

STATE OF MICHIGAN
IN THE MICHIGAN COURT OF APPEALS

TAMARA FILAS,

Plaintiff-Appellant,

vs.

Court of Appeals Case No. 317972
Lower Court Case No. 13-000652-NI
Honorable Susan D. Borman

KEVIN THOMAS CULPERT and
EFFICIENT DESIGN, INC. a
Michigan Corporation,

Defendants-Appellees.

Tamara Filas
In Pro Per
6477 Edgewood
Canton, MI 48187

MICHAEL C. O'MALLEY (P59108)
JENNIFER L. MCGRATH (P75734)
Vandever Garzia, PC
Attorneys for Efficient Design
1450 West Long Lake Road, Suite 100
Troy, MI 48098
(248) 312-2800; FAX (248) 267-1242
momalley@vgpclaw.com

JAMES C. WRIGHT (P67613)
Attorney for Efficient Design
**Zuasmer, Kaufman, August &
Caldwell, PC**
31700 Middlebelt Road, Suite 150
Farmington Hills, MI 48334
(248) 851-4111; FAX 0100
jwright@zkact.com

DREW BROADDUS (P64658)
Attorney for Culpert
Secrest Wardle
2600 Troy Center Dr., PO Box 5025
Troy, MI 48007-5025
(616) 272-7966; FAX (248) 251-1829
dbroaddus@secrestwardle.com

**DEFENDANT-APPELLEE, EFFICIENT DESIGN, INC.'S ANSWER TO PLAINTIFF-
APPELLANT'S MOTION TO EXTEND TIME FOR FILING REPLY TO DEFENDANT-
APPELLEE'S BRIEF ON APPEAL (DOCKET #43)**

NOW COMES Defendant-Appellee, Efficient Design, Inc., by and through its attorneys, Vandever Garzia, PC, and for its Answer to Plaintiff-Appellant's Motion to Extend Time for Filing Reply to Defendant-Appellee's Brief on Appeal (Docket #43), states as follows:

VANDEVEER GARZIA P. C.

INTRODUCTION

Defendant-Appellee objects to the Plaintiff-Appellant's Motion and the argument that "she was not properly served". (Plaintiff's Motion, p. 2 of 8). Plaintiff-Appellant fails to prove that Defendant-Appellee did not properly served as MCR 2.107(C)(3) requires only that Defendant place a copy of the filing, with first class postage fully prepaid, addressed to the person to be served, and depositing said envelope in the united State Mail. Defendant-Appellee complied with the requirements of the Court Rules. The documents have not been returned to the undersigned and, presumably, the US Postal Service completed the delivery. The fact that Plaintiff-Appellant alleges that she did not receive any such documents is not proof of improper service. Defendant-Appellee leaves it to this Honorable Court whether to grant the relief requested, but strenuously objects to allegations that the undersigned, a member of the State Bar of Michigan (in good standing) has somehow, intentionally or unintentionally, failed in the obligations of service.

RESPONSE TO ALLEGATIONS

1. Defendant-Appellee admits that the undersigned filed the Brief on Appeal on behalf of Efficient Design, Inc., on January 23, 2014.¹ Defendant-Appellee can neither admit nor deny when Plaintiff "discovered" the filing as service was properly completed on January 23, 2014.

2. Defendant-Appellee can neither admit nor deny the allegations in this paragraph for want of sufficient information and leaves the Plaintiff to her proofs. Answering further, Plaintiff has admitted in prior filings that she does not regularly

¹ The undersigned admits that he inadvertently attached the wrong proof of service to an e-mail to Plaintiff in response to her inquiry of February 10, 2014. The correct Proof of Service, attached as **Exhibit 1**, was provided to Plaintiff on February 12, 2014, via e-mail, attached as **Exhibit 2**. The undersigned, again, offered to stipulate to extend the Plaintiff's time to file a reply consistent with IOP

check her mailbox or e-mail inbox. (See, for example, Plaintiff-Appellant's Brief on Appeal at p. 9 "did not find the notice of the 7-day order in her inbox until July 1, 2013"; p. 12, on June 24, 2013, Plaintiff "discovered she had an e-mail from Mr. Wright's office in her inbox dated June 21, 2013"; p. 12, Plaintiff "discovered a FedEx package in her door"). Defendant-Appellee submits that Plaintiff-Appellant does not 'timely' receive documents when it is not convenient for her and this motion appears to be another example.

