



STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
820 NORTH FRENCH STREET, 11TH FLOOR  
WILMINGTON, DELAWARE 19801

NORMAN A. BARRON  
CHIEF MAGISTRATE

TELEPHONE (302) 571-2485

POLICY DIRECTIVE 80-027

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE  
ALL CHIEF CLERKS JUSTICE OF THE PEACE COURTS

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: NOVEMBER 17, 1980

RE: SURETY BOND NEEDED FOR APPEAL OF CIVIL CASES

As the attached memorandum opinion in the case of Duncan v. Rash, D.C.Del., Civ.Act. No. 80-232, opinion of Chief Judge Latchum dated November 4, 1980 indicates, 10 Del.C., §§9571 and 9572 specifically provide for a surety bond on appeal of civil cases. The deposit of cash as an alternative is not permitted. See also: State ex rel. Caulk v. Nichols, Del.Supr., 281 A.2d 24 (1970), appeal dismissed, 408 U.S. 901, 92 S.Ct. 2501, 33 L.Ed.2d 327 (1972); S & S Builders, Inc. v. Eagle Truck Transp., Inc., Del.Super., 130 A.2d 558 (1957).

Finally, I also attach the decision in the case of Ramunno v. Jaremchuk, Del.Super., 5203 Civ.A. 1976, unreported letter opinion by Judge Bernard Balick dated August 4, 1976.

NAB:pm

Attachments (2)

cc: The Honorable Daniel L. Herrmann  
John R. Fisher, Esquire  
Arthur R. Carello  
Files

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EARLE J. DUNCAN,

Plaintiff,

v.

RUSSELL T. RASH and  
Ms. E. WEBB,

Defendants.

Civil Action No. 80-232

Earle J. Duncan, pro se.

Donald L. Bruton, Deputy Attorney General, Wilmington, Del.,  
for defendants.

MEMORANDUM

Wilmington, Delaware  
November 4, 1980.

*Latchum*  
LATCHUM, Chief Judge.

The plaintiff, Earle J. Duncan, a former litigant in Justice of Peace Court No. 16 in and for Kent County, instituted this action against the defendants, Russell Rash, Chief Judge, and Evelyn A. Webb, Chief Clerk, of that Court. The gist of the pro se complaint as elaborated upon by the plaintiff in other documents and his deposition is that defendants violated plaintiff's constitutional rights to due process and equal protection of law when they refused to accept cash in lieu of a secured appeal bond in a civil action which he lost in the J.P. Court. (Docket Items ["D.I."] 1, 10, 14). The defendants answered and incorporated in their second defense a motion to dismiss (D.I. 5). Thereafter, the plaintiff moved for a preliminary injunction directing the defendants to accept cash in place of a secured appeal bond (D.I. 10). The defendants have filed affidavits in support of their motion to dismiss and in opposition to the grant of a preliminary injunction (D.I. 15, 16 & 17).<sup>1</sup>

The uncontested facts may be summarized as follows: On February 5, 1980, the Honorable Russell T. Rash, Chief Judge of Justice of the Peace Court No. 16 after trial, and upon appearance of both parties gave judgment in favor of Burd's Paving, Co. George Burd, plaintiff, and against Earle Duncan

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1. Although the plaintiff was afforded the opportunity to controvert any of defendants' affidavits (D.I. 11, 14 3 & 4), plaintiff has failed to do so.

T/A Refrigeration Supply Company, defendant, for the sum of \$255.00 and \$15.00 costs of action. Pursuant to Justice of the Peace Court Civil Rule 19(j), Mr. Duncan (the defendant in J.P. Court) was notified by mail of the entry of judgment and the time and manner of an appeal (D.I. 16).

Subsequently, Mr. Duncan attempted to appeal by posting cash instead of a surety bond as required by 10 Del. C. § 9572. The defendants refused to accept plaintiff's cash. Plaintiff thereafter properly appealed by posting an appeal surety bond pursuant to 10 Del. C. § 9572. The debt was settled prior to a trial de novo in the Superior Court. (D.I. 19, pp. 11-12).

Since the plaintiff in this case properly appealed by posting a secured bond, his motion for a preliminary injunction is now moot. Furthermore, for the reasons hereinafter discussed it is clear that plaintiff cannot prevail on the merits.

