

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

Kenneth J. Gibson, Jr. and :
Kimberly L. Gibson, :
 : C.A. No. 07-06-0033AP
 :
 Plaintiffs below/ :
 Appellants, :
 :
 :
 v. :
 :
 Car Zone and National Security, :
 :
 Defendants below/ :
 Appellees. :

Submitted: July 5, 2007

Decided: July 5, 2007

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of jurisdiction.

Kenneth J. Gibson, Jr., 307 Winchester Drive, Hampton, Virginia 23666, Pro Se Appellant.

Kimberly Gibson, 307 Winchester Drive, Hampton, Virginia 23666, Pro Se Appellant.

Basil C. Kollias, Esquire, Parkowski, Guerke & Swayze, P.A., 800 King Street, Suite 203, Wilmington, Delaware 19801, attorney for Appellee, Car Zone.

Gregory Morris, Esquire, Liguori, Morris & Yiengst, 46 The Green, Dover, Delaware 19901, attorney for Appellee, Security National.

Trader, J.

In this civil appeal from the Justice of the Peace Court 16, I hold that the failure to timely file a Complaint invokes the jurisdictional bar. Accordingly, this appeal is dismissed.

The posture of the case is as follows: On October 9, 2006, the plaintiffs, Kenneth J. Gibson, Jr. and Kimberly Gibson, filed a civil action against defendants, Car Zone and Security National. The defendants filed a counterclaim on April 9, 2007, against the plaintiff, Kenneth J. Gibson, Jr. Prior to trial, defendants made an oral motion to dismiss Kimberly Gibson as a party to this civil action and the motion was granted by the Court. At the close of the presentation of Kenneth J. Gibson, Jr.'s evidence, the Court entered a directed verdict in behalf of the defendants, Car Zone and Security National. At the conclusion of all the testimony, judgment was entered on Security National's counterclaim against Kenneth J. Gibson, Jr. for the sum of \$10,253.66.

On May 29, 2007, the plaintiffs filed a Notice of Appeal and Praecipe with the Court of Common Pleas of New Castle County. The Notice of Appeal and Praecipe was received by the Court of Common Pleas of Kent County on June 4, 2007. The plaintiffs did not file a Complaint with the Notice of Appeal and Praecipe and a Complaint has not been filed with this Court as of this date. Additionally, the plaintiffs have not filed a certified transcript of the proceedings below with this Court.

This appeal must be dismissed because of the failure of plaintiffs to file a Complaint with the Notice of Appeal and Praecipe. 10 *Del. C. Sec. 9571(a)* provides that from any judgment of the Justice of the Peace Court there is a right of appeal to the Court of Common Pleas. The appeal shall be taken within 15 days of the final judgment. *See 10 Del. C. Sec. 9571(b)*. The Court of Common Pleas shall establish appeal procedures by rule. *See 10 Del. C. Sec. 9571(d)*.

10 *Del. C. Sec. 9572(a)* provides that “the appellant shall have the appellant’s appeal entered in the Court of Common Pleas of the county where the judgment was given within the time and in the manner provided by the rules of that Court.” Rule 72.3(a) of the Civil Rules of the Court of Common Pleas provides that an appeal is commenced in the Court of Common Pleas by the appellant filing with the Clerk of the Court a notice of appeal within the time prescribed by statute for the filing of an appeal and if the appellant is the party having the duty of filing the complaint or other first pleading on appeal, the appellant shall file such pleading with the notice of appeal.

It is well settled that Section 9571 is a jurisdictional statute governing the right to appeal from the Justice of the Peace Court. *State ex rel. Caulk v. Nichols*, 281 A.2d 24, 25 (Del. 1971). When appellant violates the statute, the court loses subject matter jurisdiction to hear the appeal. *Williams v. Singleton*, 160 A.2d 376, 378 (Del. 1960).

The Court of Common Pleas by rules of court has enacted procedures for the perfection of an appeal to this Court and those procedures are set forth in Rule 72.3. Failure to comply with Rule 72.3(a) is jurisdictional under 10 *Del. C. Sec. 9571*.

The appeal in this case was filed with the Court of Common Pleas of New Castle County on May 29, 2007 and the appellants have not yet filed a Complaint with the Court. Thus, the failure of the appellants to file a complaint within fifteen days of the entry of the judgment in the court below results in the dismissal of this appeal for lack of jurisdiction.

IT IS SO ORDERED.

Merrill C. Trader
Judge