

**SUPERIOR COURT OF PENNSYLVANIA  
WESTERN DISTRICT**

**No. 1892 WDA 2019**

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**JOE MYERS,**

**vs.**

**TIMOTHY F. MCCUNE, JOSEPH H. CHIVERS, JACK W. MURTAUGH JR., GRAYDON BREWER, CARL V. NANNI, JACK LEWIS, JIM GALLAGHER, HANK LEYLAND, GREG LOVERICK, EDWARD TASSEY, AK STEEL, UAW, et al.**

**Appeal of: Joe Myers**

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**Brief of Appellees, AK Steel Corporation  
and Edward Tassej**

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***Appeal from Order Dated November 21, 2019, granting Defendants' Preliminary Objections en toto and dismissing Plaintiff's claims with prejudice.***

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**COUNTER-STATEMENT OF THE CASE**  
**COUNTER-STATEMENT OF PROCEDURAL HISTORY**

Appellant Joe Myers (“Myers”) filed his Complaint on May 29, 2019. Because the Complaint failed to present a factual or legal basis for any claims against Appellee AK Steel Corporation and/or Appellee Edward Tassej (collectively “AK Steel”), AK Steel filed preliminary objections on June 19, 2019. The trial court granted AK Steel’s preliminary objections and dismissed Myers’ claims with prejudice on November 21, 2019.

**COUNTER-STATEMENT OF FACTS**

AK Steel Corporation terminated Myers’ employment on April 10, 2001. (Complaint at pg. 4.<sup>1</sup>) Myers and his union filed a grievance regarding Myers’ termination. *Id.* at 8-9. On November 29, 2001, an arbitrator denied the grievance and upheld Myers’ termination. *Id.* at 11. Myers then filed a lawsuit against AK Steel on April 22, 2004 in the Butler County Court of Common Pleas. *See generally Myers v. AK Steel Corp.*, 156 Fed. Appx. 528 (3<sup>rd</sup> Cir. 2005). The lawsuit alleged that Myers’ union failed to adequately

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<sup>1</sup> Myers has not designated or produced a Reproduced Record.

represent him in his arbitration. *Id.* Myers also alleged breach of contract and fraud against AK Steel. *Id.* AK Steel removed the case to the United States District Court for the Western District of Pennsylvania. *Id.*

On October 4, 2004, the District Court dismissed all of Myers' claims as time barred. *Id.* Myers appealed the District Court's ruling to the Third Circuit Court of Appeals. *Id.* The Third Circuit affirmed the district court's ruling on December 8, 2005. *Id.* After more than fourteen years of inactivity, Myers filed the current case in the Butler County Court of Common Pleas on May 29, 2019.

## **SUMMARY OF ARGUMENT**

Myers' appeal should be dismissed for his numerous and significant violations of the Pennsylvania Rules of Appellate Procedure. Although Myers is a *pro se* litigant, Myers' disregard for appellate procedure has put the Appellees at a material disadvantage, and Pennsylvania courts have dismissed *pro se* litigant appeals for similar violations.

If the Court does not dismiss Myers' appeal for its extensive procedural violations, the Court should affirm the trial court's dismissal of Myers' claims. The Pennsylvania Constitution and relevant case law make it clear that the procedural rules and statutes of limitations challenged by Myers are entirely constitutional. Further, Myers waived any challenge to the trial court's holding that his claims against AK Steel, which ripened more than 18 years ago and were already litigated in both labor arbitration and civil court, were barred by collateral estoppel and the statute of limitations.

## **ARGUMENT OF APPELLEES**

### **I. MYERS' SUBSTANTIAL PROCEDURAL VIOLATIONS REQUIRE DISMISSAL OF HIS APPEAL.**

As a threshold matter, Myers' appellate brief contains multiple procedural violations. These procedural violations are of such significance that dismissal of the appeal is warranted. The Rules of Appellate Procedure state that briefs "shall conform in all material respects with the requirements of these rules" and "if the defects are in the brief or reproduced record of the appellant and are substantial, the appeal or other matter may be quashed or dismissed." Pa. R.A.P. 2101.

Myers violated several provisions in the rules regarding formatting and length of briefs. Principal briefs longer than 30 pages must not exceed 14,000 words. Pa. R.A.P. 2135. Despite his certification that his brief did not exceed 14,000 words, Myers' 100-page brief contains nearly 25,000 words - almost double the rule's limit. Myers' overly lengthy brief is exacerbated by its single-spaced formatting in violation of the Court's rules requiring that briefs be double spaced. Pa. R.A.P. 124. In addition, Myers' brief is missing the required summary of the argument, statement of the



scope and standard of review. Pa. R.A.P. 2111, 2118. Further, the procedural history section of Myers' brief, which the rules require to be concise and without argument, is 19 pages long and laced with arguments throughout. Pa. R.A.P. 2117.

Myers' procedural deficiencies are not simply a matter of incorrect formatting or excessive length. Myers also failed to designate and/or file a reproduced record, as required by Pa. R.A.P. 2186. "If an appellant fails to file his designation of reproduced record, brief or any required reproduced record within the time prescribed by these rules, or within the time as extended, an appellee may move for dismissal of the matter." Pa. R.A.P. 2188. Instead of filing or designating the required record, Myers' brief repeatedly references his personal website, [www.1776totyranny.com](http://www.1776totyranny.com), which he continuously updates with documents, videos and other content relating to this lawsuit and to his personal political views. Myers' reliance on this extrinsic material unfairly presents Appellees and the Court with a moving target, and is no substitute for a record that was properly before the trial court. *Rosselli v. Rosselli*, 750 A.2d 355 (Pa. Super. 2000).

Myers' status as a *pro se* litigant does not excuse his substantial procedural violations, particularly when these violations are prejudicial to the other parties and the Court. Pennsylvania courts have dismissed *pro se* litigant appeals because of procedural violations. *Com. v. Spuck*, 86 A.3d 870, 873 (Pa. Super. 2014) (finding issues of *pro se* litigant to be waived and quashing appeal where Appellant violated various Rules of Appellate Procedure, including Pa. R.A.P. 2135); *Commonwealth v. Lyons*, 833 A.2d 245, 252 (Pa. Super. 2003) (“[A] *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of . . . Court.”). While courts are willing to liberally construe materials filed by a *pro se* litigant, *pro se* status confers no special benefits to the litigant. *Commonwealth v. Maris*, 629 A.2d 1014, 1017 n. 1 (Pa. Super. 1993). Because Myers' brief does not comply with the Rules of Appellate Procedure, his appeal should be dismissed.

**II. TO THE EXTENT MYERS RAISES ANY SUBSTANTIVE CLAIMS, THEY ARE WITHOUT MERIT.**

**a. THE PROCEDURAL RULES ARE CONSTITUTIONAL.**

Myers' brief is largely incoherent and fails to raise clear substantive claims as to how the trial court erred. Myers appears

to argue that Pennsylvania's rules of procedure and certain statutes of limitations are unconstitutional because they violate his right to a jury trial.<sup>2</sup> Myers provides no legal support from Pennsylvania's Constitution or courts to advance his argument.

Myers' argument that the procedural rules are unconstitutional fails because the Pennsylvania Constitution explicitly grants the Supreme Court the power to prescribe such rules. Specifically, the Pennsylvania Constitution provides:

The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for the assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for the admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the Judicial Branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitations or repose.

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<sup>2</sup> Myers does not appear to acknowledge that the statutes of limitations applicable to his claims are legislatively enacted.

PA. CONST. Article 5, Section 10(c). The Pennsylvania Supreme Court, in fact, has the *exclusive* power to establish the procedural rules that Myers attacks. *In re 42 Pa.C.S. § 1703*, 394 A.2d 444, 448 (Pa. 1978) (“The United States Court of Appeals for the Third Circuit was correct in concluding that ‘the Pennsylvania Constitution gives the state’s supreme court exclusive power to establish rules of procedure for state courts’ and that ‘the legislature . . . is without power to control procedure.’”) (*quoting Garrett v. Bamford*, 582 F.2d 810 at 814 (3<sup>rd</sup> Cir. 1978)).

Moreover, Myers’ argument that the trial court wrongly denied his constitutional right to a jury trial ignores the trial court’s constitutionally ordained role in the administration of the jury trial. In contrast to Myers’ argument, the right to a jury trial is not a substantive right. Rather, “[t]he right to a jury trial is a *procedural* matter.” *Com. v. McMullen*, 961 A.2d 842, 848 (Pa. 2008) (emphasis added). Pursuant to the Supreme Court’s power to make procedural rules, the Court can create rules that address the method by which the right to a jury trial is administered fairly and equitably. *Id.* at 847.

As the trial court correctly noted, a primary function of the trial court is to serve as a gatekeeper to dismiss a case that fails to establish a legal or factual basis for a jury trial. (Trial Court Opinion at pg. 8; *see also Toney v. Chester Cty. Hosp.*, 36 A.3d 83, 99 (Pa. 2011) (“our trial courts are charged with performing their standard gatekeeping function in determining which cases should be permitted to be argued to a jury.”). Pursuant to the procedural rules established by the Supreme Court, the trial court reviewed AK Steel’s Preliminary Objections, concluded that Myers did not articulate a legal or factual basis for his claims, and dismissed the action accordingly. Myers does not argue that the trial court acted outside of the prescribed procedural rules, but rather that those procedural rules are unconstitutional. Given the trial court’s mandate from the Pennsylvania Supreme Court and the Pennsylvania Constitution, Myers’ position is legally incorrect.

**b. THE STATUTES OF LIMITATIONS ARE CONSTITUTIONAL.**

When Myers filed his initial lawsuit in 2001, the district court and Third Circuit both held that Myers’ claims were barred by the applicable statute of limitations. Now, nineteen years later, Myers

pursues identical claims. From what AK Steel can glean from Myers' appellate brief, he is arguing that the statute of limitations period, which bars his claims both then and now, violates his right to a jury trial. This argument, like his procedural argument, fails.

Courts have long held that statute of limitations are imperative to provide stability and finality. *Schumucker v. Naugle*, 231 A.2d 121, 123 (Pa. 1967). Statutes of limitations provide individuals with an adequate amount of time to recognize their claims and file a lawsuit. Further, the statute of limitations period allows entities to carry out their business without the fear of unforeseen litigation arising years after any alleged wrongdoing. Importantly, the statute of limitations period helps ensure that documents and witnesses will be available to resolve the matter.

As noted by the Pennsylvania Supreme Court:

Our various statutes of limitations and the rulings of chancellors upon pleas of laches are expressive of the feelings of mankind that, where there are wrongs to be redressed, they should be redressed without unreasonable delay, and where there are rights to be enforced, they should be enforced without unreasonable delay. Those who have interests, which they wish to have judicially characterized as legal rights, should take prompt measures to bring such interests before the proper tribunals. Persons against whom actions may be

threatened have claims to judicial consideration as well as those who threaten such actions; both are equally entitled to have the controversy between them promptly adjudicated while witnesses are still available and memories are undimmed by long intervening years.

*Riley v. Boynton Coal Co.*, 157 A. 794, 795 (Pa. 1931). Myers' claims that his right to a jury trial is impeded by the statute of limitations simply ignores the importance of this procedural mechanism. Far from being unconstitutional, statutes of limitations periods are necessary to ensure fairness for all parties. Pennsylvania's appellate courts have rejected numerous prior challenges to the constitutionality of various statutes of limitations. See *McDonald v. Redevelopment Auth. Of Allegheny Cty.*, 952 A.2d 713, 717-718 (Pa. Commw. Ct. 2008) ("[a]s a matter of constitutional law, a statute of limitations goes to matters of remedy, not to the destruction or impairment of a fundamental right, so long as the aggrieved party has a reasonable time to sue."); see also *Astemborski v. Susmarski*, 466 A.2d 1018 (Pa. 1983) (holding that six year statute limitations to establish paternity does not violate equal protection clause of the Pennsylvania or Federal Constitutions); *Pennock v. Lenzi*, 882 A.2d

