

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DE 19801-3733
TELEPHONE (302) 255-0670

December 28, 2011

Greg Burnett
P.O. Box 597
Raymond, MS 39154

RE: Greg Burnett v. Karma Pace McDuffy
Superior Court Civil Action No. 10A-10-020 WCC

Appeal from Court of Common Pleas - REMANDED

Submitted: September 14, 2011

Decided: December 28, 2011

Dear Mr. Burnett:

After reviewing the record, the Court has determined that it does not have jurisdiction to hear your appeal at this time. The Court hopes the following explanation of Delaware civil procedure will help you understand the posture of your case.

The Justice of the Peace Court entered a default judgment against you in April of 2010.¹ You sought to contest the default judgment by filing an appeal and a motion to set aside the default judgment with the Court of Common Pleas. The Court of Common Pleas docketed the appeal and scheduled the motion for a hearing.² Subsequently the Court of Common Pleas denied your motion to set aside the default judgment because you failed to appear on the date and time the Court scheduled it to be heard. The Court of Common Pleas did not rule on the

¹ Pursuant to J.P. Civ. R. 55.

² See Ct. Com. Pl. Civ. R. §§ III and IX (governing motions and appeals, respectively).

merits of your appeal or issue a final decision in the matter. No further action has occurred in the Court of Common Pleas because you appealed the denial of your motion to this Court.

This Court cannot review the Court of Common Pleas' denial of your motion to set aside the default judgment since it is not a final decision in the matter.³ You have filed what is called an interlocutory appeal and this Court does not have jurisdiction to hear such appeals.⁴

Unfortunately it appears the rulings that have been made by the lower courts are simply in response to your failure to appear when matters are scheduled. You may appear to argue a jurisdiction matter without waiving that issue, but you cannot simply ignore a hearing scheduled by the Court. When you do, the Court will often consider that you have abandoned the motion and will deny it without considering its merits. Therefore I would caution you that when matters are scheduled you should personally appear or retain an attorney to argue on your behalf.

In any event, as there is no final decision from the lower court, your appeal is denied and the matter is remanded to the Court of Common Pleas to continue with your appeal in that court.

Sincerely yours,

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

cc: Judge John Welch
Karma Pace-McDuffy
Prothonotary

³ See Super. Ct. Civ. R. 72(b) (requiring a notice of appeal to be filed only after a final judgment, order, or disposition has been entered).

⁴ See *DeLafield's, Inc. v. Avian Aquatics, Inc.*, 1999 WL 463814 (Del. May 18, 1999) (explaining that 10 *Del. C.* § 1326 only gives the Superior Court jurisdiction to hear final orders, rulings, or decisions of the Court of Common Pleas).