

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**  
KENT COUNTY COURTHOUSE  
38 THE GREEN  
DOVER, DELAWARE 19901  
PHONE: (302) 735-3910

**CHARLES W. WELCH, III  
JUDGE**

February 25, 2016

William B. Wilgus, Esquire  
28537 Dupont Boulevard  
Millsboro, DE 19966

Mr. Robert L. Smith  
501 West 11<sup>th</sup> Street, #346  
Wilmington, DE 19801

RE: Robert L. Smith v. Susan Baynard, Donald Baynard  
C.A. No.: CPU5-15-001365 (JP Court Appeal)

Decision on Appellees' Motion to Dismiss

Dear Mr. Wilgus and Mr. Smith:

The Court is in receipt of the Motion to Dismiss filed by the appellees, defendants-below, Susan and Donald Baynard for the above-referenced matter. The appellees have moved for a dismissal of the appeal filed by the appellant, plaintiff-below, Robert L. Smith, pursuant to Court of Common Pleas Civil Rules 12(b)(1), 12(b)(4), and 12(b)(6). After careful consideration by the Court, the appellees' motion is denied in part and the Court reserves decision in part for the reasons set forth below.

This appeal arises from a replevin action filed by the appellant, plaintiff-below, in Justice of the Peace Court. In his Complaint, the appellant alleged that the appellees unlawfully removed and detained his personal property, valued at \$15,000, when the appellees evicted him from their home.<sup>1</sup> For approximately six months, the appellant demanded the return of his personal property but the appellees refused.

On or about July 10, 2015, the Justice of the Peace Court entered a judgment by stipulation whereby the parties agreed that the appellees would return the appellant's personal

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<sup>1</sup> The appellant resided with the appellees at their home where he rented a room. The appellant was evicted from the home for non-payment of rent.

property in good condition within thirty days of the agreement at a mutually convenient time. After the appellant retrieved his personal property from the appellees' home, the appellant filed a motion in Justice of the Peace Court against the appellees for the payment of \$8,500 for damaged and missing property.

On or about October 27, 2015, Justice of the Peace Court held a hearing on the motion where the appellant increased his claim to \$12,000. The court entered judgment in favor of the appellees when the appellant failed to establish a prima facie case for replevin.

The appellant, *pro se*, filed his timely Notice of Appeal, Praecipe, and Complaint in this Court. The appellant claims that the appellees have not returned all of his personal property despite his demands. In his Complaint, the appellant alleges that his missing and damaged property is valued at \$12,000. He has requested the return of his property that remains detained by the appellees or, in the alternative, damages equivalent to its value if the property is not returned; and damages in an amount equivalent to the value of his damaged property. The appellant has not identified the personal property that is the subject of this appeal.

In response, the appellees filed the instant Motion to Dismiss on the following grounds: (1) insufficiency of process due to the appellant's failure to designate the order appealed from in the Notice of Appeal in accordance with Court of Common Pleas Civil Rule 72.3(c); (2) lack of subject-matter jurisdiction pursuant to Court of Common Pleas Civil Rule 72.3(f), the "mirror image rule", because the value of the property sought in the case below is not the same as the value sought on appeal; and (3) the appellant did not identify the property subject to this replevin action and, therefore, has failed to state a claim upon which relief can be granted.

From any final order or decision of the Justice of the Peace Court, there is a right of appeal de novo to this Court. 10 *Del. C.* § 9571 (a), (c). This Court has jurisdiction to hear appeals from judgments given by the Justice of the Peace Court in replevin actions. 10 *Del. C.* § 9640. The appeal shall proceed in the same manner as "appeals from justices of the peace in civil cases for debt." *Id.*

## LEGAL STANDARD

“When deciding a motion to dismiss, the Court must examine the complaint and accept all well-pleaded allegations as true.” *Morabito v. Del. Sleep Disorder Ctrs., LLC*, 2015 WL 3882609, at \*2 (Del. Super. June 23, 2015) (citations omitted). “If the facts alleged in the complaint are sufficient to support a claim for relief, the motion should be denied.” *Id.* “The test for sufficiency is a broad one, that is, whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.” *Id.* “An allegation, though vague or lacking in detail, is nevertheless ‘well-pleaded’ if it puts the opposing party on notice of the claim being brought against it.” *Id.*

## DISCUSSION

### I. Rule 12(b)(4) Insufficiency of Process

The appellees raise the argument of insufficiency of process pursuant to Civil Rule 12(b)(4) on the grounds that the Notice of Appeal fails to comply with Civil Rule 72.3(c). The appellees contend that the notice fails to designate the order appealed from because it failed to identify the Justice of the Peace who rendered the decision and the date of the decision that is the subject of this appeal.

Rule 72.3(c) states:

#### **Notice of Appeal.**

The notice of appeal shall specify the parties taking the appeal, shall designate the order, award, determination, or decree, or part thereof appealed from; shall state the grounds of the appeal; shall name the Court to which the appeal is taken; and shall be signed by the attorney for the appellants, or, if the appellants are not represented by an attorney, shall be signed by the appellants.

The proper purpose of a notice of appeal filed in this Court “is to provide notice of the appeal to all litigants who may be directly affected thereby, and to afford them an opportunity to take action to adequately protect their interests.” *Silvius v. Conley*, 775 A.2d 1041, 1042 (Del. 2001). “[A]ppeals as well as trials should, where possible and where the other side has not been prejudiced, be decided on the merits and not upon nice technicalities of practice.” *State Pers. Comm'n v. Howard*, 420 A.2d 135, 137 (Del. 1980). The Delaware Supreme Court has sent a

strong message that an appellate court should allow appeals to proceed on the merits and has reversed dismissal of appeals for failure to designate an order. *See Episcopo v. Minch*, 203 A.2d 273 (Del. 1964).

In the instant case, the Notice of Appeal names the Justice of the Peace Court from which the appeal is taken and the Justice of the Peace Court civil action number that is the subject of this appeal. The Court finds that the Notice of Appeal, specifically the civil action number, is sufficient to identify the Justice of the Peace who rendered the decision that is the subject of this appeal and the date of the decision. More importantly, the Notice of Appeal is sufficient to put the appellees on notice of the appeal so that they may take action to protect their interests. Therefore, under the practices and policy of this Court, to allow appeals to proceed on their merits, the Court will not dismiss this appeal on such grounds.

## **II. Rule 12(b)(1) Lack of Jurisdiction**

Next, the appellees argue that the Court lacks jurisdiction to hear the appeal pursuant to Civil Rule 72.3(f), the “mirror image rule.” The appellees contend that the appellant violated the mirror image rule by claiming a value of \$12,000 worth of damaged and missing property on appeal when he originally claimed a value of \$8,500 worth of damaged and missing property in Justice of the Peace Court. Civil Rule 72.3(f) in part states, “[a]n appeal to this court that fails to join the identical parties and raise the same issues that were before the [c]ourt below shall result in a dismissal on jurisdictional grounds.” Delaware courts have held that there is no violation of the mirror image rule when a party on appeal claims monetary damages in excess of the damages claimed in Justice of the Peace Court but raises the same issues on appeal as in the proceedings below. *See Jones v. Hertz Corp.*, 2014 WL 3401606, at \*5 (Del. Super. July 8, 2014); *see also Spaulding v. Byrne*, 2008 WL 4838691, at \*2 (Del. Com. Pl. Nov. 7, 2008).

In Delaware, the primary objective of a replevin action is for the “recovery of the possession of personal property which has been taken or withheld from the owner unlawfully.” *Harlan & Hollingsworth Corp. v. McBride*, 6 Terry 85, 90 (Del. 1949). A secondary object of the action may be for damages in an amount equal to the value of the property claimed if the defendant cannot or will not surrender possession. *Id.*; *see* Victor B. Woolley, Practice in Civil

Actions and Proceedings in the Law Courts in the State of Delaware, Vol. II, §§ 1541, 1555 (1906) [hereinafter Woolley]. Because statements as to the value of the property in replevin actions are for the purpose of assessing damages, there is no violation of the mirror image rule where a party in a replevin action claims a value of the property in excess of the value claimed in Justice of the Peace Court.

In the present case, the appellees' jurisdictional argument regarding the "mirror image rule" is without merit because a claim for monetary damages in a replevin action in excess of what was claimed in Justice of the Peace Court is not a valid ground to invoke dismissal pursuant to Civil Rule 72.3(f).<sup>2</sup> The appellant raises the same replevin claim on appeal as in the proceedings below and, therefore, the Court has jurisdiction to hear it.