The Delaware Supreme Court held in State ex rel. Caulk v. Nichols, 281 A.2d 24 (Del.Supr.1971) that Delaware statutes requiring the posting of a secured bond in order to appeal a civil action from the J.P. courts under 10 Del. C. §§ 9578 & 9579 (now 10 Del. C. §§ 9571 and 9572) were constitutionally permissible and did not violate either the due process or equal protection clauses of the U.S. Constitution even when the appellant was an indigent person. Upon appeal of the Caulk case to the United States Supreme Court, that Court

dismissed the appeal for want of a substantial federal question. Caulk et ux. v. Nichols, Judge, 401 U.S. 901 (1972). It is clear that votes of Supreme Court Justices to dismiss an appeal for want of a substantial federal question are votes on the merits. Hicks v. Miranda, 422 U.S. 332, 344 (1975); Super Fire Engineering Co. v. McCorkle, 550 F.2d 903 (C.A.3, 1977), cert. denied, 434 U.S. 1025. Thus, since the United States Supreme Court has held that the statutes here under attack are constitutional, this Court may not hold otherwise.

Accordingly, defendants' motion to dismiss will be treated as motion for summary judgment since it was supported by affidavits, Rule 12(b), F.R.Civ.P., and that motion will be granted in defendants' favor.

An Order will be so entered.

f

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

BERNARD BALICK  
ASSOCIATE JUDGE

COURT HOUSE  
WILMINGTON, DELAWARE 19801

Submitted: August 2, 1976

Decided: August 4, 1976

L. Vincent Ramunno, Esq.  
10th & French Streets  
Wilmington, Delaware 19801

Norman A. Barron, Esq.  
Deputy Attorney General  
Wilmington, Delaware 19801

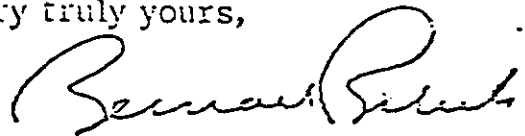
Re: Ramunno v. Jaremchuck  
5203 Civil Action 1976

Gentlemen:

Plaintiffs seek a writ of mandamus ordering a Justice of the Peace to accept their certified check as security on appeal. The statutes governing appeals provide not only that, "the party appealing shall offer security in such sum as the justice deems sufficient to cover the judgment appealed from and the costs on the appeal," but also the specific kind of security that must be given; namely, a surety bond executed by someone other than the appellant. 10 Del. C. §§9571(b), 9572(a). These statutes do not provide for a cash deposit as an alternative to a surety bond. S. & S. Builders, Inc. v. Eagle Truck Transport, Inc., Del. Super., 130 A.2d 558 (1957); Trala v. Melmar Industries, Inc., Del. Super., 254 A.2d 249 (1969). Nor may a Justice of the Peace accept an appellant's certified check without the required surety bond as security on appeal.

It is ORDERED that a writ of mandamus is DENIED.

Very truly yours,



BERNARD BALICK

BB:jlf

cc: Stephen B. Potter, Esq.  
Prothonotary

5 1976



COURT 13

STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
620 NORTH FRENCH STREET, 11TH FLOOR  
WILMINGTON, DELAWARE 19801

NORMAN A. BARRON  
CHIEF MAGISTRATE

TELEPHONE: (302) 571-2485

POLICY DIRECTIVE 80-027 (SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE  
ALL CHIEF CLERKS, COURTS OF THE JUSTICES OF THE PEACE

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: AUGUST 14, 1984

RE: SURETY BOND NEEDED FOR APPEAL OF CIVIL CASES

As the attached opinion in the case of Williams v. West, Del.Supr., \_\_\_\_ A.2d \_\_\_\_, No. 367, 1983, dated July 25, 1984, indicates, 10 Del.C., §9572 specifically provides for a surety bond on appeal of civil cases. A cash bond continues as an impermissible alternative. Perhaps the Williams opinion will encourage Legislative reform to this anachronistic statute which has often caused inequitable results.

NAB:pn

Attachment

cc: The Honorable Daniel L. Herrmann  
John R. Fisher  
Legislative Council  
Files

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MADELINE WILLIAMS,

Defendant Below,  
Appellant,

v.

NORRIS D. WEST,

Plaintiff Below,  
Appellee.

No. 367, 1983

Submitted: June 4, 1984  
Decided: July 25, 1984

Before HORSEY, MOORE, and CHRISTIE, Justices.

