

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

Dorothy P. Litzenberg)	
Plaintiff Below\Appellant)	
)	
v.)	Case No. 02-04-189
)	
William D. Albright Sr.)	
Defendant Below\Appellee)	

Dorothy P. Litzenberg
407 Delaware Avenue
Elkton, MD 21921
Plaintiff Below\Appellant

William Albright
700 W. 11th Street
New Castle, DE 19720
Defendant Below\Appellee

**DECISION ON PLAINTIFF BELOW\APPELLANT'S
OBJECTION TO MOTION FOR DISMISSAL**

CURRENT STATUS OF CASE

Dorothy P. Litzenberg, Plaintiff Below\Appellant, (hereinafter "Appellant") filed an "Objection to Motion for Dismissal" on August 26, 2002, that "objects in total to all relief, and in support of all denied relief to the Appellee" (sic). The Court will consider this to be a motion for Reconsideration\Reargument to the Court's Order, dated June 28, 2002, dismissing Appellant's Appeal of Justice of the Peace Court judgment in favor of Appellee, dated April 9, 2002.

FACTS

On April 12, 2002, Appellant filed a timely appeal of the Justice of the Peace Court judgment in favor of William D. Albright Sr., Defendant Below\Appellee (hereinafter “Appellee”). While the appeal was timely, it was incorrect in that the Summons on Appeal filed was the form for a Defendant’s filing of appeal. Also, a Complaint was not filed with the Notice of Appeal as required when Plaintiffs below file appeals de novo, as spelled out in Civil Rule 72.3(a) of the Court of Common Pleas.

Appellee filed a Motion to Dismiss the Appeal on May 29, 2002, stating as grounds for the motion that, “I William Albright believe that I proved my case in JP Court with facts and witnesses.” (The Court notes that pleading a case successfully is irrelevant when an appeal de novo is available to the parties). Appellee filed a Certificate of Service certifying that a copy of the motion was mailed to the Appellant on May 29, 2002. However, the date noticed was June 21, 2002, not June 28, 2002, the actual date of the hearing.

At the hearing on the Motion, on June 28, 2002, confusion reigned. The Appellant was not present and the Court Docket Sheet, following the incorrect heading on the appeal documents, listed the Appellant as “Defendant Below”. When the Court finally determined the proper status of

the parties, the Court noted that the Appellant had failed to file the Complaint with the Notice of Appeal and dismissed the appeal. At that point the Court overlooked the fact that the Appellee had not made the appropriate argument, either in his motion or during the hearing. The Court also overlooked the fact that the Appellant included a copy of the Bill of Particulars filed with the Justice of the Peace Court on March 18, 2002. While not properly filed as a “Complaint” in the Court of Common Pleas, it does contain facts and allegations regarding the matter.

Also, on August 26, 2002, Appellant filed an Objection to Motion for Dismissal, wherein, she stated that “Appellant had no notice of any hearing before Judge Flickinger, and was hospitalized for three weeks, unable to attend any hearing during this time,…”.

ANALYSIS

It appears that, because of Appellant’s hospitalized status at the time in question, she may not have been on notice of the June 28, 2002, hearing on Appellee’s Motion to Dismiss. Also, the date on Appellee’s Certificate of Service was incorrect, although admittedly noticing an earlier date than the actual date.

Also, the Court entered the dismissal order on grounds not raised in Appellee's Motion, the inclusion of the Bill of Particulars notwithstanding.

DECISION

In light of the above, and based on proposition that cases should be decided on the merits of the case, Appellee's Motion for Reconsideration is GRANTED, and the Court's Order of June 28, 2002, dismissing Plaintiff\Below Appellant's appeal de novo is hereby VACATED.

Plaintiff Below\Appellant, Dorothy Litzenberg, shall file a proper Complaint, in compliance with the Court's Civil Rules, within thirty (30) days of the date of this Order.

IT IS SO ORDERED

Dated: January 9, 2003

Judge Joseph F. Flickinger III