

**IN THE
COURT OF APPEALS OF INDIANA**

NO. 24A-MI-02786

Joseph B. Davis)	Appeal from the Monroe County
)	Circuit Court 8
<i>Appellant,</i>)	
)	Case No: 53C08-2312-MI-002703
v.)	
)	
City of Bloomington)	The Honorable Emily A. Salzmann, Judge
Board of Public Works,)	
)	
<i>Appellee.</i>)	

**VERIFIED PETITION AND MOTION FOR RECONSIDERATION OF
ORDER DISMISSING APPEAL**

COMES NOW Appellant, Joseph Bradley Davis, Pro Se, who affirms, under the penalties for perjury, that the ensuing representations are true. I, Joseph Bradley Davis, Pro Se, am the Appellant in the above-entitled case, and pursuant to Appellate Rule 54 (A)(3), and (B), submit this Appellant’s *Verified Petition and Motion for Reconsideration of Order Dismissing Appeal* and hereby move the Court of Appeals to Set-a-side the *Decision* made by the Court of Appeals dismissing the *Notice of Appeal*, made by the Appellant, and in support states the following:

STATEMENT OF FACTS

1. On December 13, 2024, the Court of Appeals ordered the dismissal of the Appellant’s *Notice of Appeal* filed with the Clerk of the Court of Appeals on November 16, 2024, at 12:02 AM.
2. This *Notice of Appeal* was filed in response to an adverse judgment from the Trial Court in the above-entitled case. This adverse judgment was entered into the Trial Court’s Chronological Case Summary (the “CCS”) by the Clerk of Court 8 on October 16, 2024.
3. The Appellant received E-notice of the Trial Court’s adverse judgement on October 17, 2024, at 4:10 AM.
4. The Appellant received a physical Service copy of the Trial Court’s adverse judgement from the Monroe County Clerk’s Office later on that same morning of October 17, 2024.

5. Subsequent to receiving the Service copy of the Trial Court's Ruling, the Appellant filed a *Notice of Appeal* with the Monroe County Clerk on that same day of October 17, 2024.

6. In the Appellant's *Notice of Appeal* the Appellant stated that he would be filing a *Notice of Appeal* with the Indiana Court of Appeal within 30 days of his *Notice of Appeal* that was filed with the Trial Court on that day of October 17, 2024. The Appellant also asked for a Stay of Injunction in the same *Notice of Appeal* filing.

7. On October 18, 2024, the Trial Court asked the Respondent, City of Bloomington, if they were going to respond to the Appellant's request for Stay of Injunction?

8. There was no correction from the Trial Court to the Appellant stating that he must make his timely Appeal to the Appellate Court within 30 days of the CCS adverse judgment entry, as opposed to the Appellant's explicit statement that he would file within 30 days of his *Notice of Appeal* filed with the Trial Court on October 17, 2024.

9. On October 21, 2024, after business hours, the Respondent, City of Bloomington filed a response to the Trial Court indicating that they were going to abate the Appellant's property without Notice the following morning of October 22, 2024. The Respondent provided both Notice and Service of their intention on October 22, 2024, by taping a Service copy, of their after close of business filing the night before on October 21, 2024, on the Appellant's front porch gate.

10. Then, the City of Bloomington proceeded to remove seven to eight dump trucks volume of the Appellant's sanctioned and permitted building materials and other personal property from the Appellant over the course of the day on October 22, 2024. The Appellant estimates the value of his lost property to be around \$100,000 or one hundred thousand dollars.

11. On October 28, 2024, the Appellant filed a motion for *Stay of Injunction* and *Declaratory Abatement with Notice*.

12. On December 5, 2024, the Appellant filed a motion to Correct Errors, in which the Trial Court granted a *Motion to Strike* filed by the Respondent. This Grant of the *Motion to Strike* was issued before the Appellant had received Service of the Respondent's *Motion to Strike*.

13. On December 16, 2024, the Trial Court received Notice from the Appellate Court dismissing the Appellant's Notice of Appeal based on a perceived untimeliness.

14. On December 16, 2024, the case was re-opened by the Trial Court pending a response from the Appellant in regard to the late Service of the Motion to Strike filed by the Respondent. The Grant of the Respondent's *Motion to Strike* was vacated by the Court.

15. On December 17, 2024, the Trial Court E-noticed the parties of the Appellate Court's dismissal of the Appellant's Appeal.

16. The Appellant filed his response to the Respondent's *Motion to Strike* on January 7, 2025.
17. The Trial Court is currently taking matters into consideration following Appellant's filed response to this still pending lawsuit.

