

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

Kimberly Jarmon,	:	C.A. No. 04-03-0190 AP
	:	
Plaintiff below/	:	
Appellant,	:	
	:	
v.	:	
	:	
Owner's Management Co.,	:	
	:	
Defendant below/	:	
Appellee.	:	

Submitted: May 12, 2004

Decided: May 17, 2004

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of subject matter jurisdiction.

Jane L. Pennington, Esquire, Community Legal Aid Society, Inc., 840 Walker Road, Dover, Delaware 19904, Attorney for Plaintiff Below/Appellant.

Jeffrey Clark, Esquire, Schmittinger & Rodriguez, 414 South State Street, Dover, Delaware 19901, Attorney for Defendant Below/Appellee.

Trader, J.

In this civil appeal I conclude that the Court of Common Pleas has no jurisdiction over an appeal from a magistrate court in a case involving a summary proceeding for possession of real property. Accordingly, this civil appeal is dismissed.

The relevant facts are as follows: On December 29, 2003, the plaintiff, Owner's Management Company, filed a complaint for summary possession against the defendant, Kimberly Jarmon. The plaintiff's complaint also sought a judgment for rent due. On January 28, 2004, a judgment for possession and a judgment by admission for rent due were entered against the defendant. On February 4, 2004, the defendant's attorney filed a motion to set aside the default judgment and stay the writ of possession. On March 16, 2004, the defendant's motion to vacate the judgment by admission and stay the writ of possession were denied. On March 31, 2004, the defendant filed a notice of appeal, praecipe, and a motion for relief from judgment in this court. I initially dismissed the civil appeal because it appeared that the notice of appeal, and praecipe were not timely filed with this court. Subsequently, I vacated this order dismissing the appeal because the appeal was timely filed. A hearing was scheduled for May 12, 2004, and at that time I considered plaintiff's motion to dismiss the appeal as well as defendant's motion for relief of judgment. Except for the admission of the decision of the magistrate's court, both parties declined to call witnesses at the hearing and requested that the court decide the issues on the record before the court.

The plaintiff first contends that the appeal should be dismissed for lack of subject matter jurisdiction. The plaintiff is correct.

The Justice of Peace Court has jurisdiction over summary possession proceedings pursuant to 25 Del. C. Sec. 5701. Under 25 Del.C. Sec. 5717 litigants in summary

possession proceedings have a right to a trial *de novo* before a special court comprised of three justices of the peace. Section 5917, however, does not confer a right of appeal to the Court of Common Pleas.

Historically at common law and in Delaware prior to 1793 a landlord seeking to recover lease premises relied upon an action of an ejectment. Thompson and Real Property, Sec. 1370, p. 719. In 1793 a statutory eviction procedure was enacted conferring jurisdiction on the Justice of the Peace Court. *Smith v. Justice of the Peace Court #1*, 1990 WL 123051 at *2 (Del. Super.) The present landlord tenant code was adopted in 1972 and it provided for a summary proceeding for the prompt settlement of the right to possession. 58 Del. Laws Ch. 472 Sec. 5102. The Delaware Supreme Court has held that the judgment of the magistrate is final and non-appealable. *Bomba's Restaurant & Cocktail Lounge v. Lord De La Warr Hotel*, 389 A. 2d 766 (Del. 1978). The Supreme Court in *Bomba Supra* cited the unreported opinion of Justice Quillen, then Judge Quillen, in *Woodlawn Trustees v. Billips*, 5415 C. A. 1972 (1972) in which he stated:

It has long been the law in Delaware, notwithstanding the appeal statute for debt, that appeals to the Superior Court do not lie in suits for possession and rent in 'Hold Over Tenant' cases. *David v. Frantz*, 7 *Boyce* 293, 105 A. 837 (Super. Ct. 1919). Nothing in the new statute, 58 Del. Laws Ch. 472, suggests the legislature desired to change the law. Indeed, the extraordinary provision for an appeal to a three justice court within the Justice of the Peace system evidences an express legislative intent to keep such matters out of the Superior Court. If this construction of Delaware statutes was questionable when adopted over fifty years ago, in light of continued legislative acceptance of the construction, it is now too well established to be altered by Court decision.

389 A.2d at 768.

It is true that 10 Del. C. Sec. 9570(a) provides for an appeal to this court from judgments in the Justice of the Peace Court. But as Justice Duffy stated in *Bomba*, this law has been on the books for more than 125 years “and it has never been construed to apply to an action for possession.” 389 A.2d at 769.

The defendant contends that although a claim for summary possession cannot be appealed to this court, the rent claim can be severed from the possession issue and appealed to this court. In *Marcopulos v. Eastburn*, Del. Super., C.A. No. 84C-FE-39, Stiftel, PJ (January 29, 1985) *aff'd* 497 A.2d 789(Table) (Del. 1985), President Judge Stiftel held that the landlord had no right to appeal to the Superior Court for money damages that were denied by a three judge panel in the Justice of the Peace Court. In *Greenmeadow Realty v. Calvente*, the landlord brought an action for summary possession and rent due in the Justice of the Peace Court. 1991 WL 215659 (Del. Super. Ct.). The landlord filed an appeal to the Superior Court from the three judge panel on the issue of delinquent rent only and the Superior Court held that it had no jurisdiction to consider the appeal. But in *Seaford Doughnut Co. v. Wheeler*, 1993 WL 331090 at *2 (Del. Super. Ct.), the Superior Court permitted an appeal of a claim for rent in a summary possession proceeding contrary to prior decisional law.

In this case, the defendant seeks to set aside the judgment in the court below and stay the writ of possession. Therefore, the defendant has appealed not only the issue of the claim for rent but also the issue of possession. Under *Bomba* and subsequent Delaware cases, this Court lacks jurisdiction to hear an appeal from the decision of the Justice of the Peace in cases involving summary possession. Additionally, an appellant

cannot sever the rent claim for an appeal to this court merely because he did not obtain the desired result in the court below.

In the case before me, the defendant contends that an appeal was taken to this court from the magistrate's decision denying a motion to vacate a judgment. She argues that this court may review the magistrate's reasons for denying the motion to vacate a judgment under *Ney v. Polite*, 399 A.2d 527 (Del. 1979). Defendant cites *Gibson v. North Delaware Realty Company*, 1996 WL 453414 (Del. Super.), to support this proposition. In that case, Judge Herlihy determined that it was error for the Court of Common Pleas to determine that it lacks jurisdiction in a summary possession appeal where the magistrate denied a motion to vacate a judgment. The *Gibson* case relies upon *Miles v. Justice of the Peace Court #13*, 1993 WL 488877 (Del. Super. Court). In the latter case the matter came before the Superior Court upon a petition for *writ of certiorari*. *Miles* follows prior case law and held that there is a right of review by writ of certiorari for claims that the lower court lacked jurisdiction or committed an error of law. *Id.* at *2; see also *Rende v. Delaware State Fair*, 1998 WL 449560 at *2-3 (Del. Super. Ct.). Thus, the decision in *Miles* is not a precedent for the *Gibson* case because *Gibson* involves an appeal from the Justice of the Peace Court, rather than a petition for writ of certiorari. Additionally, *Ney v. Polite* is inapposite because *Ney v. Polite* applies to appeals under 10 Del.C. Sec. 9570(a).

The defendant also contends in her motion that the judgment in the Justice of the Peace Court is void. Assuming arguendo that the court could address this issue, the defendant's contention is without merit. In the Justice of the Peace Court, the plaintiff had brought a claim for rent in the amount of \$445.00. At trial the plaintiff moved to

amend the pleadings pursuant to Justice of the Peace Civil Rule 15 and requested additional rent in the amount of \$370.60. At that time, the defendant was given the option of continuing the case so that she could prepare a defense to the amended pleading, but she declined this option and admitted the amount was due. Thereafter, the magistrate entered judgment by admission.

The defendant asserts that because she was not given notice of the additional amount due prior to the trial, the Justice of the Peace Court had no jurisdiction to hear the matter. The Justice of the Peace Court has jurisdiction over civil causes of action where the sum in demand does not exceed \$15,000.00. 10 Del.C. Sec. 9301. Therefore, the amount sought by the plaintiff was within the jurisdiction of the Justice of the Peace Court and the contention of the defendant that the judgment is void is totally without merit.

Since I have determined that this court has no jurisdiction to hear this appeal, the appeal is hereby dismissed.

IT IS SO ORDERED.

Merrill C. Trader
Judge