

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

FIDEL COSBY	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
JAMES MATTUCCI AND WILKES-BARRE	:	No. 1684 MDA 2025
HOSPITAL COMPANY, LLC D/B/A	:	
WILKES-BARRE GENERAL HOSPITAL	:	

Appeal from the Order Entered October 10, 2025
In the Court of Common Pleas of Luzerne County
Civil Division at No(s): 2024-05788

BEFORE: PANELLA, P.J.E., NICHOLS, J., and NEUMAN, J.

MEMORANDUM BY PANELLA, P.J.E.:

FILED AUGUST 28, 2026

Fidel Cosby appeals *pro se* from the order entered in the Luzerne County Court of Common Pleas on October 10, 2025, affirming the judgment of non pros entered against him and in favor of Wilkes-Barre Hospital Company, LLC d/b/a Wilkes-Barre General Hospital ("WBGH"),¹ granting WBGH's motion to strike the certificate of merit ("COM") filed by Cosby, and dismissing the case with prejudice. After careful review, we affirm.

On May 22, 2024, Cosby filed a complaint sounding in medical malpractice against WBGH, averring negligence during a surgical procedure performed at WBGH. Specifically, Cosby averred that a drill bit broke off during

¹ Although Dr. James Mattucci is named in the complaint, he has never been served and has not appeared in this action.

the surgical procedure, and was now impacted in his glenoid, causing severe arthritis and mental suffering and anguish, along with life altering pain.

On June 10, 2024, Cosby filed a handwritten letter with the prothonotary, in which he stated his address had changed to SCI-Forest. Although the letter is not titled, the prothonotary docketed the filing as an "Affidavit of Last Known Address."

On June 25, 2024, WBGH filed a notice of intention to enter judgment of non pros for failure to file a COM, pursuant to Pa.R.C.P. 1042.7. The notice was addressed to Cosby at SCI-Huntington.

Cosby thereafter filed a motion for continuance, hand dated on July 8, 2024 and filed on July 23, 2024, in which he asserted (1) he was unable to provide a COM without a court order to be transported to an outside hospital, (2) he only received the Rule 1042.7 notice on July 6, 2024, due to the notice being mailed by snail mail to Smart Communications based in Florida, constituting governmental interference, (3) he had requested appointment of counsel due to his lack of knowledge and understanding of legal practice, (4) at that time he was on cell restriction and unable to reach out to family to seek legal aid, (5) he reached out to an attorney but had not heard back yet, and (6) WBGH had violated his privacy rights by mailing legal mail to Smart Communications in Florida.

On August 5, 2024, WBGH filed a response to the motion for continuance and motion to appoint counsel. WBGH agreed to a continuance of 60 days,

pursuant to Pa.R.C.P. 1042.3(d), in order for Cosby to file a COM. The response was again addressed to Cosby at SCI-Huntington.

On August 29, 2024, the court entered an order scheduling oral argument on Cosby's motion for continuance and motion to appoint counsel. However, the next day, the court entered another order denying the motion to appoint counsel, reasoning that "Litigants are not entitled to court appointed counsel in civil actions." Order, 8/30/24. Further, the court denied the motion for continuance, stating the motion was "not in conformity with the Rules of Civil Procedure in that it appears to be requesting an extension of time to file a [COM]." ***Id.***; ***but see*** Pa.R.C.P. 1042.3(d) ("The court, upon good cause shown, shall extend the time for filing a [COM] for a period not to exceed sixty days."). Accordingly, the court ruled the scheduled oral argument was moot.

On September 5, 2024, WBGH filed a *praecipe* to enter judgment of non pros for failure to file a COM, indicating that Cosby had still failed to file a COM, despite the fact that it had been over 60 days since Cosby filed the complaint, and the court had denied a continuance.

On September 7, 2024, the prothonotary filed notice that judgment of non pros had been entered against Cosby. While the notice was filed on the docket, the certificate of service indicates service was made to Cosby at SCI-Huntington. The certified record indicates the notice, which was postmarked

on September 9, 2024, was returned to sender as undeliverable on September 17, 2024.

