

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

January 9, 2006

Joan A. LaBarge
P. O. Box 947
Rehoboth Beach, DE 19971

David C. Hutt, Esquire
Wilson, Halbrook & Bayard
107 W. Market Street
P.O. Box 690
Georgetown, DE 19947

**RE: Joan A. LaBarge, Appellant - Plaintiff
v. John Hensley, Leslie Kates and Sea Air Village, Inc., and
Sun Homes, Appellees - Defendants
C. A. No. 05A-10-001 (THG)**

Dear Ms. LaBarge and Mr. Hutt:

This is the Court's decision as to the appeal of Ms. LaBarge of the Court of Common Pleas' rulings dismissing her appeal from the Justice of the Peace Court. The Court of Common Pleas' decision is affirmed.

Based upon the pleadings of Ms. LaBarge, it would appear that a dispute arose with the Defendants concerning the Defendants' decision not to renew an agreement concerning an R. V. site.

Ms. LaBarge filed suit in Justice of the Peace Court No. 17 in regard to the dispute. The Justice of the Peace Court reached a decision on February 11, 2005 which was adverse to Ms. LaBarge. The written order of the Justice of the Peace Court No. 17 included a notice of appeal rights requiring any appeal to be filed within fifteen (15) days. Ms. LaBarge did not file an appeal to the Court of Common Pleas until March 1, 2005 which was several days past the time for the appeal established by 10 Del. C. §9571.

In the Court of Common Pleas, the Court's Commissioner heard the Defendant's Motion to Dismiss for Jurisdictional Grounds on May 16, 2005. On May 20, 2005, the Commissioner entered his Order. He ruled the appeal was filed too late and should be dismissed. On June 2, 2005, Ms. LaBarge filed a letter objecting to the Commissioner's Proposed Findings of Facts and Recommendation. Ms. LaBarge requested a copy of the transcript of the May 16, 2005 hearing and was informed in writing of its cost. She was advised the transcript would not be made until payment of \$75.00 was submitted. She did not provide for payment of the transcript.

On June 29, 2005 the Court below dismissed the appeal of Ms. LaBarge for her failure to prosecute the appeal and comply with Court of Common Pleas Civil Rule 112(A)(4) which requires that in an appeal from a Commissioner's Recommendation as to a case-dispositive matter, that a transcript of the proceedings before the Commissioner be prepared and filed. Therefore, the Court of Common Pleas Judge dismissed Ms. LaBarge's appeal of the Commissioner's Findings of Fact and Recommendation.

Thereafter, Ms. LaBarge filed an appeal in this Court.

I recognize that Ms. LaBarge is *pro se*. Nevertheless, the Court's Rules must be followed. In her memorandum in support of the appeal filed in this Court, Ms. LaBarge spends the vast majority of her time rearguing the case which she lost in the Justice of the Peace Court. She states that all she wants is for her day in Court. She does not address the procedural and legal issues concerning the reasons why Court of Common Pleas dismissed her appeal. Since the appeal was dismissed for the failure to comply with the rules and procedures of the Court of Common Pleas, that is what Ms. LaBarge should have argued in her appeal in Superior Court.

The Court below did not commit legal error when it applied Civil Rule 112(A)(4) in dismissing Ms. LaBarge's appeal for the failure to prosecute it properly. All judges are sympathetic to the problems faced by *pro se* litigants. But the problems and perils faced by *pro se* litigants does not mean that a separate set of rules should be applied when a person is not represented by an attorney. I note that even had Ms. LaBarge prosecuted the appeal in the Court of Common Pleas by obtaining a transcript, it would not have made any difference to the survival of her case. The Commissioner was clearly correct in determining that the appeal from the Justice of the Peace Court to the Court of Common Pleas was untimely.¹ That fact was fatal to Ms. LaBarge's desire to continue the litigation.

¹*Lenape Associates v. Callahan*, 616 A.2d 1214, *1 (Del. 1992).

Laberge v. Hensley, et al.
Page 3
January 9, 2006

Accordingly, the decision of the Court below is hereby **AFFIRMED**.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary