

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

<b>MELODY WING,</b>	)	
	)	
<b>Defendant-Below/Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>C.A. No. CPU4-11-006044</b>
	)	
<b>CHARMAINE HAWKES,</b>	)	
	)	
<b>Plaintiff-Below/Appellee.</b>	)	

**ORDER OF DISMISSAL**  
**FOR LACK OF SUBJECT MATTER JURISDICTION**

AND NOW THIS 16th day of March, 2012, the Court having considered the Defendant-Below/Appellant Melody Wing’s (“Appellant”) Motion for Default Judgment in this dual action for replevin and monetary damages, it appears to the Court that:

1. On September 23, 2011, Plaintiff-Below/Appellee Charmaine Hawkes’ (“Appellee Hawkes”) filed an action against Appellant Wing in the Justice of the Peace Court seeking recovery of items of personal property that had been left by the parties’ mother after her passing on August 5, 2011 (JP13-11-013211). The litigants are siblings. Specifically, by her Complaint below, Appellee Hawkes sought \$ 4,000 in damages from Wing for lot rent (\$ 75); gold jewelry; chairs and many other miscellaneous items that had belonged to the mother. Wing did not file a counterclaim. By written order dated October 20, 2011, the Justice of the Peace Court dismissed the matter without prejudice

for lack of jurisdiction over matters of equity and referred the parties to the Court of Chancery.

2. On November 9, 2011, Appellant Wing, who prevailed in the action below, appealed the matter to this Court. Appellant Wing paid the fees associated with the appeal. The Notice of Appeal identifies the same parties; however, the claims alleged are completely different. On appeal, Appellant seeks reimbursement of expenses paid for the mother's funeral, including the food purchased for the gathering after the funeral; that Hawke's name be removed from the title to the mother's trailer;<sup>1</sup> reimbursement of expenses paid by Appellant Wing for lot rent for the mobile home; return of the moneys taken from the decedent mother's bank accounts by Hawkes; and that Appellee Hawkes reimburse Appellant Wing for electric bills paid on the trailer. None of these claims were raised in the action below by either party as part of the case-in-chief, or by counterclaim.

3. On January 12, 2012, service was perfected upon Appellee Hawkes. Appellee did not file a responsive pleading. On February 24, 2012, Appellant Wing filed a Motion for Default Judgment. Appellant now moves this Court for an Order of Default Judgment against Appellee Hawkes granting relief for the claims alleged in the amount of \$ 12,859.25.

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<sup>1</sup> Appellant attached letter dated September 23, 2011 from Ciro Poppiti, Esq. to Appellee Hawkes regarding the "small estate" affidavit completed by Appellee Hawkes on September 7, 2011. Mr. Poppiti directs Ms. Hawkes to return the keys to the rental trailer and return any funds taken from the decedent's estate to Appellant Wing, as well as provide an accounting of all estate money spent by Hawkes. Mr. Poppiti issued this directive based upon his subsequent realization that Ms. Hawkes misrepresented by her Affidavit that she was not a convicted felon when in fact she was, and thus the estate authority was revoked.

4. The Rules of procedure are to be administered so as to secure the just determination of every proceeding.<sup>2</sup> Under Delaware law, subject-matter jurisdiction is “an indispensable ingredient of a judicial proceeding.”<sup>3</sup> Indeed, it is a question of law that can be raised by the Court *sua sponte* at any time,<sup>4</sup> and it can neither be waived nor conferred by consent of the parties.<sup>5</sup>

5. The Court further states that pursuant to Court of Common Pleas Civil Rule of Procedure 72.3(f), otherwise known as the “Mirror Image Rule,” “[a]n appeal to this Court that fails to join the identical parties and raise the same issues that were before the Court below shall result in a dismissal on jurisdictional grounds.”<sup>6</sup> Rule 72.3 is mandatory and jurisdictional, and precludes litigants from raising new claims on appeal that were not raised below. Therefore, the appeal before this Court violates Rule 72.3(f).

6. As stated by the Court at the hearing on this matter, the Court finds that the action on appeal violates the Mirror Image Rule insofar as new and different issues are raised on appeal that were not before the Court below either in the primary action or by counterclaim. Accordingly, the Court finds that the appeal before this Court must be dismissed for lack of subject-matter jurisdiction.

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<sup>2</sup> *Nti v. Hall*, 2007 WL 3231601, at \*1 (Del. Com. Pl. Aug. 24, 2007).

<sup>3</sup> *Textel v. Commercial Fiberglass, et al.*, 1987 WL 19717, at \*1 (Del. Super. Ct. Nov. 3, 1987).

<sup>4</sup> See CCP Civ. R. 41(e) wherein this Court may “order a complaint, petition or appeal dismissed, *sua sponte*, without notice, notwithstanding the provisions of Rule 41(e), when such complaint, petition or appeal manifestly fails on its face to invoke the jurisdiction of this Court and where the Court concludes, in the exercise of its discretion, that the giving of notice would serve no meaningful purpose and that any response would be of no avail.”

<sup>5</sup> *Textel*, 1987 WL 19717 at \*2; *Mehiel v. Solo Cup Co*, 2005 WL 1252348, at \*6 (Del. Ch. May 13, 2005)(although neither party questioned the Court's jurisdiction, the Court expressed “confiden[ce] in its ability to dismiss an action *sua sponte* when it discovers it lacks subject-matter jurisdiction”).

<sup>6</sup> *Ney v. Polite*, 399 A.2d 527 (Del. 1979).

7. As this Court lacks jurisdiction to hear any motion pending before the Court as of this day, there is no basis to consider Appellant Wing's Motion for Default Judgment.

8. Notwithstanding this ruling, the Court observes that Appellant Wing may file a new and separate action for replevin and/or monetary damages against Appellee Hawkes as to any claim for which this Court would have proper jurisdiction.

**WHEREFORE**, for the reasons set forth by the Court on the record at oral argument on this Motion heard on March 16, 2012:

**IT IS HEREBY ORDERED** that that this appeal be dismissed as this Court lacks subject matter jurisdiction.

**IT IS FURTHER ORDERED** that any court fees and/or costs incurred by Plaintiff in the filing of her Appeal to this Court shall be credited and applied to the filing of a new civil action should Plaintiff decide to proceed with a new action against Defendant in this Court.

**IT IS SO ORDERED this 16<sup>th</sup> day of March, 2012.**

*Andrea L. Rocanelli*

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Andrea L. Rocanelli  
Judge