On October 28, 2024, Cosby filed another untitled document, hand-dated October 14, 2024, in which he sought to “refute” the judgment of non pros, detailed his attempts to obtain a COM, and alternatively requested a determination if the case could proceed without a COM pursuant to ***Wiggins v. Synthes***, 29 A.3d 9, 15 (Pa. Super. 2011) (stating that although expert testimony is “certainly desirable,” this Court has recognized that “it is not essential” in cases of a manufacturing defect, where the defect can be proven through circumstantial evidence). On the same date, Cosby filed a motion to appoint counsel.

On November 6, 2024, WBGH filed a response, along with a memorandum of law, to Cosby’s motion to vacate the judgment of non pros, arguing the request should be denied as the court had not abused its discretion and Cosby had not put forth a meritorious defense for opening or striking the judgment. The response was again served to SCI-Huntington.

Cosby subsequently filed a response to WBGH’s memorandum of law, in which he stated that the judgment granted on October 7, 2024 was sent to the incorrect SCI and he did not receive it. Cosby refuted WBGH’s assertion that he had not provided a meritorious defense, again detailing his efforts to obtain a COM, the troubles he faced in doing so due to “his extreme circumstances” of being incarcerated, and his lack of legal expertise.

Between October 2024 and January 2025, Cosby filed numerous documents, many untitled, in which he sought to set aside or vacate the judgment of non pros, set forth a meritorious defense related to his lack of notice due to filings being served to the incorrect address, requested "hi-tech" medical records, and attempted to show his diligence in obtaining a COM. Cosby also filed numerous requests for the appointment of counsel and motions for recusal, asking the Judge to be removed from the case.

On February 10, 2025, the court entered an order denying Cosby's multiple requests for appointment of counsel, reiterating that litigants are not entitled to court appointed counsel in civil actions. On the same day, the court entered an order denying Cosby's motions for recusal.

On April 21, 2025, Cosby filed a purported COM, which is only signed by Cosby. Cosby did not attach any expert opinions, and only attached an operative report from a surgical procedure performed on March 6, 2025, during which Matthew Varacallo, MD removed the retained drill bit / hardware from Cosby's joint. Regarding the prior surgery, Dr. Varacallo noted only as follows:

Per the patient's history he underwent prior attempts at a Bankart repair done by a surgeon in Wilkes-Barre Pennsylvania. After reviewing the operative report and documenting the patient's history, the surgery was not successful and the surgeon had documented that during the attempted repair there was apparently a drill bit that had broken off in the patient's glenoid. The surgeon then converted to an open surgical situation and attempted to remove this drill bit but made note that there were multiple attempts to remove this hardware and eventually he decided to abort the procedure and noted that "I cannot do this."

The decision at that time apparently was made to then go back to an arthroscopic situation and then tamp the prominent hardware back into the glenoid in order to inferiorly mitigate the risk of iatrogenic arthritic damage to the patient's glenohumeral joint. Of note I was not able to review the arthroscopic images from the initial procedure however I fully reviewed the operative report. There is only documentation that there is no evidence of "severe arthritis" affecting the patient's glenohumeral joint.

Certificate of Merit, 4/21/25, at 4.

The court scheduled oral argument to be heard on Cosby's multiple motions seeking to set aside/vacate the judgment, requests for "hi-tech" medical records, and an additional request for the appointment of counsel. The oral argument was continued multiple times. In the meantime, WBGH filed responses to each of Cosby's motions. Pertinently, on May 28, 2025, WBGH filed a motion to strike the April 21, 2025 COM, along with a memorandum of law. Cosby filed a memorandum in opposition to WBGH's motion to strike the COM.

On June 16, 2025, the court ordered that oral argument on WBGH's motion to strike the COM would be heard on the same day as the previously scheduled hearing, which after numerous continuances was to take place on June 23, 2025.

On June 23, 2025, the parties appeared for oral argument. Due to Cosby's numerous *pro se* untitled filings, the court sought to clarify what the bases of Cosby's motions were in order to make sense of what was pending before the court. Cosby stated that he wanted to vacate/strike the judgment of non pros. **See** N.T., 6/23/25, at 3. The court explained that because Cosby's

filings did not have headings, and were not in conformity with the rules of civil procedure, the prothonotary had no way to determine the basis for the filings.

See id. at 4.²

Cosby again stated he was seeking to vacate the judgment of non pros and argued he never received it. **See id.** at 4-5. The court affirmed the docket showed that the judgment was returned as undelivered on October 4, 2024, “[s]o technically, there was no service of this. Of the non-pros.” **Id.** at 5. However, the court explained to Cosby that it was his obligation as the plaintiff to change his mailing address. **See id.** at 6. Cosby argued that he “changed it July 8th ...” **Id.** Reiterating that none of his filings were in conformity with the rules of civil procedure, the court noted that there was no motion for change of address on the docket in July. **See id.** Notably, no one brought up the docket entry for “Affidavit of Last Known Address” in June 2024. The court agreed that the judgment of non pros was not sent to the correct prison, but asserted that Cosby’s address of record was never changed. **See id.** at 7-8.

The court preceded to go through each of Cosby’s filings to see what he was seeking. Regarding the requests for “hi-tech” medical records, the court explained “[y]ou can’t just come to me and say, Give me the medical records.”

² We note that despite the lack of headings, the prothonotary still docketed each of Cosby’s motions with pertinent notations of the substance of each. **See e.g.** Docket 2024-05788, at 2 (indicating three separate motions filed on 10/28/2024 with the comments: “TO VACATE JUDGMENT NON PROS,” “FOR RECUSAL,” and “TO APPOINT COUNSEL”).

Id. at 12. The court explained that if Cosby wants medical records, he would have to file a subpoena or file a request through the hospital system. ***See id.*** Cosby asserted that his filing was a copy of the letter that he sent to the hospital requesting his medical records. ***See id.*** at 12-13. The hospital averred there was nothing about the letter filed with the court that demonstrated it was actually sent to and received by the hospital and they were not aware of receiving any authorization to obtain his medical records. ***See id.*** at 13. Further, the hospital stated it has a patient portal, which Cosby could access online in order to obtain his medical records. ***See id.*** Cosby argued he had no way to access the internet to obtain the records, which is why he sent a letter. ***See id.*** The court explained there are procedures that need to be followed to obtain medical records, that there was no evidence of record, including a certificate of service, showing where or how Cosby mailed the letter, or that he ever signed an authorization. ***See id.*** at 13-14.

The court then moved on to discuss WBGH's motion to strike the COM. The court first apologized for scheduling the motion to be addressed at that hearing, admitting that Cosby would not have received the order scheduling oral argument on that motion in time. ***See id.*** at 15. However, the court still asked WBGH to clarify the basis of the motion to strike. ***See id.*** WBGH explained the basis was that (1) Cosby did not comply with several terms of Pa.R.C.P. 1042.3, including that he did not file separate COMs for each named defendant, (2) Cosby did not supply a statement from a medical professional

indicating the claim had merit, including a statement that WBGH deviated from the standard of care, and (3) the judgment of non pros was entered properly. **See id.** at 16. When the court sought to clarify that Cosby did not have an expert doctor, and had only attached a doctor's report, Cosby argued that Dr. Varacallo was a qualified surgeon who would opine that malpractice occurred in this situation. **See id.** WBGH responded that upon review of the treatment records, WBGH is not mentioned at all in the record, and Dr. Varacallo does not make any comment on whether the previous treatment administered to Cosby was negligent in any way. **See id.** at 16-17.

The court next addressed Cosby's motion for appointment of counsel. When questioned by the court why he believed he was entitled to a lawyer in a civil case, Cosby asserted that there were certain procedures and different things that he is not able to do due to his incarceration. **See id.** at 18. The court explained that lawyers and expert reports cost a lot of money, and questioned who Cosby thought would be paying for those things. **See id.** The court further explained that in a criminal case, you only have the right to counsel if your liberty is at stake, but as a plaintiff bringing a cause of action in a medical malpractice case, his liberty is not at stake. **See id.** at 19. The court therefore denied the request for appointment of counsel. **See id.** at 20. The court took the rest of the issues under advisement. **See id.**

On October 10, 2025, the court entered an order granting WBGH's motion to strike the COM, affirming the judgment of non pros, and dismissing

the case with prejudice. On the same date, the court entered an order declaring multiple motions and unnamed documents filed by Cosby to be moot. This timely appeal followed.³

Preliminarily, we must determine what issues Cosby has preserved for appeal, as there are discrepancies between Cosby's 1925(b) concise statement, his statement of questions involved, and the argument section of his brief.

