IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL HURLEY,	§	
	§	No. 632, 2005
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
JUSTICE OF THE PEACE COURT	§	C.A. No. 05M-01-010
OF THE STATE OF DELAWARE,	§	
COURT NO. 16, CHIEF	§	
MAGISTRATE PATRICIA W.	§	
GRIFFIN, MAGISTRATE DEBORA	§	
FOOR and LITTLE CREEK	§	
CONTRACTING, INC.,	§	
	§	
Plaintiffs Below,	§	
Appellees.	§	

Submitted: July 26, 2006
Decided: August 7, 2006

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

O R D E R

This 7th day of August, 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Daniel Hurley appeals from a Superior Court order denying his complaint for a Writ of Mandamus and Motion for Declaratory Judgment, both intended to enlarge the time for him to appeal from a final judgment entered against him. Hurley claims that Justice of the Peace Court Civil Rule 58 requires that a "notice of docketing" be sent to the parties to the litigation before a judgment

is effective and the time period for appeal begins to run. Hurley contends that the Superior Court legally erred by rejecting that claim. Because Hurley did not receive such a notice, he contends, the judgment against him was ineffective and therefore his appeal period has not yet begun to run. We conclude that the Superior Court committed no legal error, and affirm.

2. The underlying litigation was a Justice of the Peace Court ("JP Court") action, *Little Creek Contracting v. Hurley*,[1] in which the JP Court ruled against Hurley. The written final order, issued after trial and dated September 30, 2004, stated:

> NOW, THEREFORE, IT IS ORDERED, … judgment is entered for the plaintiff.
>
> * * *
>
> Any party has 15 days, starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county.

That order was docketed the same day, and a copy was mailed to the parties' counsel.

3. Hurley did not appeal. Instead, on October 27, 2004, by letter Hurley's counsel requested that the JP Court issue a written notice, as supposedly required by Rule 58, that the judgment had been entered in the Docket. The JP Court

[1] Del. J.P. Ct. 16, C.A. No. J0402001616 (Sept. 30, 2004).

denied his request by order dated November 4, 2004 (which also included the standard notice of appeal instructions). Hurley did not appeal from that order either.

4. On January 18, 2005, Hurley filed a Complaint for Writ of Mandamus and Declaratory Judgment to compel the JP Court to issue a notice that a judgment had been entered in the Docket, thereby (in Hurley's view) starting the 15-day clock for an appeal. A Superior Court Commissioner prepared a Report and Recommendation which concluded that Hurley could not demonstrate a "clear right" to compel the JP Court to issue a second, duplicative "notice of docketing," or that Hurley lacked other remedy, or that the JP Court had failed to perform a clear ministerial duty. Hurley appealed those findings of fact and recommendations to the Superior Court, which adopted the Commissioner's reasoning and denied the appeal on November 29, 2005.

5. The trial court denied Hurley's petition for a writ of mandamus on the pleadings. A mandamus is an extraordinary remedy and will not issue until the petitioner can show that he has a clear right to the performance by a trial court of a non-discretionary duty, that no other adequate remedy is available, and that the

trial court arbitrarily failed or refused to perform its duty.[2] This Court reviews *de novo* a trial court's grant of judgment on the pleadings.[3]

6. The two provisions at issue in this matter are 10 *Del. C.* § 9571 and JP Court Civil Rule 58. Section 9571 pertinently provides:

> (a) From any final order, ruling, decision or judgment of the court in a civil action there shall be the right of appeal to the Court of Common Pleas. . . .
>
> (b) The appeal shall be taken within 15 days of the final order, ruling, decision or judgment.

JP Court Civil Rule 58 provides:

> (a) judgment is effective only when entered in the docket. Immediately upon the entry, the Court shall serve a notice of the entry and the time and manner of appeal upon every party affected thereby.

7. Hurley contends that under Rule 58, the adverse judgment was not effective because the JP Court did not serve him with a notice of entry on the Docket of the Court's September 30, 2004 order. Because judgment was ineffective, he argues, his period for appeal as prescribed by Section 9571, has not yet started to run. The Superior Court considered these contentions and properly rejected them.

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[2] *In re Bordley's Petition*, 545 A.2d 619 (Del. 1988).

[3] *Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund II*, 624 A.2d 1199, 1204 (Del. 1993).

8. Hurley received a copy of the judgment against him, which explicitly stated that "*judgment is entered* for the plaintiff . . ." (emphasis added) and specifically instructed that the parties had 15 days to appeal. Moreover, the language of Section 9571 states that the appeal "shall be taken within 15 days of the final order, ruling, decision *or* judgment" (emphasis added). Hurley concedes that the September 30, 2004 order was a "final decision" against him.

9. Under the September 30 order's instructions and the statutory provision, the deadline for Hurley to appeal was October 15, 2004. Not only did Hurley fail to appeal by that date, but also he never advanced his current argument until October 27, 2004, well after that deadline. No language of Rule 58 relaxes that deadline. Hurley's attempt to expand the statutory appeal window by arguing that under Rule 58 he was owed some additional specific notice of when the order was docketed before his appeal period began, is unpersuasive. A court rule cannot supersede or enlarge a jurisdictional provision established by statute.[4] In our view, the JP Court's September 30 order satisfied Rule 58's notice requirements, and Hurley failed to avail himself of the appeal procedures described in that notice.

10. Because Hurley had an available remedy at law, the Superior Court properly denied his petition for a writ of mandamus. Accordingly, we affirm.

[4] *Williams v. Singleton*, 160 A.2d 376 (Del. 1960).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice