

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

January 3, 2012

Andre M. Beauregard, Esq.
Brown, Shiels, & O'Brien
108 E. Water Street
P.O. Drawer F
Dover, DE 19903

RE: James Cunnington Jr. v. Division of Motor Vehicles
C.A. No.: CPU5-11-001558

Decision on Motion for Default Judgment

Dear Mr. Beauregard:

The Court is in receipt of the Plaintiff's Motion for Default Judgment for the above-referenced matter that was filed on December 14, 2011. After a careful review of the Plaintiff's motion and the file, the motion is denied due to a lack of jurisdiction.

In the plaintiff's Motion for Default Judgment, he requests that this Court "enter a judgment against the Department of Motor Vehicles and allow him a license, whether conditional or not, to drive the highways of Delaware." Without reaching the merits of the case, the Court has determined that the plaintiff is, in effect, requesting that this Court order the Division of Motor Vehicles (DMV) to issue a driver's license to him. In fact, though the plaintiff's original pleading commencing this case has been filed as a "Motion" requesting that this Court order DMV to provide the plaintiff with a Delaware driver's license, it is actually a petition for a writ of mandamus.

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Any petition asking a court to compel a public official or agency to perform a legal or ministerial duty, is a petition for a writ of mandamus. *Wilson v. Danberg*, 2010 WL 3432647, at *3 (Del. Super 2010). Under 10 *Del. C.* § 563, “[p]roceedings in mandamus shall be begun by the filing of a complaint in the Superior Court[.]” Delaware case law has long held that “all proceedings in mandamus shall be commenced in the Superior Court.” *Capital Educators Ass’n v. Camper*, 320 A.2d 782, 786 (Del. Chan. 1974). The Court of Common Pleas does not have jurisdiction to hear such matters.

Because this Court lacks the jurisdiction to issue writs of mandamus, it has no authority to grant the plaintiff’s motion. Therefore, the plaintiff’s Motion for Default Judgment is denied and this matter is dismissed without prejudice as the Court of Common Pleas lacks subject matter jurisdiction to hear it.

IT IS SO ORDERED.

Sincerely,



Charles W. Welch, III

CWW:mek

pc: Frederick H. Shranck, Esq.