

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IRIS B. ZEBROOK,)	
)	
Appellant,)	
)	
v.)	C.A. No. 01A-10-007 JRS
)	
SONIA VERMA,)	
)	
Appellee.)	

ORDER

On Appellant's Motion for Reargument. DENIED
Date Submitted: September 10, 2002
Date Decided: September 19, 2002

This 19th day of September, 2002, upon consideration of the Appellant's Motion for Reargument of the Court's Order dated August 27, 2002, it appears to the Court that:

1. Sonia Verma ("Ms. Verma"), the Appellee, brought a civil action against Iris B. Zebrook ("Ms. Zebrook"), the Appellant, in the Justice of the Peace Court No. 13 for the return of a down payment made in connection with the purchase of real estate. The Justice of the Peace Court entered a judgment in favor of Ms. Verma by Order dated May 23, 2001, after a trial on May 18, 2001.

2. Ms. Zebrook filed a Notice of Appeal in the Court of Common Pleas on June 1, 2001. A certified copy of the record, including the transcript from the trial in the Justice of the Peace Court, was filed on June 25, 2001, beyond the time permitted by the Court of Common Pleas in its statutes and rules.¹ Accordingly, the Court of Common Pleas dismissed the appeal by Order dated September 19, 2001. This Court affirmed the Court of Common Pleas decision on August 27, 2002.² The Court found that the Court of Common Pleas properly dismissed Ms. Zebrook's appeal because the certified record was not filed timely and because no showing of excusable neglect had been made.

3. The purpose of a motion for reargument is to review improper findings of fact or conclusions of law and to give the "trial court an opportunity to correct

¹ Court of Common Pleas Civil Rule 72.3(b). Rule 72.3(b) provides: "When an appeal de novo is permitted by law, an action is commenced in the Court of Common Pleas by the appellant filing with the Clerk of the Court a notice of appeal within the time prescribed by statute for the filing of an appeal. If no time is prescribed by statute, the notice of appeal shall be filed within 15 days from the entry of final judgment, order, or disposition from which an appeal is permitted by law." *See also* 10 Del C. § 9571 (b) (appeal should be taken within 15 days of "the final order, ruling, decision or judgment" from which the appeal is taken). It is uncontroverted from the record filed with the Superior Court that a notice of appeal was filed by Ms. Zebrook and stamped by the Court of Common Pleas on June 1, 2001, within 15 days from the Justice of the Peace Court's judgment on May 21, 2001 (*see* Justice of the Peace Civil Docket - Court 13, page 3). Additionally, Rule 72.3(b) provides: "The appellant shall file a certified copy of the record of the proceedings below, not including the evidence, within 10 days of the filing of the notice of appeal."

² *Zebrook v. Verma*, C.A. No. 01A-10-007, Slights, J., (Aug. 27, 2002)(ORDER).

errors prior to an appeal.”³ Under Delaware law, a motion for reargument will be denied unless it is shown that the Court “overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision.”⁴

4. Ms. Zebrook contends that the Court made improper findings or misinterpreted matters which would affect the outcome of its decision. Specifically, she argues that this Court misread the Court of Common Pleas order and determined improperly that the Court of Common Pleas did not dismiss the Appeal on jurisdictional grounds. The Court disagrees. As Ms. Verma correctly observes, Ms. Zebrook has isolated a sentence from the Court’s decision and then twisted it out of context.⁵ While it is true that the Court noted that it was unclear whether the Court of Common Pleas based its decision, at least in part, on jurisdictional grounds, there is no doubt that the Court of Common Pleas found that a violation of its rules had occurred and that excusable neglect had not been demonstrated. And, with this conclusion, the Court concurred: “A reasonably prudent person would have been

³ *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. Super. 1969).

⁴ *Monsanto Co. v. Aetna Cas. & Surety Co.*, C.A. No. 88C-JA-118, Ridgely, P.J., (Jan. 14, 1994) (citing *Wilshire Rest. Group, Inc. v. Ramada, Inc.*, Del. Ch., C.A. No. 11506, Jacobs, V.C. (Dec. 19, 1990)(Letter Op.)).

⁵ Appellee’s Response to Motion for Reargument, September 10, 2002, p. 1 (referring to the Court’s Order at 6, where the Court stated: “It is not clear whether the Court of Common Pleas based its decision to dismiss the Justice of the Peace appeal for lack of jurisdiction.”)

aware of her deadline and would have sought the transcript at least by that deadline or sought relief from the court *in advance* of the deadline's expiration.”⁶

5. Ms. Zebrook, in essence, requests this Court to codify and make mandatory the practice of the Court of Common Pleas to send dunning letters to those appellants who have not followed clear and unmistakable requirements, under both statute and rule, to perfect their appeal. This Court of Common Pleas practice is, at most, a courtesy, not an automatic extension of time, and does not relieve Appellant from any requirements to file timely the notice of appeal or the certified copy of the record from the court below.

6. The Court can find no basis upon which to second-guess or subvert the Court of Common Pleas in its efforts to police compliance with its own rules. The Appellant's Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

Judge Joseph R. Slights, III

Original to Prothonotary

cc: John R. Weaver, Jr., Esquire
George A. Brancati, Esquire

⁶ *Zebrook* (emphasis added) at 9.