Upon appeal from Superior Court's affirmance of the Court of Common Pleas' grant of summary judgment for plaintiff. Appeal Dismissed.

Rodney Don Sweet, Seaford, Delaware, for appellant.

Robert C. Wolhar, Jr., Wolhar & Moore, P.A., Georgetown, Delaware, for appellee.

MOORE, Justice:



This appeal by the defendant, Madeline Williams, is from a decision of the Superior Court which affirmed a judgment of the Court of Common Pleas in favor of the plaintiff, Norris D. West, for labor and materials furnished in the construction of a house built for the defendant and her former husband. We address only the surety requirement of 10 Del. C. §9572 applicable to bonds posted in civil appeals to the Superior Court. Because of the statute's unique, but unambiguous, mandate that such bonds be posted with surety, we have no recourse but to dismiss this appeal for lack of jurisdiction due to non-compliance with 10 Del. C. §9572.

The statutorily prescribed language for an appeal bond, used to perfect an appeal from the Court of Common Pleas to Superior Court, is found in 10 Del. C. §9572(a),<sup>1</sup> which expressly presupposes a surety: "On the . . . day of . . . , A.D., the said A. B. appeals and C. D. becomes surety in the sum of . . . dollars," etc. Section 9572(a) incisively provides that "The entry of security shall be signed by the sureties or it shall be void". Noncompliance with this unambiguous jurisdictional statute is fatal to appellate review. Ademski v. Ruth, Del. Supr., 229 A.2d 837 at 839 (1967). Here, there was no bond, either in the form contemplated by 10 Del. C. §9572(a) or with surety.

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1. 10 Del. C. §1318 provides that civil appeals from the Court of Common Pleas shall be taken "in the same manner as is provided by law as to causes tried before justices of the peace". Civil appeals from justices of the peace courts are governed by 10 Del. C. §§9571 and 9572, the latter of which concerns us here.

The defendant posted only a cash deposit denominated as a bond. Although we can conceive of no reason why cash is inadequate, the statute rejects it.<sup>2</sup>

Dismissal of this appeal is in line with Delaware precedents. In Williams v. Singleton, Del. Supr., 160 A.2d 376 (1960), we held that noncompliance with the predecessor statute to 10 Del. C. §9571 was fatal to appellate jurisdiction. In Ademski v. Ruth, Del. Supr., 229 A.2d 837 (1967), the transcript failed to show any security on appeal. Because the predecessors to 10 Del. C. §§9571 and 9572 were jurisdictional statutes which required that security be posted, failure to follow them deprived the appellate court of jurisdiction. Appellee's motion to dismiss should have been granted by the lower court.<sup>3</sup> See also, S. & S. Builders v. Eagle Truck Transport, Inc., Del. Super., 130 A.2d 558 (1957).

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2. Appellant argues that the appeal was controlled by Superior Court Rule 72, which as amended in 1977 facially does not require a security bond. However, it is axiomatic that jurisdictional statutes have priority over rules of court:

3. In Ademski, the Court allowed the appellant to amend his defective security because it was felt that his right of appeal should not be defeated by the dereliction of a public officer (there a justice of the peace) who failed to write up the entry of security on his docket. In the present case, no court clerical error created the defect, so the cases are inapposite as to amendment of defective security.

The record indicates that the Common Pleas judge might have required, and by his signature on appellant's "Appeal Bond-Cash" did approve, cash as security in this case. This practice may be widespread in the lower courts, but an erroneous appeal procedure which goes unchallenged does not create a binding precedent. Compliance with statutory jurisdictional requirements is the appellant's responsibility, as no one, not even a judge, may waive them. Dixon v. Delaware Olds, Del. Supr., 396 A.2d 963 at 966 (1978). We have no jurisdiction to permit amendment of the form of security in the present case.

In other states with similar appeal bond statutes, the overwhelming weight of authority is to the effect that cash cannot substitute for a bond as appeal security absent specific authorization by the legislature. See Annot., 65 A.L.R.2d 1137.

