

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

Gloria Best,)	
)	C.A. No. 07-04-0180AP
Plaintiff Below,)	
Appellant,)	
)	
v.)	
)	
R.J.'s Construction and)	
Robert Bossi,)	
)	
Defendants Below,)	
Appellee.)	

Submitted: August 17, 2007
Decided: August 17, 2007

Ms. Gloria Best
52 Thomas Harmon Drive
Camden, DE 19934
Pro Se Appellant

R.J.'s Construction
Att: Mr. Robert Bossi
293 Yoeman Tale Lane
Felton, DE 19943
Pro Se Appellee

SUA SPONTE DECISION TO DISMISS

Plaintiff Below-Appellant (“Plaintiff”), Gloria Best, has filed a civil appeal with this Court seeking a *de novo* review of a final order of a Justice of the Peace pursuant to 10 *Del. C.* Section 9571 and *Ney v. Polite*, 399 A.2d 527 (Del. 1979). This is the Court’s *sua sponte* decision to dismiss the appeal for lack of jurisdiction. The Court holds that

the Plaintiff's appeal must be dismissed for lack of jurisdiction because the Plaintiff has joined a new party in her appeal who was not included in the original action heard by the court below. Therefore, she has violated the "mirror image rule".

FACTS

Plaintiff originally filed the present matter against Defendant, R.J.'s Construction, in the Justice of the Peace Court in October of 2006. The Justice of the Peace Court entered a non-suit judgment on behalf of the Defendant when the Plaintiff was late for trial. The Plaintiff filed a motion to vacate the non-suit judgment with the Justice of the Peace Court. But, the motion was denied.

Plaintiff has now filed a Praecipe, Notice and Complaint on Appeal from the judgment of the Justice of the Peace Court for this matter in a timely manner. However, when she filed her appeal, the Plaintiff added Robert Bossi as an additional Defendant and Appellee.

DECISION

Appeals from Justice of the Peace Court to the Court of Common Pleas are governed by 10 *Del. C.* Section 9571. If any party fails to comply with the statute's dictates, the Court of Common Pleas has no jurisdiction over the appeal. *Dzedzej v. Prusinski*, 259 A.2d 384, 386 (Del. Super. 1969). Pursuant to 10 *Del. C.* Section 9571, a party has a right to appeal any final order, ruling, decision or judgment of a Justice of the Peace Court in a civil action to the Court of Common Pleas. *See* 10 *Del. C.* Section 9571.

“The appeal [must] be taken within fifteen days of the final order, ruling, decision or judgment.” *Id.*

Delaware courts have long interpreted 10 *Del. C.* Section 9571 to require any party filing an appeal pursuant to that section to comply with what is referred to as the “mirror image rule”. The mirror image rule assures a retrial of the same cause of action that occurred at the Justice of the Peace Court level. *Sulla v. Quillen*, 1987 WL 18425, at *1 (Del. Super. Sept. 24, 1987). It requires that if “an appeal from a Justice of the Peace Court fails to correspond to the process on which the action is founded in the names of the parties, number of the parties, or in the character of the suit, the variance is fatal and the Court does not have jurisdiction to hear the appeal”. *Rockford Builders, Inc. v. Jamie Caceras*, 2001 WL 1557503, at *1 (Del. Com. Pl. Aug. 29, 2001), quoting *Dzedzej v. Prusinski*, 259 A.2d 384, 385 (Del. Super. 1969) [*citing McDowell v. Simpson*, 1 *Houst.* 467 (Del. Super. 1857)].

The “mirror image rule” requires that the Appellant file an appeal against the exact same parties who appeared in the action in the court below. *Fossett & Strock v. DALCO Construction*, 2003 WL 22787844, at *1 (Del. Super. Nov. 24, 2003). Otherwise, the Court of Common Pleas’ jurisdiction to hear the appeal is stripped from it. *Id.* In the instant case, the Plaintiff has filed an appeal in which she has added an additional Defendant, Robert Bossi, who was not a party to the action in the court below. Since Mr. Bossi was not a party to the action in the court below, the appeal does not comply with the rule that it be of the “same” action as heard below. Accordingly, this court lacks jurisdiction to hear it.

CONCLUSION

As a result of the Court's finding of fact, which is based upon the entire record, and the Court's above-referenced conclusions of law, the Plaintiff's appeal for this action is dismissed with prejudice for lack of jurisdiction.

IT IS SO ORDERED this 17TH day of August, 2007.

CHARLES W. WELCH
JUDGE