

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

Carl. S. Pavetto,	:	
	:	C.A. No. 03-10-0172AP
Plaintiff Below/	:	
Appellant,	:	
	:	
v.	:	
	:	
Kris Hansen, Bill Hufnal,	:	
Barbara Zimmerman,	:	
Catherine Reynolds,	:	
Scott Henderson, Patricia Hufnal,	:	
Shirley Waller, Robert Eberly,	:	
Linda Bontrager,	:	
	:	
Defendants Below/	:	
Appellees.	:	

Submitted: January 7, 2004

Decided: January 7, 2004

Decision on appeal from the Justice of the Peace Court.

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

Carl S. Pavetto, 2413 Graystone Lane, Frederick, Maryland 21702, Pro Se Plaintiff
Below/Appellant.

Laura A. Yienst, Esquire, Liguori, Morris & Redding, 46 The Green, Dover, Delaware
19901, Attorney for Defendants Below/Appellee.

Trader J.

In this civil appeal from a decision of the Justice of the Peace Court #16 imposing a sanction against the plaintiff of \$1000.00 for attorney's fees, I conclude that this court lacks subject matter jurisdiction to hear this appeal because the cause of action on appeal does not correspond to the original action brought in the court below.

The relevant facts are as follows: On March 14, 2003 Carl S. Pavetto (Pavetto) filed a complaint in trespass against nine defendants. The defendants through their attorney, Laura Yiengst, requested a trial and demanded a bill of particulars. Pavetto failed to appear on the scheduled trial date and his civil action was dismissed. Thereafter, the defendants' attorney filed a motion seeking the imposition of attorney's fees against the plaintiff. At the conclusion of the hearing held on October 15, 2003, the magistrate awarded defendants' counsel fees in the amount of \$1000.00 and entered judgment against the plaintiff for that amount. He stated that this amount "reflect the unnecessary costs imposed on the defendants after the plaintiff stopped prosecuting his action in good faith." Thereafter, the plaintiff filed an appeal with this court from the order awarding attorney's fees, but he did not take an appeal from the court's order dismissing his cause of action in trespass.

The initial question is whether this court lacks subject matter jurisdiction to hear this appeal because the appeal violates the mirror image rule. The mirror image rule requires that the cause of action on appeal must be identical to the cause of action in the original proceedings. *McDowell v. Simpson*, 1857 WL 1024 (Del. Super. Ct.).

The *McDowell* court stated:

It is the first requisite of a declaration that it shall correspond with the process on which the action is founded, first, in the names of the parties, secondly, in the number of the parties, thirdly, in the character or right in which they sue or are sued,

and fourthly, in the cause and form of the action; and if it fails to correspond with the process in any of these particulars, the Court will, on motion, set it aside for irregularity.

More recent interpretations of the mirror image rule by the Delaware courts have included the requirement of pleading the identical cause of action on appeal. *Sulla v. Quillen*, 1987 WL 18425 at *1 (Del. Super. Ct.). In *Dzedzek v. Prusinski*, 259 A.2d 384, 386 (Del. Super. Ct. 1969), it was held that “the jurisdiction of the court is limited by statute to try the same action as instituted in the Justice of the Peace Court”. The court explained that an appellate court could not have jurisdiction where the cause of action in the appeal differed from the original proceedings since it would be unable to “determine the entire action as is required of a trial *de novo* in an appeal from the Justice of the Peace Court.” It was held in *Sulla v. Quillen supra.* that “The right to *de novo* appeal from the Justice of the Peace Court extends only to review by retrial of the same cause of action heard and decided at the Justice of the Peace Court level.” In *Panzer v. Farrall*, 1987 WL 8223 at *2 (Del. Super. Ct.), it was held that the reviewing court would lose jurisdiction over appeals from the Justice of the Peace Court “where the identity, number, or character of the parties or the nature of the cause of action are different on appeal.” In fact, “Any variance from the lower proceeding strips the Court of jurisdiction to hear the appeal.” *Hicks v. Taggart*, 1999 WL 462375 at *3 (Del. Super. Ct.).

In the case before me, the plaintiff took an appeal only on the issue of the magistrate’s award of attorney’s fees. The original cause of action has not been made a part of this appeal. Therefore, the cause of action on appeal is not identical with the original cause of action presented to the court below. Because of this violation of the

mirror image rule, the court has no subject matter jurisdiction to hear this appeal.

Accordingly, the appeal is dismissed.

IT IS SO ORDERED.

Merrill C. Trader
Judge