Cosby raises the following issues in his statement of questions involved:

1. Did the trial court abuse its discretion in refusing to open the judgment of non pros where [Cosby] acted promptly, provided a reasonable explanation, and demonstrated a meritorious claim?
2. Must the judgment of non pros be opened where [Cosby] was denied the notice required by Pa.R.C.P. 236 due to misdirected court mail despite the court's knowledge of his correct address?
3. Did the lack of notice constitute a violation of [Cosby]'s due process right to notice and an opportunity to be heard?

³ The only means by which relief can be sought from a judgment of non pros is through a petition to open and/or strike judgment. **See** Pa.R.Civ.P. 3051. Accordingly, "[a]ny appeal related to a judgment of non pros lies not from the judgment itself, but from the denial of a petition to open or strike." **Madrid v. Alpine Mountain Corp.**, 24 A.3d 380, 381 (Pa. Super. 2011).

Here, it appears that the order appealed from does not deny a petition to open or strike judgment, but merely affirms a previous judgment of non pros and dismisses the action with prejudice. The order, however, makes it clear that it is also addressing the 3 petitions to open or strike that Cosby filed. While the order does not explicitly deny these petitions, by affirming the September 2024 non pros judgment, the order effectively denies all 3 petitions to open or strike. Because the order effectively denies Cosby's petitions to open or strike, we find the appeal is properly before us.

4. Did the trial court improperly elevate procedural form over substance in dismissing a meritorious medical malpractice claim involving a retained surgical instrument?

5. Did the trial court abuse its discretion by failing to accommodate an incarcerated litigant pursuing a complex malpractice claim requiring expert evidence?

Appellant's Brief, at 7 (suggested answers omitted).

While Cosby's brief contains an argument section, it is not divided "into as many parts as there are questions to be argued." Pa.R.A.P. 2119(a). Although Cosby presents the five questions above in his statement of questions involved, he divides his argument section into eight parts, adding three additional, *albeit* brief, argument sections, related to the alleged lack of a transcript, the court's denial of Cosby's request for a court-ordered medical exam, and Cosby's assertion that the case should be reassigned to another judge.

Finally, the trial court ordered Cosby to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. The statement included five claims of error, which were addressed by the trial court in its opinion, as follows:

1. The trial court erred and abused its discretion by denying [Cosby]'s motion for a court order permitting examination by an independent physician outside the Department of Corrections' system for the purpose of obtaining a [COM], as required under Pa.R.C.P. 1042.3 in [Cosby]'s pending medical malpractice action.

2. The trial court erred and abused its discretion by denying [Cosby's] repeated request for appointment of counsel, despite [Cosby]'s indigent and incarcerated status, while also ignoring the complexity of the circumstances of the case which would require

[Cosby] to find expert testimony which he court not possibly do due to him being incarcerated.

3. The trial court erred and demonstrated judicial bias by failing to address [Cosby]’s repeated assertions that [WBGH] were deliberately withholding medical records requested under the Health Information Technology for Economic and Clinical Health Act (HI-TECH), thereby denying [Cosby] access to essential evidence necessary to support his claims and obtain a [COM].

4. The trial court erred and abused its discretion by failing to recognize [Cosby]’s meritorious defense and justification for not obtaining a [COM], also refusing to open the judgment of non-pros which was unjustly and unlawfully entered even after [Cosby] met and presented the required standards under the principles articulated in ***Shultz v. Erie Insurance Exchange***, [477 A.2d 471 (Pa. 1986)], where [Cosby]’s inability to obtain the required [COM] was caused by factors beyond his control, including incarceration, lack of access to independent medical evaluation, and [WBGH]’s refusal to release medical records.

5. The trial court erred and abused its discretion by failing to accept the postoperative report and photographic evidence provided by Dr. Matthew Varacallo, who performed the corrective procedure, which demonstrated the presence of a foreign object retained in [Cosby]’s body following surgery, a condition that constitutes prima facie evidence of medical malpractice and medical negligence under Pennsylvania Law.

1925(b) Concise Statement, 11/11/25, at 1-2 (unnecessary capitalization and some citations omitted).

We first note “[i]t is well-established that any issue not raised in a Rule 1925(b) statement will be deemed waived for appellate review. Further, an appellant’s concise statement must identify the errors with sufficient specificity for the trial court to identify and address the issues the appellant wishes to raise on appeal.” ***Commonwealth v. Bonnett***, 239 A.3d 1096, 1106 (Pa. Super. 2020) (citations omitted).

Upon review, Cosby failed to preserve his issues related to lack of a transcript⁴ and recusal of the court, by failing to include them in either his 1925(b) concise statement or his statement of issues involved. As such, those issues are not preserved for appellate review and are waived. ***See id.***

We also acknowledge that WBGH argues issues 2-4 in the appellate brief are waived for failure to include them in Cosby's 1925(b) concise statement. ***See*** Appellee's Brief, at 18. WBGH is correct that issue 2-4 are not included in Cosby's 1925(b) concise statement, nor does the concise statement explicitly mention the concepts of lack of notice, or elevating "procedural form over substance." Accordingly, those issues are waived as well. ***See Bonnet***, 239 A.3d at 1106. We proceed to address the remainder of the issues that have been preserved for our review.

We begin with our standard and scope of review:

When reviewing a petition to open and/or strike a judgment of non pros pursuant to Pa.R.C.P. 1042.6, our Court may reverse the decision of the trial court only if we find that the trial court abused its discretion in reaching its determination. A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record. It is well-established that a motion to strike off a judgment of non pros challenges only defects appearing on the face of the record and that such motion may not be granted if the record is self-sustaining.

Mumma v. Boswell, Tintner, Piccola & Wickersham, 937 A.2d 459, 463 Pa. Super. 2007) (citations, italics, and quotation marks omitted). "A petition

⁴ Notably, despite Cosby's claim to the contrary, a transcript does appear in the certified record.

seeking to open a judgment of non pros must allege that: (1) the petition is timely filed; (2) there is a reasonable explanation or legitimate excuse for the inactivity or delay[;] and (3) there is a meritorious cause of action.” ***Zokaites Contracting Inc. v. Trant Corp.***, 968 A.2d 1282, 1286 (Pa. Super. 2009) (italics and citation omitted).

Rule 1042.7 provides when entry of judgment of non pros should be entered for failure to file a COM:

(a) The prothonotary, on praecipe of the defendant, shall enter a judgment of non pros against the plaintiff for failure to file a [COM] within the required time provided that

(1) there is no pending motion for determination that the filing of a certificate is not required or no pending timely filed motion seeking to extend the time to file the certificate,

(2) no [COM] has been filed,

(3) except as provided by Rule 1042.6(b), the defendant has attached to the praecipe a certificate of service of the notice of intention to enter the judgment of non pros, and

(4) except as provided by Rule 1042.6(b), the praecipe is filed no less than thirty days after the date of filing of the notice of intention to enter the judgment of non pros.

Pa.R.C.P. 1042.7.

Cosby’s complaint was filed on May 22, 2024. Cosby had 60 days to file a timely COM, or alternatively, he had to file an extension request either within those 60 days or within 30 days after the filing of WBGH’s notice of intention to enter judgment of non pros. **See** Pa.R.C.P. 1042.3(a), (d); **see also**

Pa.R.C.P. 1042.3(d) ("The court, upon good cause shown, shall extend the time for filing a [COM] for a period not to exceed sixty days.").

Here, Cosby did not file a COM by July 25, 2024, which was more than 60 days after the filing of the complaint, and 30 days after the notice of intention to enter judgment of non pros was filed. However, the record is clear that this notice was sent to the wrong address, and Cosby asserts he did not receive it until July 6, 2024. Even if we gave Cosby the benefit of the doubt and assumed, *arguendo*, that his extension request was timely *and* that it tolled the period within which a COM must be filed, **see** Pa.R.C.P. 1042.3(d), Cosby would have only had until the end of September at the latest to file a COM. Cosby did not file a COM until almost 7 months later on April 21, 2025.

Despite the untimeliness of the COM, the trial court nevertheless addressed the COM on its merits. Accordingly, the timeliness of the COM was not an ultimate factor in the court's decision. Instead, the court's decision appears to have hinged on Cosby's failure to prove the existence of a reasonable explanation and a meritorious claim.

As to the existence of a meritorious claim, Cosby asserts the new surgery automatically proves his claim and that the retention of a surgical instrument inside a patient's body is an event that is direct, objective proof of negligence. Specifically, Cosby contends that no expert testimony is necessary because leaving a foreign object inside a patient's body constitutes obvious negligence, i.e. *res ipsa loquitur*.

We begin by noting the lack of merit in Cosby's argument that he could prosecute his claim of negligence without expert testimony. The prothonotary was within its authority to grant the judgment of non pros and the trial court did not err in choosing not to open and/or strike the judgment of non pros because Cosby did not file a valid COM. **See** Pa.R.C.P. 1042.7. Even if he could proceed at trial without expert testimony, Cosby was required to attach a written statement from a licensed professional to his COM because the COM was not signed by an attorney. **See Baez v. Correct Care Solutions, Inc.**, 245 A.3d 1059, 1854 WDA 2019, at *5 (Pa. Super. filed Dec. 11, 2020) (unpublished memorandum) ("the Rule does not allow a pro se party to certify that expert testimony is unnecessary.") (citation and italics omitted);⁵ Pa.R.C.P. 1042.3(e) (providing where a certificate of merit is not signed by an attorney, a written statement from an appropriate licensed professional must be attached to the certificate). As Cosby did not comply with Rule 1042.3(e), it does not matter whether he could proceed at trial without an expert. "A *pro se* litigant is not absolved from complying with procedural rules." **Warner v. University of Pennsylvania Health System**, 874 A.2d 644, 648 (Pa. Super. 2005) (citation omitted). Cosby failed to comply with the procedural rules and the trial court did not err in upholding the judgment of non pros. Therefore, this claim does not entitle Cosby to relief.

⁵ Pursuant to Pa.R.A.P. 126(b), we may rely on unpublished memorandum issued after May 1, 2019, for their persuasive value.

Even if we were to ignore Cosby's failure to comply with the procedural rules, this claim would not merit relief, as his contentions are not within the province of laypersons. *Res ipsa loquitur*, a doctrine that allows a fact-finder to infer negligence from the surrounding circumstances, requires:

- (a) the event is of a kind which ordinarily does not occur in the absence of negligence;
- (b) other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and
- (c) the indicated negligence is within the scope of the defendant's duty to the plaintiff.

Fessenden v. Robert Packer Hosp., 97 A.3d 1225, 1230 (Pa. Super. 2014) (quoting the Restatement (Second) of Torts, § 328D(1)) (case citation omitted).

Traditionally, *res ipsa* is associated with events that are within the common knowledge of laypersons and requiring no expert testimony to establish negligence and causation. Some examples of such events offered by the commentators to the Restatement are the fall of an elevator, or the escape of gas, water, or electricity from mains or wires, or train derailments. From the nature of such events, "the conclusion is at least permissible that such things do not usually happen unless someone has been negligent."

Lageman by and through Lageman v. Zepp, 237 A.3d 1098, 1105 (Pa. Super. 2020) (quoting the Restatement (Second) of Torts, § 328D cmt. c) (case citation omitted).

