



No.2-23-0072

SC

IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

PAUL R. DULBERG,	)	Appeal from the Circuit Court of the 22nd
	)	Judicial Circuit, McHenry County, Illinois
Plaintiff-Appellant,)	
	)	Relief Sought:
HANS MAST and the LAW OFFICES OF	)	RECONSIDER THIS HONORABLE
THOMAS J. POPOVICH, P.C.	)	COURT'S NOVEMBER 9, 2023 ORDER
	)	MADE AS A MISTAKE OF LAW
Defendants-Appellees)	
	)	Honorable Joel D. Berg, Judge Presiding
	)	Date of Notice of Appeal March 3, 2023
	)	Date of Judgment February 1, 2023, 2017 LA
	)	000377
	)	Date of Post judgment Motion Order: None
	)	Circuit Court 2017LA000377

**MOTION TO RECONSIDER THIS HONORABLE COURT'S ORDER ENTERED ON
NOVEMBER NINTH (9), 2023 AS A MISTAKE OF LAW**

(CIVIL)

**I. ON NOVEMBER 9, 2023 THIS HONORABLE COURT DENIED APPELLANTS'
EMERGENCY MOTION AND FOURTH MOTION TO EXTEND TIME TO FILE
APPELLANTS' BRIEF "PURSUANT TO APPELLEES' RESPONSE"**

A) Appellants' **EMERGENCY MOTION AND FOURTH MOTION TO EXTEND
TIME TO FILE APPELLANTS' BRIEF (AND) EMERGENCY MOTION TO
CONDUCT AN AUDIT OF THE RECORD ON APPEAL TO DISCOVER
CHANGED OR MISSING DOCUMENTS; SUPPLEMENT THE RECORD
ON APPEAL AND, IF GRANTED, FOR 35 DAYS EXTENSION OF TIME
AFTER THE TRIAL COURT CLERK HAS SUPPLEMENTED AND/OR
CORRECTED THE RECORD ON APPEAL TO FILE APPELLANT'S
BRIEF** is attached to this MOTION TO RECONSIDER as EXHIBIT 1.

B) Appellees' **DEFENDANTS/APPELLEES HANS MAST AND THE LAW**

**OFFICES OF THOMAS J. POPOVICH, P.C.'S RESPONSE TO PLAINTIFF/
APPELLANT PAUL R. DULBERG'S EMERGENCY MOTION FOR 4TH
EXTENSION TO FILE APPELLANT'S BRIEF, TO CONDUCT AN AUDIT
OF THE RECORD ON APPEAL TO DISCOVER CHANGED OR MISSING
DOCUMENTS, AND TO SUPPLEMENT THE RECORD ON APPEAL** is

attached to this MOTION TO RECONSIDER as EXHIBIT 2.

C) Order of the ILLINOIS APPELLATE COURT SECOND DISTRICT DATED NOVEMBER 9, 2023 and signed by Jeffrey H. Kaplan, Clerk of the Court is attached to this MOTION TO RECONSIDER as EXHIBIT 3.

II. ERRORS OF LAW BY APPELLEES AND ACCEPTED BY THIS HONORABLE COURT WITHOUT REPLY BY APPELLANT

ARGUMENT as stated by Appellees in their Response:

I. This Court should deny Dulberg's Motion as it does not present an emergency.

Appellants Response:

As has been consistent during the entirety of this case, Appellees, take on the role of not only Advocates but Judge (in this case Appellate Judge) and state that the First Extension based upon a death and the second Extension based upon a disappearance while traveling to the United States of America in Tokyo, Japan followed by a false Imprisonment without the right to counsel nor the right to contact anyone and retention of all assets and currency should be viewed, not as an incredibly stressful and emotional time on Appellant and Appellant's Counsel, but just as additional time to comply with procedural 2 requirements of this Appeal.

The Facts that Appellant, an Illinois fully disabled resident's lifelong friend and live in care taker was unexpectedly found dead in Appellant's home and the consequential stress and time requirements of arranging for a funeral and replacement care taker plus the subsequent disappearance and false imprisonment of Appellant's Attorney's Fiancée, in Japan, would not delay the investigation of missing and altered parts of the Record on Appeal consisting of , at

least:

2 Volume(s) of the Common Law Record, containing 2148 pages

1 Volume(s) of the Report of Proceedings, containing 512 pages

0 Volume(s) of the Exhibits, containing 0 pages.

Appellees, cavalierly declare and cite Ill. S. Ct. Rule 361(g) “Except in the most extreme and compelling circumstances, a motion for an extension of time will not be considered an emergency” to declare that Appellant’s two Motions for Extension of Time that were denied were not emergencies.

Thus, Appellee declares: a death; a disappearance in a foreign country; a Record on Appeal of at least 2,660 pages with some missing, and some blatantly altered, as discussed within the Affidavit of Saira Pasha that was attached to the prior Emergency Motion as Exhibit E (see again attached herein as EXHIBIT E within EXHIBIT 1 attached), not sufficient to be categorized as an “Emergency”

Please note that one of the issues raised in the Affidavit of Saira Pasha on page 4 and 5 number 17 **Missing recordings of court proceedings from January 10, 2018 and February 27 2018** has been established as true as the trial court record, but not the Record on Appeal has been supplement sua sponte on November 9, 2023 (nearly 6 years later)

Please also note that the dates of the Records of Proceedings do not match the dates that the filed stamp date in the upper right hand corner state, that being November 9, 2023 and those dates do not match the Received Date on the bottom of each page, that being November 13, 2023 and finally those dates do not match the Accepted date of November 14, 2023 also on the bottom of each page. (Please see EXHIBITS 4 and 5 attached)

Unnumbered second argument in Appellees’ Argument 1. Although not presented in numbered bold print, Appellees attempt to insert another different issue within their Argument I. when they “change horses in midstream” by falsely asserting that Appellant did not comply with the requirements of Ill. S. Ct. Rule 329.

Appellant’s Response:

THE FOLLOWING “MISTAKES IN THE LAW” WERE ADVANCED BY APPELLEES AND ADOPTED BY THIS HONORABLE COURT AS EVIDENCED BY THE STATEMENT “Appellant’s “emergency” motion is denied pursuant to appellees’ response.” (Please see Appellant’s EXHIBIT 3, 2nd par. 1st sentence):

A) Appellees state “If there is any issues with the record on appeal, then Dulberg should have followed the procedures for supplementing the record in Ill. S. Ct. Rule 329. He failed to do so, as further discussed below.” (Appellees thereafter continued this erroneous argument first inserted in **Unnumbered second argument in Appellees’ Argument 1** with the following, “**III. The Court should again deny Dulberg’s request for leave to supplement the record on appeal due to Dulberg’s delay and failure to follow proper procedures.**”

B) Ill. S. Ct. Rule 329 states:

Rule 329. Supplement to the Record on Appeal . The record on appeal shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by this rule. Material omissions or inaccuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, *or by the reviewing court or a judge thereof.* [emphasis added] Any controversy as to whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by that court and the record made to conform to the truth. If the record is insufficient to present fully and fairly the questions involved, the requisite portions may be supplied at the cost of the appellant. If necessary, a supplement to the record may be certified and transmitted. The clerk of the circuit court shall prepare a certified supplement to the record which shall be filed in the reviewing court upon order issued pursuant to motion. Amended May 28, 1982, effective July 1, 1982; amended October 14, 2005, effective January 1, 2006; amended June 22, 2017, eff. July 1, 2017.

C) Ill. S. Ct. Rule 329 Committee Comments state:

Committee Comments (Revised May 1982) This rule is a comprehensive provision covering amendment of the record on appeal, correction of improper authentication, and the settling of any questions concerning whether the record conforms to the truth. It contains portions of former Rules 36(3) and (4). Under this sweeping provision, it will be possible to supply omissions, correct inaccuracies or improper authentication, or settle any controversy as to whether the record on appeal accurately discloses what occurred at the trial *by the procedure that will most appropriately solve the particular problem.* [emphasis added] In view of the liberal terms of this paragraph, the rather elaborate provisions of former Rule 36(4), requiring that a claim as to improper authentication be raised by motion before or at the time of the filing of the brief of the party making the claim, were eliminated as no longer necessary. Unless there is some real prejudice involved, there will be no incentive for claiming improper authentication. *Rule 329 was amended in 1982 to permit a single judge of the reviewing court to correct the record.* [emphasis added]

D) It is clear from a fair reading of Ill. S. Ct. Rule 329 and the Committee Comments that requesting the trial court judge or Appellees' Counsel to supplement the missing and altered documents is a futile, if not impossible act., (the reasons why will be elaborated upon below) and the Appellant complied with Ill. S. Ct Rule 329 and the accompanying Committee Comments by twice filing Motions to accomplish the necessary supplementations, and being denied based upon Appellants' erroneous Response forces Appellant to file this Motion To Reconsider because of a Mistake of law.

E) THE LAW NEVER REQUIRES THE DOING OF A USELESS THING

E1. Justice Robert D. McLaren, Appellate Court of Illinois, Second District in *PNC*

BANK, National Association, v. Jeremy T. Wilson and Michelle M. Wilson 2017 Il App (2d) 151189, 74 N.E.3d 100, 107¶26 (2017) stated:

“The law does not require futile acts as prerequisites to the filing of legal proceedings. “[A] demand is not necessary where the circumstances indicate its futility. [Citations.] In order to excuse the requirement of a demand for the surrender of property, the evidence must show the demand would have been unavailing.” First Illini Bank v Wittek Industries, Inc. , 261 Ill.App.3d 969, 970–71, 199 Ill.Dec. 709, 634 N.E.2d 762 (1994). In addition, “where it appears that a demand would have been of no avail, then none is required, for PNC Bank, Nat’l Ass’n v. Wilson, 2017 IL App (2d) 151189, 74 N.E.3d 100 (Ill. App. 2017) the law never requires the doing of a useless thing.” Carroll v. Curry , 392 Ill.App.3d 511, 515, 332 Ill.Dec. 86, 912 N.E.2d 272 (2009). Further, the alleged failure did not prejudice Jeremy’s ability to ameliorate a mortgage contract that he nullified by his voluntary act of discharge in bankruptcy without reaffirmation. Thus, although the regulation at issue requires proof of mailing, in this particular case this defense is unavailing as the discharge without reaffirmation would have rendered PNC Bank’s efforts futile. There is neither purpose nor policy that would countenance a determination of prejudicial error.”

E2. Justice Griffin, Appellate Court of Illinois, First District in *Sylva v. Baldwin Court Condominium Association, Inc.* 2018 IL App (1st) 170520, 106 N.E.3d 431, 436 ¶22 (2018) indicated a like thinking stating:

“It is one of the oldest and perhaps the wisest maxims of equity that the law will not require a person to do a useless act.” *Rock Island Y.W.C.A. v. Bestor* , 48 Ill. App. 3d 761, 765, 6 Ill.Dec. 731, 363 N.E.2d 413 (1977) ; see also *PNC Bank National Ass’n v. Wilson*, 2017 IL App (2d) 151189, ¶ 25, 411 Ill.Dec. 791, 74 N.E.3d 100 (futile acts are usually excused).”

F) REQUESTING SUPPLEMENTING THE RECORD ON APPEAL WITH MISSING DOCUMENTS, REPLACING ALTERED DOCUMENTS AND MAKING THE AUDIO RECORDING OF DEFENDANT HANS MAST’S DEPOSITION OBTAINED PURSUANT TO SUBPOENA WOULD BE

A USELESS/FUTILE/IMPOSSIBLE ACT FOR THE FOLLOWING

REASONS:

- F1.** The Trial Court Judge Thomas A Meyer has retired as of September 2023. (see EXHIBIT 6 attached)
- F2.** The Trial Court Judge Thomas A. Meyer has previously denied the supplementing of the record with the audio recording of the discovery deposition of Defendant Hans Mast received and certified by the certified Reporter pursuant to subpoena because Judge Meyer, without hearing the audio file, determined it does not add materially to his understanding of what transpired. (see again attached herein as EXHIBIT D page 5 line 11 through page 6 line 9 within EXHIBIT 1 attached.)
- F3.** The Trial Court Judge Thomas A. Meyer had at least on one occasion self-recused himself as a friend of Defendant Thomas J. Popovich in 12LA326, who has also appeared in the matter for Plaintiff-Appellant Paul Dulberg in the underlying case (12LA178). Thomas J. Popovich is the owner and sole stockholder of The Law Offices of Thomas J. Popovich, P.C. and supervisor of Mr. Mast, the named defendants and current Appellees in 17LA377. (see again attached herein as EXHIBIT A within EXHIBIT 1 attached and EXHIBIT 8 attached and ROP_Vol_1_of_1_230421_1628_8FF9DDF1.pdf pages R292 Line 14 through R300 Line 13)
- F4.** The Trial Court Judge Thomas A. Meyer did not self-recuse himself in the current matter (17LA377) although his stated friend Thomas J. Popovich's Law Firm is a named Defendant in this matter. Also, we offer as additional proof of Judge Thomas A. Meyers refusing to self recuse when his friend is a defendant. (see EXHIBIT 9)
- F5.** The Honorable Judge Joel D. Berg, who replaced Judge Thomas A. Meyer in this matter and at least one other matter, Christine M. Interrante v. Law Offices of Thomas J. Popovich, P.C. and Thomas J. Popovich, individually 18LA370, when the Honorable Thomas A. Meyer was transferred to traffic court at the end of 2022, refused to hear a Motion to Reconsider and sent it back to the Honorable Thomas A.

Meyer for hearing. (see EXHIBIT 7 attached.)

F6. The Honorable Joel D. Berg only heard one motion in 17LA377, that being a motion for summary judgment that ended the matter in the trial court.

F7. The Honorable Thomas A. Meyers was the trial court judge from inception in 2017 up to the time before the hearing of the Motion for Summary Judgment which ended the matter in the trial court.

F8. The Honorable Judge Joel D. Berg clearly indicated in 18LA370 that he will not entertain a Motion to Reconsider regarding a matter that he was not presented and argued before himself. (again see EXHIBIT 7 attached.)

F9. The Honorable Judge Joel D. Berg has also self recused in cases where Thomas Popovich was a defendant, only difference between Judge Berg and Judge Meyer is Judge Berg does not give any reason for recusal. (see GROUP EXHIBIT 10)

F10. The Appellees and their counsel have made it clear by objecting to all relevant request regarding supplementing and correcting the Record on Appeal that continuing to ask for such relief is a futile, useless activity. The specific objections can be made available upon this Courts request.

Therefore Appellant prays that this Honorable Appellate Court finds that the procedural steps under Ill. S.C. Rule 329 to get agreement from the Trial Court or Appellees and Appellees Counsel was and is a futile, useless and additionally an impossible thing and Appellants' Requests permitted under Ill. S. Ct Rule 329 as further explained under the Committee Comments for Ill.S.Ct. Rule 329 asking this Honorable Appellate Court to grant Appellants Motions to supplement and correct altered documents be reconsidered in light of all the above. Appellants further pray that after reviewing Appellant's Motion to Reconsider, this Honorable Appellate Court grant the requests previously requested in Appellants' prior denied Motions to supplement and correct the Record on Appeal.

Dated: November 21, 2023

Respectfully submitted,
By: /s/ Alphonse A. Talarico
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707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Alphonse A. Talarico

PROOF OF DELIVERY

I am sending this Motion to Reconsider, Proposed Order and Notice of Filing to George K. Flynn and Michelle M. Blum , Karbal Cohen Economou Silk Dunne, LLC., 200 S Wacker Drive, Suite 2550, Chicago, Illinois 60606, Tel:(312) 431-3700, Fax: (312) 431-3670, gflyn@karballaw.com, mblum@karballaw.com by an approved electronic filing service provider (EFSP) on November 21, 2023 at 11:59 p.m.

I certify that everything in the *Proof of Delivery* is true and correct. I understand that a false statement herein is perjury and has penalties provided by law under 735 ILCS 5/1-109.

Dated: November 21, 2023

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
contact@lawofficeofalphonsetalarico.com

CERTIFICATE OF SERVICE BY ELETRONIC DELIVERY

I, Alphonse Talarico, an attorney, on oath state that I served the foregoing:

NOTICE OF FILING NOTICE OF
MOTION TO RECONSIDER
MISTAKE OF LAW upon counsel
listed above by an approved electronic
filing service provider (EFSP) on
November 21, 2023 at 11:59 p.m.

/s/ Alphonse A. Talarico
ARDC 6184530
707 Skokie Boulevard suite 600
Northbrook, Illinois 60062
(312) 808-1410
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/s/ Alphonse A. Talarico