

SUPREME COURT OF THE STATE OF DELAWARE

Bueller v. Augustus-Debalt

Bueller v. Augustus-Debalt · No. Nos. 113, 2017 and 192, 2017 · Decided June 14, 2017

SUMMARY

The Delaware Supreme Court consolidated and dismissed two appeals arising from Family Court proceedings concerning a petition for protection from abuse and a related motion for fees and costs. The Court held that the challenged orders were nonfinal interlocutory orders and dismissed the appeals without prejudice, preserving the appellant's right to appeal after entry of a final Family Court order.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Karen L. Valihura; Leo E. Strine, Chief Justice; Karen L. Valihura, Justice; James T. Vaughn, Justice
JURISDICTION	Delaware
DECIDED	June 14, 2017
DOCKET	Nos. 113, 2017 and 192, 2017
DISPOSITION	dismissed
PROCEDURAL POSTURE	The appellant filed two appeals from Family Court orders concerning a petition for protection from abuse and a related motion for fees and costs. The Supreme Court consolidated the appeals and issued notices to show cause regarding interlocutory-appeal requirements and unpaid record-preparation and transcript fees.
STANDARD OF REVIEW	The Court addressed appellate jurisdiction and finality rather than the merits of the underlying PFA or fee issues.
PRECEDENTIAL VALUE	Published per curiam order of the Supreme Court of Delaware; precedential effect is not otherwise specified in the opinion text.
PARTIES	Debra Bueller v. Pablo Augustus-Debalt, Paul Augustus-Debalt

TOPICS

appellate procedure

interlocutory appeal

final judgment rule

family law procedure

domestic violence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the February 23, 2017 Family Court order affirming the PFA order was a final, appealable judgment when the related motion for fees and costs remained unresolved.
2. Whether the April 6, 2017 Family Court order concerning fees and costs was a final, appealable judgment when it remanded the matter to the Commissioner for further proceedings.
3. Whether the appeals should be dismissed because the appellant failed to comply with Supreme Court Rule 42 and, in one appeal, failed to pay required record-preparation and transcript fees.

HOLDINGS

1. The February 23 order was not a final judgment because it did not dispose of the pending motion for fees and costs; therefore, the appeal from that order was premature.
2. The April 6 order was not a final judgment because it remanded the matter to the Commissioner for further proceedings; the appeal from that order was therefore premature.
3. The appeals were dismissed without prejudice, and the appellant's right to appeal the February 23 and April 6 orders remained intact until a final order was entered by a Family Court Judge.
4. An order issued by a Family Court Commissioner is not a final judgment for purposes of an appeal to the Delaware Supreme Court; review of a Commissioner's order lies first to a Family Court Judge.

KEY QUOTATIONS

“Absent compliance with Supreme Court Rule 42, this Court is limited to the review of a final judgment.” (¶ 4)

“An order is deemed final and appealable when it disposes of all justiciable matters.” (¶ 4)

FACTUAL BACKGROUND

The underlying proceedings involved a petition for protection from abuse and a related motion for fees and costs. The Family Court Judge affirmed the PFA order while the fees-and-costs matter remained pending, and later remanded the fees-and-costs matter to the Commissioner for further proceedings.

PROCEDURAL HISTORY

A Family Court Commissioner granted the petition for protection from abuse and issued an order concerning fees and costs. A Family Court Judge affirmed the PFA order on February 23, 2017, and on April 6, 2017, affirmed in part and rejected in part the fees-and-costs order while remanding for further proceedings before the Commissioner. The Supreme Court dismissed both appeals as premature because neither order was final and the appellant had not complied with Supreme Court Rule 42.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The appeals were dismissed without prejudice. After a Family Court Judge enters a final order following the Commissioner's decision on remand, the appellant may file a new appeal encompassing that final order and the February 23 and April 6 interlocutory orders.

CASES CITED

- J.I. Kislak Mortg. Corp. v. William Matthews Builder, Inc., 303 A.2d 648, 650 (Del. 1973)
- Street v. Butler, 2017 WL 991079 (Del. Mar. 13, 2017)
- Lipson v. Lipson, 799 A.2d 345, 348-49 (Del. 2001)
- Pollard v. The Placers, Inc., 692 A.2d 879, 881 (Del. 1997)
- Boggs v. Treptor, 2000 WL 1508652 (Del. Sept. 14, 2000)
- Bailey v. Jackson, 2016 WL 3382340 (Del. June 10, 2016)
- Redden v. McGill, 549 A.2d 695, 697-98 (Del. 1988)
- Postles v. Div. of Child Support Enforcement, 2001 WL 1293065 (Del. Oct. 17, 2001)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE DEBRA BUELLER,¹ § § No. 113, 2017 Petitioner Below, § Appellant, § Court Below—Family Court of § the State of Delaware v. § § File No. CS16-02526 PABLO AUGUSTUS-DEBALT, § Petition No. 16-33588 § Respondent Below, § Appellee. § DEBRA BUELLER,² § § No. 192, 2017 Petitioner Below, § Appellant, § Court Below—Family Court of § the State of Delaware v. § § File No. CS16-02526 § Petition No. 16-33588 PAUL AUGUSTUS-DEBALT, § § Respondent Below, § Appellee. § Submitted: June 7, 2017 Decided: June 14, 2017 Before STRINE, Chief Justice; VALIHURA and VAUGHN, Justices.

