

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

DELAWARE INSTITUTE OF HEALTH	)	
SCIENCES, INC.	)	
	)	
Appellant/Plaintiff,	)	
	)	
v.	)	C.A. N10A-08-002 JRJ
	)	
ELLEN EZEKIEL OKORIE	)	
	)	
Appellee/Defendant.	)	

Date Submitted: April 14, 2011

Date Decided: August 4, 2011

Upon Appeal from the Court of Common Pleas for the State of Delaware in and for New Castle County: **REMANDED**

**OPINION**

Laraine A. Ryan, Esq., 1601 Milltown Road, Ste. 8, P.O. Box 5733, Wilmington, Delaware 19808, Attorney for Appellant.

Ellen Ezekiel Okorie, *Pro Se*, 524 Concorde Bridge Place, Newark, Delaware 19702.

## INTRODUCTION

Appellant Delaware Institute of Health Sciences, Inc. (hereinafter “DIHS”), files this appeal from the Court of Common Pleas’ (hereinafter “CCP”) decision granting Ellen Ezekiel Okorie’s (hereinafter “Okorie”) Motion to Dismiss for Lack of Subject Matter Jurisdiction. For the reasons explained below, the Court finds that the CCP failed to set forth a sufficient legal basis to grant Okorie’s Motion to Dismiss. Accordingly, the decision is **REMANDED** for further findings consistent with this opinion.

## FACTS AND PROCEDURAL HISTORY

On September 23, 2008, Okorie filed an action for breach of contract against “Saheed Rufai *of* Delaware Institute of Health Sciences, Inc.” in Justice of the Peace Court 13 (hereinafter “JP”).<sup>1</sup> Okorie claimed she attended DIHS, a nursing school owned by Saheed Rufai (hereinafter “Rufai”), and was entitled to a tuition refund because she withdrew from her classes. On November 26, 2008, “Saheed Rufai” *and* “Delaware Institute of Health Sciences, Inc.” filed an Answer to the Complaint and requested a trial.<sup>2</sup> Despite not being a named party in the Complaint, the “Delaware Institute of Health Sciences, Inc.” filed a Counterclaim against Okorie for breach of contract.<sup>3</sup> DIHS claimed Okorie “attended classes for a period in excess of 50 percent of total school hours” and is obligated to pay the full tuition.<sup>4</sup> The JP dismissed both parties’ claims because neither party submitted evidence as to how many hours are required to complete

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<sup>1</sup> See Complaint.

<sup>2</sup> See Defendant’s Answer to the Complaint.

<sup>3</sup> See Counterclaim.

<sup>4</sup> *Id.*

the program and how many hours Okorie completed. No monies were awarded to either party.<sup>5</sup>

The JP did not differentiate between Rufai and DIHS as named defendants. The cover page of the JP Judgment identifies the parties as “Okorie vs. Saheed Rufai of Delaware Institute of Health Sciences, Inc.”<sup>6</sup> However, the Judgment itself names “Saheed Rufai” as the defendant,<sup>7</sup> and in the discussion section of the Judgment, “Rufai” and “Delaware Institute of Health Sciences, Inc.” are named as defendants and their names are used interchangeably.<sup>8</sup>

On July 28, 2009, DIHS appealed to the CCP challenging the JP’s dismissal of DIHS’s breach of contract counterclaim. The original action as it appears in the JP was not appealed to the CCP, as the appeal in CCP is titled “Delaware Institute of Health Sciences, Inc, v. Okorie.” In response to the appeal, Okorie filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to Court of Common Pleas Civil Rule 72.3, commonly referred to as the “mirror image rule.”<sup>9</sup> The CCP granted Okorie’s Motion because the identical parties and issues that were before the JP were not before the CCP. DIHS filed the instant appeal with this Court.

## **STANDARD OF REVIEW**

On appeal, the Superior Court determines whether the Court of Common Pleas decision is supported by substantial evidence and free from legal error.<sup>10</sup> Substantial evidence is such relevant evidence that a reasonable mind would accept as adequate to

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<sup>5</sup> *Okorie, v. Rufai of DIHS*, JP13-08-010040, McNesby, J. (Del. J.P. July 1, 2009).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Court of Common Plea Civil Rule 72.3(f); “An appeal to [the Court of Common Pleas] that fails to join the identical parties and raise the same issues that were before the Court below shall result in a dismissal on jurisdictional grounds.”

<sup>10</sup> *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

support a conclusion.<sup>11</sup> If substantial evidence exists to support a finding of fact, this Court must accept that ruling, as it must not make its own factual conclusions, weigh evidence, or make credibility determinations.<sup>12</sup> The Court’s review of conclusions of law is *de novo*.<sup>13</sup> Absent an error of law, the CCP’s decision will not be disturbed where there is substantial evidence to support its conclusions.<sup>14</sup>

## PARTIES’ CONTENTIONS

DIHS contends that the mirror image rule is “overly harsh” and should be interpreted liberally to preserve the right to appeal. Furthermore, DIHS argues that the instant appeal does not violate the mirror image rule because Rufai is the sole director and operator of DIHS, and therefore, Okorie would not suffer prejudice by allowing the appeal.<sup>15</sup>

## DISCUSSION

In reviewing the procedural history of this matter, it is unclear who the named defendant is. The Complaint identifies “Saheed Rufai of DIHS” as the defendant, but it is “DIHS” who filed a Counterclaim. The JP never addressed this issue and referenced Rufai and DIHS as defendants interchangeably. For this reason, this matter is remanded to the CCP with instructions that the action be remanded to the JP so the correct defendant can be identified. Without knowledge of who the parties are, the CCP (and this Court, should one of the parties appeal) could not determine if the mirror image rule has been violated.

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<sup>11</sup> *Oceanport Indus. v. Wilmington Stevedorse, Inc.*, 636 A.2d 892, 898 (Del. 1994).

<sup>12</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>13</sup> *Oceanport*, 636 A.2d at 898.

<sup>14</sup> *Id.*

<sup>15</sup> In regards to this appeal, Okorie is a *pro se* appellee. Her reply brief discusses the underlying merits of the breach of contract action and does not address the CCP decision concerning the mirror image rule. Okorie was represented by counsel in the CCP when the motion was made.

## **CONCLUSION**

For the aforementioned reasons, the Court **REMANDS** this matter to the Court of Common Pleas with instructions that action be remanded to the Justice of the Peace and requests that the defendant be clearly identified.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge