

granting of the motion to amend. Defendant makes no claim of any resultant prejudice as to her ability to present a defense to the ejectment action asserted by plaintiffs. It was not suggested that even if defendant had been given an express offer to a continuance of the hearing that she would have requested it and, if she had, that this would have affected the outcome of this proceeding.

Defendant had an election to make when she was dissatisfied with the District Justice's judgment. Pa.R.C.P.D.J. No. 1015. Had she filed an appeal, plaintiffs would have been required to proceed *de novo* under the provisions of the Rules of Civil Procedure, Pa.R.C.P.D.J. No. 1007.A., and such procedure would have required the filing of a civil complaint and the service thereof on defendant, followed by a full opportunity to defend.

The granting of the writ of certiorari would simply require the reference back of the matter to the District Justice where the allegedly gross irregularity would be rectified through this Court's direction, and that court would then proceed to rule on the matter. In this instance, defendant has failed to convince us that the interests of justice, as expressed in the due process clause of the Constitution, compel or even suggest such a requirement. If we had the slightest belief that the procedures employed by the District Justice had an adverse impact on this litigant's rights, we would not hesitate to grant the writ. We have no such belief, and so we will deny the relief sought.

#### ORDER OF COURT

NOW, May 21, 1990, the Court finds against defendant, and dismisses the writ of certiorari heretofore issued.

Costs to be paid by defendant.

FIRST NATIONAL BANK OF GREENCASTLE V. TALHELM,  
ET AL., C.P. Franklin County Branch, No. A.D. 1989 - 330

*Mortgage Foreclosure - Counterclaim - Right to Jury Trial*

1. In an action in mortgage foreclosure, the plaintiff has no right to demand a jury trial; however, the defendants counterclaim in trespass would allow a demand for jury trial.
2. A party waives his right to a jury trial if demand is not made within 20 days after service of the last pleading (Pa. RCP 1007.1).
3. In enforcing Pa. RCP. Rule 1007.1 the Court will not consider prejudice to the other party and the rule will be strictly enforced.

*David C. Cleaver, Esq.*, Counsel for plaintiff  
*Gregory R. Reed, Esq.*, Counsel for Defendants

KAYE, J., June 21, 1990:

#### OPINION

This matter is before the Court on a petition for leave of court to make written demand for jury trial which was filed by the defendants, Gerald D. Talhelm, Gregory M. Talhelm, and Harold E. Talhelm.

#### FACTS AND PROCEDURAL BACKGROUND

On September 27, 1989, the plaintiff, First National Bank of Greencastle, filed a civil complaint in action of mortgage foreclosure against the defendants. The defendants filed their original answer on October 31, 1989, and an amended answer on January 30, 1989, in response to the plaintiff's preliminary objections. The defendants asserted new matter and counterclaims against the plaintiff in both of the answers. The plaintiff filed a reply to the new matter on February 15, 1990 which completed the pleadings in this case. The defendants caused a rule to show cause why they should not be granted leave to make a written demand for a jury trial in their counterclaims to be issued on the plaintiff. The plaintiff filed its answer to the rule on May 7, 1990, and the matter was set for oral argument to be held June 7, 1990. Argument was held on that date and the matter is in a posture for decision.

#### DISCUSSION

We are asked to decide whether the defendants should be granted leave to make a written demand for a jury trial. The plaintiff in this case is not entitled to a jury trial on the mortgage foreclosure action

according to Pa.R.C.P. 1150. However, the defendants have filed a counterclaim in trespass and are constitutionally entitled to demand a jury trial for those counterclaims. U.S. Const. Amend. VII, PA. Const., Art. I, §6.

The Pennsylvania Rules of Civil Procedure provide the time limit in which a demand for a jury trial must be made.

(a) In any action in which the right to jury trial exists, that right shall be deemed waived unless a party files and serves a written demand for a jury trial not later than twenty (20) days after service of the last permissible pleading.

Pa.R.C.P. 1007.1

In the case at bar, the last pleading was filed on February 15, 1990, and defendants had twenty (20) days from that date to make their demand for a jury trial. The defendants failed to make their demand within the time period allowed in the rules.

The Supreme Court in *Jones v. VanNorman*, 513 Pa. 572, 522 A.2d 503 (1987), clearly stated that Rule 1007.1 is to be enforced, and that prejudice to the other side is not to be considered where the provisions of Rule 1007.1 (a) have not been satisfied. Therefore, we are compelled to find that the defendants waived their right to a jury trial by not making their demand within the time period prescribed by the rule.

The defendants' petition for leave of court to make a written demand for a jury trial is denied.

#### ORDER OF COURT

NOW, June 21, 1990, defendants' petition for leave to file a demand for jury trial is DENIED.

OMMERT V. OMMERT (NO.2)\*, C.P. Franklin County Branch, No. FR. 1987-905S

Child Support - Modification - Changed Circumstances - Increase in Salary

\*Editor's Note--Another case, involving the same parties, was reported earlier, at 10 Franklin 114.

1. A 10% increase in salary is sufficient to show a change in circumstances justifying modification.
2. A Court order awarding exclusive possession of the marital real estate to wife does not constitute a change in circumstances.

*Martha B. Walker, Esq.*, Attorney for Plaintiff

*Thomas J. Finucane, Esq.*, Attorney for Defendant

#### OPINION AND ORDER

KAYE, J., May 21, 1990:

#### OPINION

#### PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter is before the Court on a petition to modify child support payments which was filed by Robert E. Ommert ("Robert"). Robert and Bonnie L. Ommert ("Bonnie"), the respondent, are husband and wife. They are the parents of Kristy N. Ommert ("Kristy"), born March 16, 1980. Robert is employed as a rural mail carrier for United States Postal Service. Bonnie works as a United States Postal Office Clerk.

The parties separated on October 21, 1987 when Robert left the marital home to reside elsewhere. Currently, there is a divorce action pending between them. Kristy has continued to live with Bonnie in the marital home.

On February 1, 1988, the parties entered into a stipulation and agreement, whereby Robert would pay \$92.00 every two weeks to Bonnie for child support and maintain medical coverage for Kristy through his employer. Further, the parties agreed that each would pay one-half (½) of the monthly mortgage payment on the marital home. An order of court was made pursuant to this stipulation and agreement on February 5, 1988.

On September 15, 1988, the Court made a new order in conformity with a second stipulation and agreement between the parties