

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

JENNIFER AUGUST,

Appellant,

v.

JIE LIN and  
TOKYO STEAKHOUSE  
OF DELAWARE, INC.

Appellees.

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C.A. No. S19A-01-003 CAK

Submitted: May 30, 2019

Decided: August 20, 2019

*Upon Appellant's Appeal from a Decision of the Court of Common Pleas*

**AFFIRMED**

**MEMORANDUM OPINION AND ORDER**

Jennifer August, 2 Black Duck Reach, Rehoboth Beach, Delaware 19971, Plaintiff  
Below/Appellant, pro se

Daniel F. McAllister, Esquire, and Brian V. DeMott, Esquire, BAIRD MANDALAS  
BROCKSTEDT LLC, 2711 Centerville Road, Suite 401, Wilmington, Delaware 19808,  
Attorney for Defendants Below/Appellees, Jie Lin and Tokyo Steakhouse of Delaware,  
Inc.

KARSNITZ, J.

## I. INTRODUCTION

This case requires me to review the Court of Common Pleas' dismissal of Jennifer August's ("Appellant's" or "Ms. August's") Complaint on Appeal from the Justice of the Peace Court ("JP Court") for failure to state a claim upon which relief can be granted under Court of Common Pleas Civil Rule 12(b)(6) ("Rule 12(b)(6)"). This in turn requires me to decide whether Appellant's Complaint on Appeal satisfied the requirements of the applicable Court of Common Pleas statute and rule. No claims were raised in the Complaint against defendant Jie Lin ("Lin") or defendant Tokyo Steakhouse of Delaware, Inc. (the "Steakhouse") (hereinafter collectively referred to as "Appellee").

10 *Del. C.* § 9571 provides a right of 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 in the county in which that order, ruling, decision or judgment was rendered. Specifically, 10 *Del. C.* § 9571(c) provides:

"The appeal *shall* be a trial *de novo*." [Emphasis supplied]

Pursuant to authority granted to it by 10 *Del. C.* § 9571(d), the Court of Common Pleas has established appeal procedures by rule. Court of Common Pleas Civil Rule 72.3(f) ("Rule 72.3(f)") provides:

"The Mirror Image Rule is abolished as a basis for lack of jurisdiction over an otherwise perfected appeal *de novo*. An appeal to this Court shall join the necessary parties and raise the same issues that were before the Court below. Upon motion of a party or *sua sponte*, the Court *may* add or dismiss parties or claims in accordance with the Rules of the Court." [Emphasis supplied]

At issue is whether the Court of Common Pleas erred when it did not *sua sponte* allow Appellant to amend her Complaint on Appeal to comply with the requirements of Rule 72.3(f). A corollary issue is whether Appellant failed to perfect her appeal with the Court of Common Pleas, thereby depriving the Court of Common Pleas of jurisdiction and its power to *sua sponte* allow Ms. August to amend her Complaint on Appeal.

## **II. FACTS**

This case arises from a dispute over the amount of tips that Appellant contributed to a tip pool and the amount of tips reported on Appellant's paycheck while she was employed as a server by Lin at the Steakhouse. Appellant claimed \$5,893.62 in damages because Appellee allegedly required her to share 50% of her daily server wage tips with "non-primary direct service employees" in violation of the Delaware Minimum Wage Law, and also claimed that the amount of her tips was overstated on her paycheck.

## **III. PROCEDURAL HISTORY**

On May 22, 2018, Ms. August filed a debt action against Appellee in JP Court. On September 25, 2018, a trial was held in JP Court, and on October 17, 2018, the JP Court, in a well-reasoned opinion, held that Appellant was owed nothing on the tip-sharing claim, but was owed \$802 on the tip overstatement claim.

