant in the amount of \$9,011.11 (the “Judgment”).¹ Pursuant to Pa.R.Civ.P.M.D.J. 1002(A), Appellant had thirty days from entry of Judgment to file an appeal to the Court of Common Pleas. Accordingly, the appeal period expired on December 12, 2025.

¹ The Judgment reflects the outcome of the proceeding and amount awarded—it does not contain the hearing details, attendance information, or a notation as to whether Appellant submitted a notice of intent to defend and/or appeared for a hearing on the merits.

Appellant did not file a timely appeal. Instead, on January 6, 2026, Appellant filed the Nunc Pro Tunc Application—in it, Appellant alleges that, on December 11, 2025, counsel for Appellant sent the Notice of Appeal (from the Judgment) to the Berks County Prothonotary by Federal Express Priority Overnight, but the package was not delivered until December 15, 2025. Appellant therefore asserted that the untimely filing was caused by circumstances beyond its control and that it should be permitted to pursue a de novo appeal nunc pro tunc.

By Order dated January 9, 2026, the Trial Court issued a Rule to Show Cause directing Appellees to respond. Because the application presented issues of material fact concerning the circumstances of the attempted filing, the Trial Court scheduled an evidentiary hearing for February 17, 2026. On January 29, 2026, Appellees filed a response opposing nunc pro tunc relief, denying Appellant’s material allegations and asserting, among other things, that (a) Appellant waited until the final day before expiration of the appeal period to attempt filing by private carrier, (b) Appellant unreasonably delayed in seeking nunc pro tunc relief, and (c) Appellant failed to set forth any competent factual basis for relief.

On February 17, 2026, the Trial Court convened an evidentiary hearing. Following the hearing, and after consideration of the record, the arguments of counsel, and the applicable law, the Trial Court entered the Order of April 22, 2026, denying Appellant’s Nunc Pro Tunc Application. On May 7, 2026, Appellant filed a timely Notice of Appeal to the Superior Court. On May 29, 2026, Appellant filed a Concise Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) raising the following issues (set forth verbatim):

- (1) The Trial Court erred in denying Defendant/Appellant’s Motion for Leave to File Appeal Nunc Pro Tunc.

- (2) The issue on appeal is whether Appellant should be permitted to file an appeal to the Court of Common Pleas, from the Magisterial court, where the appeal was not permitted to be filed online and subsequently the appeal paperwork was filed one (1) day late due to an unexplained delay by the common carrier in delivering the filing. Said delay was beyond Defendant/Appellant's control as the carrier was paid for timely delivery of the appeal and no prejudice had/has occurred to any additional party as the delay of (1) day has caused no harm to any party other than Defendant/Appellant.

II. DISCUSSION

The Superior Court reviews an order denying nunc pro tunc relief for abuse of discretion. *See Union Elec. Corp. v. Bd. of Prop. Assessment, Appeals & Review of Allegheny Cnty.*, 746 A.2d 581, 583 (Pa. 2000); *see also Penn Sycamore Apartments Inc. v. Brooks*, 346 A.3d 768, 772 (Pa. Super. Ct. 2025); *Lobos Mgmt. v. Powell*, 330 A.3d 438, 441 (Pa. Super. Ct. 2025). An abuse of discretion is not merely an error of judgment; rather, discretion is abused where the law is overridden or misapplied, the judgment exercised is manifestly unreasonable, or the result reflects partiality, prejudice, bias, or ill will as shown by the evidence or the record. *Union Elec.*, 746 A.2d at 583; *Lobos*, 330 A.3d at 441.

The timeliness of an appeal implicates jurisdiction. *Penn Sycamore*, 346 A.3d at 772; *Lobos*, 330 A.3d at 441. Time limitations governing appeals are strictly construed, and a court may not enlarge an appeal deadline as a matter of grace, sympathy, or mere indulgence. *Criss v. Wise*, 781 A.2d 1156, 1159 (Pa. 2001). In the context of appeals from minor court judgments, the Court of Common Pleas cannot extend a deadline absent extraordinary circumstances, such as fraud, a breakdown in the process of the court, or a showing that the appeal was untimely because of non-negligent circumstances relating to the appellant or counsel. *Penn Sycamore*, 346 A.3d at 772.

