

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

EAST POINT APARTMENTS,)	
)	
Plaintiff-Below/Appellee)	
)	
v.)	C.A. No. CPU4-11-005517
)	
SONYA JONES,)	
)	
Defendant-Below/Appellant.)	

Submitted: October 12, 2011
Decided: October 26, 2011

***DECISION ON APPEAL
FROM THE JUSTICE OF THE PEACE COURT***

APPEAL DISMISSED WITHOUT PREJUDICE and REMANDED

East Point Apartments, Attn: Donna Clementoni, 2610 Philadelphia Pike,
Claymont, DE 19703, Plaintiff-Below/Appellee.

Sonya Jones, 2610 Philadelphia Pike, Claymont, DE 19703, Defendant-
Below/Appellant.

ROCANELLI, J.

This is an appeal from the Justice of the Peace Court denial of the Defendant-Below/Appellant's ("Defendant") motion to vacate a default judgment awarding summary possession in a landlord/tenant proceeding. This Court concludes that the Court of Common Pleas does not have subject matter jurisdiction over an appeal from the Justice of the Peace Court in a case involving a summary proceeding for possession of real property. Accordingly, this civil appeal is dismissed without prejudice and remanded to the Justice of the Peace Court for further consideration.

PROCEDURAL POSTURE

On July 18, 2011, Plaintiff-Below/Appellee East Point Apartments ("Plaintiff") filed a landlord/tenant suit against Defendant in the Justice of the Peace Court, seeking summary possession of a residential rental unit and \$ 838.50 for unpaid rent and late fees (JP13-11-009824). Trial was set for August 29, 2011. The certified transcript from Justice of the Peace Court filed on appeal reflects that the Court sent notice to the parties. Defendant failed to appear at trial, and the Justice of the Peace Court entered a default judgment for Plaintiff. Possession was awarded, as well as \$ 403.50 in damages and \$ 40 court costs. Defendant did not appeal the court's default judgment order to a three judge panel.

On September 9, 2011, Defendant filed a motion to vacate the default judgment. That same day, the Court granted Defendant's request for a hearing and

scheduled the hearing for September 28, 2011, with “trial to follow if granted.” On September 28, 2011, the Justice of the Peace Court denied Defendant’s motion after Defendant failed to appear and memorialized that decision by written Order (“September 28 Order”), which states:

SEPTEMBER 28, 2011. ONLY PLAINTIFF APPEARED FOR A HEARING ON DEFENDANT’S MOTION. DEFENDANT’S MOTION IS DENIED AS DEFENDANT FAILED TO APPEAR TO PRESENT SAID MOTION TO THE COURT.

Defendant did not seek reargument of the September 28 Order ruling on the motion to vacate, nor did Defendant appeal the matter to a three judge panel at the Justice of the Peace Court. On October 12, 2011, Defendant filed a notice of appeal, praecipe and a hand-written letter with the Court of Common Pleas, which this Court interprets as a motion for relief from judgment awarding possession.

DISCUSSION

Defendant filed this appeal seeking a review of the decision denying Defendant’s motion for relief from a default judgment awarding possession and related monetary damages in a residential landlord/tenant case. Thus, the threshold inquiry on appeal is whether this Court has subject matter jurisdiction to hear a motion for relief in a case where the underlying default involves a possession case. This Court does not have jurisdiction to hear Defendant’s appeal.

Under Delaware statutory law, the Justice of the Peace Court has jurisdiction over summary possession proceedings. *25 Del. C. § 5701*. Litigants in summary

possession hearings have a right to a trial *de novo* before a special court comprised of three justices of the peace, a three judge panel. 25 Del. C. § 5717. The statute does not confer a right of appeal to the Court of Common Pleas. While it is true that 10 Del. C. § 9570(a) provides a right of appeal to this Court from judgments in the Justice of the Peace Court, the Delaware Supreme Court has consistently held that such right of appeal has “never been construed to apply to an action for possession.”¹

Applying the foregoing principles to the record facts, this Court finds that it lacks subject matter jurisdiction to hear this appeal. The Court considered the record below, notice of appeal, certified docket and hand-written note submitted therewith. This case primarily involves an action for possession, despite the dual claim seeking monetary relief for unpaid rent. As such, per Delaware statute, any appeal from the September 28 Order must be directed to a three judge panel in the Justice of the Peace Court. Consequently, this Court lacks subject matter jurisdiction to consider the merits of Defendant's appeal.

This Court is nonetheless cognizant of the potential for confusion by litigants who are wading through the cloudy waters of the appeal process, especially self-represented litigants. The Court further observes that the September

¹ *Bomba's Restaurant & Cocktail Lounge v. Lord De Law Warr Hotel*, 389 A.2d 766 (Del. 1978); *see also Jarmon v. Owner's Mgmt Co.*, 2004 WL 1859988 (Del. Com. Pl. May 17, 2004) (dismissed appeal for lack of subject-matter jurisdiction because action involved a claim for summary possession, despite the fact that the narrow issue on appeal was the magistrate's denial of motion to vacate default judgment).

28 Order advised of the five-day window to appeal a final order in a summary possession matter to a three judge panel but the September 28 Order also states: the "Final Date of Appeal of a Civil Case to the Court of Common Pleas on denial of the motion is 15 days from the date of this order." It is understandable that a self-represented litigant may have been confused. Notwithstanding these observations, this appeal essentially involves a claim for summary possession, and, as such, the statutory framework evidences an express intent by the Delaware legislature that any appeal must be heard by a three judge panel in the Justice of the Peace Court and not by the Court of Common Pleas.

CONCLUSION

For the reasons stated above, the Court hereby orders that the appeal be **DISMISSED WITHOUT PREJUDICE**, and that the matter be **REMANDED** to the Justice of the Peace Court for the State of Delaware for further consideration. The Court further clarifies that nothing in this Order be deemed a determination that, substantively or procedurally, the Defendant has a right to a three judge panel hearing in the Justice of the Peace Court for the State of Delaware.

IT IS SO ORDERED this 26th day of October, 2011.

Andrea L. Rocanelli

The Hon. Andrea L. Rocanelli