On October 31, 2018, Appellant filed a Notice of Appeal with the Court of Common Pleas. The Complaint on Appeal in the Court of Common Pleas alleged various errors and abuses of discretion by the JP Court. Appellee filed a Motion to Dismiss the Complaint on Appeal pursuant to Rule 12(b)(6) on November 15, 2018. On December 28, 2018, Appellant filed a pleading styled “Motion for Declaratory Judgment” which essentially requested that the Court of Common Pleas accept her version of the facts and her conclusions of law from the JP Court trial. On January 3, 2019, the Court of Common Pleas held a hearing and on January 9, 2019, dismissed Appellant’s Complaint on Appeal under Rule 12(b)(6). The Court of Common Pleas stated that it had undertaken a careful review of the JP Court’s opinion and determined that the JP Court had evaluated all evidence introduced by Appellant and had reached its conclusions after a careful analysis of both facts and law.

No Motion to Amend the Complaint on Appeal was ever filed by Ms. August with the Court of Common Pleas. The transcript of the January 3, 2019 hearing reflects neither that Ms. August verbally requested to amend the Complaint on Appeal, nor that the Court of Common Pleas *sua sponte* allowed Appellant to amend the Complaint on Appeal.

On January 28, 2019, Ms. August filed her Notice of Appeal with this Court from the adverse decision of the Court of Common Pleas. On February 5, 2019, Appellee’s counsel entered his appearance with this Court and filed a Motion to Dismiss

Appeal on two grounds. First, Appellant's appeal was untimely.<sup>1</sup> At the hearing on the motion I found the appeal *was* timely. Second, Ms. August's appeal had never been perfected with the Court of Common Pleas, and thus the Court of Common Pleas lacked jurisdiction to hear the appeal altogether.<sup>2</sup> On February 15, 2019, Appellant filed her Response to Motion to Dismiss Appeal. I held a hearing on Appellee's Motion on March 1, 2019<sup>3</sup> and denied the Motion to Dismiss Appeal and set a schedule for briefing. Thereafter, the parties briefed the substantive issues. On July 31, 2019, I held a hearing at which the self represented Appellant, and counsel for Appellee presented their oral arguments. I reserved decision.

#### IV. PARTIES' CONTENTIONS

##### A. Appellant's Contentions

In her Opening Brief on Appeal, Appellant states eleven (11) grounds for her appeal "which stem from matters-of-law errors and abuses of discretion" by the Court of Common Pleas. Although these grounds are stated in a somewhat redundant fashion, they may be summarized all claims the JP erred in its disposition of the case. *No* claims

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<sup>1</sup>Superior Court Civil Rule 72(b) requires that notices of appeal to the Superior Court be filed within 15 days of entry of the final judgment from which the appeal is taken, if no statute otherwise prescribes the time for appeal. 10 *Del. C.* §1326 governs rights to appeal from the Court of Common Pleas and allows 30 days for the time for filing an appeal. Confusion may reign with the 15 day appellate period for filing an appeal from JP Court to Court of Common Pleas.

<sup>2</sup> Appellee cited *Jones v. Hertz Corp.*, 2014 WL 3401606, at \*6 (Del. Super. Ct. July 8, 2014), *aff'd*, 105 A.3d 989 (Del. 2014). It argued that, because the Court of Common Pleas never assumed jurisdiction over the initial appeal from the JP Court, the matter could not thereafter be appealed from the Court of Common Pleas to this Court. In Appellee's view, the matter remained in the JP Court, and any appeal must be taken directly from the JP Court according to the appropriate procedures.

<sup>3</sup> At that hearing, Appellant stated that the Court of Common Pleas had never given her the opportunity to amend her Complaint on Appeal. However, there is nothing to that effect in the transcript of that hearing.

were made against the Steakhouse or Lin.

Ms. August requests that I declare her ownership of all of the tips and grant vb her right to recover \$5,893.62 from Appellee. She asks that I enter judgment in her favor against Appellee in the amount of \$5,893.62 for wages claim, order Appellee to correct an error in Appellant's W-2 form, and order Appellee to conform its tips policy to the requirements of the Delaware Minimum Wage Law. She also requests that I either remand the case to the Court of Common Pleas so that she may file an amended Complaint on Appeal in that court, and/or allow her to reopen the declaratory judgment in the Court of Common Pleas.

#### **A. Appellee's Contentions**

Appellee contends that Appellant's Complaint on Appeal filed in the Court of Common Pleas made no allegations regarding acts or omissions of Appellee, but rather was directed entirely at an abuse of discretion by the JP Court. Since the Court of Common Pleas could not evaluate claims against Appellee based on facts alleged against a third party, Appellee contends that, on its face, the Complaint on Appeal failed to allege a claim against Appellee under Rule 12(b)(6).

Appellee correctly contends Appellant made no request to amend her Complaint on Appeal under Rule 72.3(f) prior to the Rule 12(b)(6) hearing, at that hearing, in response to Appellee's arguments, or in response to the Court of Common Pleas'

questions.<sup>4</sup> Instead, she stood on her pleadings, and continued to style her Complaint on Appeal as an appellate brief. Thus, argues Appellant, no facts were developed *de novo* in the Court of Common Pleas on which the Court could base a decision and it had no choice but to dismiss.

Appellee also contends that the Court of Common Pleas applied the correct standard of review to its Rule 12(b)(6) Motion. Facts alleged in the Complaint on Appeal were taken as true, and all inferences therefrom were viewed in a light most favorable to Appellant.<sup>5</sup> Appellee demonstrated to the Court of Common Pleas that Appellant could not prevail under any set of facts that could be proved to support her claim.<sup>6</sup>

Appellee further contends that, since Appellant never perfected her appeal to the Court of Common Pleas, the Court of Common Pleas never acquired jurisdiction over Appellant's claim, and thus lacked the power to allow Appellant to amend her Complaint on Appeal.

Finally, Appellee argues that, assuming *arguendo* that the Court of Common Pleas improperly granted its Rule 12(b)(6) Motion, the Court applied the abuse of discretion standard to the JP Court decision (which Appellant requested) and thus its

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<sup>4</sup> At its January 3, 2019 hearing, the Court of Common Pleas specifically asked Appellant if she wanted it to apply an abuse of discretion standard of review, and she neither declined this request nor sought to amend the Complaint on Appeal.

<sup>5</sup> *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003); *McMullin v. Beran*, 765 A.2d 910, 916 (Del. 2000).

<sup>6</sup> *Branson v. Exide Elecs. Corp.*, 645 A.2d 568 (Del. 1994).

decision should be affirmed.<sup>7</sup>

## V. STANDARD OF REVIEW

Appeals from the Court of Common Pleas to this Court “shall be reviewed on the record and shall not be tried *de novo*.”<sup>8</sup> The Superior Court’s function when addressing an appeal from the Court of Common Pleas is similar to that of the Delaware Supreme Court.<sup>9</sup> The Superior Court must limit its review to correcting errors of law and determining whether the trial judge’s factual findings “are adequately supported by the record and are the product of orderly and logical deductive process.”<sup>10</sup> If a Court of Common Pleas decision is supported by sufficient evidence, it must be accepted by the Superior Court.<sup>11</sup>

Legal conclusions of the trial judge are examined “*de novo* for errors in formulating or apply legal precepts.”<sup>12</sup> Factual issues are reviewed under an abuse of

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<sup>7</sup> During the January 3, 2019 Court of Common Pleas hearing, Appellant repeatedly requested that the Court apply the appellate “abuse of discretion” standard to the JP Court decision, rather than alleging facts *de novo*, although in her Opening Brief she claims otherwise.

<sup>8</sup>10 Del. C. § 1326(c)

<sup>9</sup> *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985).

<sup>10</sup> *Romain v. State Farm Mutual Auto. Ins. Co.*, 1999 WL 1427801, at \*1 (Del. Super. Dec. 2, 1999) (citing *Wyatt v. Motorola, Inc.*, 1994 WL 714006, at \*2 (Del. Super. Mar. 11, 1994)).

<sup>11</sup> *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

<sup>12</sup> *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008).



discretion standard.<sup>13</sup> “An abuse of discretion occurs when the trial court has ‘exceeded the bounds of reason in view of the circumstances’ or ‘so ignored recognized rules of law or practice so as to produce injustice.’ ”<sup>14</sup>

Court of Common Pleas Civil Rule 72.3(f), which governs *de novo* appeals from the Justice of the Peace Court to the Court of Common Pleas, *formerly* provided that:

“[A]n appeal to this court 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***. Compliance with paragraph (d) of this Rule<sup>15</sup> shall constitute ***transfer of jurisdiction of the civil action from the Justice of the Peace Court to the Court of Common Pleas***.” [Emphasis Supplied]

This rule, formerly referred to as the “mirror image” rule, was apparently first articulated in 1857 in *McDowell v. Simpson*<sup>16</sup> and was later codified in former Rule 72.3(f). Generally, under the former mirror image rule, claims where a mirror image rule violation is asserted dealt either with allegations that identical parties had not been joined

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<sup>13</sup> *Webb-Buckingham v. State*, 2009 WL 147020, at \*2 (Del. Super. Jan. 22, 2009) (citing *Zimmerman v. State*, 693 A.2d 311, 313 (Del. 1997)).

<sup>14</sup> *Id.* (quoting *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994)).

<sup>15</sup> “(d) Upon the acceptance of the filing, the clerk shall enter into the record a notation that the case is on appeal.”

<sup>16</sup> Del. (1 Houst.) 467, at 469 (Super. 1857) (“[I]t is the first requisite of a declaration that it shall correspond with the process on which the action is founded, first, in the names of the parties, secondly, in the number of the parties, thirdly, in the character or right in which they sue or are sued, and fourthly, in the cause and form of the action; and if it fails to correspond with the process in any of these particulars, the Court will, on motion, set it aside for irregularity.”).

or identical claims had not been joined in the appeal.<sup>17</sup> “However, with respect to issues, when the complaint on appeal sets forth more specifically the causes of action that were raised below but does not alter the subject matter of the case below, there is no mirror image violation.”<sup>18</sup>

Effective May 1, 2018, Rule 72.3(f) was revised to read as follows:

“The Mirror Image Rule is *abolished as a basis for lack of jurisdiction* over an otherwise perfected appeal *de novo*. An appeal to this Court shall join the necessary parties and raise the same issues that were before the Court below. Upon motion of a party or *sua sponte*, the Court *may* add or dismiss parties or claims in accordance with the Rules of the Court.” [Emphasis supplied]

## VI. DISCUSSION

*The Court of Common Pleas correctly dismissed Appellant’s Complaint on Appeal under Court of Common Pleas Rule 12(b)(6).*

The flaw in this case is that Appellant misunderstood the nature of an appeal from the Justice of the Peace Court to the Court of Common Pleas. In common parlance an appeal takes critical issue with the decision of the Court from which the appeal is taken. Typically an appeal on the record created in the lower Court is reviewed for errors of law, or factually findings not supported by the record. By contrast an appeal *de novo* starts the process afresh, allegations as before are made and a new record created.

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<sup>17</sup> *Sparks v. Kalicharan*, 2011 WL 3035227, at \*2 (Del. Com. Pl. May 27, 2011); *Jones v. Hertz Corp.*, \_\_\_ A.3d \_\_\_, 2014 Del. Super. LEXIS 346 (Del. Super. Ct. July 8, 2014).

<sup>18</sup> *Silverview Farm, Inc. V. Laushey*, 2006 WL 1112911, at \*2 (Del. Com. Pl. Apr. 26, 2006).

Court of Common Pleas Civil rule 72.3 sets forth the rule governing appeals de novo, and requires the Plaintiff in the proceeding in JP Court to file a Complaint. The rules governing pleadings including Complaints are set forth in Court of Common Pleas Civil Rules 7 and 8 and require:

“(1) A short and plain statement of the claim  
showing that the pleader is entitled to relief and  
(2) a demand for judgment...”

Practicing attorneys intuitively understand the difference, but self represented litigants may not. Appellant did not state a claim against Appellee - she stated her “claims” as to why the JP Court was mistaken in its rulings. Lin and the Steakhouse had nothing asserted against them, or to which to respond. The Court of Common Pleas had no “claims” between the parties to determine.

Somewhat puzzling to me was the Court of Common Pleas’ discussion at its hearing on Appellee’s Motion to Dismiss of the correct standard it was to use. Specifically, the Court of Common Pleas raised whether it should use an abuse of discretion standard to judge Ms. August’s appeal. The discussion does not square with 10 *Del. C.* §9571 and its enacting Civil Rule 72.3.<sup>19</sup>

Ms. August after much discussion stood by her Complaint as filed. The Court of Common Pleas found that the Complaint made no claims vis a vis the Steakhouse or Lin and dismissed it.

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<sup>19</sup> See *Kurtz v. Pomerantz Del. Super. Lexis 1046* (Del. Super. Ct., April 29, 2015).

In my view, the Court of Common Pleas properly found that Appellant failed to state a claim against any party or to demand judgment. The Complaint on Appeal filed in the Court of Common Pleas made no allegations regarding acts or omissions of Appellee, but rather was directed entirely to errors allegedly committed by the JP Court. The Complaint on its face failed to allege a any claim against Appellee under Rule 12(b)(6).

Appellant made no request to amend her Complaint on Appeal Under Rule 72.3(f) prior to the Rule 12(b)(6) hearing, at that hearing, in response to Appellee's arguments, or in response to the Court of Common Pleas' questions. Instead, she stood on her pleadings, and continued to style her Complaint on Appeal as an appellate brief. Thus, no facts were developed *de novo* in the Court of Common Pleas on which the Court could base a decision and it had no choice but to dismiss the case.

10 *Del. C.* § 9571(c) unequivocally requires that an appeal from the JP Court to the Court of Common Pleas must be a trial *de novo*. Appellant's Complaint on Appeal was styled as an appellate brief asserting abuses of discretion by the JP Court. She was repeatedly asked at the Court of Common Pleas at its January 3, 2019 hearing if she wanted the Court to apply an abuse of discretion standard

of review, and she continued to do so, and declined to amend the Complaint to state claims *de novo*.

### *The Self Represented Litigant*

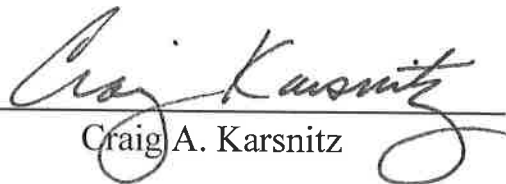
Our Supreme Court has adopted guidelines for Civil hearing involving self represented litigants.<sup>20</sup> The difficult line to walk is between helping a self represented non-lawyer litigant and remaining neutral. The guidelines give guidance on the issues allowing a Judge to “assume more than a passive role...” while remaining neutral.

Here the Court of Common Pleas appropriately walked that line. Both the Court and the appellee repeatedly cited the laws and rules which require that Appellant file a Complaint making appropriate allegations against Appellee so the case could proceed. Ms. August steadfastly failed to so, and in so doing failed to grasp the essence of an appeal *de novo*. Ultimately the Court of Common Pleas was left with no choice but to take the action if did dismissing the case.

### **VII. CONCLUSION**

For the foregoing reasons, the Decision of the Court of Common Pleas is **AFFIRMED.**

**IT IS SO ORDERED.**

  
Craig A. Karsnitz

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<sup>20</sup> Delaware Judicial Guidelines for Civil Hearings Involving Self Represented Litigants, May 11, 2011.