1057 (Pa. 2005) (holding statute of limitations for wrongful death and survival actions does not violate remedies, due process, or equal protection clauses of the Pennsylvania or Federal Constitutions); and *Philadelphia, B. & W. R. Co. to Use of Pennsylvania R. Co. v. Quaker City Flour Mills Co.*, 127 A. 845, 846 (Pa. 1925)("[a] statute of limitations requiring existing actions to be brought within a prescribed time from the date when the cause of action arose is constitutional and within legislative powers, provided a reasonable time thereafter be given by the act for the commencement of the suits, the cause of which had accrued when the law became effective.") Therefore, Myers' claim that his right to a jury trial was violated is without merit and his appeal should be dismissed.

**c. MYERS WAIVED ANY NON-CONSTITUTIONAL CHALLENGES TO THE TRIAL COURT'S HOLDING.**

While Myers arguably challenges the constitutionality of the statutes of limitations *generally* in his appeal, he does not challenge the trial court's holding that his claims were ripe as of 2001 and that he "fail[ed] to allege any basis for an equitable tolling of the statute of limitations for any federal or state claims



against the present Defendants.” (Trial Court Opinion at pg. 6). As a result, Myers waived any arguments regarding tolling, equitable estoppel, or any other avoidance of these statutes. See *C.H.L. v. W.D.L.*, 214 A.3d 1272, 1277 (Pa. Super. 2019).<sup>3</sup>

### **CONCLUSION**

For the foregoing reasons, **AK Steel Corporation and Edward Tasse**y respectfully request this Court affirm the trial court’s November 21, 2019 Order dismissing Myers’ claims with prejudice.



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<sup>3</sup> Moreover, the trial court correctly held that Myers’ claims clearly are barred by all applicable statute of limitations and the doctrine of collateral estoppel. See *generally*, 42 Pa.C.S.A. §5501-5538 (listing various statutes of limitations); *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998) (outlining elements of collateral estoppel). The doctrine of res judicata may also apply. See *Callery v. Mun. Auth. of Blythe Twp.*, 243 A.2d 385, 387 (Pa. 1968) (setting forth elements of res judicata).

Counsel for Appellee, AK Steel  
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**CERTIFICATE OF COMPLIANCE**  
**PURSUANT TO PA.R.A.P. 2135(a)(1) and PA.R.A.P. 2135(d)**

I hereby certify that Appellees' reply brief does not exceed 7,000 words limit set forth in Pa.R.A.P. 2135(a)(1) and Pa.R.A.P. 2135(d). I relied upon the word count of my word processing system to make this certification.



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Nicholas J. Koch

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: AK Steel Corporation  
and Edward Tasse

Signature: /s/ Nicholas J. Koch

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Brief of Appellees, AK Steel Corporation and Edward Tasse, was served this 20th day of May, 2020, via Electronic Mail and First-Class Mail, postage prepaid, upon Appellant, Mr. Joe Myers, and via First-Class Mail, postage prepaid, upon the remaining parties and counsel of record, as follows:

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**IN THE SUPERIOR COURT OF PENNSYLVANIA**

Joe Myers, Appellant	:	1892 WDA 2019
v.	:	
Timothy F. McCune, Joseph H. Chivers, John/Jack W. Murtagh Jr., Graydon Brewer, Carl V. Nanni, Jack Lewis, Jim Gallagher, Hank Leyland, Greg Loverick, Edward Tasse, AK Steel et al, UAW (formerly Butler Armco Independent Union) et al, Angelo Papa, William Cunningham, Michael Lettrich, Maria Milie Jones, Dennis Roman, Nicholas Koch, Adam Hobaugh, Appellees	:	

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I hereby certify that this 20th day of May, 2020, I have served the attached document(s) to the persons on the date(s)  
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**IN THE SUPERIOR COURT OF PENNSYLVANIA**

/s/ Nicholas Joseph Koch

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