

This matter is before the Court on appeal from the Justice of the Peace Court. Trial was held in the Justice of the Peace Court on August 11, 2011. On September 6, 2011, the Justice of the Peace Court entered judgment in favor of Mid-Atlantic Systems of DPN, Inc. (“Defendant”). Specifically, the Court held that “[p]laintiff did not present any testimony that would prove by a preponderance of the evidence that Defendants breached the contract by selling them more of a water control system than they needed.” The Justice of the Peace Court Order granting judgment in favor of Defendant did not address any other causes of action besides breach of contract.

On September 21, 2011, Ronald Deysher and Ann Marie Deysher (“Plaintiffs”) filed a Notice of Appeal and Complaint on Appeal in the Court of Common Pleas. The Complaint does not specify any particular cause of action, but rather alleges that there was a contract between the parties for the installation of a basement waterproofing system, that the system did not work and as a result Plaintiff’s basement was damaged. Further, the Complaint alleges that Plaintiff relied on Defendant’s expertise in selecting an appropriate basement waterproofing system, and Defendant instead sold Plaintiff a basement waterproofing system that was far more extensive and expensive than necessary to correct the water problem. The Notice of Appeal provides, in whole:

COMES NOW, Plaintiffs-Below/Appellees, RONALD DEYSHER and ANN MARIE DEYSHER, and hereby give notice pursuant to 10 Del. C. §9571, of an appeal of the decision of the Justice of the Peace Court No. 9, by the Honorable Kathy S. Gravell, Civil Action No. JP9-11-000712, dated September 6, 2011.

Moreover, Plaintiffs did not file a Notice of Appeal in the Justice of the Peace Court at this time.

On November 14, 2011, Defendant filed the instant Motion to Dismiss. In the Motion, Defendant argued that the appeal should be dismissed for the following reasons: (1) the Notice of Appeal does not comply with Court of Common Pleas Civil Rule 72.3(c) because it does not state the grounds for the appeal; (2) Plaintiffs failed to comply with Court of Common Pleas Civil Rule 72.3(e) because Plaintiffs did not file a Notice of Appeal in the Justice of the Peace Court; (3) the Complaint on Appeal violates Court of Common Pleas Civil Rule 72.3(f), the mirror image rule, because Plaintiffs raised new factual allegations and requested additional remedies not requested in the Complaint filed in the Justice of the Peace Court; and (4) the Complaint on Appeal fails to state a claim upon which relief can be granted as required by Court of Common Pleas Civil Rule 12(b)(6).

On December 5, 2011, Plaintiffs filed a Response to the Motion to Dismiss. In this Motion, Plaintiffs admitted that the Notice of Appeal filed on September 21, 2011 in the Court of Common Pleas does not comply with Court of Common Pleas Civil Rule 72.3(c). Plaintiffs argued that they filed a corrected Notice of Appeal with the Court on December 5, 2011. However, the Court's docket reflects that no such corrective filing was in fact made. Further, Plaintiffs admitted that their appeal was not previously perfected because they did not file a Notice of Appeal in the Justice of the Peace Court as required by Court of Common Pleas Civil Rule 72.3(e). However, Plaintiffs noted that they filed a Notice of Appeal in the Justice of the Peace Court on December 5, 2011. The Justice of the Peace Court docket reflects that on December 5, 2011, Plaintiffs did file a Notice of Appeal with the Justice of the Peace Court. The Notice of Appeal filed December 5, 2011 in the Justice of the Peace Court provides in whole:

COMES NOW, Plaintiffs/Appellees, RONALD DEYSHER and ANN MARIE DEYSHER, and hereby give notice pursuant to 10 Del. C. §9571, of an appeal of the decision of Justice of the Peace Court No. 9, by the Honorable Kathy S. Gravell, Civil Action No. JP9-11-000712, dated September 6, 2011.

The grounds for this appeal is that the Judgment entered in this matter failed to properly consider the evidence presented and to give proper weight to the testimony of the witnesses.

This document was not filed in the Court of Common Pleas. Moreover, Plaintiffs did not attach to their response to the Motion copies of either the Notice of Appeal filed December 5, 2011 in the Justice of the Peace Court, or the amended Notice of Appeal they argued was filed December 5, 2011 in the Court of Common Pleas. Plaintiffs also argued that the requirements imposed Court of Common Pleas Civil Rules 72.3(c) and (e) are not jurisdictional, and that Plaintiffs failure to initially comply with these rules was the result of excusable neglect.

