

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN CARMAN,	§
	§ No. 622, 2012
Plaintiff Below,	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§
KEN BOULDEN,	§ C.A. No. N12A-10-004
	§
Defendant Below,	§
Appellee.	§

Submitted: February 12, 2013

Decided: April 22, 2013

Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 22nd day of April 2013, upon consideration of the appellant's opening brief, the appellee's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Stephen Carman, appeals from a Superior Court Order dated October 15, 2012 that dismissed as untimely his appeal from a judgment of the Court of Common Pleas. The appellee, Ken Boulden, moves to affirm the judgment below on the ground that it is manifest on the face of Carman's opening brief that Carman's appeal is without merit. We agree and affirm.

(2) The record reflects that Carman filed a complaint in replevin in the Court of Common Pleas in March 2012. Boulden moved to dismiss. The Court of

Common Pleas held a hearing on April 20, 2012. Following that hearing, the Court of Common Pleas granted Boulden's motion and entered a judgment of dismissal on the ground that Carman's complaint was not timely filed. Carman filed a notice of appeal in the Superior Court on October 15, 2012. The Superior Court dismissed Carman's appeal on the ground that it was not filed in a timely manner.

(3) In his opening brief on appeal, Carman argues that the Court of Common Pleas erred by failing to apply the doctrine of equitable tolling and instead dismissing his complaint as untimely. Carman also appears to argue that the Superior Court should have equitably tolled the appeal limitations period because Carman is incarcerated and was unable to access the prison law library for several months in order to perfect his appeal in a timely manner.

(4) Pursuant to Superior Court Civil Rule 72(b), an appeal from a judgment of the Court of Common Pleas to the Superior Court must be filed within 15 days of the judgment.¹ In this case, Carman's notice of appeal should have been filed on or before May 7, 2012. He did not file his notice of appeal until October 15, 2012, more than five months later. An appellant's *pro se* and/or incarcerated status

¹ DEL. SUPER. CT. CIV. R. 72(b) (2013).

does not excuse the failure to file a timely notice of appeal.² As a result, we find no error in the Superior Court's dismissal of Carman's appeal as untimely.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

² See *Davis v. Estate of Perry*, 2013 WL 1043981, at *1 (Del. Mar. 13, 2013) (citing *Carr v. State*, 554 A.2d 778, 779-80 (Del. 1989)).