

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ERIC RILEY & JEANNE RILEY,)	
)	
Defendants-Below,)	
Appellants,)	
)	
v.)	C.A. No. N15A-12-005 JAP
)	
NEW CASTLE AUTO AUCTION)	
& CONSIGNMENTS, INC.,)	
)	
Plaintiff-Below,)	
Appellee.)	

RULE TO SHOW CAUSE

The Rileys appeal from a November 25, 2015 judgment entered against them in a debt action by the Court of Common Pleas. In its November 25 opinion the Court of Common Pleas ruled that Plaintiff-below New Castle Auto’s was contractually entitled to attorneys fees, but the trial court deferred a decision on the amount of those fees pending post-opinion submissions by the parties. It directed New Castle Auto’s counsel to file an affidavit in support of the amount of fees being claimed and directed the Rileys to respond by a date specified in the November 25 opinion. It concluded that “[t]he Court shall then issue a separate written decision on the amount of attorney’s fees.”

Insofar as civil appeals from the Court of Common Pleas are concerned, this court’s appellate jurisdiction is limited to appeals from final judgments. The Delaware Code provides for a limited right of appeal from the Court of Common Pleas: “[f]rom any *final* order, ruling, decision or judgment of the court in a civil

action there shall be the right of appeal to the Superior Court.”¹ It has long been settled in Delaware that for purposes of appellate jurisdiction a “final judgment is generally defined as one which determines the merits of the controversy or the rights of the parties and leaves nothing for future determination or consideration.”² The Delaware Supreme Court has said that the “test for whether an order is final and therefore ripe for appeal is whether the trial court has clearly declared its intention that the order be the court's ‘final act’ in a case.”³ Here, the Court of Common Pleas Judge wrote that “[t]he Court shall then issue a separate written decision on the amount of attorney’s fees.” There seems to be little room for doubt, therefore, that the Court of Common Pleas did not consider its November 25, 2015 opinion to be its last act in the case. This court can see no distinction between this case and those in which the Delaware Supreme Court has held that an outstanding claim for attorneys fees renders a judgment non-final. In *Sentinel Technologies, Inc. v. Revolution Retail Systems, L.L.C.*⁴, that court wrote:

Upon consideration of the parties' respective positions, we conclude that this appeal is interlocutory. This Court consistently has held that that a judgment on the merits is not final until an outstanding related application for an award of attorneys fees has been decided. The ruling from which the appeal is taken is interlocutory in nature because it did not finally determine and terminate the cause before the Court of Chancery.

¹ 10 Del. C. § 1327 (emphasis added).

² *Showell Poultry, Inc. v. Delmarva Poultry Corp.*, 146 A.2d 794, 796 (Del. 1958). *Showell Poultry* has withstood the test of time and is still cited for that proposition. *E.g.*, *Brunhammer v. State*, 2016 WL 611822 (Del. 2016); *Blue Hen Lines, Inc. v. Tyrbitt*, 787 A.2d 74 (Del. 2001).

³ *Tyson Foods, Inc. v. Aetos Corp.*, 809 A.2d 575, 579 (Del. 2002).

⁴ 2015 WL 931153 (Del. 2015).

It therefore appears to the court that it lacks jurisdiction to hear this appeal. The parties shall show cause in writing on or before November 17, 2016 why this appeal should not be dismissed.

November 1, 2016

John A. Parkins, Jr.
Superior Court Judge

oc: Prothonotary

cc: David J.J. Facciolo, Esquire, Minster & Facciolo LLC, Wilmington, Delaware
D. Miika Roggio, Esquire, Silverman McDonald & Friedman, Wilmington,
Delaware