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

D PALMER ENTERPRISES, INC.,

C.A. No. JP16-12-001926

Defendant/Appellant,

V.

W SCOT PARSONS,

Plaintiff/Appellee.

TRIAL DE NOVO

Submitted: October 2, 2012 Decided: October 2, 2012

D Palmer Enterprises, Inc, Defendant/Appellant, did not appear.

W Scot Parsons, Plaintiff/ Appellee, pro se, did not appear.

ORDER

Arndt, J Murray, J Sweet, J On October 2, 2012, this Court, comprised of the Honorable Ernst M. Arndt, the Honorable James A. Murray and the Honorable William J. Sweet, acting as a special court pursuant to 25 *Del. C.* § 5717(a)¹ convened a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by w Scot Parsons, (hereinafter referred to as "Plaintiff"), against D Palmer Enterprises, Inc., (hereinafter referred to as "Defendant"). For the following reasons the Court *Dismisses the Defendant's Appeal*.

Factual and Procedural Background

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking possession, court cost, accrued rent and post-judgment interest at the current legal rate. This action is based on Defendants failure to pay rent. Trial was held on July 30, 2012, and judgment was entered in favor of Plaintiff.² Thereafter, Defendants filed a timely appeal of the Court's Order pursuant to 25 *Del. C.* § 5717(a)

¹ 25 Del. C. § 5717(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, which shall render final judgment, by majority vote...."

² Parsons v. Palmer, et al, Del J.P., C.A. No. JP16-12-001926, Wall, J. (July 30, 2012).

Call to Convene Trial

The Court convened trial some 15-20 minutes³ beyond the scheduled time for which trial was to commence. The Court summoned the parties into the courtroom via the court's public address system. The Defendant and Plaintiff failed to respond to the Court's announcement, further review with court staff indicated that neither party checked in with the court clerk and where not in the courthouse at the scheduled time for trial.

Review of Service

Upon judicial review of the court's docket and file, service of notice for said trial was mailed upon Defendant via the United States Postal Service. Trial notice was mailed to the address (155 North DuPont HWY Unit 3, Dover DE) as provided by Defendant to the Court in his Notice of Appeal. The Court has not received any notification from the Postal Service stating that the address was undeliverable. Therefore, Defendant has been properly served with notice of today's trial and has failed to appear and prosecute his appeal.

³ Policy Directive 80-008 (REVISED) addresses the appropriate wait time for the arrival of parties to appear for trial. Pursuant to this Directive, the Court allows an additional 15 minutes from the scheduled time for trial for parties to appear. i.e. parties scheduled for an 8:15am trial time would be given until 8:30am to appear for trial before the court commenced trial and/or took any action. (nonsuit, default judgment, dismissal)

Conclusion

Based on the foregoing unanimously by the Court, the Defendant's appeal pursuant to § 5717(a) is *DISMISSED WITH PREJUDICE* for failing to appear and prosecute after proper notice. Pursuant to Justice of the Peace Civil Court Rule 72.1(f)⁴ the *Judgment*⁵ entered on July 11, 2012, *shall stand*.

IT IS SO ORDERED, this 2nd day of October, 2012.

Judge Ernst M. Arndt

Judge James. A. Myrray

Judge William J. Sweet

⁴ J.P.Civ R. 72.1(f). Failure of a party to appear on appeal. "In either an appeal by trial de novo or an appeal on the record, if the appellant (or both parties) fails to appear for trial of the appeal, the judgment below shall stand...."

⁵ "Judgment for possession is awarded to the Plaintiff." *Minner v. Edge*, Del J.P., C.A. No. JP16-12-003028, Wall, J. (July 11, 2012).