

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

John M. Biddle,	:	
	:	C.A. No. 06-02-0108AP
Third Party Defendant below/ Appellant,	:	
	:	
v.	:	
	:	
Eric Mello and Melanie Mello,	:	
	:	
Plaintiff below/ Appellee.	:	

Submitted: February 13, 2007

Decided: February 13, 2007

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of jurisdiction.

John M. Biddle, 1 Woods End Road, Dover, Delaware 19901, Pro Se Appellant.

**Eric and Melanie Mello, 11 West Commerce Street, Harrington, Delaware 19952,
Pro se Appellee.**

Trader, J.

In this appeal from the Justice of the Peace Court, this civil action must be dismissed for violation of the mirror image rule.

The relevant facts are as follows: On September 18, 2006, the plaintiffs, Eric Mello and Melanie Mello, filed a civil action against the defendants, Clara Pinder and James Pinder. On October 26, 2006, a third-party complaint was filed against the third-party defendant, John Biddle. On January 16, 2007, prior to trial, the magistrate granted the defendants' motion to dismiss Clara Pinder and James Pinder from the civil action. Thereafter, a default judgment was entered on behalf of the plaintiffs and against the third-party defendant, John Biddle, for \$6,000.00, plus costs of these proceedings. On January 19, 2007, the third-party defendant filed a motion to vacate the default judgment and this motion was denied by the magistrate. Thereafter, the third-party defendant then filed a notice of appeal and praecipe with this Court. On appeal, the defendant failed to include Clara Pinder and James Pinder as parties to this proceeding .

Common Pleas Rule 73(c) provides as follows: "An appeal to this court that fails to join the identical parties and raises the same issues that were before the court below, shall result in a dismissal on jurisdictional grounds."

Common Pleas Rule 73(c) is a codification of prior case law on the mirror image rule. The mirror image rule is set forth in *McDowell v. Simpson*, 6 Del. 467 (Del. Super. 1857). The rule requires exactness in the number of parties and any variance in the number of parties is deemed fatal to a *de novo* appeal. *Sulla v. Qullen*, 1987 WL 18425, at *1 (Del. Super. Sept. 24, 1987). The effect of the *McDowell* Rule is to deprive this Court of jurisdiction over matters appealed from the Justice of the Peace Court where the number of parties is different on appeal. *Panzer v. Farrall*, 1987 WL 8223, at *2 (Del.

Super. Mar. 3, 1987). The burden to assemble the parties to the appeal should fall on the appellant. *Fossett & Strock v. Dalco Constr.*, 2003 WL 22787844, at *2 (Del. Super. Nov. 24, 2003.). Any variance from the lower proceeding strips this Court of jurisdiction to hear the appeal. *Hicks v. Taggart*, 1999 WL 462375, at *3 (Del. Super. Apr. 12, 1999).

In this case, the third-party defendant is appealing from a decision of the magistrate denying his motion to vacate a default judgment. Under *Ney v. Polite*, 399 A.2d 527 (Del. 1979), there is a right to appeal a Justice of the Peace Court's denial of a request to vacate a default judgment, and the appeal is limited to review of the magistrate's order in denying relief. *Id.* at 529. But *Ney* only allows for a *de novo* review consistent with 10 Del. C. § 9570. *Id.* and the rules of this Court. This Court does not have jurisdiction over an appeal *de novo* from the Justice of the Peace Court when the parties below are not identical to the parties on appeal.

Accordingly, pursuant to Common Pleas Civil Rule 73(c) and the cases interpreting the mirror image rule, this appeal must be dismissed.

IT IS SO ORDERED.

Merrill C. Trader
Judge