

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DANIEL HURLEY,)
) C.A. No. 05M-01-010 (JTV)
 Plaintiff,)
)
 v.)
)
 JUSTICE OF THE PEACE COURT)
 OF THE STATE OF DELAWARE,)
 COURT NO. 16, CHIEF MAGI-)
 STATE PATRICIA W. GRIFFIN,)
 DEBORA FOOR and LITTLE)
 CREEK CONTRACTING, INC.,)
)
 Defendants.)

Submitted: July 21, 2005

Decided: November 29, 2005

Steven Schwartz, Esq., Schwartz & Schwartz, Dover, Delaware. Attorney for Plaintiff.

Stephani J. Ballard, Esq., Department of Justice, Wilmington, Delaware. Attorney for Defendants Justice of the Peace Court No. 16, Chief Magistrate Patricia W. Griffin, and Debora Foor.

Little Creek Contracting, Inc., *Pro se*.

*Upon Consideration of Plaintiff's Appeal From
Superior Court Commissioner's Findings of Fact & Recommendation
Regarding a Writ of Mandamus & Motion for Declaratory Judgment*

DENIED

VAUGHN, President Judge

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OPINION

The plaintiff, Daniel Hurley, appeals Superior Court Commissioner Andrea M. Freud's Findings of Fact and Recommendation that his request for a Writ of Mandamus and Motion for Declaratory Judgment be denied. The plaintiff seeks to compel Justice of the Peace Court No. 16 to issue a "Notice of Order" in a matter previously litigated in that court to establish or re-establish his time to appeal a final judgment.

STANDARD OF REVIEW

Pursuant to Superior Court Rule 132(a)(4)(iv):

A judge of the Court shall make a *de novo* determination of those portions of the report or specified proposed findings of fact or recommendations to which an objection is made. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner. A judge may also receive further evidence or recommit the matter to the Commissioner with instructions.

As the Commissioner's findings and recommendation are case dispositive in this case, I consider this matter *de novo*.

DISCUSSION

The facts, which appear to be undisputed, are set forth in the Commissioner's findings and recommendation and will be repeated here only as necessary. The litigation in the Justice of the Peace Court was *Little Creek Contracting v. Hurley*. A trial was held on August 26, 2004. In a written order that followed, the Justice of the Peace found against Mr. Hurley. The final order which was issued after trial states in the heading that the case is "Decided: September 30, 2004." In the

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conclusion, however, shortly above the magistrate's signature, the order states "NOW, THEREFORE, IT IS ORDERED, this 29th day of September, 2004, for the reasons described within this order, judgment is entered . . .". The order was docketed September 30 and a copy of the order was mailed to both parties with a "Notice of Appeal Rights." The appeal period is 15 days. Mr. Hurley did not appeal during that period and, instead, on October 29, 2004 wrote to the Justice of the Peace Court suggesting that the judgment was ineffective because notice that the judgment was entered in the court's docket was not served upon the parties. He asked the court to "officially docket" the judgment and provide notice of such docketing. The Justice of the Peace Court denied his request.

The plaintiff contends that Justice of the Peace Court Civil Rule 58 requires the Justice of the Peace Court to send parties a specific notice of the docketing of a final order. Rule 58 requires that immediately upon the docketing of a judgment, "the Court shall serve a notice of the entry . . . upon every party affected thereby." He contends that the judgment is not effective and the appeal period does not begin to run until specific notice is given that the judgment has been entered on the docket. He contends that sending parties a copy of the final order which includes language that "judgment is entered," together with a notice of the time and manner of appeal, does not satisfy Rule 58's requirement that notice of entry of the judgment on the docket be given.

Like the Commissioner, however, I find the plaintiff's contentions, and his arguments in support of his contentions, unpersuasive. It appears from the record of this case, or at least no evidence has been introduced otherwise, that the final order and notice of the time and manner of appeal comprise the usual paperwork sent to

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parties when the Justice of the Peace Court decides a case. I make this observation not because the usual way of doing something is necessarily correct, but to note that there is nothing in the record to suggest that Mr. Hurley in any way led to believe that a "Notice of Order" would be forthcoming, apart from his interpretation of the language of the rule.

I do not think that Rule 58 requires the highly specific notice contended for by the plaintiff. I think that a statement in a final order that "judgment is entered" is sufficient notice under the rule to the litigants that judgment is entered on the date stated in the order, or the date of the order, as the case may be. An order which misstates the date upon which an order is docketed and causes a party to miscalculate the day upon which the 15 days begins to run can be dealt with in an appropriate case. This is not such a case. Whether the time for filing an appeal began on September 29 or September 30 is not at issue. Well more than 15 days passed before any next event occurred in the case.

For the above reasons, and for the reasons given by the Commissioner, which I adopt and incorporate herein by reference, the plaintiff's Petition for Writ of Mandamus and Declaratory Judgement is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File