

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Harriett Gately,	:	C.A. No. 08-02-0048AP
	:	
Plaintiff below/	:	
Appellant,	:	
	:	
v.	:	
	:	
James/Leslie Carey,	:	
	:	
Defendants below/	:	
Appellees.	:	

Upon Defendants' Motion to Dismiss the Plaintiff's Appeal

Submitted: May 7, 2008

Decided: May 8, 2008

Defendants' motion is denied.

Harriett Gately, 1303 Rising Sun Road, Camden, Delaware 19934, Pro Se Appellant.

**Maggie Clausell, Esquire, 9 E. Loockerman Street, Ste. 205, Dover, Delaware 19901,
Attorney for Appellees.**

Trader, J.

In this civil appeal from the Justice of the Peace Court, I hold that the plaintiff has set forth all of the parties necessary for a *de novo* review.

The relevant facts are as follows: on October 28, 2007, the plaintiff, Harriett Gately, filed a civil action in the Justice of the Peace Court 16 against the defendants, James Carey and Leslie Carey. The defendants filed a counterclaim for \$1500.00 and, after a trial before the Justice of the Peace Court on January 30, 2008, judgment was entered on behalf of the plaintiff for court costs in the amount of \$40.00. On February 12, 2008, the plaintiff filed a notice of appeal, praecipe, complaint, and transcript of the record with this Court.

The defendants have filed a motion to dismiss the appeal on the grounds of a violation of the mirror image rule. In the court below, the civil action was brought by Harriet Gately against Defendants, James Carey and Leslie Carey. On appeal, the notice of the appeal, praecipe, and complaint mistakenly lists John and Leslie Carey as the defendants. The plaintiff testified at an evidentiary hearing that she had listed the names of James Carey and Leslie Carey on the praecipe and the notice of appeal, but based on the names of the defendants listed in the complaint, the civil clerk erased the names and substituted John Carey and Leslie Carey on the documents. The plaintiff further testified that she incorrectly listed John Carey on the complaint, but that she intended him to be the same person that she sued in the court below. She has subsequently filed an amended complaint, listing James Carey and Leslie Carey as the defendants on appeal.

The defendants contend that the appeal should be dismissed since the parties on appeal are not identical with the parties in the court below. The defendants' contention is

incorrect. The defendants in this Court are the same parties that appeared in the court below.

The mirror image rule, first announced in *McDowell v. Simpson*, 1 Houst. 467 (Del. Super. Ct. 1857), requires that the Court presiding over an appeal *de novo* have before it all of the parties and the issues that were before the court below. *See also Cooper's Home Furnishings, Inc. v. Smith*, 250 A.2d 507, 508 (Del. Super. Ct. 1969) (jurisdiction of the Court is limited by statute to try the same action as instituted in the Justice of Peace Court); 10 *Del. C.* §9571 (Appeal in civil action); *Court of Common Pleas Civil Rule 72.3(c)* (Appellate Jurisdiction). Although the mirror image rule may be exacting, the appeal should not be dismissed where it is clear from the face of the pleadings that the appellant intended to include all of the parties necessary for a *de novo* review. *Freibott v. Patterson Schwartz, Inc.*, 740 A.2d 4, 6 (Del. Super. Ct. 1999). Every variance in the names of the parties is not fatal to the appeal. *Id.* *See also Freedman v. Aronoff*, 1994 WL 555429, at *2 (Del. Super. 1994) (rejecting as meritless an argument that caption lacking the “his wife” phrase and the “P.” from the wife’s name was fatal to the appeal).

In the *Freibott* case, the plaintiff filed a claim against Patterson Schwartz, Inc. and several other defendants in the Justice of the Peace Court. Subsequent thereto, an amended complaint was filed naming the corporate defendant as Patterson Schwartz & Associates, Inc. The Justice of the Peace rendered a decision in favor of all the defendants. On the appeal, the plaintiff listed the corporate defendant as Patterson Schwartz, Inc. and the Court of Common Pleas dismissed the appeal based on a violation of the mirror image rule. On appeal to the Superior Court, the Superior Court reversed

the decision of the Court of Common Pleas and held that the face of the pleadings indicated that the appellant intended to include all the parties necessary for a *de novo* review. *Id.* In this case, I hold that the appellant intended to include the same parties on appeal as were present in the court below. Therefore, the appellant did not violate the mirror image rule.

Based on these findings of fact and conclusions of law, the defendants' motion to dismiss is denied.

IT IS SO ORDERED.

Merrill C. Trader
Judge