

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

GLADYS M. BUMBREY,)	
)	
Appellant/Plaintiff Below,)	
)	
v.)	CPU6-19-001656
)	
JOYCE GUNBY, JACK L. MULLINS,)	
BRENDAN MCGOWAN, MULLINS)	
AUTO BROKERS, INC.,)	
)	
Appellees/Defendants Below)	

Submitted December 17, 2019
Decided February __, 2020

Gladys M. Bumbrey, Pro se Plaintiff
Michael R. Smith, Esq. for Defendants

DECISION ON MOTION TO APPEAL COMMISSIONER’S RECOMMENDATION

On December 17, 2019 Gladys M. Bumbrey (“Plaintiff”) appealed the Commissioner’s Recommendation to dismiss Plaintiff’s Notice of Appeal from a Justice of the Peace Court Decision.¹ For the reasons discussed below, the Commissioner’s Findings of Fact and Recommendation (“Recommendation”) is **ACCEPTED** and entered as the **ORDER** of the Court.

Procedural History and Facts

On August 19, 2019, Plaintiff filed a complaint in the Justice of the Peace Court (“JP Court”) against the above-captioned Defendants, alleging they performed substandard work on her vehicle. At trial on November 13, 2019, JP Court dismissed the action against all but one Defendant, and entered judgment in favor of that Defendant. On December 2, 2019, Plaintiff filed a petition to proceed *in forma pauperis* in the Court

¹ Case # JP17-19-004902

of Common Pleas. On December 3, 2019 Plaintiff returned to the Clerk's Office and filed a Notice of Appeal of the JP Court action.

On December 13, 2019, the Commissioner filed his Recommendation to dismiss Plaintiff's Appeal for lack of jurisdiction due to her untimely filing of the Appeal. Plaintiff filed an Appeal of the Commissioner's Recommendation on December 17, 2019.

Standard of Review

A Commissioner's decision to reject a Notice of Appeal and dismiss the appeal for lack of jurisdiction is case dispositive.² The Court reviews objections made to case dispositive determinations *de novo*.³

Discussion

A Notice of Appeal must be filed by the appellant in the Court of Common Pleas within fifteen days of the entry of a final judgment from the Justice of the Peace Court.⁴ It has been long established by the Delaware Supreme Court that the requirements of 10 Del. C. § 9571(b) are jurisdictional; if they are not strictly complied with then the Court has no jurisdiction over the appeal.⁵ An appellant's self-represented status does not excuse a failure to strictly comply with the jurisdictional requirements of 10 Del. C. § 9571(b).⁶ However, the Delaware Supreme Court has recognized a narrow exception: When an appellant fails to perfect an appeal within fifteen days, "a jurisdictional defect is created which may not be excused in the absence of unusual circumstances that are not attributable to the appellant or the appellant's attorney."⁷ Under this exception the Court

² Court of Common Pleas Civil Rule 112(A)(4).

³ Court of Common Pleas Civil Rule 112(A)(4)(iv).

⁴ 10 Del. C. § 9571(b); Court of Common Pleas Civil Rule 72.3

⁵ *Dzedzej v. Prusinski*, 259 A.2d 384 (Del. 1969).

⁶ *Short v. Johnson*, 2015 WL 1609328, at *1 (Del. Com. Pl. Mar. 30, 2015) (quoting *Smith v. State*, 812 A.2d 224, (Del. 2002)).

⁷ *Short v. Johnson*, 2015 WL 1609328, at *1 (Del. Com. Pl. Mar. 30, 2015) (quoting *Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988)).

may exercise jurisdiction over an untimely appeal if the untimeliness of the appeal is attributable to court personnel, and the appellant took all the necessary steps to comply with 10 Del. C. § 9571(b).⁸ An appellant must present credible evidence attributing the delay to court personnel; otherwise the appeal cannot be heard.

In the present case, Plaintiff had until December 2, 2019 to file her appeal of the November 13, 2019 JP Court decision.⁹ Plaintiff contends that she attempted to file her Notice of Appeal on December 2, 2019, but the clerk's office refused to accept it. She also contends that she was purposely deceived by the clerk's office into filing only her *in forma pauperis* petition on December 2nd. The Court does not find any merit or credibility in Plaintiff's claims. The docket shows that the *in forma pauperis* petition was filed on December 2nd, and the Notice of Appeal was filed on December 3rd. If the Plaintiff had attempted to file the Notice of Appeal on December 2nd as she claims, then it would have been accepted and filed on December 2nd. The Court can only infer from the fact that Defendant filed her *in forma pauperis* petition on December 2nd, and then returned and filed the Notice of Appeal on December 3rd, that the Plaintiff did not bring the Notice of Appeal to the Clerk's Office until December 3rd. Plaintiff has not presented the Court with any credible evidence attributing the delay of her appeal filing to court personnel, or that she took all necessary steps to timely file her appeal. Accordingly, this case does not fall within the exception to the fifteen day jurisdictional requirement, and the Court lacks jurisdiction to hear this appeal.

⁸ *Short v. Johnson*, 2015 WL 1609328 (Del. Com. Pl. Mar. 30, 2015).

⁹ The 15 day time period actually ended on November 28, 2019. However, Court of Common Pleas Civil Rule 6 states that if the 15th day falls on a Saturday, Sunday, legal holiday, or other day on which the office of the Clerk of the Court is closed, then the due date will be the next business day on which the office is open. November 28, 2019, fell on Thanksgiving Day and the Clerk's office was closed on November 29th. Thus, pushing the due date of the Appeal to December 2, 2019.

Conclusion

For the foregoing reasons, the Commissioner's Findings of Fact and Recommendations are **ACCEPTED** and entered as the **ORDER** of the Court. Plaintiff's Appeal is **DISMISSED**.

IT IS SO ORDERED this ____ day February, 2020.

Kenneth S. Clark, Jr., Judge