

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Ilona Banas,)
) C.A. No. CPU5-09-000165
 Defendant-Below,)
 Appellant,)
)
 v.)
)
 Joseph Jones and Krysten Gill,)
)
 Plaintiffs-Below,)
 Appellees.)

Date: March 24, 2010

Ms. Ilona Banas
4764 Limestone Road
Wilmington, DE 19808
Pro Se Appellant

Mr. Joseph Jones
Ms. Krysten Gill
1287 Town Point Road
Chesapeake City, MD 21915
Pro Se Appellees

DECISION ON DISMISSAL

On January 29, 2009, Ilana Banas, Defendant-Below, Appellant (“Defendant”), filed a timely appeal of the decision of the Justice of the Peace Court, which ruled in favor of Joseph Jones and Krysten Gill, Plaintiffs-Below, Appellees (“Plaintiffs”). Pursuant to the Court of Common Pleas appeal process, the Plaintiffs filed a Complaint in this Court on February 24, 2009. Defendant never filed an Answer to the Complaint.

On September 10, 2009, the Court sent the parties a Notice, pursuant to Court of Common Pleas Civil Rule 41(e), indicating that the case may be dismissed for inactivity. The Defendant returned the Notice to the Court, postmarked September 22, 2009, with the following hand-written message:

Are you dismissing his claim or my claim? What are you dismissing – Why was not followed up more than 6 months? Why would I pay for the case if they do not made (sic) the case? Why was it not scheduled? The tenant did not gave (sic) me 60 notice have not paid rent and wants back his sec. deposit. I do not believe I owe him back his sec. deposit!

By letter dated January 8, 2010, the Court advised the Defendant that the Rule 41(e) Notice referred to her claim because she never filed an Answer to the Complaint for this matter. In its correspondence, the Court then provided as follows:

Although your note to the court suggests that you do not desire your appeal to be dismissed, it gives no reason as to why you failed to file an Answer to the Complaint. Please advise the court why you have not filed an Answer to the Complaint in writing within the next fifteen days.

Ms. Banas never provided an explanation as requested by the Court in its January 8, 2010, correspondence.

DISCUSSION

When an appeal from the Justice of the Peace Court is filed in the Court of Common Pleas, “the pleadings and proceedings thereafter shall be as in other civil actions commenced in the Court.” 10 *Del. C.* § 9572. After Defendant filed her appeal of the Justice of the Peace Court decision against her, Plaintiffs filed a Complaint in accordance with the Court of Common Pleas Civil Rules. Defendant failed to file an Answer. Court of Common Pleas Civil Rule 12(a) provides that “[a] defendant shall

serve an answer within 20 days after service of process, complaint and affidavit, if any, upon that defendant, unless the Court directs otherwise . . .”

Under Court of Common Pleas Civil Rule 41(e), “[t]he Court may order an action dismissed, *sua sponte*, upon notice of the Court, for failure of a party diligently to prosecute the action, for failure to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate. . . . After consideration of [any response to the Rule 41(e) Notice], the Court shall enter an order dismissing the action or maintaining the case.”

In this case, Defendant failed to file an Answer to the Complaint in accordance with Civil Rule 12(a). Furthermore, Defendant’s response to the Civil Rule 41(e) Notice did not provide an explanation for her failure to file an Answer and did not otherwise provide the Court with any reason to maintain the case. Therefore, the dismissal of this appeal is appropriate.

CONCLUSION

Defendant failed to pursue her appeal of the Justice of the Peace decision against her in favor of Plaintiffs. Therefore, her appeal was properly dismissed pursuant to Court of Common Pleas Civil Rule 41(e).

IT IS SO ORDERED THIS 24th DAY OF MARCH, 2010.


CHARLES W. WELCH
JUDGE