3. Defendant-Appellee can neither admit nor deny the allegations in this paragraph for want of sufficient information and leaves the Plaintiff to her proofs.

4. Admitted.

5. Admitted. As noted, above, the undersigned inadvertently attached the wrong proof of service to the e-mail. However, the Plaintiff was already aware that the Brief on Appeal was filed on January 23, 2014, as evidenced by the admission in her February 10, 2014 e-mail (dated 2/10/14 at 11:50 pm).

6. Admitted that Defendant provided a copy of the Defendant-Appellee's Brief on Appeal that was not "time-stamped" by the Court of Appeals. The Court Rules make no such requirement.

7. Admitted that the undersigned attached the wrong proof of service to the e-mail to Plaintiff on February 11, 2014. The error was corrected and the proper Proof of Service was sent to Plaintiff on February 12, 2014. Defendant-Appellee denies any allegations that the "validity of this Proof of Service is questionable" as it complies with the Court Rules. MCR 2.107(C)(3). Defendant-Appellant would ask this Honorable Court to caution Plaintiff-Appellee with the tone of her allegations as potentially

7.212(G)-1. Plaintiff refused the offer and, instead, has filed this motion.

libelous.

8. Admitted that the undersigned, initially, provided the wrong proof of service. The correct proof of service, consistent with the Court Rules, was supplied and is attached as **Exhibit 1**. Defendant denies the attached proof of service does not show that the document was actually mailed to Plaintiff. Defendant is not obligated to provide a certified return receipt (although it is clear that such may be necessary due to Plaintiff-Appellant's apparent failure to timely receive any filing).

9. Admitted.

10. Denied that the Plaintiff-Appellant would need any more than the 21 days allowed under MCR 7.212(G). Plaintiff has admittedly received the Defendant-Appellee's Brief on Appeal, as of February 11, 2014. (Plaintiff's Motion at p. 3 of 8, Para. 6).

11. Denied that Plaintiff is unable to "attend to" the filing of a Reply Brief, consistent with the Court Rules, as each of the Defendant-Appellee's attorneys, including the undersigned, must "currently attend[] to numerous legal matters". (Plaintiff's Brief at p. 5 of 8, Para. 11). Denied that the "actual date of service" was February 11, 2014. (See **Exhibit 1**).

12. Denied for the reason it is not true. Plaintiff-Appellant has had several attorneys, which she has dismissed of her own accord.

13. Denied for the reason it is not true. Plaintiff-Appellant has had several attorneys, which she has dismissed of her own accord.

14. Defendant-Appellee neither admits nor denies the allegations in this paragraph for want of sufficient information and leaves the Plaintiff to her proofs.

15. Admitted that Plaintiff-Appellant is not working; which creates an

VANDEVEER GARZIA P. C.

abundance of time for her to attend to her “numerous legal matters”.

16. Defendant-Appellee neither admits nor denies the allegations in this paragraph. Answering further, the allegations in this paragraph are irrelevant to the issues in this motion and should be stricken.

17. Defendant-Appellee neither admits nor denies the allegations in this paragraph for want of sufficient information and leaves the Plaintiff to her proofs. Defendant would move to strike the allegations in this paragraph for her failure to provide any proof of the facts alleged.

18. Denied for the reason it is not true. Defendant-Appellee’s Brief on Appeal was served on January 23, 2014. (See **Exhibit 1**).

19. Defendant-Appellee denies the allegations in this paragraph for the reason they are not true. Defendant would point out that the time for action for items c., d., e., f., g., h., i., j., k., l., m., n., o., and p. have already passed.

