

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

D & F Properties,	:	
	:	C.A. No. 06-03-0040AP
Plaintiff below/ Appellee.	:	
	:	
v.	:	
	:	
Cindy Bransfield,	:	
	:	
Defendant below/ Appellant,	:	
	:	

Submitted: April 5, 2006

Decided: April 5, 2006

**Decision on appeal from the Justice of the Peace Court.**

**Appellant's appeal is dismissed for lack of jurisdiction.**

**John F. Brady, Esquire, Brady, Richardson, Beauregard and Chasanov, 10 East Pine Street, Post Office Box 742, Georgetown, Delaware 19947, Attorney for Appellee.**

**Cindy Bransfield, 1011 North Walnut Street, Milford, Delaware, 19963, Pro Se Appellant.**

**Trader, J.**

In this civil appeal from the magistrate's order denying appellant's motion to vacate a default judgment, I hold that this Court has no jurisdiction to consider an appeal of a summary possession proceeding. Accordingly, the appeal is dismissed.

The procedural posture of the case is as follows: On December 29, 2005, D & F Properties filed a civil action in Justice of the Peace Court No. 16 for possession of the property as well as back rent in the amount of \$2,520.00. On February 1, 2006, a default judgment was entered against the defendant in the amount of \$3,640.00, plus the possession of the property. On February 9, 2006, the defendant filed a motion to vacate the default judgment, and on February 24, 2006, the Justice of the Peace Court denied the motion to vacate the default judgment, holding the following:

The movant admitted she was late for original court date and she owed a sum of money to the plaintiff. The Court finds that she had no excusable reason for not appearing on time for the hearing and if she had appeared, there is a reasonable likelihood the plaintiff would have prevailed.

A further application to set aside default judgment was denied by the magistrate on March 2, 2006. The defendant filed a praecipe and notice of appeal with this Court on March 7, 2006. Thereafter, the Court granted her permission to proceed in *forma pauperis* and she filed a counterclaim with this Court on March 20, 2006.

The plaintiff contends that the appeal should be dismissed for lack of subject matter jurisdiction. The plaintiff is correct. The Justice of the Peace Court has jurisdiction over summary possession proceedings pursuant to 25 Del.C. Sec. 5701. Under 25 Del.C. Sec. 5717, litigants in summary possession proceedings have a right to a trial by *de novo* before a special court comprised of three justices of the peace. However, Sec. 5717 does not confer a right of appeal to the Court of Common Pleas.

The present landlord/tenant code was adopted in 1972 and provides for a summary proceeding for the prompt settlement of the right of possession. 58 Del. Laws Ch. 472 Sec. 5102. The Delaware Supreme Court has held that the judgment of the magistrate in a summary proceeding for possession is final and non-appealable. *Bomba's Restaurant and Cocktail Lounge v. Lord De La Warr Hotel*, 389 A.2d 766 (Del. 1978). In *Capano Investments v. Levenberg*, 564 A.2d 1130 (Del. 1989), the Supreme Court held that 25 Del. C. Sec. 5717 does not confer a right of appeal to Superior Court in summary possession proceedings, particularly in light of the language regarding "final judgment." Although there is authority that the rent claim can be severed from the summary possession proceeding and appealed directly to this Court, under *Seaford Doughnut v. Wheeler*, 1993 WL 331090 (Del. Super. July 28, 1993), the defendant is seeking to appeal the summary possession proceeding as well as the rent claim to this Court.

In the case before me, this appeal was taken to this Court from the magistrate's decision denying a motion to vacate a default judgment. Generally, this Court may review the magistrate's reasons for denying a motion to vacate a default judgment under *Ney v. Polite*, 399 A.2d 527 (Del. 1979). But *Ney v. Polite* is inapposite because *Ney* applies to appeals under 10 Del. C. Sec. 9570(a).

Since I have determined that this Court has no jurisdiction to hear this appeal, the appeal is hereby dismissed.

**IT IS SO ORDERED.**

---

**Merrill C. Trader**  
**Judge**