

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STALANA, LLC,)
)
Defendant-Below/Appellant,)
)
&)
)
GEORGE SHAER)
and NARIMAN SHAER)
)
Defendants-Below/Appellees,)
v.)
)
GERARD HALMAGYI,)
)
Plaintiff-Below/Appellee.)

C.A. No. CPU4-16-002545

Submitted: December 12, 2016
Decided: January 27, 2017

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DECISION ON MOTION TO DISMISS

SMALLS, C.J.

This is a Motion to Dismiss (the “Motion”) an appeal brought by Wilfrieda Vleugels¹ (“Vleugels”) on behalf of Defendant-Below/Appellant Stalana, LLC (“Stalana”), an artificial business entity. Gerard Halmagyi (“Halmagyi”) brings this Motion arguing Stalana’s notice of appeal violates the Mirror Image Rule pursuant to *Court of Common Pleas Civil Rule 72.3(f)*. Furthermore, Halmagyi contends that Stalana, being an artificial business entity, must be represented by an attorney in order to appear before this Court, and any appeal brought by Vleugels on behalf of Stalana must be dismissed.

On November 18, 2016, the Court held a hearing on the Motion. During the hearing, Vleugels stated the defects contained in her notice of appeal were made after consulting and receiving advice from the Court of Common Pleas’ Clerk’s Office (the “Clerk’s Office”). At the conclusion of the hearing, the Court reserved decision on the Motion and ordered Vleugels to submit an affidavit detailing her interactions with the Clerk’s Office. This is the Court’s decision on the Motion after consideration of Vleugels’s affidavit and Halmagyi’s response thereto.

FACTS AND PROCEDURAL HISTORY

On June 6, 2016, Halmagyi brought an action in the Justice of the Peace Court No. 13 seeking the return of his security deposit. The complaint alleges Halmagyi was the tenant of a residential unit owned by Defendants-Below/Appellees George and Nariman Shaer (collectively, the “Shaers”).² The complaint further alleges the Shaers hired Stalana to be the property manager for the unit. The original complaint in the Justice of the Peace Court was captioned: “Gerard Halmagyi v. Stalana LLC and George & Nariman Shaer.” A trial was

¹ Vleugels is the owner and sole employee of Stalana.

² The Shaers take no position with regard to the instant Motion.

held in the Justice of the Peace Court on September 14, 2016, where Vleugels represented Stalana as provided by *Supreme Court Rule 57(b)* and *Justice of the Peace Court Civil Rule 91*.³ At the conclusion of trial, the court entered judgment for Halmagyi in the amount of \$4,600.00 and against defendant, Stalana, LLC. The Justice of the Peace Court did not enter a judgment against George and Nariman Shaer.

On September 30, 2016, Vleugels filed a Notice of Appeal to this Court on behalf of Stalana, LLC. However, in doing so, Vleugels also added herself as a party appellant. The caption for the notice of appeal reads: “Wilfrieda Vleugels, Stalana LLC, George Shaer, Nariman Shaer v. Gerard Halmagyi.”⁴

On October 25, 2016, Halmagyi filed the instant Motion to Dismiss. Halmagyi contends Stalana’s notice of appeal violates the Mirror Image Rule as set forth in *Court of Common Pleas Civil Rule 72.3(f)*. Specifically, Halmagyi argues that Vleugels, by adding herself as a party to the appeal, failed to have the same parties that were before the Justice of the Peace Court, which violates the rule, thus divesting this Court of jurisdiction. Furthermore, Halmagyi argues the notice of appeal docketed with the Court is void because an attorney did not file it on behalf of Stalana. It is Halmagyi’s contention that only a Delaware attorney may represent a business entity in this Court. Halmagyi maintains Vleugels is not a Delaware

³ J.P. Ct. Civ. R. 91 provides:

Civil actions may be prosecuted and/or defended in the Justice of the Peace Court by an officer or employee of a party which is an artificial entity or public body, who need not be an attorney licensed to practice law in Delaware, if the officer or employee (with the authorization of the artificial entity or public body) has filed a Certificate of Representation with the Chief Magistrate and complied with the other provisions of Supreme Court Rule 57.

⁴ One of Halmagyi’s arguments for dismissing the appeal is that Vleugels forgot to include the Shaers in her Notice of Appeal. Upon review of the Court’s docket, the Notice of Appeal filed on September 30, 2016 at 11:20 a.m. contains the Shaers as parties to the appeal. Therefore, the Court disregards this argument.

attorney, and as such may not file the appeal for Stalana, an artificial entity. Therefore, Halmagyi contends the appeal must be dismissed.

On November 18, 2016, the Court held a hearing on the Motion. At the hearing, Vleugels claimed a clerk in the Court's Clerk Office instructed her on how to complete the notice of appeal, including adding her name as a party to the documents. Furthermore, Vleugels claimed the Clerk's Office told her that she would not need an attorney to represent Stalana because it was operated by a sole proprietor. The Court therefore ordered Vleugels to submit an affidavit detailing the information provided by the Clerk's Office, and reserved decision on the Motion.

On November 23, 2016, Vleugels submitted an affidavit regarding her encounter with the Clerk's Office. According to the affidavit, on September 30, 2016, Vleugels went to the Clerk's Office in order to file a notice of appeal on behalf of Stalana. Vleugels maintains that she filed the appeal documents with the same information that appeared on the original Justice of the Peace Court's subpoena, and the parties to the appeal were Stalana, the Shaers, and Halmagyi. Upon completion of the appeal documents, Vleugels states that she had a court clerk review them, and was instructed by the clerk to add her personal name and address to the notice of appeal.

The affidavit further states that Vleugels was in fact informed by the clerk that she would need an attorney, however, this was after she paid the court and sheriff fees for the appeal. Conversely, the affidavit also states that the clerk was unsure if Vleugels needed an attorney because the judgment was only against Stalana. The affidavit further provides that upon hearing she would need an attorney, Vleugels claims she told the clerk to withdraw her

appeal and return her money, because she was unable to afford an attorney at that time. Vleugels then states the clerk told her to leave the appeal documents with the Clerk's Office, and the clerk would have his supervisor contact Vleugels as to whether she needed an attorney. If it was determined that Vleugels did need an attorney, the clerk would not process the appeal and would return Vleugels's money. Later that same day, a supervisor from the Clerk's Office contacted Vleugels. Vleugels claims the supervisor told her that because Stalana was owned and operated by a sole proprietor, it would not need an attorney, and Vleugels could represent the business. Vleugels claims the supervisor told her to relay this information to a judge in order to avoid obtaining an attorney.

On December 12, 2016, Halmagyi filed a Response to Vleugels's affidavit. Halmagyi concedes that there is case law that allows a *pro se* litigant some latitude in the event of court personnel error. However, Halmagyi contends it is not the function of the clerk to ignore the sufficiency of a notice of appeal which is tendered to the clerk for filing. Furthermore, Halmagyi argues an appellant's *pro se* status does not excuse his failure to comply with statutory law and court rules. Halmagyi maintains that Vleugels received from the Justice of the Peace Court a standard packet of information explaining how to properly file an appeal. Halmagyi contends that this is just another all too familiar case where a litigant blames someone else for the deficiencies in their appeal. However, Halmagyi maintains that Vleugels must be held personally responsible for the defects contained within her notice of appeal, and Stalana's appeal must be dismissed because it does not meet the jurisdictional requirements.

DISCUSSION

Civil appeals from the Justice of the Peace Court to the Court of Common Pleas are governed by *10 Del. C. § 9571*. Pursuant to this statute, a party has a right to appeal from any final order, ruling, decision, or judgment of the Justice of the Peace Court in a civil action to the Court of Common Pleas.⁵ However, the appeal must be taken within fifteen days from the Justice of the Peace Court's final decision.⁶ Delaware courts have construed this statute as being jurisdictional; any failure to comply with the statute will divest the Court of jurisdiction.⁷ Furthermore, the statute requires the Court of Common Pleas to establish its own appeal procedures by court rule.⁸

The procedures for an appeal from the Justice of the Peace Court are governed by *Court of Common Pleas Civil Rule 72.3*. Pursuant to this Rule, an appeal is commenced within this Court by an appellant filing a Notice of Appeal within fifteen days of the Justice of the Peace Court's final decision.⁹ The Notice of Appeal requires the appellant to specify the parties taking the appeal; designate the order, award, or judgment appealed from; state the grounds for the appeal; and name the Court to which the appeal is taken.¹⁰ Furthermore, an appeal that "fails to join the identical parties and raise the same issues that were before the court below shall result in a dismissal on jurisdictional grounds."¹¹ Finally, the Notice of

⁵ 10 Del. C. § 9571(a).

⁶ 10 Del. C. § 9571(b).

⁷ See *Dziedziej v. Prusinski*, 259 A.2d 384, 386 (Del. Super. 1969).

⁸ 10 Del. C. § 9571(d).

⁹ CCP Civ. R. 72.3(b).

¹⁰ CCP Civ. R. 72.3(c).

¹¹ CCP Civ. R. 72.3(f).

Appeal requires the signature of the appellant, or if the appellant is represented by an attorney, the signature of the attorney.¹²

In Delaware, a corporation or limited liability company must be represented by counsel in the Court of Common Pleas.¹³ “While a natural person may represent himself or herself in court even though he or she may not be an attorney licensed to practice, a corporation, being an artificial entity, can only act through its agents and, before a court only through an agent duly licensed to practice law.”¹⁴ An exception to this steadfast rule is that an artificial business entity may be represented in the Justice of the Peace Court by one of its officers or employees pursuant to *Supreme Court Rule 57*.¹⁵ However, this exception does not extend to “any case from which an appeal. . . is lodged in the Court of Common Pleas.”¹⁶

In *Biddles Construction, LLC v. Seeley*, this Court dismissed an appeal brought by a non-attorney agent on behalf of an artificial business entity.¹⁷ This Court reasoned that because the appellant was a limited liability company, its filings with the Court must be made by someone licensed to practice law in Delaware.¹⁸ Consequently, this Court found appellant’s notice of appeal void because it was filed by one of its agents and not by a Delaware attorney.¹⁹ Since the notice of appeal was void, this Court held that the appellant failed to

¹² CCP Civ. R. 72.3(c).

¹³ See *Biddles Constr., LLC v. Seeley*, 2016 WL 6126251, at *2 (Del. Super. Oct. 19, 2016).

¹⁴ *Transpolymer Indus., Inc. v. Chapel Main Corp.*, 582 A.2d 936 (Del. 1990).

¹⁵ See Del. Supr. Ct. R. 57(b) (“Civil actions before Justice of the Peace Courts may be prosecuted and/or defended by an officer or employee of an artificial entity or public body, who need not be an attorney duly licensed to practice law in this State. . .”).

¹⁶ Del. Supr. Ct. R. 57(e)(1).

¹⁷ *Biddles Constr., LLC v. Richard Seeley and Heidi Seeley*, C.A. No. CPU5-15-000617 (Del. Com. Pl. Oct. 5, 2015).

¹⁸ *Id.* at 3.

¹⁹ *Id.*

perfect its appeal within the statutorily required fifteen days—despite the fact that the notice of appeal was filed within the time limit by its agent—thus divesting this Court of jurisdiction.²⁰ This Court’s decision in *Biddles* was recently affirmed by the Superior Court.²¹ The Superior Court found the rules regarding attorney representation on appeal and the requirements for filing a notice of appeal are incorporated within *10 Del. C. § 9571*, and a failure to perfect a notice of appeal within the statutory time frame deprived the Court of Common Pleas of jurisdiction.²²

Ultimately, a litigant’s right to appeal exists only to the extent provided by the Constitution and laws of this State. As such, “an appellate court is without jurisdiction to hear an appeal unless the proceeding therefor is filed within the time allowed by the governing law or rule of court.”²³ Thus, the jurisdictional requirements imposed by *10 Del. C. § 9571* must be satisfied in order for this Court to have jurisdiction over any appeal. However, Delaware Courts have stated an exception to this rigid jurisdictional requirement where the appellant’s untimely filing is based upon information received from court personnel.²⁴ “Where an appellant has done all that is required of him in seeking review but his default has been occasioned by court-related personnel, his petition for review will not be denied.”²⁵ This exception was designed to protect a litigant who relies in good faith on the

²⁰ *Id.*

²¹ See *Biddles Constr., LLC v. Seeley*, 2016 WL 6126251 (Del. Super. Oct. 19, 2016).

²² *Id.* at *2.

²³ *Casey v. S. Corp.*, 29 A.2d 174, 176–77 (Del. 1942).

²⁴ See *Lenape Assocs. v. Callaban*, 616 A.2d 1214 (Del. 1992) (TABLE); *Bey v. State*, 402 A.2d 362 (Del. 1979); *Hicks v. Taggart*, 1999 WL 462375 (Del. Super. Apr. 12, 1999).

²⁵ *Petrucelli v. McFarland*, 1989 WL 41700, at *2 (Del. Super. Mar. 20, 1989).

reasonable instructions of the Court,²⁶ and as such, the Court will not punish a litigant for reasonably relying on misinformation.

In the case *sub judice*, Vleugels claims she received misinformation from the Clerk's Office which led to her defective appeal. The affidavit goes into significant detail regarding the first documents Vleugel filed and the subsequent changes made following her interaction with Court personnel. A party which litigates in the courts is required to make themselves familiar with the rules to ensure compliance. When the facts indicate there were efforts by a litigant to comply, and through no-fault of their own are misguided, fundamental fairness requires the Court to balance the relative equities to achieve the prevailing policy that disputes should be resolved on their merits. The affidavit put forth facts that one would reasonably conclude Vleugels did in fact receive information from the Clerk's Office on September 30, 2016, which could lead a reasonable person to be confused. This confusion should not lead to a denial of a litigant's right to have their day in Court. To be barred on such a technical violation is fundamentally unreasonable and unfair.

There is no doubt regarding the application of the rule that an appellant's failure to join the identical parties that were before the court below will result in dismissal on jurisdictional grounds. Additionally, the notice of appeal for an artificial business entity must be filed by an attorney. However, the application of these rules are to ensure regularity of the process, not to deny one's right to their day in court. A *pro se* litigant should not be expected to second guess the advice of the Clerk's Office.

²⁶ See *Lenape Assocs.*, 616 A.2d 1214, at *3.

CONCLUSION

For the foregoing reasons, Halmagyi's Motion to Dismiss is **DENIED**. Appellant is required to file an amended Notice of Appeal as required by the rules within twenty (20) days. Failure to comply will result in the issue being reconsidered.

IT IS SO ORDERED.

Alex J. Smalls,
Chief Judge