

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
KENT COUNTY COURTHOUSE  
DOVER, DELAWARE 19901  
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III  
JUDGE**

January 4, 2011

Kathleen J. Jennings, Esq.  
Aaronson, Collins & Jennings, LLC  
8 East 13<sup>th</sup> Street  
Wilmington, DE 19801

Frederick H. Schranck, Esq.  
Deputy Attorney General  
Department of Transportation  
P O Box 778  
Dover, DE 19903

RE: Mark Irwin v. Delaware Department of Transportation, Division of  
Motor Vehicles  
C.A.No.: CPU5-10-001766  
Decision on Dismissal of Appeal

Dear Ms. Jennings and Mr. Schranck:

This matter involves the appellant's civil appeal from a suspension of his driver's license by the appellee pursuant to 21 *Del. C.* Section 2734 and Court of Common Pleas Civil Rule 72.1. After reviewing the file and record for this matter, the Court requested the position of the parties as to whether it had jurisdiction over this matter since the appeal did not appear to be timely filed. After reviewing the parties' written arguments, this correspondence constitutes the Court's decision on this issue.

Court of Common Pleas Civil Rule 72.1(b) provides the process to be used when appealing the suspension of a driver's license by the Division of Motor Vehicles. The rule states, in pertinent part, that "[i]f no time is prescribed by statute, the notice of appeal shall be filed within fifteen days from entry of the final judgment, order, or disposition from which the appeal is permitted by law." The appeal for this matter has been made pursuant to 21 *Del. C.* § 2734. That section of the Delaware Code does not provide a time by which an appeal must be filed. Thus, Rule 72.1(b) provides the appeal period for this matter, which is fifteen days from the entry of the final judgment, order or disposition from which the appeal is being taken.

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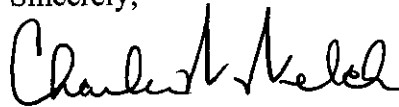
The disposition from which this appeal has been taken was entered on June 21, 2010. The appellant's appeal was filed with this Court on July 26, 2010. Thirty-one days elapsed between the appellee's decision and the entry of its final disposition and the filing of the appellant's appeal with this Court. Therefore, the appeal was not timely filed pursuant to Court of Common Pleas Civil Rule 72.1(b).

Appellant contends that the Court should still consider his appeal because the appellee lacked subject matter jurisdiction to enter an order suspending his license and that lack of subject matter jurisdiction may be challenged at any time. Appellee counters that the appellant's failure to timely file his appeal deprives the Court of Common Pleas of any jurisdiction of the matter.

While the appellant is correct that subject matter jurisdiction may be challenged at any time, this Court may only consider such an argument if it has jurisdiction over the matter. Since the appellant failed to perfect his appeal in this matter in a timely manner, this Court does not have jurisdiction over it. *Perform Building Components, Inc. v. Edwards*, 280 A.2d 697, 698 (Del. Super. 1971); *Dzedzej v. Prusinski*, 259 A.2d 384, 386 (Del. Super. 1969). Therefore, the appellant's appeal is dismissed for lack of jurisdiction.

**IT IS SO ORDERED.**

Sincerely,



Charles W. Welch, III

CWW:mek