The exception for non-negligent circumstances is narrow. It applies only in unique and compelling cases in which the appellant clearly establishes that it attempted to file the appeal, but unforeseeable and unavoidable events precluded it from doing so. *Criss*, 781 A.2d at 1160. A petitioner seeking nunc pro tunc relief based on non-negligent circumstances must establish that: (1) the notice of appeal was filed late as a result of non-negligent circumstances; (2) the notice of appeal, or petition seeking allowance of the late appeal, was filed shortly after the expiration date or within a reasonable time after the claimed extraordinary circumstance; and (3) the appellee was not prejudiced by the delay. *See Criss*, 781 A.2d at 1159-60 (discussing *Bass v. Com.*, 401 A.2d 1133 (Pa. 1979)).

Critically, lack of prejudice does not itself confer jurisdiction or require nunc pro tunc relief. The absence of prejudice is one component of the equitable analysis; it does not excuse the petitioner from proving that the untimely filing resulted from fraud, a breakdown in court operations, or extraordinary non-negligent circumstances. *See Criss*, 781 A.2d at 1159-60.

A. Waiver for Lack of Record on Appeal

As an initial matter, Appellant's issues are materially dependent on the evidence presented at the February 17, 2026, hearing. The Trial Court did not deny the Nunc Pro Tunc Application solely on the pleadings—the Trial Court issued a Rule to Show Cause and expressly scheduled an evidentiary hearing because disputed issues of material fact existed. The hearing was therefore the proceeding at which Appellant bore the burden of establishing the factual predicate for relief.

It is well-settled that an appellate court may consider only facts which have been duly certified in the record on appeal. *See Murphy v. Murphy*, 599 A.2d 647, 652 (Pa. Super. Ct. 1991) (citations omitted). The appellant bears the responsibility of providing the Superior Court with a complete and comprehensive record for review. *Com. v. Feflie*, 581 A.2d 636, 640 (Pa. Super. Ct.

1990) (citations omitted); *see also* Pa. R.A.P. 1911 (providing that “[t]he appellant shall request any transcript required under this chapter” and shall make any necessary payment or deposit required). Where a claim depends upon materials not included in the certified record, the claim is waived. *See Com. v. Proetto*, 771 A.2d 823, 834 (Pa. Super. Ct. 2001); *see also Com. v. Muntz*, 630 A.2d 51, 55 (Pa. Super. Ct. 1993).

Appellant has not caused the transcript of the February 17, 2026, evidentiary hearing to be included in the certified record. As such, meaningful appellate review is impossible. Without the transcript, the Superior Court cannot determine what testimony was presented, which witnesses testified, what exhibits were admitted, whether the Federal Express materials were authenticated, whether any evidence established counsel’s diligence, whether any evidence established when Appellant learned that the attempted filing had not been timely received, whether Appellant acted promptly thereafter, or whether Appellant otherwise satisfied its burden of proof. This is not a technical omission—Appellant asserts that the late filing resulted from an “unexplained delay by the common carrier” and that the delay was beyond Appellant’s control. Those assertions are evidentiary in nature. They cannot be evaluated in the abstract or from counsel’s allegations alone. With the hearing transcript absent from the certified record, Appellant’s challenges to the Trial Court’s discretionary determinations should be deemed waived.²

² In preparing this Opinion pursuant to Pa. R.A.P. 1925(a), the Trial Court reviewed the docket. Although Appellant averred in a separate statement accompanying the Notice of Appeal that “a transcript has been requested of the hearing held on February 17, 2026,” Appellant undertook no formal steps to secure preparation of the transcript in accordance with Pa. R.A.P. 1911 and Pa. R.J.A. 4007. Indeed, Pa. R.J.A. 4007(A) provides that “[a]ll requests for transcripts shall be set forth on a standardized form provided by the Court Administrator.” Apart from the bare assertion contained on the second page of the Notice of Appeal, the Record reflects no such request, nor any other effort to comply with the procedures governing transcript preparation. Consequently, no transcript of the February 17, 2026, hearing has been prepared or made available. As such, the Trial Court is compelled to prepare this Opinion based upon its notes, recollection of the proceedings, and the docket entries of record.

B. Appellant Failed to Establish a Breakdown in Court Operations

In the absence of waiver, Appellant nevertheless failed to establish grounds for relief. Appellant's theory does not involve a breakdown in the operations of the court system. Indeed, a breakdown in court operations generally involves conduct by a court, court office, administrative body, or judicial officer that misleads a party, prevents a filing, fails to give required notice, supplies incorrect information, or otherwise causes a litigant to lose appellate rights through the default of the judicial or administrative system. *See, e.g., Union Elec.*, 746 A.2d at 584-85 (unauthorized extension of statutory filing deadline by property assessment board constituted a breakdown warranting nunc pro tunc relief). Appellant has not set forth any evidence or allegation of fraud or of a breakdown in the court system that would warrant a late appeal.

Accepting as true the allegations set forth in the Nunc Pro Tunc Application (absent a transcription/record of proceedings), Appellant does not allege that the Berks County Prothonotary refused a timely filing, supplied incorrect information, misdocketed a filing, failed to give required notice, or otherwise contributed to the missed deadline. Nor did Appellant allege, much less establish, that the minor court misled Appellant regarding the appeal period. The asserted failure occurred, instead, within a private delivery service selected by Appellant to transmit jurisdictional appeal papers on the eve of the filing deadline. This distinction matters—a private carrier's failure to deliver a package when anticipated is not a breakdown in court operations. It is not the default of a court officer, the misstatement of a tribunal, or an administrative defect in the judicial process. Even assuming the Federal Express delay occurred exactly as alleged, the failure of a private carrier selected by a litigant does not constitute a breakdown in the operations of the judicial system. Accordingly, this case was properly analyzed, not as a court-breakdown case, but as a request for nunc pro tunc relief based on alleged non-negligent circumstances.

C. Appellant Failed to Establish Extraordinary, Non-Negligent Circumstances

The burden rests entirely upon Appellant to demonstrate extraordinary circumstances warranting the exercise of the Trial Court's equitable authority. The filing of a petition seeking nunc pro tunc relief does not itself satisfy that burden. Rather, the petitioner must establish through competent evidence that the untimely filing resulted from fraud, a breakdown in court operations, or other extraordinary and non-negligent circumstances sufficient to justify departure from an otherwise jurisdictional filing deadline. Appellant was afforded a full evidentiary hearing for that purpose. Following consideration of the testimony, exhibits, arguments of counsel, and applicable law, the Trial Court concluded that Appellant failed to satisfy its burden.

The Trial Court further recognizes that Appellant was not confronted with a sudden or unforeseeable deadline. MDJ Chieffo entered the Judgment on November 12, 2025, affording Appellant thirty days within which to perfect an appeal. The record appears to reflect that Appellant obtained the certified Notice of Judgment/Transcript from the Magisterial District Court on December 11, 2025,—*the day before expiration of the appeal period*—and included that document with its proposed appeal papers. [See Notice of Judgment/Transcript (printed Dec. 11, 2025, at 11:04 a.m.)]. Appellant then chose to transmit the appeal package by private overnight carrier rather than effect filing by some other means. The timing of that decision was a relevant consideration in assessing diligence and whether the ensuing delay was truly unforeseeable and unavoidable. Even accepting Appellant's factual assertions as true, the Trial Court was not compelled to conclude that entrusting a jurisdictional filing to a private overnight carrier on the eve of the filing deadline constituted the type of extraordinary, non-negligent circumstance warranting nunc pro tunc relief.

At bottom, Appellant’s position amounted to little more than an assertion that the chosen delivery service failed to perform as expected. The Trial Court did not find that showing sufficient to justify the extraordinary remedy requested. As *Criss*,³ *Lobos*, *Penn Sycamore*, and other cases binding upon this Trial Court make clear, appeal deadlines are to be strictly enforced and that nunc pro tunc relief is reserved for truly extraordinary situations. After considering the evidence presented at the February 17, 2026, hearing, the Trial Court concluded that Appellant failed to establish such circumstances. Because Appellant failed to satisfy its burden of proof, denial of nunc pro tunc relief was proper.

D. Appellant Failed to Act Promptly After Failing to Meet the Deadline

The Trial Court also acted within its discretion in concluding that Appellant failed to establish diligence after missing the appellate deadline. Nunc pro tunc relief requires not only a qualifying extraordinary circumstance, but also prompt corrective action after the circumstance occurs. *See Criss*, 781 A.2d at 1159-60; *Lobos*, 330 A.3d at 441 n.3. Critically, the promptness requirement applies universally: “whatever extraordinary circumstance is alleged as the reason for the late filing of the appeal—fraud, breakdown of the court’s operation through default of its officers, or non-negligent conduct on the part of appellant, appellant’s attorney, or the attorney’s staff—the petition to file the appeal nunc pro tunc must be filed within a reasonable time after the

³ *Criss* is strikingly similar to the present matter and is perhaps the closest published authority to the facts presented here. In *Criss*, counsel prepared paperwork to take an appeal from arbitration proceedings and entrusted the notice of appeal to the United States Postal Service. After missing the appellate deadline, Appellant argued that an unexpected delay in delivery constituted a non-negligent circumstance warranting nunc pro tunc relief. The Supreme Court rejected that argument and reinstated the trial court’s denial of relief, holding that mail delays are both “foreseeable and avoidable” and that litigants have a duty to anticipate them. *See Criss*, 781 A.2d at 1160. Thus, the Supreme Court rejected the contention that a party’s reliance upon a third-party delivery service, and its failure to account for potential delays in that service, constitutes the type of extraordinary, non-negligent circumstance warranting nunc pro tunc relief. Stated differently, the failure of a private carrier or the United States Postal Service to deliver jurisdictional appeal papers as anticipated does not, standing alone, excuse an untimely filing. It bears noting that counsel in *Criss* arguably acted with greater diligence than Appellant here, having entrusted the notice of appeal to the carrier six days before the filing deadline, rather than on the eve of it.

occurrence of the extraordinary circumstance.” *Amicone v. Rok*, 839 A.2d 1109, 1114 (Pa. Super. Ct. 2003). Moreover, as the Superior Court observed in *McKeown v. Bailey*, quoted with approval in *Amicone*, nunc pro tunc relief requires that “the time period which elapses is of **very short duration**.” *Amicone*, 839 A.2d at 1114 (quoting *McKeown*, 731 A.2d at 630) (emphasis added).

Here, Appellant’s own allegations establish the relevant timeline. The appeal papers were not received by the Prothonotary by the December 12, 2025, deadline and were not delivered until December 15, 2025. Appellant thus knew, or should have known, no later than December 15 that the filing had failed. Yet Appellant did not file its Nunc Pro Tunc Application until January 6, 2026—more than three weeks after the missed deadline and more than three weeks after delivery confirmed the failure. No explanation for that interval appears in the record. The evidentiary hearing was the appropriate forum for Appellant to address this gap. Appellant bore the burden of explaining what it knew and when, what steps it took to monitor delivery, what steps it took upon learning of the missed deadline, and what justification, if any, existed for the delay in seeking relief. To the Trial Court’s recollection, these questions went largely, if not entirely, unanswered.

The contrast with the case law is instructive. *See Bass*, 401 A.2d at 1135 (affirming nunc pro tunc relief where notice of appeal was filed four days late due to secretary’s sudden illness); *see also Cook v. Unemployment Comp. Bd. of Review*, 671 A.2d 1130, 1132 (Pa. 1996) (granting nunc pro tunc relief where claimant filed appeal four days late because he was hospitalized); *Amicone*, 839 A.2d at 1115-16 (relief denied even though a genuine court breakdown had occurred, because the petition was filed more than four months after the prothonotary rejected the appellant’s filing). Here, although the delay in seeking relief is shorter than in *Amicone*, Appellant—unlike the petitioner in *Amicone*—cannot even establish the threshold extraordinary circumstance. A three-week unexplained delay in seeking an extraordinary equitable remedy, by a party who has

failed to satisfy the predicate requirements for that remedy, is not the prompt corrective action the law demands.

Accordingly, the Trial Court was independently justified in denying relief on the ground that Appellant failed to seek it within a reasonable time, and the denial of the Nunc Pro Tunc Application was proper on this basis as well.

E. Lack of Prejudice Does Not Entitle Appellant to Relief

Appellant's Concise Statement also asserts that no prejudice resulted from the one-day delay in delivery. Even if accepted, the absence of prejudice is not a substitute for proof of fraud, a breakdown in court operations, or extraordinary non-negligent circumstances. Rather, lack of prejudice is considered only after the petitioner first establishes a legally sufficient reason for the untimely filing. *Criss*, 781 A.2d at 1159-60.

Appellees were entitled to the finality of the Judgment once the appeal period expired without an appeal. The Court of Common Pleas does not acquire authority to disregard jurisdictional appeal rules merely because a late appeal may seem harmless in hindsight. The rules governing appeals from the minor courts reflect a policy of finality and prompt review—prevailing parties are entitled to this, and courts must enforce applicable deadlines absent a recognized basis for nunc pro tunc relief. *See, e.g., Penn Sycamore*, 346 A.3d at 772-73; *see also, e.g., Lobos*, 330 A.3d at 441-42.

