

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

Dorothy Spencer,	:	
	:	C.A. No. 06-02-0099AP
Defendant below/	:	
Appellant,	:	
	:	
v.	:	
	:	
Schuster Management Corp.,	:	
	:	
Plaintiff below/	:	
Appellee.	:	

Submitted: April 28, 2006

Decided: April 28, 2006

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

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

**Timothy A. Reisinger, Esquire, 19 S. State Street, Dover, Delaware 19901, Attorney for Appellant.**

**William W. Pepper, Sr., Esquire, Schmittinger & Rodriguez, 414 S. State Street, Dover, Delaware 19901, Attorney for Appellee.**

**Trader, J.**

In this civil appeal from the Justice of the Peace Court, I hold that the appeal must be dismissed for lack of jurisdiction.

The relevant facts are as follows: On September 9, 2005, the appellee, plaintiff-below, filed a complaint in the Justice of the Peace Court for summary possession as well as rent due. By the time of the trial, the appellant had relinquished possession of the rental unit and the civil action was transformed into a debt action for accrued rent. Following the trial on December 7, 2005, judgment was entered on behalf of the appellee. On December 22, 2005, the appellant filed a motion to amend the judgment, and on February 15, 2006, appellant's motion was denied by the magistrate. The appellant filed a notice of appeal and praecipe with this Court on February 24, 2006, and the appellee has filed a motion to dismiss the appeal for lack of jurisdiction.

The appellee contends that the appeal should be dismissed because it was not perfected within 15 days from the date of the judgment below. I agree.

A civil appeal from the Justice of the Peace Court to the Court of Common Pleas must be taken within 15 days of the final order, ruling, decision or judgment. 10 Del.C. 9571(b). An untimely motion for review of trial or reargument does not extend the time for taking an appeal. *Fisher v. Biggs*, 284 A.2d 117 (Del. 1971); *Preform Building Components v. Edwards*, 280 A.2d 697 ( Del. 1971). In the Justice of the Peace Court post-trial motions must be filed within 10 days. Justice of the Peace Court Civil Rule 62 and 59. Since appellant's motion in the court below was filed after the 10 day period, her untimely motion does not extend the time for filing an appeal.

It is well settled that Sec. 9571 is a jurisdictional statute governing the right of appeal from the Justice of the Peace Court. *State ex rel. Caulk v. Nichols*, 281 A.2d 24 (Del.1971). When an appellant violates the statute, the Court loses subject matter

jurisdiction to hear the appeal. *Williams v. Singleton*, 160 A.2d 376 (Del. 1960). The appeal must be perfected before the expiration of fifteen days. *Dzedzej v. Prusinski*, 259 A.2d 384 (Del. Super. 1969). Since the decision of the Court below was made on December 7, 2005 and the appeal was filed in this Court on February 24, 2006, the appeal has not been perfected under the statute.

The appellee also contends that the appeal should be dismissed because the appellant failed to file the first pleading under Common Pleas Civil Rule 72.3. The appellee is incorrect on this contention. Under appellee's contention, the Court should review the lower court's denial of the appellant's post-trial motion. Under *Griffin v. Carlson*, Del. Super. Lexis 386 (Del. Super. Oct. 15, 1991) this court cannot review a magistrate's denial of a motion for a new trial.

The appellant contends that the error of the clerk in the Justice of the Peace Court in mailing the written decision to the wrong address should not defeat the appellant's right to appeal. It is true that the dereliction of a public officer does not defeat the appellant's right to an appeal. *Ademski v. Ruth*, 229 A.2d 837 (Del. 1967). The appellant contends that the Judge's ruling was mailed to the wrong address and by the time she received the Order, it was too late to file a motion. But the decision was rendered in open court and the time of appeal runs from the date of that decision. The appellant was aware of the decision and consequently could have filed her post-judgment motion in a timely manner.

The appellant obtained an application for a post-trial motion from the clerk between December 7 and December 16, 2005, and therefore, she could have filed her motion in a timely manner. Although the post-trial motion is dated December 16, 2005, and the appellant testified it was filed on that date, I accept the date that it was stamped in

by the clerk. The motion was received by the clerk of the Court on December 22, 2005, and clocked in on that date. Court records are entitled to the presumption of regularity. *Weaver v. State*, 2005 Del. Lexis 450 (Nov. 8, 2005). This presumption of regularity of the court records has not been overcome by the appellant's testimony. Furthermore, there was no evidence that the clerk of the court misled the appellant concerning the filing of the motion. The late filing of the motion was not the conduct of a reasonable and prudent person.

Since the appellant failed to perfect her appeal within 15 days as required by Sec. 9571, this Court has no jurisdiction to consider this appeal. Accordingly, the appeal is dismissed for lack of jurisdiction.

**IT IS SO ORDERED.**

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