

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLET D. WARD,	§
	§ No. 389, 2012
Plaintiff Below-	§
Appellant,	§
	§
v.	§ Court Below—Court of Chancery
	§ of the State of Delaware,
DELMARVA POWER & LIGHT	§ C.A. No. 7591
COMPANY,	§
	§
Defendant Below-	§
Appellee.	§
	§

Submitted: October 22, 2012
Decided: December 17, 2012

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices

ORDER

This 17th day of December 2012, upon consideration of the appellant's opening brief, the appellee's motion for affirm, and the record below, it appears to the Court that:

(1) The appellant, Carlet Ward, filed this appeal from a decision of the Court of Chancery, dated July 5, 2012, which denied her motion for a temporary restraining order and dismissed her complaint. The appellee, Delmarva Power and Light Company (DP&L), has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Ward's opening brief that her appeal is without merit. We agree and affirm.

(2) Ward filed a complaint against DP&L and the Public Service Commission¹ in the Court of Chancery on June 4, 2012, seeking a monetary judgment of more than \$11,000 for alleged overpayments that Ward made to DP&L over a six year period. Ward alleged that DP&L had engaged in fraudulent billing practices and that the Public Service Commission (the Commission) had denied her due process because of “her race and class” at a hearing that was held by the Commission to resolve Ward’s complaints about DP&L’s disputed overcharges. Ward also requested a temporary restraining order (TRO) to compel DP&L to restore electrical service to her residence.²

(3) The Commission filed a motion to dismiss Ward’s complaint, among other reasons, on the ground that Ward had failed to appeal the Commission’s decision upholding DP&L’s charges to the Superior Court as required by the Administrative Procedures Act, 29 Del. C. ch. 101.³ DP&L also filed a motion to dismiss, alleging that no grounds existed for a TRO because the harm alleged could be fully remedied by money damages and because Ward alleged no irreparable harm and had failed to avail herself of statutory remedies. DP&L also

¹ Ward indicated in her notice of appeal to this Court that she was not taking the appeal against the Public Service Commission.

² Ward filed the TRO petition seeking to prevent DP&L from cutting off her electrical service. Her petition, however, did not set forth any grounds, as required by Court of Chancery Rule 65(b), for the trial court to issue a TRO without prior notice to DP&L. Ward had failed to effectuate service of her petition on DP&L, and thus her petition was not ruled upon by the trial court, prior to DP&L shutting off her service.

³ DEL. CODE ANN. tit. 29, §§ 10102(4), 10142(a) (2003).

moved to dismiss on the ground that the Court of Chancery lacked subject matter jurisdiction because the action was untimely, because the Superior Court had exclusive jurisdiction to review the Commission's decision, and because an adequate remedy at law existed for the relief Ward sought.

(4) Following a hearing on July 3, 2012, the Court of Chancery issued a ruling from the bench, which denied Ward's petition for a TRO because she had failed to state a colorable claim for relief. The Court of Chancery further found that Ward's allegation of fraudulent billing had not been pleaded with particularity as required by Court of Chancery Rule 9(b). Having found that the complaint failed to state a claim for equitable relief, the Court of Chancery declined to exercise jurisdiction over any legal claims because Ward was pursuing a claim for money damages in the Court of Common Pleas and because Ward had failed to pursue an appeal to the Superior Court from the Commission's decision denying her complaint against DP&L for allegedly overbilling her.

(5) After careful consideration of the parties' respective contentions on appeal, we find it manifest that the judgment below should be affirmed for the reasons set forth in the Court of Chancery's bench ruling issued July 3, 2012. Ward brought her complaint against DP&L for alleged overbilling to the Commission, which held a hearing and ruled that DP&L had properly billed Ward. Ward failed to appeal that decision to the Superior Court, which had exclusive

jurisdiction to review the Commission's findings and conclusions.⁴ The Commission's decision that DP&L had properly billed Ward, thus, was a final order. Under these circumstances, the Court of Chancery did not err in denying Ward's motion for a TRO because Ward could not establish that she had a colorable claim for relief.⁵

(6) Furthermore, we find no error in the Court of Chancery's dismissal of Ward's substantive complaint. While Ward alleged that DP&L had engaged in fraudulent billing practices, she failed to set forth any facts supporting that claim with particularity, as required by Court of Chancery Rule 9(b).⁶ Having failed to state any claim for equitable relief, the Court of Chancery properly declined to exercise jurisdiction over Ward's legal claim for money damages.⁷ To the extent that Ward contends in her opening brief that the Vice Chancellor had a disqualifying conflict of interest in her case, she failed to raise this claim below. We will not consider it for the first time on appeal.⁸ Moreover, she offers no

⁴ DEL. CODE ANN. tit. 29, §§ 10102(4), 10142(a) (2003).

⁵ The Court of Chancery will issue a TRO only if the plaintiff can establish: (i) a colorable claim; (ii) that absent entry of the TRO, plaintiff will suffer irreparable harm; and (iii) the harm to plaintiff absent entry of the TRO outweighs the harm that entry of the TRO may cause the defendant. *See Smart Home, Inc. v. Selway*, 2011 WL 3808274 (Del. Ch. Aug. 15, 2011).

⁶ *See Hauspie v. Stonington Partners, Inc.*, 945 A.2d 584, 586 (Del. 2008) (setting forth the elements of fraud, which must be pled with particularity).

⁷ DEL. CODE ANN. tit. 10, §§ 342 (1999).

⁸ Del. Supr. Ct. R. 8 (2012).

factual basis for her allegation that the judge was personally biased against her. A judge's unfavorable ruling alone does not establish bias.⁹

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁹ See *Los v. Los*, 595 A.2d 383, 385 (Del. 1991).