

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOHN A. PARKINS, JR.
JUDGE

**NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801-3733
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October 10, 2011

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**Re: Michael D. Protack
v. Delaware Direct
C.A. No. N10A-07-005 JAP**

Dear Counsel and Mr. Protack:

This is an appeal by Mr. Protack from an adverse ruling in a civil matter. A final judgment was entered in that court on May 18, 2010. Mr. Protack did not appeal until July 9, 2010. This court, therefore, issued a Rule to Show Cause why the appeal should not be dismissed for lack of jurisdiction.

The Rule to Show Cause read in pertinent part:

It appearing to the court that appellant seeks to appeal from a judgment of the Court of Common Pleas dated May 18, 2010, and

It appearing to the court that appellant did not file a Notice of Appeal until July 9, 2010, the Notice of Appeal having not been filed within 30 days of the entry of the judgment from which the appeal is taken, and

It appearing that the court may therefore lack jurisdiction to entertain this matter...

Unfortunately, appellant missed the point in his response. Instead of addressing the timeliness of his Notice of Appeal, appellant focused on the filing of his brief. In his response to the Rule to Show Cause, appellant asserts that “I submitted an appeal to Superior Court in person on 18 April.” The assertion does not specify the year, but necessarily it must be 2011; if it were 2010, the notice of appeal would have predated the judgment from which the appeal was taken. It is likely that what appellant is referring to is his opening brief, which was dated April 20, 2011.

The core issue here is the timeliness of appellant’s Notice of Appeal. Delaware law provides that any appeal to this court must be taken “within 30 days of the final order, ruling, decision or judgment.” 10 *Del. C.* § 1326(b). This deadline is jurisdictional and cannot be waived by this court. The court finds that appellant’s appeal was docketed on July 9, 2010. The court’s docket sheet reflects it was filed on that date and the initial papers were time stamped on that date. Because this appeal was filed more than 30 days after the May 18, 2010 judgment of the Court of Common Pleas, this court lacks jurisdiction to entertain it. The appeal is therefore **DISMISSED**.

It is **SO ORDERED**.

Very truly yours,

John A. Parkins, Jr.

cc: Prothonotary