

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

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|---------------------|---|-----------------------|
| Laurel B. Carlucci, | : | C.A. No. 07-02-0019AP |
| | : | |
| Defendant below/ | : | |
| Appellant, | : | |
| | : | |
| v. | : | |
| | : | |
| James Messick | : | |
| | : | |
| Plaintiff below/ | : | |
| Appellee. | : | |

Submitted: March 1, 2007

Decided: March 1, 2007

Decision on appeal from the Justice of the Peace Court.

Appellant's appeal is dismissed for lack of subject matter jurisdiction.

Laurel B. Carlucci, 18 Sandalwood Drive, #3, Newark, Delaware 19713, Pro Se Appellant.

James Messick, 811 Horse Pen Road, Felton, Delaware 19943, Pro Se Appellee.

Trader, J.

This civil appeal from the Justice of the Peace Court must be dismissed for lack of subject matter jurisdiction. This Court lacks jurisdiction because the parties below are not identical to the parties on appeal.

The relevant facts are as follows: On November 21, 2006, the plaintiff, James Messick, filed a civil action for debt in Justice of the Peace Court 16 against the defendants, Laurel B. Carlucci and George Carlucci. On January 8, 2007, judgment by admission was entered against George Carlucci and judgment by default was entered against Laurel Carlucci. On January 24, 2007, the defendant, Laurel B. Carlucci, filed a motion to vacate the default judgment and the motion was denied by the Court. On February 6, 2007, the defendant, Laurel B. Carlucci, filed a Praecipe, Notice of Appeal, and Petition to Proceed in *Forma Pauperis* with this Court. The Petition to Proceed in *Forma Pauperis* has been granted by the Court. The defendant, Laurel B. Carlucci, failed to include George Carlucci as a party to the appeal in the Notice of Appeal and Praecipe with this Court.

The mirror image rule has been the law of Delaware for over one and fifty years. *McDowell v. Simpson*, 6 Del. 467, 1 Houst. 467 (Del. Super. 1857). The rule requires exactness in the number of parties. *Id.* The effect of the *McDowell* rule is to deprive the Court of Common Pleas of jurisdiction over matters appealed from the Justice of the Peace Court where the number of parties is different on appeal. *Panzer Mgmt. Co. v. Farrall*, 1987 WL 8223, at *2 (Del. Super. Mar. 3, 1987). The burden is upon the appellant to assemble the parties to the appeal. *Fossett & Strock v. Dalco Constr.*, 2003 WL 22787844, at *2 (Del. Super. Nov. 24, 2003).

In order for this Court to have jurisdiction on an appeal *de novo* from the Justice of the Peace Court, the parties below on appeal must be identical in number. *Hicks v. Taggart*, 1999 WL 462375, at *3 (Del. Super. Apr. 12, 1999). Further, any variance from the lower Court proceeding strips this Court of jurisdiction. *Id.*

In the case before me, George Carlucci who was included in the original proceedings, was not included in the appeal. The failure of the defendant, Laurel B. Carlucci, to include George Carlucci as a party to this appeal strips this Court of jurisdiction.

Accordingly, the appeal must be dismissed for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Merrill C. Trader
Judge