20. Defendant-Appellee properly served its Brief on Appeal on January 23, 2014. Plaintiff’s Reply Brief is due on February 13, 2014 (which deadline has passed). Defendant does not object to a 14 day extension, as allowed under IOP 7.212(G)-1.

21. Defendant-Appellee denies the Plaintiff-Appellant needs any additional time beyond the original extension of 14 days.

22. Defendant-Appellee denies that any additional extension is warranted.

SUPPORTING LAW

Defendant-Appellee relies upon MCR 2.107(C)(3), which only requires that a party place a filing in the US mail with proper postage affixed to complete service. Pursuant to the Court Rule, service is complete upon the placing of the filing in the mailbox. Defendant further relies upon MCR 7.212(G), requiring a reply to be filed

within 21 days of service as well as IOP 7.212(G)-1, which allows for an extension of 14 days.

Defendant would ask, under MCR 7.216(C)(1), that it reprimand Plaintiff-Appellee for her improper representations that the undersigned has filed false or improper documents in this case and award it a reasonable attorney fee for having to respond to Plaintiff's false allegations of impropriety.

CONCLUSION

Defendant-Appellee does not oppose this Honorable Court granting an extension, consistent with its internal operating procedures. Defendant-Appellee leaves this Court to a determination of what is just. However, Plaintiff-Appellant has made unfounded allegations of impropriety on the part of the undersigned, which should not be rewarded with an additional extension. The undersigned complied with the service requirements of the Court Rules. Any allegations of 'questionable reliability' should certainly be focused on Plaintiff, who fails to receive any documents, when convenient for her. Defendant-Appellee would ask this Court to limit any extension to 14-days, making Plaintiff's reply brief due on February 27, 2014.

VANDEVEER GARZIA, P.C.

/s/ Michael C. O'Malley
MICHAEL C. O'MALLEY (P59108)
Attorneys for Def Efficient Design
1450 W. Long Lake Road, Suite 100
Troy, MI 48098-6330
(248) 312-2800

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon the attorneys of record of all parties to the above cause by the court's efilng and upon Tamara Filas by regular mail on February 19, 2014. I declare under penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

/s/Rebecca Stanley

EXHIBIT 1

Lower Court or Tribunal WAYNE CIRCUIT COURT	STATE OF MICHIGAN IN THE COURT OF APPEALS	CASE NO.			
	Proof of Service	CIRCUIT:	Year: 13	Number: 000652	Case Type: N9
		COURT OF APPEALS:	317972		

Case Name: TAMARA FILAS V KEVIN THOMAS CULPERT

On 1/23/2014, one copy of the following documents:

Brief Defendant- Appellee Efficient Design's Brief on Appeal and Proof of Service

was delivered to the persons listed below:

Date
1/23/2014

Signature
/s/Michael C. O'Malley

Bar Number	Name	Delivery Method	Service Address
P- 64658	Broaddus, Drew W.	E-Serve	dbroaddus@secrestwardle.com
P-	Coomer, Kim	E-Serve	kcoomer@vgpclaw.com
P-	Filas, Tamara	Mail	6477 Edgewood; Canton, MI 48187
P- 59108	O'Malley, Michael	E-Serve	momalley@vgpclaw.com
P-	Vertel, Sandra	E-Serve	svertel@secrestwardle.com
P- 67613	Wright, James C.	E-Serve	appeals@zkac.com

RECEIVED by Michigan Court of Appeals 1/23/2014 12:32:20 PM

The documents listed above were electronically filed with the Michigan Court of Appeals at the date/time stated in the left margin. As a recipient of service of these documents, you may wish to go to <https://wiznet.wiznet.com/appealsmi> to register as a user of the electronic filing system.

EXHIBIT 2

Michael C. OMalley

From: Michael C. OMalley
Sent: Wednesday, February 12, 2014 12:38 PM
To: 'T Filas'
Cc: 'Broaddus, Drew'; 'James C. Wright'
Subject: RE: URGENT---Stipulation Needed 2-11-14 to Extend Due Date of Reply Brief, COA #317972
Attachments: FILAS BRF POS_20140212090320.pdf

Ms. Filas:

You have the correct date from the Court of Appeals, January 23, 2014. In the future, you should rely on the Court of Appeals docket as that references the dates from which all other dates are calculated. You are correct, I attached the wrong proof of service to my e-mail; an error on my part. Thank you for drawing my attention to the error. My staff has contacted the Court of Appeals and they are using the January 23, 2014, service date; which is the date reflected in the Court of Appeals docket and on the correct proof of service. I apologize for the confusion.

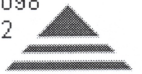
The correct Proof of Service showing service of the Brief on Appeal (time stamped in the Court of Appeals) is attached. The Brief, with exhibits, was mailed to you at 6477 Edgewood, Canton, MI, on January 23, 2014; which date is reflected in the Court of Appeals docket. My staff will mail another copy of the brief to this same address today. Please advise if this address is incorrect or if there is another mailing address we should use.

As indicated previously, I am willing to stipulate to an extension of 14 days, as a courtesy, pursuant to the Court of Appeals internal operating procedures, for your Reply Brief filing date. The internal operating procedures do not allow for an extension beyond the 14 days, so I am unable to stipulate to any relief beyond that time frame. If you forward a proposed stipulation, I will endeavor to return it promptly.



MICHAEL C. O'MALLEY
VANDEVEER GARZIA, P.C.
1450 W. Long Lake Road
Suite 100
Troy, MI 48098
Direct: 248-312-2940
Main: 248-312-2800
Fax: 248-267-1242
momalley@vgpclaw.com

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From: T Filas [mailto:[e-mail redacted](#)]

Sent: Tuesday, February 11, 2014 4:21 PM

To: Michael C. OMalley

Subject: Re: URGENT---Stipulation Needed 2-11-14 to Extend Due Date of Reply Brief, COA #317972

Dear Mr. O'Malley,

Thank you for your prompt response, although I am not sure why you felt the need to make the comment that I have not been courteous to you or the other Defendants. I have treated you and the other attorneys with nothing but respect and courtesy.

You stated that Defendant's Brief on Appeal was placed in the US postal system on January 20, 2014. However, as I stated in my previous e-mail, the Register of Actions indicates the Proof of Service date to be January 23, 2014 for the submission of Defendant's Brief on Appeal. If it had been submitted on January 20, 2014, the due date for my reply would have been yesterday, February 10, 2014, and I would already be too late.

A Proof of Service should state the document that was served. The attached, e-mailed Proof of Service you sent me today indicates a service date of January 20, 2014, but does not indicate what document was served. Let me clear that I did receive a document from your office that was served on 1-20-14, but it was entitled "Defendant-Appellee Efficient Design, Inc.'s Answer to Co-Defendant's Motion to Affirm and Request for Consistent Relief," which is clearly not the same document as "Defendants Brief on Appeal." Further, this document is shown on the Register of Actions as "ANSWER – MOTION" with service date of 1-20-14, so it is clearly accounted for.

The document served to me and the COA on 1-20-14, "Defendant-Appellee Efficient Design, Inc.'s Answer to Co-Defendant's Motion to Affirm and Request for Consistent Relief," came with a proof of service that was part of the document itself, contained in small print on page 18 of the document, just like a couple of the other documents you filed with the courts. The proof of service you e-mailed me today is a completely separate document from the brief and differs from what appears to be the standard practice at your law firm of a "self-contained" Proof of Service within the document being served.

Also, the copy of Defendant's Brief on Appeal you e-mailed today does not include the time date stamp on in the left margin to prove when it was actually filed with the court of appeals. As previously stated, the Register of Actions states that this brief was filed on 1-23-14, not 1-20-14, as you have stated. **Please send me a copy of Defendant's Brief on Appeal that contains the time date stamp from the Court of Appeals so I can verify the true due date of my Reply. I also will need a copy of the exhibits that correspond with the Brief which were not attached to the e-mail.**

Since time is of the essence to request an extension of my filing due date for my reply to Defendant's Brief on Appeal dated 1-23-14, and the discrepancies between my view of the facts and your view of the facts concerning the 1-20-14 filing and the 1-23-14 filing (for which I am requesting an extension to file), I cannot rely upon a stipulation from you. Thereby, I will handle the request for the extension of the filing date for my reply to the 1-23-14 Defendant's Brief on Appeal without your stipulation.

