

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KATHLEEN KELLEY,	§	No. 318, 2000
	§	
Plaintiff Below,	§	Court Below—Superior Court
Appellant,	§	of the State of Delaware, in
	§	and for New Castle County
v.	§	
	§	C.A. No. 99C-07-239
A. ARCHIE SMITH, JR.,	§	
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: March 27, 2001  
Decided: April 27, 2001

Before **VEASEY**, Chief Justice, **BERGER** and **STEELE**, Justices

**ORDER**

This 27th day of April 2001, upon consideration of the briefs of the parties, it appears to the Court that:

(1) The Appellant, Kathleen Kelley, filed a four-count Complaint in Superior Court in 1999. Defendant A. Archie Smith answered. Both parties requested a jury trial.

(2) The Superior Court severed Count 1 of the Complaint, an action of replevin, with the agreement of the parties in order to accommodate the

parties' need for an expedited resolution of their dispute over rightful possession of three horses, the property involved in the replevin action.

(3) On May 16, 2000 the Superior Court entered an oral ruling from the bench and followed it with a written Order on June 13<sup>th</sup>, 2000.

(4) The Superior Court's Order on the replevin Count denied Appellant's "prayer for replevin" of the three horses, "with prejudice." The Order further declared the defendant the "true and lawful owner of the three horses known as Fred Bear Claw, Piccone and Lily's Tune," and entered the Order pursuant to Superior Court Civil Rule 54(b).

(5) Kelley appealed the final Order and argues that the Superior Court erred in formulating or applying legal precepts and that its factual findings are not supported by the record.

(6) We conclude that the Superior Court's ruling that the Appellant's action for replevin be denied is supported by sufficient facts in the record and is free from legal error.

(7) We further conclude that, because both the Appellant and the Appellee requested a jury trial on the remaining Counts of the Complaint and Counterclaim, the Superior Court erred as a matter of law when it declared Appellee the "owner" and not merely the person in rightful

possession of the horses for the purpose of racing them at the urging of and to accommodate the parties. The remaining issues, including ownership, should be determined at a jury trial.

NOW, THEREFORE, IT IS ORDERED that the judgment of Superior Court is AFFIRMED IN PART and REMANDED IN PART. The Superior Court is instructed to hold a jury trial on the remaining Counts and Counterclaim. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele  
Justice

oc: Clerk of the Court  
c: The Honorable Richard R. Cooch  
Richard P.S. Hannum, Esquire  
Mr. A. Archie Smith, Jr.  
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