Cosby has not alleged sufficient facts to address his claims without the need for expert opinion. We are unable to determine whether the doctor was responsible for retention of the surgical instrument, or whether the retention

was caused by the defective nature of the device itself. Further, laypersons would not know the effects, generally, of the retention of a surgical instrument inside a patient's body and could not determine without an expert whether those effects would be present in the absence of any negligence. Simply put, Cosby has not met a single element required for *res ipsa loquitur*.

As to a reasonable explanation for his delay in filing a COM, Cosby argues he was delayed because he is incarcerated and therefore faced substantial institutional barriers in attempting to obtain medical records and expert medical review. In any event, he argues he made efforts to obtain medical records with multiple requests for medical records. Cosby takes issue with the trial court failing to compel disclosure of the medical records, and denying him the assistance of counsel. Further, he emphasizes that important correspondence was repeatedly mailed to his former address, interfering with his ability to respond to procedural requirements associated with the COM. In sum, Cosby contends the delay resulted from (1) incarceration limiting his access to experts, (2) delayed medical records despite requests, (3) lack of counsel, and (4) repeated misdirection of mail. After careful review of the record, we do not find any of these explanations warrant relief.

As discussed above, despite the facial untimeliness of Cosby's COM, the court nevertheless addressed the substance of the COM that Cosby eventually filed. Accordingly, the misdirection of mail did not impede the court's review of his COM.

Additionally, this Court has emphasized that while an individual has a right to be represented by counsel in a civil proceeding, this right “cannot be equated with the right to receive court-appointed counsel.” **Weir v. Weir**, 631 A.2d 650, 657 (Pa. Super. 1993)). While there are limited circumstances where an exception can be made, Cosby was unable to show any life or liberty interests are at stake. Accordingly, the court did not err in denying Cosby’s requests for the appointment of counsel. The fact of his incarceration does not mandate the trial court to act as counsel or as a representative of Cosby and take action to acquire his medical records.

Further, Cosby’s status as a *pro se* incarcerated plaintiff does not, on its own, provide a reasonable explanation for failure to comply with our rules of civil procedure.

Appellant apparently labors under the false assumption that by proceeding *pro se* he is absolved of all responsibility to comply with procedural rules, and that the appellee and/or the court had some affirmative duty to walk him through the procedural requirements, or to ignore the procedural requirements, in order to reach the merits of his claim. Such is not the case. The United States Supreme Court has explained: The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law.

Jones v. Rudenstein, 585 A.2d 520, 522 (Pa. Super. 1991) (citation omitted). From his filings, it appears that Cosby is capable of reviewing legal documents and doing basic legal research, including knowing enough to file his complaint just before the statute of limitations was ending.

Pertinently, the Pennsylvania Supreme Court has held that Rule 1042.2 does not require a *pro se* plaintiff “to file a more detailed written statement than that which a licensed attorney must procure from an expert.” ***Bisher v. Lehigh Valley Health Network, Inc.***, 265 A. 3d 383, 415 (Pa. 2021). Cosby is simply being held to the same substantive standard as everyone else in being required to file a COM. Cosby has not provided any reasonable explanation on top of his *pro se* incarcerated status that would entitle him to relief. While he originally claimed in his motion for continuance that he was unable to reach out to family to seek legal aid due to his cell restriction at that time, and that he had reached out to an attorney but had not heard back, he has not since explained why he has been unable to obtain legal or expert aid or seek family support to acquire such since that time, or why he was unable to do so in the two years it took to file his complaint. While Cosby contends he made efforts to obtain medical records, he failed to provide any proof he reached out directly to WBGH for medical records.⁶ **See** N.T., 6/23/25, at 13.

Based on the above, we find the trial court properly refused to open and/or strike the judgment of non pros due to the nonexistence of a written

⁶ Cosby continuously mentions multiple “HI-TECH” requests for medical records, which appears to reference a federal statute, the Health Information Technology for Economic and Clinical Health (HITECH) Act. **See** 42 U.S.C. § 17901-53. However, we know of no duty established by this statute that would require the court to compel medical records on Cosby’s behalf. Rather, this statute focuses on protecting patient confidentiality and privacy.

statement from an appropriate licensed professional. Because Cosby's claims do not merit relief, we affirm the order of the trial court.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 08/28/2026