

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

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|-------------------------|---|---------------------|
| NINA and MAZEN SHAHIN, | : | |
| | : | |
| Appellants, | : | C.A. NO: 06A-01-004 |
| | : | |
| v. | : | |
| | : | |
| DELAWARE FEDERAL CREDIT | : | |
| UNION, | : | |
| | : | |
| Appelle. | : | |

Submitted: May 2, 2006
Decided: August 3, 2006

Nina and Mazen Shahin, *pro se*.

Gregory A. Morris, Esq., Liguori, Morris & Yiengst, Dover, Delaware for Appellant.

OPINION

UPON CONSIDERATION OF APPELLANT'S
APPEAL FROM FROM COURT OF COMMON PLEAS
DENIED

Young, Judge

Shahin v. Delaware Federal Credit Union
C.A. No: 06A-01-004
August 3, 2006

Appellants, Nina and Mazen Shahin, bring the present appeal from a decision of the Court of Common Pleas, which granted summary judgment to appellee, Delaware Federal Credit Union (“DFCU”). This case is a debt action, which originated in the Justice of the Peace Court, and was appealed to the Court of Common Pleas. In both of the proceedings below, the Court found in favor of DFCU. For the following reasons, the Shahins’ appeal is **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

The Shahins initiated their claims against DFCU in the Justice of the Peace Court, seeking reimbursement for a \$35.00 fee assessed to their account for insufficient funds (“NSF fee”). The Magistrate held in favor of DFCU after learning that DFCU credited the Shahins’ account for the \$35.00 NSF fee.¹ The Shahins appealed the Magistrate’s decision to the Court of Common Pleas, which granted DFCU’s motion for summary judgment. The Shahins made a timely appeal of the decision of the Court of Common Pleas to this Court on January 11, 2006.²

In preparation for the Superior Court appeal, the Shahins obtained a copy of the transcript of the proceeding in the Court of Common Pleas, and complained that

¹ DFCU admits that it assessed the Shahins the \$35.00 NSF fee in error. The parties dispute whether the Shahins advised DFCU directly of the error. DFCU claims it did not learn of the problem until they were served with the JP Court complaint. DFCU credited the Shahins’ account for the NSF fee on the day of the JP Court hearing.

² 10 Del.C. § 1326(b).

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the transcript contained errors.³ The Court of Common Pleas denied the Shahins' request to review the tape of December 21, 2005 hearing and submit corrections of the transcript errors. The Shahins filed a similar motion with this Court, seeking to review the tape and correct the hearing transcript. At oral argument on March 3, 2006, this Court considered the Shahins' motion as an appeal of the Court of Common Pleas decision, and denied their request.

The Shahins now present their brief in support of their appeal of the decision of the Court of Common Pleas on DFCU's motion for summary judgment.

STANDARD OF REVIEW

When considering an appeal from the Court of Common Pleas, this Court's function is similar to that of the Delaware Supreme Court.⁴ "In reviewing appeals from the Court of Common Pleas, the Superior Court must limit its scope of review to correcting errors of law and ascertaining whether the trial judge's factual findings 'are adequately supported by the record and are the product of an orderly and logical deductive process.'"⁵ This Court must accept any decision of the Court of Common

³ Record of the parties' oral arguments before the Court of Common Pleas on the summary judgment motion was recorded by Court of Common Pleas Reporter Linda Lavender. An audiotape of the proceeding was also prepared. The Shahins argue that the transcript contains mistakes, omissions, and unauthorized additions.

⁴ *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985).

⁵ *Romain v. State Farm Mutual Auto. Ins. Co.*, 1999 WL 1427801, at *1 (Del. Super.)(citing *Wyatt v. Motorola, Inc.*, 1994 WL 714006, at *2 (Del. Super.)).

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Pleas that is supported by sufficient evidence.⁶ However, when reviewing a summary judgment decision on appeal, “the applicable standard requires that this Court examine the record below *de novo* to determine whether the court below correctly applied the applicable legal principles.”⁷

DISCUSSION

The Shahins make several arguments about the propriety of the proceedings, not only at the hearing in the Court of Common Pleas, but also in the Justice of the Peace Court. The scope of this Court’s review is limited to the issues the parties raised at trial, and this Court will not hear issues the parties did not raise and address before the lower court.⁸ In this case, the Court of Common Pleas decision at issue was on DFCU’s motion for summary judgment. Accordingly, this opinion is limited to those issues raised in the Court of Common Pleas hearing on that motion.

Summary judgment should be rendered if the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as

⁶ *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972); *Wilson v. Klabe Construction Co.*, 2004 WL 1732217, at *2 (Del. Super.).

⁷ *Baldwin v. Conner*, 1999 WL 743276, at *2 (Del. Super.) (citing *Hoechst Celanese Corp. v. Certain Underwriters at Lloyds*, 656 A.2d 1094, 1098 (Del. 1995)).

⁸ *Pringle v. Atlantic Millwork*, 1998 WL 472751, at *4 (Del. Super.) (citing *Wilmington Trust Co. v. Conner*, 415 A.2d 773 (Del. 1980)).

a matter of law.⁹ The facts must be viewed in the light most favorable to the non-moving party.¹⁰ Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.¹¹ However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.¹²

In the Court of Common Pleas appeal, which was a *de novo* proceeding, DFCU argued that the Shahins' claim was without merit, because the \$35.00 NSF fee had been credited to the Shahins' account. In fact, there was no dispute that the Shahins had been reimbursed for the improperly assessed NSF fee.¹³ The record shows that

⁹ Super. Ct. Civ. R. 56(c).

¹⁰ *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

¹¹ *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

¹² *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

¹³ Court of Common Pleas transcript at 8

THE COURT: Well, you sued for \$35; they credited the \$35 in the court below, didn't they?

MS. SHAHIN: The credited only for 35 after the Court, after this hearing, not before.

* * * * *

THE COURT: But, before you came here they credited it?

MS. SHAHIN: No. Oh, before I came here?

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DFCU credited the Shahins' account on September 6, 2005, the day of the Justice of the Peace hearing. However, the Shahins argue that they are entitled to interest and court costs. The Court of Common Pleas denied their claim, however, ruling that interest and costs cannot be awarded when there is no claim upon which relief can be granted.

The Court of Common Pleas did not err in determining that no genuine issue of material fact existed as to the Shahins' claim that DCFU owed them \$35.00 for the NSF fee, because the evidence shows that the Shahins received reimbursement. There is no dispute that the Shahins were paid; therefore, summary judgment was appropriate. Having determined that DFCU is entitled to judgment as a matter of law, the Shahins' claims for interest and costs cannot be considered.

Finally, the Shahins complain, *inter alia*, that they were not afforded due process, because the Justice of the Peace Magistrate engaged in *ex parte* communications with DFCU.¹⁴ The Shahins also complain that their due process rights were violated by the Court of Common Pleas, because their claims were not considered *de novo*. The Shahins' claim that the Court of Common Pleas proceeding

THE COURT: Yes.

MS. SHAHIN: Yes.

¹⁴ The Shahins were not served with a copy of DFCU's answer to the complaint in the Justice of the Peace action. At the hearing before the Magistrate, the Shahins complained that the Justice of the Peace Court should have taken the initiative and served them with DFCU's answer. Because the Court received DFCU's answer, but the Shahins did not, the Shahins accused the Court of engaging in *ex parte* communications with DFCU.

