

IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY
COURT NO. 16

MICHAEL A. BOWERS, SR.,

Plaintiff/Appellant,

v.

**MICHAEL A. BOWERS, JR. and
CAROLYN BOWERS,**

Defendants/Appellees.

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C.A. No. JP16-16-000068

APPEAL OF THE DENIAL OF A MOTION TO REARGUE

Submitted: August 9, 2016

Decided: September 15, 2016

Michael A. Bowers, Sr.¹ (“Plaintiff”) was represented by Peter K. Schaeffer, Jr., Esquire.

Michael A. Bowers, Jr. and Carolyn Bowers (“Defendants”) appeared represented by Dean A. Campbell, Esquire.

ORDER

This is an appeal, timely filed, of a decision by the sitting magistrate denying a Motion to Reargue. The appeal to a three judge panel was approved by the sitting magistrate on form and timeliness only. The panel, comprised of Judges Hutchison, Dillard, and Sherlock, heard the appeal on August 9, 2016. For the following reasons, this appeal should be **DISMISSED**.

BACKGROUND

Plaintiff filed a Landlord/Tenant Summary Possession petition on January 7, 2016 seeking possession of his home at 235 Duck Creek Parkway, Clayton, Delaware. Defendant Carolyn Bowers timely requested a jury trial. A pre-trial conference was held on January 27, 2016. Plaintiff motioned the Court for summary judgment. After the pre-trial hearing, the Court denied the request for jury trial and the Motion for Summary Judgment was granted.² Plaintiff was granted summary possession of the residence and court costs. On February 2, 2016, Defendants requested a trial *de novo* and then the next day filed a motion to vacate the summary judgment. The trial *de novo* was stayed pending

¹ Michael A. Bowers, Sr. did not attend the hearing because he had been admitted to Kent General Hospital and was in intensive care. Mr. Schaeffer elected to proceed without him present.

² *Bowers v. Bowers*, Del. J.P., C.A. No. JP16-16-000068, Sweet, J. (Jan. 27, 2016).

the outcome of the motion to vacate. On March 8, 2016, Defendants filed a case in the Court of Chancery. On April 8, 2016, the motion to vacate the summary judgment was granted and another pre-trial conference was scheduled for May 23, 2016, rendering the appeal moot. At the hearing, Defendants moved the Court for dismissal for lack of jurisdiction because there is no landlord/tenant relationship. The Court reserved decision and on May 24, 2016 granted Defendants' motion to dismiss due to lack of jurisdiction thus making the motion for summary judgment and jury trial moot.³ On May 25, 2016, Plaintiff filed a motion for reargument of the May 24, 2016 ruling. On June 6, 2016, the motion for reargument was denied.⁴ On June 8, 2016, Plaintiff appealed the denial of the motion to reargue to a three Justice Panel per 25 *Del. C.* § 5717.

DISCUSSION

The panel convened and has determined that this case was improperly appealed to a three Justice Panel. Justice of the Peace Court is a court of limited jurisdiction defined by the statutory authority granted by the General Assembly.⁵ Appeals in landlord-tenant actions are governed by 25 *Del. C.* § 5717 which reads in part:

(a) *Nonjury trials.* – With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee

* * *

(c) *Jury trials.* – With regard to jury trials, a party aggrieved by the judgment rendered in such proceeding may request, in writing, within 5 days after judgment, a review by an appellate court comprised of 3 justices of the peace other than the justice of the peace who presided at the jury trial, as appointed by the chief magistrate or a designee

The language in this statute specifies that appeals to a three-judge panel are from “trials,” both jury and non-jury. In addition Justice of the Peace Court Civil Rule 72.1 addresses appeals in summary possession cases. Rule 72.1 reads in part:

(c) *Three judge panel.* An appeal following a summary possession trial shall be made to a three (3) judge panel comprised of three (3) judges other than the judge who presided at the trial. . . .

* * *

(d) *Appeals de novo.* An appeal of a decision following a nonjury trial shall be a trial de novo. . . .

* * *

(e) *Appeals on the record.* An appeal of a decision resulting from a jury trial shall be on the record and the party seeking the review must designate with particularity

³ *Bowers v. Bowers*, Del. J.P., C.A. No. JP16-16-000068, Sweet, J. (May 24, 2016).

⁴ *Bowers v. Bowers*, Del. J.P., C.A. No. JP16-16-000068, Sweet, J. (June 6, 2016).

⁵ *Townsend v. Harmon*, 35 Del. 562, 171 A. 178 (Del. Super. Ct. 1933) (decided under prior law).

the points of law which the party appealing feels were erroneously applied at the trial court level....

Like the appeal statute under 25 *Del. C.* § 5717, Justice of the Peace Court Civil Rule 72.1 specifies that appeals to a three-judge panel are from summary possession “trials,” both jury and nonjury. The panel has jurisdiction to hear appeals from “trials” and no other actions. The Court has traditionally interpreted this to mean that appeals to a 3-judge panel are permissible only where there has been an adjudication on the merits of the question of possession of the rental unit. Where the issue of possession is not in question, such as here where an ancillary post judgment motion is being appealed, the Court has no jurisdiction. Additionally, Superior Court has ruled appeals based on ancillary motions in summary possession cases should be accepted and decided in the Court of Common Pleas.⁶

CONCLUSION

For the reasons stated above, this panel unanimously finds it is without jurisdiction to hear an appeal from the denial of a motion to reargue in a landlord-tenant summary possession action. Therefore, the appeal should be **DISMISSED**.

Pursuant to 10 *Del. C.* § 1902, “[s]uch proceeding may be transferred to an appropriate court for hearing and determination, provided that the party otherwise adversely affected, within 60 days after the order denying the jurisdiction of the first court has become final, files in that court a written election of transfer, discharges all costs accrued in the first court, and makes the usual deposit for costs in the second court.”

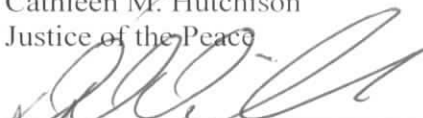
Based on the foregoing, this appeal will be dismissed without prejudice within 60 days of the signing of this order.

IT IS SO ORDERED this 15th day of September, 2016.

Trial *de novo*/Appeal Panel



Cathleen M. Hutchison
Justice of the Peace



Dwight D. Dillard
Justice of the Peace



Michael P. Sherlock
Justice of the Peace

⁶ *Gibson v. North Delaware Realty Co. Stoneybrook Townhomes*, 1996 WL 453414 (Del. Super. Ct.).