

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

WORK HORSE CONSTRUCTION)	
COMPANY INC,)	
Plaintiff Below/Appellant,)	
)	
v.)	Case No.: CPU4-12-001097
)	
CARL D. WARNER,)	
Defendant Below/Appellee.)	

Submitted: June 29, 2012
Decided: July 16, 2012

On Appellee's Motion to Dismiss
GRANTED

MEMORANDUM DECISION AND ORDER

Chandra J. Williams, Esquire, Rhodunda & Williams, 1220 North Market Street, Wilmington, Delaware, 19801. Attorney for Appellant.

Carl D. Warner, 728 Auburn Mill Road, Hockessin, Delaware, 19707. Self-represented Litigant.

ROCANELLI, J.

This is an appeal from the Justice of the Peace Court. On February 20, 2012, Work Horse Construction, Inc. ("Work Horse Construction"), Appellant/Plaintiff below, filed a notice of appeal and complaint on appeal, identifying the case on appeal as JP13-11-010657. On May 17, 2012, Carl D. Warner, Appellee/Defendant below, filed an Answer. On May 30, 2012, Defendant filed the Motion to Dismiss which is the subject of this decision. On June 29, 2012, this Court held a hearing on the Motion to Dismiss. This is the Court's decision.

Procedural History

On August 4, 2011, Bruce Douglas, the sole owner and operator of Work Horse Construction, filed a lawsuit in Justice of the Peace Court against Carl D. Warner which was docketed as Case No. JP13-11-0105657 (“Douglas v. Warner JP Action”). A hearing was conducted on October 14, 2011 and, on October 18, 2011, the Justice of the Peace Court dismissed the Douglas v. Warner JP Action without prejudice on the grounds that an improper party was named in the lawsuit. The last docket entries for the Douglas v. Warner JP Action are notices related to an appeal that were docketed on February 23, 2012 and a case update indicating the transcript was picked up by plaintiff’s counsel on February 29, 2012.

On October 31, 2011, after the Douglas v. Warner JP Action was dismissed by the Justice of the Peace Court, Work Horse Construction filed a lawsuit in Justice of the Peace Court against Carl D. Warner, docketed as Case No. JP13-11-015102 (“Work Horse Construction v. Warner JP Action”). After a hearing on February 3, 2012, an Order of Dismissal with Prejudice was entered in the Work Horse Construction v. Warner JP Action on February 6, 2012. The last docket entry is a court notice related to the final order of dismissal. There are no docket entries related to an appeal of the February 6, 2012 decision.

Work Horse filed a notice of appeal and related documents in the Court of Common Pleas on February 20, 2012. This appeal is identified as an appeal from the case docketed in the Justice of the Peace Court as Case No. JP13-11-0105657. Identification of this docket number is consistent with the docket entries in the Justice of

the Peace Court in that documents related to an appeal were docketed in the Douglas v. Warner JP Action. However, Work Horse, which filed this appeal in the Court of Common Pleas as appellant, was not a party to the identified case being appealed. Rather, Bruce Douglas was the plaintiff. Thus, in filing this appeal, Work Horse Construction has used the docket number from the Douglas v. Warner JP Action which was dismissed in October 2011 but has identified the parties as those in the Work Horse Construction v. Warner JP Action which was dismissed in February 2012.

Motion to Dismiss by Appellee

Carl D. Warner has moved to dismiss the appeal on the grounds that the appeal was not properly perfected. Specifically, if this is an appeal from the Douglas v. Warner JP Action, then it is not timely because the appeal was filed in February 2012 but the final order was issued by the Justice of the Peace Court in October 2011. Also, if this is an appeal from Douglas v. Warner JP Action, then it offends the mirror image rule because Work Horse Construction is the appellant in the Court of Common Pleas but was not a party in Douglas v. Warner JP Action. On the other hand, if this is an appeal from the Work Horse Construction v. Warner JP Action, then the appeal was not properly perfected because there are no docket entries in the Justice of the Peace Court related to an appeal for Work Horse Construction v. Warner JP Action and the certified judgment order filed in the Court of Common Pleas is from the Douglas v. Warner JP Action.

Analysis

There are mandatory jurisdictional requirements for appeals from the Justice of the Peace Court to the Court of Common Pleas.¹ Failure to comply with the requirements set forth therein divests the Court of Common Pleas of subject matter jurisdiction to entertain an appeal from the Justice of the Peace Court.²

First, the appeal must be filed within fifteen days of the date of the final order below.³ Here, Work Horse Construction filed an appeal on February 20, 2012. The Notice of Appeal identifies the February 6, 2012 decision as that from which an appeal is taken. Therefore, on its face, the appeal seemed to be timely. However, on March 21, 2012, Work Horse Construction docketed the certified copy of the judgment dated October 14, 2011. This filing undermined the apparent timeliness of the appeal.

Second, there is a requirement that any appeal to the Court of Common Pleas from the Justice of the Peace Court join the identical parties and raise the identical issues as below. This is the so-called mirror image rule. Court of Common Pleas Civil Rule 72.3(f) provides that “[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.” There is much confusion in the pending appeal because Work Horse Construction has mixed and matched the parties in one case below with the case number and judgment in another case below. Consequently, the complaint on appeal

¹ 10 *Del. C.* § 9571; Court of Common Pleas Civil Rule 72.3.

² *Williams v. Singleton*, 160 A.2d 376, 378 (Del. 1960); *Warren Williams Co. v. Giovannozzi*, 295 A.2d 587, 588 (Del. Super. 1972); *Woods v. Unisex Hair Palace*, 2009 WL 3152878, *1 (Del. Com. Pl. Aug. 26, 2009).

³ 10 *Del. C.* § 9571(b).

violates the mirror image rule because it fails to join the identical parties from the court below.

In response, Work Horse Construction contends that its appeal is not jurisdictionally defective because Work Horse Construction *intended* to appeal the February 6, 2012 judgment of the Justice of the Peace Court decision in the Work Horse Construction v. Warner JP Action. Even assuming the Court was to accept the contention that appellant's intention is controlling, this appeal would still be jurisdictionally defective because Court of Common Pleas Civil Rule 72.3(e) requires that the appellant file a notice of appeal with the Justice of the Peace Court within ten calendar days.⁴ When this case was heard on June 29, 2012, Work Horse Construction had not taken any steps to file appropriate notices in the Justice of the Peace Court in the Work Horse Construction v. Warner JP Action. Rather, as noted above, those filings were docketed in the Douglas v. Warner JP Action. Moreover, Work Horse Construction has not filed a corrected notice of appeal or complaint on appeal in Court of Common Pleas or filed a certified copy of the judgment dated February 6.

Finally, the Court rejects Work Horse Construction's characterization of its error as merely listing the wrong case number on the notice of appeal. There have been a multitude of errors which have caused confusion and undermined perfecting the appeal according to the governing requirements.

⁴ *Deysher v. Mid-Atlantic Systems of DPN, Inc.*, C.A. No. CPU4-11-005431, at *5-6 (Del. Com. Pl. Dec. 20, 2011) (Welch, J.).

Therefore, for the reasons stated herein, Carl D. Warner's **Motion to Dismiss** is hereby **GRANTED**.

IT IS SO ORDERED this 16th day of July, 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli