

¹ Fishtown is a neighborhood in Philadelphia.

project[,] for allegedly abusing the legal system and obstructing the development. Scott filed a motion for entry [of a] judgment of *non pros* for inactivity against the Developers['] complaint. The [c]ourt granted the motion for judgment of *non pros* not only against the complaint but also against [Scott's] counterclaims. Scott filed a petition to open the judgment of *non pros* against the counterclaims[, which was denied].

Trial Court Opinion, 6/3/25, at 1-2 (name honorifics omitted).

The court then provided a full recitation of the case's procedural history:

On March 3, 2017, the Developers, represented by Paul Toner and Jared Klein of Orphanides & Toner LLP, initiated a lawsuit against Scott by writ of summons.

On June 27, 2017, an affidavit of service for the writ of summons on Scott was filed with the [c]ourt. On July 12, 2017, Scott filed a notice of management program dispute seeking to transfer the case to the [Philadelphia County Court of Common Pleas'] Commerce Program. On July 25, 2017, the [c]ourt granted the notice of management program dispute, and the case was transferred to the Commerce Program.

In addition to filing a notice of management program dispute, on July 13, 2017, Scott filed a rule for the Developers to file a complaint. On August 18, 2017, the Developers filed their complaint.

Between August 31, 2017, and December 19, 2017, the parties filed successive preliminary objections and complaints, culminating in a second amended complaint, which Scott answered with new matter and counterclaims on February 27, 2018. On March 23, 2018, the Developers filed preliminary objections to the counterclaims. On May 15, 2018, the [c]ourt sustained the preliminary objections in part, striking Exhibit A to the counterclaims, and overrul[ed] the remainder of the preliminary objections.

On February 17, 2018, Scott filed a motion for determination of immunity[.] The [c]ourt denied the motion on April 9, 2018. On April 13, 2018, Scott filed an appeal of the April 9 [o]rder to the Commonwealth Court of Pennsylvania. The Developers filed a motion to stay proceedings on May 29, 2018. Scott filed a notice

of no opposition to the motion to stay. On June 21, 2018, the [c]ourt granted the motion to stay proceedings pending resolution of the appeal to the Commonwealth Court. The [o]rder granting the stay stated that if the matter was remanded, a new [c]ase [m]anagement [o]rder would be issued.

On June 4, 2019, the Commonwealth Court denied the appeal. Scott then filed a petition for review to the Supreme Court of Pennsylvania. On February 25, 2020, the Supreme Court of Pennsylvania denied the petition for review. [From that date, until] January 1, 2023, there was no docket activity.

On January 1, 2023, the [c]ourt issued a notice of docket inactivity. On February 23, 2023, the Developers filed a [s]tatement of [i]ntention to [p]roceed with this action[,] requested that the case be removed from deferred/stayed status[,] and requested a scheduling conference to reestablish deadlines for the completion of discovery and adjudication of the matter. On April 19, 2024, the case was removed from deferred status[,] and a [c]ase [m]anagement [c]onference was scheduled for May 17, 2024. On May 17, 2024, a [c]ase [m]anagement [o]rder was issued placing the case on a [s]tandard [t]rack with a discovery deadline of April 7, 2025. Both the Developers and Scott attended the conference. On June 21, 2024, Scott filed a motion for judgment of *non pros*. The [c]ourt held a hearing on the motion on September 26, 2024. On November 20, 2024, the [c]ourt issued an order and opinion granting the motion for judgment of *non pros* and dismissed the complaint and also the counterclaims.

Id. at 2-4 (footnote, name honorifics, and record citations omitted).²

On December 20, 2024, Scott filed a petition to open the judgment of *non pros* with respect to his counterclaims, which was ultimately denied by order on February 28, 2025. Scott timely appealed the court's decision and,

² The Developers separately attempted to appeal this November 20, 2024 order. However, because they "did not file a proper petition to open or strike the judgment of *non pros*," we quashed their appeal. ***See Maransky v. Scott***, Order, 3/28/25, 5 EDA 2025. Thereafter, our Supreme Court denied the Developers' corresponding petition for allowance of appeal from our quashal. ***See Maransky v. Scott***, 180 EAL 2025.

too, filed a timely concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b).

