[J-93A-2020, J-93B-2020 and J-93C-2020] [MO: Dougherty, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ALWAYS BUSY CONSULTING, LLC,	:	No. 11 WAP 2020
	:	
Appellant	:	Appeal from the Order of the
	:	Superior Court entered September
	:	6, 2019 at No. 94 WDA 2019,
v.	:	quashing the Appeal from the Order
	:	of the Court of Common Pleas of
	:	Allegheny County entered
BABFORD & COMPANY, INC.,	:	December 28, 2018 at Nos. GD-18-
	:	005205 and GD-18-005466.
Appellee	:	
		ARGUED: October 22, 2020
ALWAYS BUSY CONSULTING, LLC,	:	No. 12 WAP 2020
	:	
Appellant	:	Appeal from the Order of the
	:	Superior Court entered September
	:	6, 2019 at No. 330 WDA 2019,
v.	:	quashing the Appeal from the
	:	Judgment of the Court of Common
	:	Pleas of Allegheny County entered
BABFORD & COMPANY, INC.,	:	January 31, 2019 at Nos. GD-18-
	:	005205 and GD-18-005466.
Appellee	:	
		ARGUED: October 22, 2020
ALWAYS BUSY CONSULTING, LLC,	:	No. 13 WAP 2020
	:	
Appellant	:	Appeal from the Order of the
	:	Superior Court entered September
	:	6, 2019 at No. 387 WDA 2019,
v.	:	quashing the Appeal from the
	:	Judgment of the Court of Common
	:	Pleas of Allegheny County entered
BABFORD & COMPANY, INC.,	:	February 26, 2019 at Nos. GD-18-
	:	005205 and GD-18-005466.
Appellee	:	
		ARGUED: October 22, 2020

CONCURRING AND DISSENTING OPINION

JUSTICE DONOHUE **DECIDED: MARCH 25, 2021**

I join Parts I, II and III of the Majority Opinion. In my view, the breakdown in court operations precludes quashal of this appeal for the reasons explained by the Majority in Part III. For this reason, I would reverse the Superior Court and remand for consideration of the merits.

I dissent from Parts IV and V of the Majority Opinion where the Majority creates an exception to *Commonwealth v. Walker*, 185 A.3d 969 (Pa. 2018). In *Walker*, we held that Pa.R.A.P. 341(a) requires that where one or more orders resolve issues arising on more than one docket or relating to more than one judgment, separate notices of appeal must be filed. While the Majority creates a narrow exception to accommodate consolidated cases that are perfectly symmetrical in parties and issues, even this narrow break from the bright-line holding of *Walker* undermines the purpose of the rule.

The Majority is correct that this case is distinguishable from *Walker*.[1] The Majority likewise correctly notes that here, consolidation was sought and granted in the trial court and there existed a complete identity of all claims "such that a single order disposed of the litigation which involved two sides of the same coin, i.e., competing petitions to vacate or confirm the same arbitration award." Majority Op. at 16. But how would the Superior Court know of this total symmetry without looking behind the notice of appeal?

Appellant filed his first premature notice of appeal at the lead docket number 5205 with a caption that **included both docket numbers**. After a reminder from the Superior Court that the appeal needed to be perfected, judgment was entered at docket number 5205 and the original appeal was perfected. This spurred a query by the Superior Court

[1] In *Walker*, the Commonwealth filed a single notice of appeal from a suppression order that affected four defendants at four unconsolidated dockets.

by way of rule to show cause why the appeal should not be quashed pursuant to *Walker* because the single notice of appeal pertained to two lower court docket numbers. At this point, Appellant attempted to file a second notice of appeal at the other docket number, 5466, which the lower court prothonotary rejected. Appellant then filed a new notice of appeal at docket number 5205, **again including both docket numbers in the caption**.

Three things are apparent from this tortured history: the Appellant was attempting to appeal from an order that resolved issues arising on more than one docket by way of a notice of appeal filed at only one docket; Appellant intended that the appeal would resolve the issues at more than one docket; and without looking behind the notice of appeal, the Superior Court was not able to discern the impact of the order on the two dockets. This situation was anticipated and resolved by *Walker*.

Despite the impact of the defective appeal, the Majority concludes that quashing this appeal under *Walker* elevates form over substance. Majority Op. at 16. In support of creating an exception for perfectly symmetrical consolidated civil appeals, it relies on the identity of parties, claims and issues. This rationale is hauntingly reminiscent of *General Electric Credit Corp. v. Aetna Casualty & Surety Co.*, 263 A.2d 448 (Pa. 1970) which required, inter alia, that the issues raised in the appealed and unappealed cases were "substantially identical" in order to save a defective appeal. *Id*. at 453. As detailed in *Walker*, *General Electric* morphed into different criteria in a variety of applications in our intermediate appellate courts. *See Walker*, 185 A.3d at 975. A determination of whether or not a notice of appeal was defective came to depend on the outlook of an intermediate appellate court or one of its panels. *Walker* eliminated the obvious unfairness of the fortuity of this case-by-case approach and mandated the application of

a bright-line rule. As my learned colleague Justice Mundy notes in her concurring opinion, we (over her dissent) made a concerted decision to depart from the cumbersome and unpredictable prior precedent. There is no reason to deviate from the bright-line rule approach because appellate counsel has not caught on to it.

Walker imposes no unnecessary or complicated burdens on the Appellant. The rule is not nuanced and compliance with it is not difficult. It requires nothing more than familiarity with this rule of appellate procedure. It is clear, at least to me, from the history of this case that Appellant did not make a decision informed by *Walker* when filing only one notice of appeal. In fact, Appellant argues that the Superior Court contributed to the breakdown in the operations of the courts because it failed to expressly instruct him to file separate notices of appeal at separate dockets. Appellant's Brief at 26-27 and Majority Op. at 9. To state the obvious, Appellant confuses the responsibility of the Appellant to follow the rules of appellate procedure with that of the intermediate appellate court to decide appeals.

Given the simplicity of the rule enunciated in *Walker*, creating an exception is not warranted. We have made clear that we would not continue down that slippery slope. Moreover, I am not of the view that we should burden our intermediate appellate courts by molding the rule to accommodate the lack of knowledge of the law.

I would reverse the decision of the Superior Court for the reasons set forth in Part III of the Majority Opinion. I dissent from Parts IV and V of the Majority Opinion.