ARGUMENTS FOR RELIEF AND RE-OPENING OF APPEAL

18. Though Appellate Rule 9 (A)(1) states that the Appellant's Notice of Appeal must be filed with the Clerk of the Court of Appeals 30 days from the entry of an adverse judgement from a Trial Court, the practical date for the 30 day count, in fairness, should run from the date of Notice and Service, as is common practice in the Indiana Rules of Trial Procedure. Otherwise, the strict adherence to CCS entries can be as many as three days prior to true Notice and Service.
19. The Appellant received E-notice of the Trial Court's adverse judgement on October 17, 2024, at 4:10 AM.
20. The Appellant received a physical Service copy of the Trial Court's adverse judgement from the Monroe County Clerk's Office later on that same morning of October 17, 2024.
21. Subsequent to receiving the Service copy of the Trial Court's Ruling, the Appellant filed a *Notice of Appeal* with the Monroe County Clerk on that same day of October 17, 2024.
22. In the Appellant's *Notice of Appeal*, the Appellant stated that he would be filing a *Notice of Appeal* with the Indiana Court of Appeal within 30 days of his *Notice of Appeal* that was filed with the Trial Court on that day of October 17, 2024. The Appellant also asked for a Stay of Injunction in the same *Notice of Appeal* filing.
23. On November 16, 2024, at 12:02 AM, the Appellant filed his *Notice of Appeal* with the Clerk of the Court of Appeals. This was 23 hours and 57 minutes prior to the 30-day deadline from which the Appellant received E-notice, and physical Service of the Trial Court's adverse judgement. The Appellant's *Notice of Appeal* filing was also within the 30-day time frame that the Appellant indicated that he would with his *Notice of Appeal* filed with the Trial Court on October 17, 2024.
24. Explicitly stated in his October 17, 2024, *Notice of Appeal* with the Trial Court was the intention to file his *Notice of Appeal* with the Appellate Court by November 16, 2024. The Trial Court had ample opportunity to correct any confusion by the Appellant with the inconsistency of timeliness between the Indiana Rules of Trial Procedure and the Rules of Appellate Procedure. However, the Trial Court neglected to clarify this procedural inconsistency.
25. Even by the strictest interpretation of Indiana Appellate Rule 9 (A)(1), that the 30-day count for timeliness begins from the entry of an adverse judgement in the CCS, the Appellant's filing could only be construed as being untimely by less than 3 minutes duration, as his filing was time-stamped at 12:02 AM on November 16, 2024, and not completed by 11:59 and 59 seconds being the CCS entry 30-day deadline.

26. There was excusable neglect by the Appellant in his perceived lateness of under 3 minutes. As the Appellant is Pro Se in representation, he does not have the familiarity of how to navigate the Indiana Court's E-file system like an attorney who is a trained member of the Bar. The Appellant had a very difficult time trying to enter the Service contacts for the Appellee, City of Bloomington.

27. The Tyler E-file interface was also very slow to process the submitted filing made by the Appellant. Another minute, or more, was lost to the Tyler processing of the Appellant's submission, pushing the time stamp into the AM of the next day November 16, 2024, at 12:02.

28. Despite an untimely period of under 3 minutes, the *Notice of Appeal* filed by the Appellant with the Court of Appeals is substantive to the serious issues of denial of civil rights, and fairness in the miscarriage of Due Process by the City of Bloomington, and the Trial Court against the Appellant. As stated in the facts above, this still pending Trial Court case has already resulted in a loss around \$100,000 Dollars to the Appellant by the removal of his personal property. This does not include the nearly 3,800 hours of the Appellant's time in which he has made appeals to the City of Bloomington and subsequently filed suit in the Monroe County Trial Courts for relief through Pro Se litigation.

29. The Appellate Court has discretion to re-open the Notice of Appeal made by the Appellant in pursuit of fairness and relief from the ongoing damages that are being inflicted upon the Appellant by the City of Bloomington.

WHEREFORE, the Appellant humbly moves the Court of Appeals to Grant relief for the petitioning Appellant by vacating its decision to dismiss the Appellant's *Notice of Appeal* for good cause shown. And, to re-open said *Appeal* such that Appellant may continue the process forward in his pursuit of adjudicative remedy of a just and fair outcome. The Appellant asks for this and all other relief just and proper.

The Appellant, Joseph Bradley Davis, Pro Se, verifies that the aforementioned statements above are true.

Respectfully submitted,

/s/ Joseph Bradley Davis

Joseph Bradley Davis

January 13, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January 13, 2025, the foregoing was served upon the following person, Larry Dean Allen, Counsel for the Appellee, City of Bloomington, Board of Public Works, 401 N. Morton St., Suite 220, Bloomington, IN 47404 by Efileincourts.gov :

/s/ Joseph Bradley Davis

Joseph Bradley Davis, Pro Se
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