

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD A. JOLLEY,	§
	§
Plaintiff Below-	§ No. 110, 2000
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
MUSTAFA KILIC and GULA	§ in and for New Castle County
KILIC,	§ C.A. No. 99A-10-016
	§
Defendants Below-	§
Appellees.	§

Submitted: August 23, 2000

Decided: September 26, 2000

Before **WALSH, HOLLAND** and **BERGER**, Justices

ORDER

This 26th day of September 2000, upon consideration of the appellant's opening brief and the appellees' motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, Richard A. Jolley, filed this appeal from a February 16, 2000 order of the Superior Court denying his motion to vacate the Superior Court's dismissal of his attempted appeal of a decision of the Justice of the Peace Court to the Court of Common Pleas. The defendants-appellees, Mustafa Kilic and Gula Kilic (the "Kilics"),

have moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of Jolley's opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In 1999 Jolley filed a complaint against the Kilics in the Justice of the Peace Court. On September 2, 1999, when Jolley failed to appear for the hearing on the complaint, the Justice of the Peace Court issued a non-suit judgment against him.² Jolley then filed a motion to reopen the judgment, which was denied on September 29, 1999. Jolley had 15 days in which to appeal the decision of the Justice of the Peace Court to the Court of Common Pleas.³ The deadline for the filing of the appeal was October 14, 1999.⁴

(3) On October 20, 1999, Jolley appeared at the Court of Common Pleas Clerk's office and attempted to file a notice of appeal.⁵

¹Supr. Ct. R. 25(a).

²10 Del. C. § 9539.

³10 Del. C. § 9571(b); Ct. Com. Pl. Civ. R. 72.3.

⁴Ct. Com. Pl. Civ. R. 6(a). The Notice of Appeal Rights sent to Jolley on September 30, 1999 erroneously states that the deadline for the appeal is October 15, 1999. This error is inconsequential, however, since Jolley did not attempt to file his appeal until after that date.

⁵This is reflected in the date written on the notice of appeal Jolley filed in the Superior Court, the attached note from the Court of Common Pleas stating that it can not accept an appeal filed on October 20, 1999 and the date stamped appeal papers Jolley attempted to file in the Court of Common Pleas.

The notice of appeal was rejected by the Clerk because it was untimely.⁶ Jolley then filed an appeal in the Superior Court. The Kilics moved to dismiss Jolley's appeal on the ground that his attempted filing of the notice of appeal in the Court of Common Pleas was untimely. After a hearing, the Superior Court dismissed the appeal.⁷

(4) Failure to file an appeal within the time period provided by law fails to vests an appellate court of jurisdiction and dismissal is mandatory.⁸ The Superior Court was required to dismiss Jolley's appeal because he had failed to timely perfect his appeal in the Court of Common Pleas below.⁹

(5) It is manifest on the face of Jolley's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law.

⁶Jolley's notice of appeal to the Court of Common Pleas shows a date stamp of October 20, 1999, which has been crossed out.

⁷Super. Ct. Civ. R. 12(h) (3).

⁸*Carr v. State*, 554 A.2d 778, 779 (1989).

⁹*Id.*

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

Randy J. Holland
Justice