Thank you for your attention to this matter.

Respectfully,

Tamara Filas

On Tue, Feb 11, 2014 at 9:56 AM, Michael C. OMalley <MOMalley@vgpclaw.com> wrote:

Dear Ms. Filas:

Defendant's Brief on Appeal was placed in the US Postal System on January 20, 2014, pursuant to the Court Rules. The brief was mailed to you at the address you have identified. Attached is a copy of the Proof of Service, filed with the Court of Appeals. For your convenience, I have also attached a copy of the Brief, itself. It is my position that my client has complied fully with the requirements of the Court Rules.

I am not in a position, nor am I inclined, to handle the preparation and filing of a stipulation for your benefit. However, out of courtesy (which has not been returned to the defendants, in any manner, during the course of this litigation) I will agree to the extension of time for the filing of your Reply Brief, within the Court Rules. Pursuant to IOP 7.212(G)-1, it is my understanding that the Court of Appeals will extend the time for filing a Reply up to 14 days. Accordingly, the stipulation should reflect February 27, 2014, as the due date. Please forward an appropriate stipulation for my review. I will endeavor to respond as soon as feasible as my practice takes me out of the office today and tomorrow morning. Alternatively, you may file your motion and reflect in the motion that I do not object to a 14 day extension to file your Reply.

You will note that today is February 11, 2014. You calculate that your Reply to our Brief on Appeal is due on February 13, 2014. It would appear that you have 2 days to find time to prepare a stipulation, get my approval, and deliver the stipulation to the Court of Appeals or to file your motion. There is no 5:00 pm deadline on February 11, 2014, as you indicate.



MICHAEL C. O'MALLEY

VANDEVEER GARZIA, P.C.

1450 W. Long Lake Road

Suite 100

Troy, MI 48098

Direct: 248-312-2940

Main: 248-312-2800

Fax: 248-267-1242

momalley@vgpclaw.com

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1450 West Long Lake Road, Suite 100 | Troy, Michigan 48098
Telephone: 248.312.2800 | Fax: 248.267.1242
www.VGpcLAW.com



From: T Filas [mailto: e-mail redacted]
Sent: Monday, February 10, 2014 11:50 PM
To: Michael C. OMalley
Subject: URGENT---Stipulation Needed 2-11-14 to Extend Due Date of Reply Brief, COA #317972

6477 Edgewood
Canton, MI 48187
February 10, 2014

Michael C. O'Malley

Vandever Garzia

1450 W. Long Lake Rd., Suite 100

Troy, MI 48098

Sent via e-mail

RE: Urgent---Stipulation Needed 2-11-14 to Extend Due Date of Reply Brief, COA #317972

Dear Mr. O'Malley,

I was looking at the Register of Actions for Court of Appeals Case No. 317972, *Tamara Filas vs. Kevin Culpert and Efficient Design, Inc.*, and it indicates that you filed Appellee, Efficient Design's Brief on January 23, 2014. I was not served with this filing.

The due date for my reply to this Brief is February 13, 2014. Therefore, I am asking that you please serve the Brief to me again on Tuesday, February 11, 2014, and sign my name to an e-filed stipulation that my Reply Brief will be due Tuesday, March 4, 2014. I would greatly appreciate it as I do not have access to e-filing and would have to drive to the court to submit the stipulation. I apologize for the late notice, but I just discovered I didn't have a copy of your brief tonight. The stipulation would have to be e-filed by 5:00 p.m. Tuesday, February 11, 2014.

Please e-mail me a copy of the e-filed stipulation with the COA date/time stamp in the margin.

Thank you for your time and assistance in resolving this matter.

Respectfully,

Tamara Filas