1 The Court has assigned pseudonyms to the parties. Del. Supr. Ct. R. 7(d). 2 Id. ORDER This 14th day of June 2017, having considered the notices to show cause in the above-captioned appeals and the appellant's response, it appears to the Court that: (1) The above appeals—No. 113, 2017 and No. 192, 2017—are from a Family Court Judge's orders on a petition for protection from abuse ("PFA") and on a related motion for fees and costs.

Appeal No. 113, 2017 is from the Judge's February 23, 2017 order affirming a Commissioner's order granting the PFA petition. Appeal No. 192, 2017 is from the Judge's April 6, 2017 order affirming in part and rejecting in part the Commissioner's order on the motion for fees and costs and remanding the matter for further proceedings before the Commissioner.

In the interest of judicial economy, the appeals have been consolidated, sua sponte, for decision. (2) The Clerk issued notices to show cause in both appeals. In appeal No. 192, 2017, the appellant was directed to show cause why the appeal should not be dismissed for her failure to comply with Supreme Court Rule 42 when filing an appeal from an interlocutory order.

In appeal No. 113, 2017, the appellant was directed to show cause why the appeal should not be dismissed for her failure to pay required record preparation and transcript fees associated with the appeal. (3) In appeal No. 192, 2017, the appellant filed a response to the notice to show cause, contending that the April 6 order is a final order and not an interlocutory 2 order.

The appellant has not responded to the notice to show cause in appeal No. 113, 2017. (4) Absent compliance with Supreme Court Rule 42, this Court is limited to the review of a final judgment.³ An order is deemed final and appealable when it disposes of all justiciable matters.⁴ (5) In this case, the Court has concluded that these appeals are from non- final interlocutory orders and must be dismissed for the appellant's failure to comply with Rule 42.

In appeal No. 113, 2017, the February 23 order was not the final judgment because it did not rule on the pending motion for fees and costs.⁵ In appeal No. 192, 2017, the April 6 order was not the final judgment because the order remanded the matter to the Commissioner for further proceedings.⁶ (6) Although the appeals must be dismissed as premature, the appellant's right of appeal from the February 23 and April 6 orders will remain intact pending the issuance of a final order⁷ by a Family Court Judge⁸ following the 3 J.I.

Kislak Mortg. Corp. v. William Matthews Builder, Inc., 303 A.2d 648, 650 (Del. 1973). 4 Id. 5 Street v. Butler, 2017 WL 991079 (Del. Mar. 13, 2017) (citing Lipson v. Lipson, 799 A.2d 345, 348–49 (Del. 2001)). 6 Id. (citing Pollard v. The Placers, Inc., 692 A.2d 879, 881 (Del. 1997)). 7 Accord Boggs v. Treptor, 2000 WL 1508652 (Del. Sept. 14, 2000) (“Appellant's right of appeal remains intact until the Family Court has disposed of all matters.”).

8 This Court's appellate jurisdiction over Family Court civil proceedings is limited to decisions issued by the Judges of the Family Court. See Bailey v. Jackson, 2016 WL 3382340 (Del. June 10, 2016) (citing 10 Del. C. § 1051(a); Redden v. McGill, 549 A.2d 695, 697–98 (Del. 1988)). 3 Commissioner's decision on remand.⁹ When the final order has issued, the appellant may file a new appeal encompassing that order as well as the February 23 and April 6 interlocutory orders.

NOW, THEREFORE, IT IS ORDERED that appeal No. 113, 2017 and appeal No. 192, 2017 are DISMISSED without prejudice to the appellant's right to file a new appeal once a final order is entered in the Family Court. BY THE COURT: /s/ Karen L. Valihura Justice 9 An order issued by a Commissioner is not a final judgment for purposes of appeal to this Court. Postles v. Div. of Child Support Enforcement, 2001 WL 1293065 (Del.

Oct. 17, 2001) (citing *Redden v. McGill*, 549 A.2d 695 (Del. 1988)). A party's right to appeal from a Commissioner's order is to a Judge of the Family Court. See 10 Del. C. § 915(d) (Supp. 2017) (governing review of Commissioners' orders); Fam. Ct. Civ. R. 53.1 (governing appeals from Commissioners' orders). 4