

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

MICHAEL BROWN )  
 )  
 Defendant Below/Appellant, )  
 )  
 v. ) C.A. No.: CPU4-14-000211  
 )  
 LUCILE O. BROWN & )  
 MALCOLM D. BROWN, SR., )  
 )  
 Plaintiffs Below/Appellees. )

Submitted: August 5, 2014  
Decided: September 29, 2014

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**ORDER**

COMES NOW, the Court finds as follows:

1. Lucile O. Brown and Malcolm D. Brown, Sr., Plaintiffs

Below/Appellees were the defendants in a Landlord Tenant action brought by Michael Brown, Defendant Below/Appellant, in the Justice of the Peace Court #J0608072812, 2006. In that proceeding, the Justice of the Peace Court entered judgment for Michael Brown for \$7,298.33, plus a per diem and post-judgment interest.

2. On June 4, 2013, Lucile O. Brown and Malcolm D. Brown, Sr., brought an action in the Justice of the Peace Court (Docket # JP13-13-006961) for failure of Michael Brown to satisfy the judgment after they paid the judgment. There is no dispute that the 2006 Judgment was paid.

3. On December 16, 2013, the Justice of the Peace Court found for the Plaintiffs Lucile O. Brown and Malcolm D. Brown, Jr., concluding that defendant Michael Brown failed to timely file a “Satisfaction of Judgment,” as required by 10 *Del. C.* 9567. The Court entered an award of \$3,684.16 on the judgment.

4. Thereafter, Michael Brown on December 26, 2013 filed a motion in the Justice of the Peace Court seeking relief from the Judgment entered on December 16, 2013.

5. The motion docketed in the Justice of the Peace Court on December 26, 2013, provided in section “A” Type of relief requested: “*I would like to request a new trial.*”<sup>1</sup>

6. The motion seeking relief was heard by the Justice of the Peace Court on January 17, 2014. The Court analyzed the motion under Justice of the Peace Court’s *Civil Rule 60* “*Relief from Judgment or Order.*”

7. On January 28, 2014, the Justice of the Peace Court entered a written order denying Michael Brown’s motion under its *Civil Rule 60*.

8. On January 24, 2014, Michael Brown filed this appeal in Court of Common Pleas, in and for New Castle County.

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<sup>1</sup> Attached application for a motion hearing.

9. The provisions of *10 Del. C. 9571* provide an appeal in civil matters must be taken within 15 days of the final order, ruling or judgment.

10. In the Justice of the Peace Court, the judgment for Lucile O. Brown and Malcolm D. Brown, Sr. was entered on December 16, 2013. Therefore, the period to file an appeal began to run as of the date of this decision. However, on December 26, 2013, Michael Brown filed his motion for a new trial. While the Justice of the Peace Court analyzed the motion under its *Civil Rule 60 "Relief from Judgment or Order"*, it is clearly stated in the filing, Brown was seeking a new trial.

11. The statutory language which requires that all appeals to be filed within 15 days is jurisdictional. However, the time period to file is tolled by a motion for reargument or a motion for a new trial. *Wilson v. Mackiewicz*, 2003 WL 21741531 (Del. Super).

12. Michael Brown's motion for a new trial tolled the time to file the appeal until the Justice of the Peace Court decided the motion. The motion was heard on January 17, 2014, and the order was entered on January 28, 2014.

13. The appeal was docketed January 24, 2014. While it was filed before the written order of the Court, it was after the hearing and within the 15-day statutory period.

Accordingly, I conclude the appeal is properly before the Court. The case will be scheduled for trial.

SO ORDERED

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Alex J. Smalls  
Chief Judge

Brown v Brown-ORD Sep 2014