Dismissal of an appeal taken in good faith, albeit with improper security, is the harsh but inevitable result where jurisdiction is negated by a statute. An unambiguous statute like 10 Del. C. §9572 leaves no room for judicial construction even when it confounds the equities of a case. Mary A. O. v. John J. O., Del. Supr., 471 A.2d 993 at 995 (1983); A. & P. Stores v. Hannigan, Del. Supr., 367 A.2d 641 at 642 (1976). This statute admits of only two possible findings as to the entry of security: either validity or nullity. Harsh by nature, it requires that the appellant strictly follow it or suffer dismissal. See Mary A. O., 471 A.2d at 995, n. 4.

The requirement of a surety bond and not cash as appeal security is an anachronism much in need of legislative reform. A cash security would fill the function intended of a surety bond at least as well as a surety. The underlying purpose of the appeal bond statutes is to protect the successful litigant and guarantee payment of the judgment. Bernstein v. Burgess Battery Company, Del. Supr., 171 A.2d 914 at 916 (1961). The legislature may also have wished to prevent frivolous appeals, considering that Delaware appellate courts have no discretionary appellate jurisdiction in matters of this type. Del. Const., art. IV, §11 (1)(a); 10 Del. C. §1318. A victorious appellee's judgment would be protected better by the ready reserve of a cash security than by the pledge of a surety whose solvency

may later be in doubt. And an appellant would be discouraged equally well from bringing a frivolous appeal by the requirement of either a surety bond or a cash security.

We can envision cases where the rigid dictates of 10 Del. C. §9572, together with the recurrent practice of acceptance of a "cash bond" by the lower courts, would unjustly force the dismissal of a meritorious appeal.<sup>4</sup> However, if an otherwise valid statute causes or leads to an inequitable result, then it is the sole province of the legislature to correct it.

Public Service Commission v. Wilmington Suburban Water, Del. Supr., 467 A.2d 446 at 451 (1983). A court's duty of fidelity to a valid and plain legislative mandate leaves no alternative even though the result appears anachronistic, and a different course would have been preferable. Monroe Park v. Metropolitan Life Insurance Co., Del. Supr., 457 A.2d 734 at 737 (1983). We commend this problem to the General Assembly for its consideration.

\* \* \*

APPEAL DISMISSED.

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4. Here, we are satisfied that if we had reached the merits this appeal would not have been successful.



STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
820 NORTH FRENCH STREET - 11TH FLOOR  
WILMINGTON, DELAWARE 19801

NORMAN A. BARRON  
CHIEF MAGISTRATE

TELEPHONE (302) 571-2485

POLICY DIRECTIVE 80-027 (SECOND SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE  
ALL SENIOR CLERKS, COURTS OF THE JUSTICES OF THE PEACE

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: JULY 23, 1985

RE: ACCEPTANCE OF CASH AS SECURITY FOR APPEALS IN CIVIL CASES

On June 28, 1985, Governor Michael Castle signed into law Senate Bill No. 22, a copy of which is attached.

In essence, the Bill allows for the posting of cash as security in any civil case appealed from Justice of the Peace Court to Superior Court.<sup>1</sup> A cash deposit may now be accepted in lieu of a surety bond on appeal.<sup>2</sup>

When cash is posted as security, the amount thereof shall be set by the Justice of the Peace who originally heard the civil case in the amount of the judgment plus costs.

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<sup>1</sup>With regard to indigents, please refer to Policy Directive 81-032, dated January 9, 1981, An Indigent's Right To Appeal In Civil Cases.

<sup>2</sup>"Cash" is defined as "Money or its equivalent; usually ready money." Black's Law Dictionary, Revised Fourth Edition, West Publishing Co., p. 272. With the above definition in mind, I interpret the word "cash" to mean United States currency, a certified check, or a money order.

Procedurally, all civil courts shall accept such cash and deposit same to their civil checking funds. Remember, the security must be posted within the 15 day time limit for taking an appeal. Warren Williams Co. v. Giovannozzi, Del.Super., 295 A.2d 587 (1972). On a monthly basis, checks shall be issued against said deposits to the Prothonotary of the applicable County of the Court from where the appeal was taken. A check shall be prepared and forwarded to Superior Court along with the transcript of the case, when feasible.

A notation shall be noted on each forwarded check as to the case number and the parties thereto so that a proper disbursement may be credited and disbursed pending the resolution of the appeal in Superior Court.

NAB:pn

Attachment

cc: The Honorable Daniel L. Herrmann  
The Honorable Margo Ewing Bane  
The Honorable Emily G. Morris  
The Honorable Lynn W. Moore  
Michael E. McLaughlin  
Files



DELAWARE STATE SENATE

133RD GENERAL ASSEMBLY

SENATE BILL NO. 22

AS AMENDED BY

SENATE AMENDMENT NO. 1

JUN 28 1985

65

40

AN ACT TO AMEND CHAPTER 95, PART VII, TITLE 10 OF THE DELAWARE CODE RELATING TO COURTS AND JUDICIAL PROCEDURE; AND PROVIDING FOR THE USE OF CASH AS SECURITY ON APPEAL

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §9571, Chapter 95, Part VII, Title 10 of the Delaware Code by adding thereto the following new subsections:

"(e) On appeal, a cash deposit may be made in lieu of a bond with security. When a cash deposit is made in lieu of a bond on appeal, the cash deposit shall be retained until the final determination of the cause, and shall be subject to the lien of the judgment appealed from and costs, interest thereon, and the costs of the appeal."

Section 2. Amend §9572, Chapter 95, Part VII, Title 10 of the Delaware Code by striking the title of said section, and substituting in lieu thereof the following:

"§9572. Bond With Surety; Form"

Section 3. Amend §9572, Chapter 95, Part VII, Title 10 of the Delaware Code by striking the ninth word ("appeal") of subsection (a), and substituting the words "appeal with surety bond" in lieu thereof.

Section 4. Amend §9572, Chapter 95, Part VII, Title 10 of the Delaware Code by striking the words "the entry" as the same appear in subsection (b), and substituting the words "Where a bond with surety is used as security on the appeal, the entry" in lieu thereof.



STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
820 NORTH FRENCH STREET, 11TH FLOOR  
WILMINGTON, DELAWARE 19801

NORMAN A. BARRON  
CHIEF MAGISTRATE

TELEPHONE: (302) 571-2485

POLICY DIRECTIVE 80-027 (THIRD SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE  
ALL CLERKS OF THE COURT, JUSTICE OF THE PEACE COURTS

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: OCTOBER 15, 1985

RE: ACCEPTANCE OF CASH AS SECURITY FOR APPEALS IN CIVIL CASES

As stated in Policy Directive 80-027 (Second Supplement), dated July 23, 1985, newly enacted legislation has been signed allowing for the posting of cash in lieu of surety bond in civil appeals from Justice of the Peace Courts to Superior Court.<sup>1</sup>

As a result of discussions between the New Castle County Prothonotary and this Office, the following revised procedure is hereby established, effective immediately:

All Civil Courts shall accept such cash and deposit same to their civil checking funds.<sup>2</sup> Remember, the security must be

1

It is suggested that bond be set in the amount of the judgment plus Court costs, plus 20% of the judgment to cover the post-judgment interest that will normally accrue during the appeal period.

2

Proceeds from the posting of cash posted for civil appeals shall be retained in the civil checking account and should not be forwarded to the State Treasurer in connection with the monthly cash collection reports.



posted within the 15 day time limit for taking an appeal. Warren Williams Co. v. Giovannozzi, Del.Super., 295 A.2d 587 (1972).

Assuming the appeal taken from Justice of the Peace Court is perfected in Superior Court, Superior Court personnel will notify the applicable Justice of the Peace Court to forward the bond posted to the Prothonotary of the appropriate County. This will officially end Justice of the Peace Court involvement with the case, since the case would then be within the jurisdiction of the Superior Court. At the time cash is posted for appeal, the appellant shall complete a copy of the form which is attached hereto as Exhibit B. The Justice of the Peace Court shall retain a copy in the file and forward the original to the Prothonotary as part of the transcript.

Assuming the appeal is not perfected in Superior Court, the Justice of the Peace Court continues to have jurisdiction

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3

A sample notice is attached hereto as Exhibit A.

4

Superior Court Rule 3(c) states:

"(c) Appeals De Novo. In appeals where the action is tried de novo, an action is commenced in the Superior Court by the appellant filing with the Prothonotary a praecipe and a certified transcript of the record within 20 days of the date of the allowance of the appeal. When the appellant is the party having the duty of filing the complaint or other first pleading on appeal, he shall file such pleading with praecipe and the transcript of the record. When the appellee is the party having the duty of filing the complaint or other first pleading on appeal, he shall serve a copy of such pleading within 20 days after service of the process on appeal, or if he has not been served, within 40 days after the date of the process, and thereafter the pleadings shall proceed as in other actions."

5

Copies of Exhibit B should be run off as needed until such time as printed forms are distributed to the various civil courts.

over the case and therefore over the cash bond that was posted.

In this connection, 10 Del.C., §§9574 and 9575 are pertinent:

"§9574. Execution upon striking of appeal.

(a) Whenever an appeal is struck off, the justice shall, upon application of the creditor, issue execution upon the judgment with the costs on the appeal added, against both defendant and sureties, as is provided in §§9547 and 9548 of this title, respecting other sureties of record.

(b) If it appears by the return to such execution that no goods can be found sufficient to satisfy the same or any balance thereof exceeding \$5, besides interest and costs, the appellee, or his executors or administrators may file a duly certified transcript of the docket entries of the judgment and execution with the Prothonotary of the Superior Court in the county where such judgment was given. The Prothonotary shall enter in his judgment docket the name of the party and sureties, the amount of the judgment, and by what justice rendered, the time from which interest runs, and the amount of the costs, with the true date of such filing and entry, and such judgment so transferred shall from that date become and be a lien on all the real estate of the debtor and the surety in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as judgments of the Court.

(c) Any joint debtor or surety shall be entitled to the remedies provided by subchapter II of Chapter 77 of Title 18."

"§9575. Abatement and dismissal.

(a) If an appellant does not duly enter his appeal in the Superior Court, it shall be abated; and on production of the Prothonotary's certificate, under seal, made after the next term of the Court following the appeal, showing that it has not been regularly entered, the justice of the peace shall strike off the appeal.

(b) If after entering an appeal, the appellant neglects to prosecute it, or fails to comply with any rule, or makes other default, so that in a like case, in any other suit in Court, a nonsuit, non pros., or judgment by default would

be entered, the Court shall dismiss the appeal, and remit the record to the justice, and give judgment for the respondent for costs; whereupon the justice shall strike off the appeal."

Thus, should the appeal not be perfected, the appeal is struck off and the case is retained within the jurisdiction of the Justice of the Peace Court.

Under these circumstances, the judgment creditor may file execution in Justice of the Peace Court for the cash that was posted for the appeal. Before the proceeds of any cash appeal bond is disbursed, the Court shall set and hold a hearing so that a proper disbursement of the bond proceeds may be made.

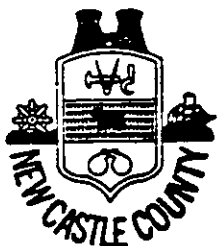
All Justice of the Peace Court civil cases that are appealed and where cash has been posted as security shall be placed in a suspense file. This file shall be reviewed by the Clerk of the Court on a monthly basis to track the cases and the cash posted as bond. Any case inactive for more than 6 months, that is, where the cash bond has not been sent to the Prothonotary, should be researched and status notices sent out to the parties involved.

The contents of this Policy Directive supersedes the contents of all previous Policy Directives which are inconsistent herewith.

NAB:pn

Attachments

cc: The Honorable Margo Ewing Bane  
The Honorable Emily G. Morris  
The Honorable Lynn W. Moore  
John R. Fisher  
Michael E. McLaughlin  
Elizabeth O. Richeson  
Files



# NEW CASTLE COUNTY OFFICE OF THE PROTHONOTARY

Margo Ewing Bane  
Prothonotary

Exhibit A

Public Building, 11th and King Streets  
Wilmington, Delaware 19801

(302) 571-7570

## MEMORANDUM

TO: Justice of the Peace Court No. \_\_\_\_\_

FROM: Margo Ewing Bane  
Prothonotary

RE: Appeal to Superior Court

\_\_\_\_\_ vs. \_\_\_\_\_

J. P. Case No. \_\_\_\_\_

Superior Court Case No. \_\_\_\_\_

DATE:

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The above referenced appeal was filed in Superior Court today. Please forward the cash bond to the Prothonotary of New Castle County, Public Building, 11th & King Streets, Wilmington, DE 19801, with a copy of this letter attached.

MEB:BR/dcb

EXHIBIT B

IN THE COURTS OF THE JUSTICES OF THE PEACE  
OF THE STATE OF DELAWARE  
IN AND FOR \_\_\_\_\_ COUNTY

Court No. \_\_\_\_\_

|           |   |                       |
|-----------|---|-----------------------|
| _____     | ) |                       |
| Plaintiff | ) |                       |
|           | ) |                       |
| v.        | ) | J.P. Civil Action No. |
|           | ) |                       |
|           | ) | _____                 |
| _____     | ) |                       |
| Defendant | ) |                       |

CASH BOND

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,  
\_\_\_\_\_ appeals and makes a cash deposit  
in the amount of \$ \_\_\_\_\_ to be retained until the final  
determination of the cause. Said cash shall be subjected to the  
lien of the judgment appealed from and cost, interest thereon and  
the costs of the appeal.

\_\_\_\_\_  
Signed  
Appellant



STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
820 NORTH FRENCH STREET, 11TH FLOOR  
WILMINGTON, DELAWARE 19801

NORMAN A. BARRON  
CHIEF MAGISTRATE

TELEPHONE: (302) 571-2485

POLICY DIRECTIVE 80-027 (FOURTH SUPPLEMENT)

TO: ALL JUSTICES OF THE PEACE, STATE OF DELAWARE  
ALL CLERKS OF THE COURT JUSTICE OF THE PEACE COURTS

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: OCTOBER 22, 1985

RE: ACCEPTANCE OF CASH AS SECURITY FOR APPEALS IN CIVIL  
CASES

In Policy Directive 80-027 (Third Supplement), dated October 15, 1985, it was stated that when an appeal is not perfected in Superior Court, that Court will dismiss the appeal upon motion. The appeal, under such circumstances, is "struck off" to use the words found in 10 Del.C., §9574(a). The Third Supplement indicated that when a appeal is struck off, the judgment creditor may file execution in the Justice of the Peace Court for the cash that was posted for the appeal. Authority for such a proposition is found in the case of Bayly v. Betts, Del.Supr., \_\_\_ A.2d \_\_\_, No. 202, 1984, decided April 22, 1985, a copy of which is attached hereto. Although the Bayly case involved a surety bond rather than a cash bond, the rationale for the decision in Bayly would apply to a cash bond situation as well.

HORSEY, Justice:

This appeal involves the right of a Justice of the Peace Court judgment creditor to seize and sell personal property of the judgment debtor's surety on an appeal bond following dismissal of the debtor's appeal.

On June 8, 1983, plaintiff Kenneth R. Betts (appellee) was awarded a judgment of \$560 and costs against defendant Robert A. Bayly (appellant) following trial of a trespass action in Justice of the Peace Court of the State of Delaware, No. 17.

On June 17, 1983, defendant Bayly initiated a timely appeal to Superior Court by securing a transcript of the proceeding in the Justice of the Peace Court and an appeal bond, co-signed as surety by defendant's father, A. Gordy Bayly (hereafter "surety"), in compliance with 10 Del. C. § 9571.<sup>1</sup> However, the notice of appeal with

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<sup>1</sup> The appeal bond essentially complied with the requirements of § 9572, which provides, in pertinent part:

" . . . the said A.B. [defendant] appeals and C.D. becomes surety in the sum of . . . Dollars, that the said appeal shall be prosecuted with effect and also that any judgment which shall be rendered against the said [defendant/judgment debtor] . . . upon the said appeal shall be satisfied, and the said [surety] hereby authorizes and empowers the Superior Court . . . to give judgment against me, the said [surety] for the same amount as shall be given against the said [defendant/judgment debtor] and such judgment, if and when entered, shall be a lien upon my real estate and may be collected and treated as any other judgment in said Superior Court."



accompanying surety bond and transcript was not timely docketed in Superior Court within the 20 days of date of allowance of the appeal, contrary to Rule 3(c) of the Superior Court Rules of Civil Procedure. On October 21, 1983, on plaintiff's motion, Superior Court dismissed defendant Bayly's appeal for lack of jurisdiction.

In November, 1983, on plaintiff's application, a writ of fi fa attachment was issued by Justice of the Peace Court No. 17 and levy was made on certain goods and chattels of the surety, for sale to satisfy plaintiff's judgment against defendant. Following hearing on motion of surety to quash the levy, the motion was denied and the levy was sustained. The Court reasoned that 10 Del. C. § 9572 was the "only" applicable statute; and because defendant had failed to prosecute the appeal with effect, "therefore both defendant and surety are liable in the execution process."

On petition of both defendant and surety for writ of certiorari to Superior Court, the Court affirmed the judgment of the Justice of the Peace Court. The Court improperly failed to state the reasons for its decision and merely adopted various arguments of the appellee. This practice of the Court has been previously criticized and has resulted in the vacating of a judgment and remand. See B.E.T. v. Board of Adjustment of Sussex County, Del. Supr., No. 214, 1984, Per Curiam, (Feb. 6, 1985) and the cases

cited therein. However, in this case we decline to do so given the adequate record before the Justice of the Peace Court and that Court's fully reasoned decision.

On appeal to this Court, the debtor-defendant and his surety assert that both the Justice of the Peace Court and Superior Court err in finding in 10 Del. C. § 9572 authority to execute on the surety's assets to satisfy the judgment against defendant. We conclude that the statutory authority for execution against the surety must be more broadly stated to derive from 10 Del. C. § 9574(a) in conjunction with § 9572. Therefore, we affirm on a somewhat different rationale than that of the Court below.

Since the appeal to Superior Court did not proceed to judgment against defendant, neither § 9572, standing alone, nor § 9573<sup>2</sup>, both of which appellants rely upon,

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<sup>2</sup> 10 Del. C. § 9573, in pertinent part, provides:

"(c) If a judgment is rendered against an appellant, or his executors or administrators, the Prothonotary shall enter judgment against the sureties or their executors or administrators for the amount entered against the appellant, or his executors or administrators, and as a part of the same judgment. A judgment so entered shall from that date become a lien on all of the real estate of the surety in the county, in the same manner and as fully as other judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as other judgments in that Court."

controls this case. Therefore, no judgment could be entered against surety in Superior Court by virtue of § 9572 and the appeal bond binding surety. However, A. Gordy Bayly, by becoming surety for the defendant, subjected himself to the execution process of the Justice of the Peace Court by virtue of 10 Del. C. § 9574(a).<sup>3</sup>

10 Del. C. § 9574(a) does control the instant case since the defendant's appeal to Superior Court was dismissed for lack of jurisdiction. Applying the somewhat archaic language found in § 9574(a), defendant's appeal was, in effect, "struck off" -- as though no appeal had been taken. That having occurred, under the unambiguous language of § 9574, "the justice shall, upon application of the creditor, issue execution upon the judgment . . . against both defendant and sureties. . . ."

We find untenable defendant's construction of § 9574(a) as not becoming operable until an appeal to Superior Court goes to judgment. Section 9574 clearly controls execution process out of the Justice of the Peace Court following remand of a stricken appeal. Section

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<sup>3</sup> 10 Del. C. § 9574(a) provides:

"Whenever an appeal is struck off, the justice shall, upon application of the creditor, issue execution upon the judgment with the costs on the appeal added, against both defendant and sureties, as is provided in §§ 9547 and 9548 of this title, respecting other sureties of record."

9574(a) becomes operable "[w]henever an appeal is struck off." The provisions of § 9574, along with § 9575, derive from § 4524 of the 1935 Code. Under § 4524, upon dismissal of an appeal for any reason and return of the record to the Justice of the Peace Court, "the justice shall strike off the appeal [and] [w]henever an appeal shall be so struck off, the justice shall, upon application of the creditor, issue execution upon the judgment . . . against both defendant and sureties. . . ." Code 1935, § 4524. Woolley on Delaware Practice, § 1434.

Appellants also seek to invoke the "abatement" provisions of 10 Del. C. § 9575 as controlling their appeal to Superior Court and the language of § 9575(a).<sup>4</sup> They suggest that Superior Court was not permitted to enter its summary order of dismissal of the appeal but instead was required to retain jurisdiction over the appeal until "the next term of the Court following the appeal." Abatement is a form of dismissal by operation of law (most commonly involving the death of a party) that has no relevance to the basis upon which this appeal was dismissed by Superior Court. See Woolley, supra, § 1417. Hence, to the extent

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<sup>4</sup> 10 Del. C. § 9575(a) provides:

"(a) If an appellant does not duly enter his appeal in the Superior Court, it shall be abated; and on production of the Prothonotary's certificate, under seal, made after the next term of the Court following the appeal, showing that it has not been regularly entered, the justice of the peace shall strike off the appeal."