II. Discussion

Ten *Del. C.* § 9571 governs appeals from the Justice of the Peace Court. Subsection (a) provides for appeals as of right to the Court of Common Pleas from any final judgment of the Justice of the Peace Court.¹ Subsection (b) provides that the appeal shall be taken within fifteen (15) days of the final judgment.² Finally, subsection (d) provides that “[t]he Court of Common Pleas shall establish appeal procedures and supersedeas bond requirements by rule.”³ The requirements imposed by this statute are mandatory and jurisdictional.⁴ Accordingly, if the statute is not complied with, the Court of Common pleas lacks jurisdiction to entertain the appeal.⁵

Court of Common Pleas Civil Rule 72.3 governs appeals de novo from the Justice of the Peace Court. Rule 72.3 is the rule that was enacted in response to 10 *Del. C.* § 9571(d). As such, failure to comply with Rule 72.3 divests the Court of Common Pleas of subject matter jurisdiction to entertain an appeal from the Justice of the Peace Court.⁶ Rule 72.3(b) provides in pertinent part:

When an appeal de novo is permitted by law, an action is commenced in the Court of Common Pleas by the appellant filing with the Court a notice of appeal within the time prescribed by statute for the filing of an appeal. If no time is prescribed by the statute, the notice of appeal shall be filed within 15 days from the entry of the final judgment.

¹ 10 *Del. C.* § 9571(a).

² 10 *Del. C.* § 9571(b).

³ 10 *Del. C.* § 9571(d).

⁴ *Williams v. Singleton*, 160 A.2d 376, 378 (Del. 1960); *Warren Williams Co. v. Giovannozzi*, 295 A.2d 587, 588 (Del. Super. 1972); *Woods v. Unisex Hair Palace*, 2009 WL 3152878, *1 (Del. Com. Pl. Aug. 26, 2009).

⁵ *Id.*

⁶ *Woods*, 2009 WL 3152878 at *1. *See also*, *Dippel v. O’Hearn*, 2010 WL 2346223 (Del. Com. Pl. May 25, 2010).

Further, Rule 72.3(c) governs the contents of the Notice of Appeal required to be filed in the Court of Common Pleas by Rule 72.3(b) and provides as follows:

The notice of appeal shall specify the parties taking the appeal, shall designate the order, award, determination, or decree, or part thereof appealed from; shall state the grounds of the appeal; shall name the Court to which the appeal is taken; and shall be signed by the attorney for the appellants, or, if the appellants are not represented by an attorney, shall be signed by the appellants.

Finally, Rule 72.3(e) requires that the appellant in appeals from the Justice of the Peace Court file certain documents in the Justice of the Peace Court, specifically providing that:

The appellant shall, within 10 calendar days, file a notice of appeal with the Justice of the Peace Court to stay the record. The record on appeal shall constitute the record below as of the time of the filing of the notice of appeal. There shall be no stay of execution or other proceedings below unless ordered by this Court pursuant to Rule 62(c).

In this case, the Court lacks jurisdiction over this appeal because Plaintiffs failed to comply with Rules 72.3(c) and (e). Accordingly, the appeal must be dismissed for lack of jurisdiction.

Plaintiffs' Notice of Appeal filed September 21, 2011 failed to comply with Rule 72.3(c). Court of Common Pleas Civil Rule 72.3(c) requires that the Notice of Appeal required to be filed in the Court of Common Pleas by Rule 72.3(b) "shall state the grounds of the appeal." Plaintiffs admit, and the Court agrees that the Notice of Appeal filed in the Court of Common Pleas on September 21, 2011 does not state the grounds of the appeal. Moreover, contrary to Plaintiffs' representation in their Response to the instant Motion, the Court's docket does not reflect that Plaintiffs have filed a corrected Notice of Appeal in this Court, to date.

Further, Plaintiffs failed to file a Notice of Appeal in the Justice of the Peace Court within the time required by Rule 72.3(e). Rule 72.3(e) requires appellants in appeals from the Justice of the Peace Court to file a Notice of Appeal in the Justice of the Peace Court within ten

days of filing the appeal in the Court of Common Pleas. In this case, Plaintiffs filed their defective Notice of Appeal in the Court of Common Pleas on September 21, 2011. Nonetheless, the Justice of the Peace Court docket reflects that Plaintiffs did not file their Notice of Appeal in the Justice of the Peace Court until December 5, 2011, over two months later, and well outside of the ten day limit established by Rule 72.3(e). Also, Defendant filed the instant Motion to Dismiss on November 14, 2011, which argues that this appeal should be dismissed because Plaintiffs had not yet filed a Notice of Appeal in the Justice of the Peace Court as required by Rule 72.3(e). Nonetheless, Plaintiffs waited until December 5, 2011, nearly one month after the filing of Defendant's Motion, to finally file a Notice of Appeal in the Justice of the Peace Court. It is also noteworthy that even though to date a Notice of Appeal stating the grounds for the appeal as required by Rule 72.3(c) has not been filed in the Court of Common Pleas, the Notice of Appeal filed late on December 5, 2011 in the Justice of the Peace Court does adequately state the grounds for the appeal. Finally, given the mandatory and jurisdictional nature of 10 *Del. C.* § 9571 and Rule 72.3, the Court is not persuaded by Plaintiff's unexplained and unsubstantiated claims that the numerous errors contained in its attempts to perfect this appeal since judgment was entered in the Justice of the Peace Court on September 6, 2011 were the result of excusable neglect. Therefore, Defendant's Motion to Dismiss the Appeal is hereby granted.

III. Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss is hereby **GRANTED**.

IT IS SO ORDERED this 20th day of December, 2011.

John K. Welch
John K. Welch, Judge