Scott raises three issues for our review:

1. Did the trial court apply an incorrect standard, or disregard the law of the case doctrine, in finding that Scott failed to meet his “meritorious cause of action” burden vis-à-vis Pennsylvania Rule of Civil Procedure 3051(c)(2)?
2. Did the trial court err in finding that the delay leading to a judgment of *non pros* as to Scott’s counterclaims caused actual prejudice to the counterclaim defendants, **see** Pa.R.Civ.P. 3051(c)(3)(iii)?
3. Did the trial court err in assigning responsibility for the delay to Scott, **see** Pa.R.Civ.P. 3051(c)(3)(i)-(ii)?

See Appellant’s Brief at 3-4.

Preliminarily, we note that the court indicates that it *sua sponte* entered a judgment of *non pros* as to Scott’s counterclaims pursuant to Pennsylvania Rule of Judicial Administration 1901(a). **See** Trial Court Opinion, 6/3/25, at 13 n.7. Rule 1901(a) establishes that “[w]here a matter has been inactive for an unreasonable period of time, the tribunal, on its own motion, shall enter an appropriate order terminating the matter.” Pa.R.J.A. 1901(a).

Rule 1901(a) operates in conjunction with Pennsylvania Rule of Civil Procedure 230.2. Specifically, Rule 1901 provides “general guidelines for conducting an administrative purge, [while] Rule 230.2 set[s] forth a procedural mechanism for a court to perform an administrative purge of cases that ha[ve] remained on the civil docket for two or more years with no evidence of any activity.” Pa.R.Civ.P. 230.2, Explanatory Comment–2015.

Rule 1901 provides that appropriate notice of any proposed termination is a mandatory minimum standard under the rule:

(c) Minimum standards. Before any order terminating a matter on the ground of unreasonable inactivity is entered, the parties shall be given at least 30 days' written notice of opportunity for hearing on such proposed termination, which notice shall be given:

(1) In person or by mail to the last address of record of the parties or their counsel of record and setting forth a brief identification of the matter to be terminated; or

(2) By publication in the manner provided by rule of court in the legal newspaper designated by rule of court for the publication of legal notices in any case where notice by mail cannot be given or has been returned undelivered or where the docket of the matter shows no evidence of activity during the previous two years. Any matter terminated after notice by publication pursuant to this paragraph may be reinstated by the court after dismissal upon written application for good cause shown.

Pa.R.J.A. 1901(c).

Next, we observe that the procedures set forth in Rule 230.2 also provide for mandatory notice of the proposed termination:

Rule 230.2. Termination of Inactive Cases

(a) General Rule. At least once a year, the court shall initiate proceedings to terminate cases in which there has been no activity of record for two years or more, and shall report such information to the Court Administrator of Pennsylvania on a form supplied by the Administrative Office of Pennsylvania Courts or in such format as requested from time to time by the Administrative Office of Pennsylvania Courts.

(b) Notice of Proposed Termination.

(1) For each case identified pursuant to subdivision (a), the court shall serve a notice of proposed termination on counsel of record, and on the parties if not represented, 30

days prior to the date of the proposed termination. The notice shall contain the date of the proposed termination and the procedure to avoid termination.

(2) The notice shall be served electronically pursuant to Rule 205.4(g)(1), or pursuant to Rule 440 on counsel of record and on the parties, if not represented, at the last address of record.

(c) Termination. If no statement of intention to proceed has been filed on or before the date of the proposed termination, the prothonotary shall enter an order as of course terminating the matter for failure to prosecute.

(d) Reinstatement.

(1) If an action has been terminated pursuant to this rule, an aggrieved party may petition the court to reinstate the action.

(2) If the petition is filed within 60 days after the entry of the order of termination on the docket, the court shall grant the petition and reinstate the action.

(3) If the petition is filed more than 60 days after the entry of the order of termination on the docket, the court shall grant the petition and reinstate the action upon a showing that:

(i) the petition was timely filed following the entry of the order for termination; and

(ii) there is a reasonable explanation or a legitimate excuse for the failure to file both:

(A) the statement of intention to proceed prior to the entry of the order of termination on the docket; and

(B) the petition to reinstate the action within 60 days after the entry of the order of termination on the docket.