### **III. Rule 12(b)(6) Failure to State a Claim**

The appellees' final argument is that the appeal should be dismissed pursuant to Civil Rule 12(b)(6) for failure to state a claim upon which relief may be granted. The appellees contend that the appellant failed to identify the property subject to this appeal and, therefore, has failed to state a claim for replevin.

To successfully claim replevin to any items of personal property, the claimant must adequately identify the property. *WSFS v. Chillibilly's, Inc.*, 2005 WL 730060, at \*6 (Del. Super. Mar. 30, 2005). "Generally speaking, the property should be described with sufficient particularity to admit of ready identification." Woolley, § 1531. The identification of property is paramount in a replevin action because a party may not recover possession of property or damages for the value of property that is not properly identified. *Chillibilly's, Inc.*, 2005 WL 730060, at \*6.

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<sup>2</sup> The appellees' argument also lacks merit because the appellant's \$12,000 claim is the same on appeal as in Justice of the Peace Court. The appellant amended his claim at the motion hearing in Justice of the Peace Court from \$8,500 to \$12,000, which the appellant claims as the value of his property that is missing and damaged. The \$12,000 worth of missing and damaged property is the subject of this appeal.

The appellant in this case has failed to adequately identify the property subject to this appeal in his Complaint.<sup>3</sup> However, “a *pro se* complaint, [although] inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers.” *Vick v. Haller*, 522 A.2d 865, 1987 WL 36716, at \*1 (Del. 1987) (TABLE) (citing *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (applying Federal Rule of Civil Procedure 12(b)(6)). Although *pro se* litigants are required to comply with court rules, Delaware courts will “accommodate *pro se* litigants only to the extent that such leniency does not affect the substantive rights of the parties.” *Maddox v. Isaacs*, 2013 WL 2297030, at \*2 (Del. Super. May 7, 2013).

When justice so requires, the Court may grant a party leave to amend a deficient pleading. Ct. Com. Pl. Civ. R. 15(a). Pursuant to Court of Common Pleas Civil Rule 15(a), “a party may amend a party’s pleading once as a matter of course at any time before a responsive pleading is served or . . . by leave of court or by written consent of the adverse party . . . .” Rule 15 was created to facilitate cases being adjudicated based upon their merits and, therefore, granting leave to amend is reserved to the sound discretion of the trial judge. *Wilson v. Wilson*, 2005 WL 147942, at \*1 (Del. Super. Jan. 14, 2005). “Justice will not permit a motion to amend a pleading when the opposing party will be prejudiced . . . .” *Shockley v. Whitehead*, 2014 WL 1254113, at \*4 (Del. Super. Mar. 26, 2014).

In the instant case, the Court finds that the appellees will not be prejudiced by allowing the appellant to amend his Complaint so that he may aver a proper claim for replevin. The appellees will suffer only *de minimis* prejudice compared to the hardship the appellant will face if the Court dismisses this appeal upon pleading technicalities. It is the Court’s policy to adjudicate cases upon their merits. Therefore, the Court, *sua sponte*, grants leave to the appellant to file an amended complaint that adequately describes the property that is the subject of this replevin action.

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<sup>3</sup> In their Motion, the appellees contend that neither the Notice of Appeal nor the Summons identify the property subject to this appeal. The appellees did not provide an argument or case law to show that the property must be identified in either the Notice of Appeal or the Summons. In accordance with 10 *Del. C.* § 9640, this Court must take, docket, and dismiss appeals of replevin actions in the same manner as civil debt cases; therefore, the Complaint is the proper pleading in which a party must adequately identify property.

## CONCLUSION

In conclusion, the appellees' motion to dismiss on Rule 12(b)(1), insufficiency of process, and Rule 12(b)(4), lack of jurisdiction grounds is denied. The Court reserves decision regarding the appellee's Rule 12(b)(6) motion and hereby grants the appellant leave to amend his Complaint. The appellant shall file an amended complaint in accordance with Civil Rule 15(aa) within 30 days of this order. The Amended Complaint shall contain a list of the appellant's missing and damaged property, along with its respective value. Failure to comply with this Order will result in the dismissal of the case.

**IT IS SO ORDERED this 25<sup>th</sup> day of February, 2016.**

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive style with some capital letters.

Charles W. Welch, III

CWW: mek