

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TIMOTHY N. BRUHN,)	
)	
Plaintiff, Appellant)	
)	
v.)	Civil Action No.: 06-07-115
)	
WENDY S. MEYERS,)	
)	
Defendant, Appellee)	

Submitted: May 4, 2007
Decided: May 25, 2007

Timothy N. Bruhn
401 Georgetown Avenue
Wilmington, DE 19809
Pro Se

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ON DEFENDANT’S MOTION TO DISMISS

Defendant, Appellee Wendy S. Meyers (hereinafter “Meyers”) brings this motion pursuant to Court of Common Pleas *Civil Rule 12(b)* to Dismiss. Meyers moves the Court on the basis; (1) the Court lacks subject matter jurisdiction; (2) the matter is barred by statute of limitations; (3) the action is barred by *res judicata*; and (4) the action is redundant and lacks merit. A hearing was held on May 4, 2004 and the Court reserved decision to consider party’s arguments and review documents.

This matter concerns an appeal by Plaintiff-appellant Timothy N. Bruhn (hereinafter “Bruhn”) from an adverse decision by the Justice of the Peace Court. He alleged the Justice of the Peace Court denied his request for postponement when his primary witness was unavailable, the Court refused to enter documentation proving the family heirloom belonged to him, the property division at the time of the divorce was never completed, and the Family Court Judge refused his request for a property division, ruling a year was too long for the request to be considered.

The decision of the Justice of the Peace Court was entered on June 27, 2006 and this appeal was docketed on July 2, 2006, therefore, the appeal is de novo. The complaint in the Justice of the Peace Court sought payment from a property settlement of 2004 and return of a diamond ring which plaintiff claimed was a family heirloom. Under Court of Common Pleas *Civil Rule 72.3(c)* the Court has jurisdiction on appeal where the claims are the same as those brought in the Court below. Therefore, the claim in these proceedings is limited to monetary demand for property settlement of 2004 and the claim for return of the diamond ring.

At the hearing on May 4, 2004, the parties agreed they were married and subsequently divorced resulting in Family Court proceedings. Also attached to Meyer’s motion to dismiss is Bruhn’s September 23, 1997 petition in the Family Court to reopen property division, which was denied November 20, 1997. Resolution of the marital property is vested in the Family Court under *Title 13* of the *Delaware Code*. While the parties may attempt to characterize them otherwise, it is

evident that the claims in these proceedings arise out of a dispute involving marital property and therefore, this Court lacks jurisdiction in these matters.

Meyers also argues Bruhn's claims are barred by the statute of limitations. The Family Court in an order dated November 20, 1997 denied Bruhn's motion to reopen property division following a divorce decree entered eighteen months earlier on the basis there was unreasonable delay. The provisions of *10 Del. C. § 8106* provide that no action to recover damages based upon contract breach may be brought after the expiration of three (3) years. Assuming Bruhn may claim that the marriage is a contract and there is a breach, any claim would have to be brought within three (3) years of the accrual of the action which is the date of the divorce. The supporting documents indicate the divorce decree was entered by the Family Court February 15, 1996; therefore, this action would have to be brought by February 14, 1999. This action was filed in the Justice of the Peace Court May 24, 2006 and is therefore time barred.

Because I conclude the Court lacks subject matter jurisdiction, and the claim is time barred by *10 Del. C. § 1806*, I need not reach the other claims of Meyers.

Accordingly, the motion to Dismiss is hereby GRANTED.

SO ORDERED this 25th day of May, 2007

Alex J. Smalls
Chief Judge