(e) Termination with Prejudice. Any case which is reinstated pursuant to subdivision (d) shall be subject to termination with prejudice upon a subsequent termination pursuant to subdivision (a). No subsequent reinstatements shall be granted.

Pa.R.Civ.P. 230.2 (a)-(e). Subsections (f) through (h) contain the form notice of proposed termination, the form statement of intention to proceed, and the required status conference that must be held after the court receives a statement of intention to proceed. **See id.** 230.2 (f)-(h).

From the record before us, we cannot say whether the court strictly complied with Rules 1901 and 230.2 as to Scott, as counterclaim plaintiff, because the actual notice of docket inactivity, while listed as a docket entry, is not of record.³ Nevertheless, at the hearing on Scott's motion for judgment of *non pros*, Scott implicitly indicated that he received "the automated court letter for [in]activity[,] which [the Developers] responded to[.]" N.T. *Non Pros* Hearing, 9/26/24, at 4. Later, when the court asked him if it granted his *non pros* motion, "wouldn't [it] also [order a judgment of *non pros*] with respect to the counterclaim? Because if there is no activity on the affirmative claim . . . can't the same be said for the counterclaim?" **Id.** at 35. Scott responded:

³ According to the docket, the court issued a notice of docket inactivity pursuant to Rule 230.2 on January 4, 2023, the Developers filed a statement of intention to proceed on February 23, 2023, and the court thereafter removed the case from deferred status on April 19, 2024. After that, the court held a May 17, 2024 status conference, which resulted in the issuance of a new case management order. This new case management order set forth a new timeline of dates certain without any distinction between the parties and their respective claims, merely identifying "Plaintiff(s)" and "Defendant(s) and any additional defendant(s)" for presentation of curriculum vitae and expert reports. Case Management Order, 5/17/24.

“that is one possibility. And that is a possibility that [he was] prepared for [that day].” **Id.** Scott thereafter conceded that he had “not done anything on the docket” but believed it “was not [his] turn” to act in any capacity. **Id.** at 36.

Although Rules 1901 and 230.2 do not expressly refer to counterclaimants, other cases have shown that they, too, must file a statement of intention to proceed with their counterclaims or theoretically risk a judgment of *non pros* being entered by the court. **See, e.g., Belfiore v. Truck Training Technology, Inc.**, 2022 WL 12213545 at *1 (Pa. Super., filed Oct. 21, 2022) (unpublished memorandum cited pursuant to Pa.R.A.P, 126(b)) (stating “On February 16, 2011, the trial court filed a notice of proposed termination of the case due to docket inactivity. On April 18, 2011, [Defendants] filed a statement of intention to proceed with the counterclaim.”) (brackets in original).

To the extent there was any deficiency in the court’s notice of docket inactivity as to Scott, Scott neither provided a copy of that notice to this Court nor argued that it was defective. **Cf. Smith v. Smith**, 637 A.2d 622, 623-24 (Pa. Super. 1993) (noting appellate court cannot consider anything which is not part of record, and it is appellant’s duty to supply complete record for review). In fact, as indicated above, Scott acquiesced to the court’s ability to enter a judgment of *non pros* on his counterclaims by acknowledging the possibility of that result at the hearing. Therefore, we proceed with the understanding that the court was permitted to act in the manner that it did,

i.e., enter a judgment of *non pros* on Scott's counterclaims *sua sponte*.

We next proceed to the court's denial of Scott's petition to open its judgment of *non pros*. In ***Shope v. Eagle***,⁴ our Supreme Court expressed "no opinion on the issue of whether a petition to open pursuant to Pa.R.C[iv].P. 3051 need be filed to appeal a Rule 1901 termination[.]" 710 A.2d 1104, 1107 n.7 (Pa. 1998). Nevertheless, here, Scott filed a petition to open pursuant to Pa.R.Civ.P. 3051(c), and the parties and court proceeded accordingly. We therefore review Scott's appeal on that basis.

Rule 3051(c) provides that:

(c) If the relief sought includes the opening of the judgment of *non pros* for inactivity, the petition shall allege facts showing that

(1) the petition is timely filed,

(2) there is a meritorious cause of action, and

(3) the record of the proceedings granting the judgment of *non pros* does not support a finding that the following requirements for entry of a judgment of *non pros* for inactivity have been satisfied:

(i) there has been a lack of due diligence on the part of the plaintiff for failure to proceed with reasonable promptitude,

(ii) the plaintiff has failed to show a compelling reason for the delay, and

(iii) the delay has caused actual prejudice to the defendant.

⁴ We recognize that ***Shope*** was decided prior to the adoption of Rule 230.2. ***See, e.g., Kane v. Vigunas***, 967 A.2d 987, 991 (Pa. Super. 2009).

Pa.R.Civ.P. 3051(c).

“A request to open a judgment of *non pros*, like the opening of a default judgment, is in the nature of an appeal to the equitable powers of the court[.]” ***Bartolomeo v. Marshall***, 69 A.3d 610, 613 (Pa. Super. 2013). As such, we review a trial court’s decision to deny a petition to open or strike a judgment of *non pros* for an abuse of discretion. ***See id.*** Moreover, we note that the “failure to file a timely or rule[-]compliant petition to open operates as a waiver of any right to address issues concerning the underlying judgment of *non pros*.” ***Intech Metals, Inc. v. Meyer, Wagner & Jacobs, P.C.***, 153 A.3d 406, 411 (Pa. Super. 2016) (citation and quotation marks omitted).

We proceed directly to whether the contents of Scott’s petition contained sufficient information regarding the “meritorious” nature of his counterclaims, as it is dispositive of this appeal. As this Court has explained,

[t]o show that a cause of action is meritorious, under Rule 3051(c)(2), facts must be shown to exist which support a cause of action. A petition that merely repeats the averments from the complaint does not satisfy the meritorious cause of action requirement in Rule 3051(c)(2).

Id. (citations and quotation marks omitted). Additionally, “failure to show facts to exist that would support a meritorious cause of action in their petition to open, operates as a waiver of the issues concerning the underlying interlocutory order.” ***Id.*** at 412 (citation and quotation marks omitted).

Instantly, the court found that Scott, in his petition, did not “allege any facts nor did he attach any documents to support his counterclaims to his

petition.” Trial Court Opinion, 6/3/25, at 7. Thus, in denying his petition, it concluded that “he failed to show his cause of action was meritorious.” ***Id.***

The relevant portion of Scott’s petition reads as follows:

38. Scott’s counterclaim counts were not reliant in any way on the availability of missing witnesses. All four of Scott’s counterclaims are instead supported by documentary evidence that [the Developers] themselves created and has been preserved:

a. Count I of the Counterclaim sought damages for the fraud that Plaintiff Kevin Baird, then a licensed attorney, was committing by repeatedly representing that he was an attorney seeking a settlement, when in fact he was desperately and unsuccessfully attempting to goad Scott (or Scott’s attorney) into committing a crime. Plaintiff Kevin Baird himself recorded all of these interactions, and Scott does not believe they have been degraded over time.

b. Count II of the Counterclaim sought damages for [the Developers’] construction beyond the scope of their building plans which [the Developers] themselves submitted to the City of Philadelphia and remain on file.

c. Count III of the Counterclaim sought damages for Kevin Baird’s ongoing abuse of process, through his participating in the entire zoning litigation and subsequently this litigation. Kevin Baird never had a legal right to intervene in the zoning matters to begin with, and this count is based on the record of these proceedings, property ownership records, and [the Developers’] discovery responses.

d. Count IV of the Counterclaim sought defamation damages for comments Maransky himself made, in a blast email [the Developers] produced during discovery in the instant matter. There is no issue with missing witnesses, because the most critical information is a written record, created by [the Developers], which they have already produced.

Petition to Open Judgment of *Non Pros*, 12/20/24, at 7-8 (emphases and name honorific omitted). Scott’s petition contains no specific record citations nor

does it include any appended attachments. Furthermore, the quoted portion of Scott's petition, above, is the only part germane to his demonstration that his underlying causes of action are meritorious. This terse and unsupported summary of his individual counterclaims, each spanning one-to-two sentences in length, is in sharp contrast to the *twenty-two pages* in total he spent outlining them in his responsive filing to the Developers' complaint, filed some six years earlier **See** Defendant's Answer, New Matter, and Counterclaim, 2/27/18, at 70-91.

Although Scott alleges that discovery yielded information in support of his counterclaims, these words, alone, are insufficient to establish meritoriousness. Indeed, a petition to open requires more from the petitioner than an implicit suggestion that the court must scour the record to identify the relevant record support, potentially located within thousands of pages of discovery, to ascertain the meritoriousness of the petitioner's allegations. ***Cf. Stephens v. Messick***, 799 A.2d 793, 800 (Pa. Super. 2002) (finding fault in the petitioner having not averred "any specific facts elicited during discovery that would tend to show that her cause of action is meritorious," where the petition merely repeated the averments in the complaint, and this Court additionally remarking that she "did not attach to her petition . . . any deposition testimony or expert reports that would be sufficient to carry her burden of proof at trial[]").

The four summarized counterclaims contained in his petition are

nebulously predicated on his own belief as to existence of videographic evidence, information “remain[ing] on file,” apparent discovery responses, and allegedly already produced documents. Despite these brief insinuations of record support, we are left with the inescapable conclusion that although Scott, in his own summation, maintains the continued viability of four wholly distinct counterclaims in his petition to open, he has fatally neglected to correspondingly demonstrate the meritoriousness as to any of them. Simply put, Rule 3051(c)(2) requires more than inclusion of one-to-two unsupported sentences and necessitates post-pleading record support. However, as it happened, the bald nature of Scott’s allegations provided the court, in ruling on his petition to open, with an even less-detailed regurgitation of the same averments that were contained in his initial counterclaim pleading, notwithstanding Scott’s inclusion of ambiguous, possibly nonexistent, record support.⁵

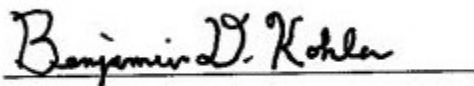
⁵ For example, in addressing counterclaim one in his petition to open, Scott: (1) alleged that Baird committed fraud through some sort of misrepresentation; and (2) attempted to show the meritoriousness of this claim by writing that Baird “himself recorded all of these interactions, and Scott does not believe they have been degraded over time.” Petition to Open Judgment of *Non Pros*, 12/20/24, at 8 (emphasis omitted). However, his original counterclaim indicated, *inter alia*, that Baird “made an ongoing representation to [Scott] and [Scott’s] attorney, between approximately April 1, 2013[,], and approximately June 26, 2013[,], that Baird was an owner authorized and willing to engage in a legitimate settlement negotiation to resolve [Scott’s] possible opposition to a zoning application and an ongoing zoning appeal.” Defendant’s Answer, New Matter, and Counterclaim, 2/27/18, at 71. Scott’s petition merely restates, in less specific terms, the contents of (Footnote Continued Next Page)

Therefore, we conclude that Scott, in his petition to open, failed to meet his burden in satisfactorily showing *specific* facts, in excess of those contained in his original counterclaims, i.e., those obtained during discovery—in support of his counterclaims.⁶ In failing to meet this burden, Scott did not file a rule-compliant petition and, dispositively for the purposes of this appeal, has waived any right to address issues concerning the underlying judgment of *non pros*. ***See Intech Metals, Inc., supra.***

Thus, the trial court did not abuse its discretion in denying Scott's petition to open the judgment of *non pros* entered against him. Consequently, we affirm the trial court's order.

Order affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/21/2026

his original filing, albeit now with a thin veneer that there is record support *somewhere* for his underlying cause of action.

⁶ We note that notwithstanding the specific dictates of Rule 3051, requiring demonstration of a meritorious cause of action, Scott avers that he “has an underlying meritorious cause of action, regardless of whether it was properly alleged in his Rule 3051 petition.” Appellant’s Brief at 19. Scott provides no support for this purported exception to the Rule.