III. CONCLUSION

In sum, Appellant bore the burden of proving entitlement to an extraordinary equitable remedy. The Trial Court gave Appellant that opportunity by issuing a Rule to Show Cause and conducting an evidentiary hearing. Following that hearing, the Court concluded that Appellant failed to prove a breakdown in court operations, failed to prove extraordinary non-negligent

circumstances, failed to prove sufficient diligence, and failed to establish a basis requiring the Trial Court to extend the jurisdictional deadline for appeal from the Judgment.

The April 22, 2026, Order did not override or misapply the law. It applied the strict filing requirements governing appeals and the narrow Pennsylvania standards for nunc pro tunc relief. Appellant's assertion that a private carrier delivered the appeal papers after the deadline, particularly where Appellant waited until the eve of the deadline to transmit those papers, did not compel the Trial Court to find extraordinary circumstances. That determination is entitled to a great degree of deference under the applicable standard of review.⁴

For these reasons, the Trial Court respectfully submits that its April 22, 2026, Order should be affirmed.

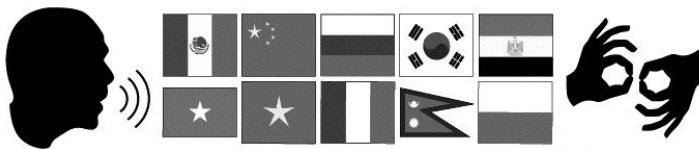
BY THE COURT:



J. Benjamin Nevius, J.

⁴ “[T]he term ‘discretion’ imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion, within the framework of the law, and is not exercised for the purpose of giving effect to the will of the [trial] judge.” *Com. v. DiStefano*, 265 A.3d 290, 297–98 (Pa. 2021) (citations omitted). “Absent an abuse of that discretion, an appellate court should not disturb a trial court's discretionary ruling.” *Id.*

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Arabic/العربية: يحق لك الحصول على مترجم دون دفع أي تكلفة من جانبك. لطلب مترجم، يُرجى إعلام موظفي المحكمة باستخدام معلومات الاتصال المقدمة في الجزء العلوي من هذا الإشعار.

Russian/Русский: У вас есть право на бесплатные услуги переводчика. Заявка на переводчика подается в суд по адресу, телефону или эл. почте, указанным выше в заголовке этого уведомления.

Vietnamese/Tiếng Việt: Quý vị có quyền được một thông dịch viên giúp mà không tốn chi phí nào cả, xin hãy báo cho nhân viên tòa án dùng thông tin liên lạc có ở trên đầu thông báo này.

Nepali/नेपाली: तपाईंको निःशुल्क रूपमा भाषा अनुवादक राख्न पाउने अधिकार छ। अनुवादकको लागि अनुरोध गर्न, यस सूचनाको माथि दिइएको सम्पर्क जानकारी भरेर अदालतका कर्मचारीहरूलाई जानकारी दिनुहोस्।

Korean/한국어: 귀하는 비용에 대한 부담 없이 통역 서비스를 받을 권리가 있습니다. 통역 서비스를 요청하려면 본 통지서의 상단에 기재된 연락처를 통해 법원 직원에게 알리십시오.

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Punjabi/ਪੰਜਾਬੀ/India: ਤੁਹਾਨੂੰ ਇੱਕ ਦੁਭਾਸ਼ੀਆ ਹਾਸਲ ਕਰਨ ਦਾ ਹੱਕ ਹੈ, ਜਿਸ ਦੀ ਤੁਹਾਨੂੰ ਕੋਈ ਲਾਗਤ ਨਹੀਂ ਲੱਗੇਗੀ। ਦੁਭਾਸ਼ੀਏ ਲਈ ਬੇਨਤੀ ਕਰਨ ਵਾਸਤੇ, ਕਿਰਪਾ ਕਰ ਕੇ ਅਦਾਲਤ ਦੇ ਅਮਲੇ ਨੂੰ ਜਾਣੂ ਕਰਵਾਓ ਤੇ ਇਸ ਲਈ ਇਸ ਨੋਟਿਸ ਦੇ ਸਿਖਰ ਉੱਤੇ ਦਿੱਤੀ ਸੰਪਰਕ ਜਾਣਕਾਰੀ ਦਾ ਇਸਤੇਮਾਲ ਕਰੋ।

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