

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR SUSSEX COUNTY**

|                       |   |                    |
|-----------------------|---|--------------------|
| WILLIAM GRAHAM and,   | ) |                    |
| GAYLE GRAHAM,         | ) |                    |
|                       | ) |                    |
| Defendant-Appellants, | ) | C.A. No. 06-03-109 |
|                       | ) |                    |
|                       | ) |                    |
| vs.                   | ) |                    |
|                       | ) |                    |
| WILLIAM MATHUES,      | ) |                    |
|                       | ) |                    |
| Plaintiff-Appellee.   | ) |                    |
|                       | ) |                    |

Decided August 27, 2007

Maggie R. Clausell, Esquire, Attorney for Defendant-Appellant  
William Mathues, *pro se*, Plaintiff-Appellee

**DECISION ON APPEAL FROM COMMISSIONER'S  
RECOMMENDATION**

Defendant-Appellants appeal the Commissioner's recommendation denying Appellants' motion to dismiss this action on appeal *de novo* from the Justice of the Peace Court. For the following reasons, the Court accepts the Commissioner's recommendation, and enters judgment accordingly.

**BACKGROUND**

On March 27, 2006 Appellants, Defendants below William Graham and Gayle Graham, filed a Notice and Summons on Appeal from the judgment of the Justice of the Peace Court. In response thereto, on April 21, 2006 Plaintiff

Mathues filed a Complaint. The caption of the Complaint read “William Mathues, Plaintiff v. William Graham, Defendant.” On May 10, 2006 Appellant William Graham filed an Answer and Counterclaim. On November 13, 2006 Appellant William Graham filed a “Motion for Dismissal” of the action, on the ground that Plaintiff-Appellee’s failure to name Co-Appellant-Defendant Gayle Graham in his Complaint violated the “Mirror Image Rule” embodied in Civil Rule 73.2. On November 15, 2006 Appellee filed a Motion to Amend the Complaint to add Co-Defendant Gayle Graham.

On November 27, 2006 the Commissioner heard both motions. In his December 11, 2006 report, the Commissioner found no violation of the Mirror Image Rule,<sup>1</sup> recommending that the motion to dismiss be denied, and that Appellee’s motion to amend the Complaint be granted. Appellants filed a Motion to Object to the Commissioner’s report. Appellee has not responded to the motion.

### **STANDARD OF REVIEW**

A motion to dismiss an appeal *de novo* for lack of subject-matter jurisdiction under Civil Rule 72.3 (c) is a case-dispositive determination. When reviewing case-dispositive matters the judge of the Court reviews the decision *de novo*. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner. CCP Civ. R. 112 (A) (4) (iv).

### **DISCUSSION**

The Court has reviewed *de novo* the Commissioner’s findings and analysis in his well-reasoned decision, and agrees with his conclusions. All of the parties

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<sup>1</sup> *McDowell v. Simpson*, 1 Houst. 467 (Del.Super. 1885); see *Silverview Farm, Inc. v. Laushey*, 2006 WL 1112911 (Del.Comm.Pl.), CCP Civ. R. 72.3(c).

that were before the Court below are before this Court on appeal, and were so within fifteen days of the filing of the appeal. Both Defendants William and Gayle Graham filed the appeal *de novo* from the Justice of the Peace Court, thus voluntarily submitting to both personal jurisdiction and subject matter jurisdiction over the matters appealed. Service was properly made upon the Appellee-Plaintiff below. Thus, this Court was properly vested with jurisdiction *ab initio* from the filing of the appeal. The facts here clearly differ from those presented in *Cooper's Home Furnishings, Inc. v. Smith*,<sup>2</sup> and *Dzedzej v. Prusinski*.<sup>3</sup> In *Cooper's*, the plaintiff below was the appellant, who failed to file his appeal against one of two co-defendants in his complaint on appeal. In *Dzedzej*, an appealing defendant below failed to file his appeal against a co-defendant. In both of these cases, the defect lied in the filing of the appeal, and the failure to cure the defect within the jurisdictional 15 day time limit within which to file an appeal.

In the present case, there was no defect in the filing of the *appeal*. Both Appellants properly filed their appeal against the Plaintiff-Appellee. Thus, this Court has jurisdiction over this matter. Accordingly, to preserve its jurisdiction, this Court can grant Appellee permission to amend his errant Complaint to properly include Appellant Gayle Graham, who already is a party before this Court.<sup>4</sup>

The Court further notes that, if it did grant Appellees' motion to dismiss on jurisdictional grounds, the Court would be compelled to dismiss the entire appeal *de novo*. The effect of such dismissal would be to reinstate the judgment against

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<sup>2</sup> 250 A.2d 507 (Del Super. 1969)

<sup>3</sup> 259 A.2d 384 (Del.Super. 1969).

<sup>4</sup> See *Silverview Farm, Inc. v. Laushey*, 2006 WL 1112911, at 4 (Del.Comm.Pl.)

Appellees rendered in the Justice of the Peace Court, which would effectively deny Appellants their right of appeal, through no fault of their own.<sup>5</sup>

### CONCLUSION

The Commissioner's recommendation is **ACCEPTED**. Appellants' motion to dismiss is **DENIED**. Appellee's motion to amend is **GRANTED**. Appellants shall file their response to the Amended Complaint within twenty (20) days of the date of this Order.

**IT IS SO ORDERED**, this \_\_\_\_ day of August, 2007.

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Kenneth S. Clark, Jr.  
Judge

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<sup>5</sup> *Civil Rule 55* (bb2), which provides for entry of judgment against an appellee who fails to file a complaint "for failure to plead" is inapplicable, since appellee here did file a complaint; further, if the Court indeed lacked jurisdiction due to a Mirror Image Rule violation of identity of parties, it could not enter judgment under Rule 55 (bb2).