

SUPREME COURT OF THE STATE OF DELAWARE

Anderson v. Leer

No. 444, 2020 · No. No. 444, 2020 · Decided February 16, 2021

SUMMARY

The Delaware Supreme Court dismissed the appeal without prejudice because the Court of Chancery had not entered a final, appealable order and at least one motion remained pending. The Court noted that the appellants had not complied with Supreme Court Rule 42 and permitted any docketing fee to be applied to a future appeal from a final order.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Chief Justice Seitz; Justice Valihura; Justice Vaughn
JURISDICTION	Delaware
DECIDED	February 16, 2021
DOCKET	No. 444, 2020
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants appealed from the Court of Chancery's decision granting appellees' motion to dismiss and its denial of appellants' motion for reargument. The Supreme Court issued a notice to show cause why the appeal should not be dismissed because the challenged order was interlocutory and appellants had not complied with Supreme Court Rule 42.
STANDARD OF REVIEW	The Supreme Court's appellate jurisdiction absent compliance with Supreme Court Rule 42 is limited to review of final orders.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order
PARTIES	Kevin Anderson, Susan Fitzgerald v. Steven Leer, Jennifer Scanlon, Jose Armario, William H. Hernandez, Richard P. Lavin, Brian A. Kenney, Gretchen R. Haggerty, Matthew Carter, Jr., Thomas A. Burke

TOPICS

- appellate jurisdiction
- final judgment rule
- interlocutory appeal
- appellate procedure
- civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the Delaware Supreme Court had appellate jurisdiction over an appeal from a Court of Chancery decision when no final order had been entered and a motion remained pending.
2. Whether the appeal should be dismissed without prejudice for failure to comply with Supreme Court Rule 42 governing interlocutory appeals.

HOLDINGS

1. Absent compliance with Supreme Court Rule 42, the Delaware Supreme Court's appellate jurisdiction is limited to review of final orders. Because no final order had been entered and a motion remained pending, the appeal was not properly before the Court and had to be dismissed without prejudice.

KEY QUOTATIONS

“Absent compliance with Supreme Court Rule 42, the appellate jurisdiction of this Court is limited to the review of final orders.” (at 2)

“An order is deemed final and appealable if the trial court has declared its intention that the order be the court’s final act in disposing of all justiciable matters within its jurisdiction.” (at 2)

FACTUAL BACKGROUND

The Court of Chancery granted a motion to dismiss and later denied reargument. No order consistent with the dismissal decision had been entered, and appellants' motion for leave to file a second amended complaint remained pending. The parties agreed that the Court of Chancery had not entered a final, appealable order.

PROCEDURAL HISTORY

The Court of Chancery granted appellees' motion to dismiss on August 31, 2020, and denied appellants' motion for reargument on December 1, 2020. The Court of Chancery had instructed the parties to submit a conforming order, but no final order had been entered, and appellants' motion for leave to file a second amended complaint remained pending. The Delaware Supreme Court dismissed the appeal without prejudice because no final, appealable order existed and the parties agreed that the Court of Chancery had not entered one.

DISPOSITION

dismissed

CASES CITED

- Hines v. Williams, 2018 WL 2435551 (Del. May 29, 2018)
- Julian v. State, 440 A.2d 990, 991 (Del. 1982)

- J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc., 303 A.2d 648, 650 (Del. 1973)

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE KEVIN ANDERSON and SUSAN § FITZGERALD, § No. 444, 2020 § Plaintiffs Below, § Court Below: Court of Chancery Appellants, § of the State of Delaware § v. § C.A. No. 2018-0602-SG § STEVEN LEER, JENNIFER § SCANLON, JOSE ARMARIO, § WILLIAM H. HERNANDEZ, § RICHARD P. LAVIN, BRIAN A. § KENNEY, GRETCHEN R. § HAGGERTY, MATTHEW § CARTER, JR., and THOMAS A. § BURKE, § § Defendants Below, Appellees. § Submitted: February 5, 2021 Decided: February 16, 2021 Before SEITZ, Chief Justice; VALIHURA and VAUGHN, Justices.

ORDER After consideration of the notice to show cause and the appellants' response, it appears to the Court that: (1) The appellants filed this appeal from decisions of the Court of Chancery dated August 31, 2020, which granted a motion to dismiss brought by the appellees (the "Motion to Dismiss Opinion"), and December 1, 2020, which denied the appellants' motion for reargument.

The Motion to Dismiss Opinion instructed the parties to submit a form of order consistent with the decision, but no such order has yet been entered. On December 11, 2020, the appellants filed in the Court of Chancery a motion for leave to file a second amended complaint. That motion remains pending.

(2) On January 26, 2021, the Senior Court Clerk issued a notice to the appellants to show cause why the appeal should not be dismissed for the appellants' failure to comply with Supreme Court Rule 42 when appealing an apparent interlocutory order.

In their response, the appellants state that they filed the appeal out of an abundance of caution because, in the opposition to the motion for leave to file a second amended complaint, the appellees suggested that the Motion to Dismiss Opinion might be a final, appealable order and the appellants wanted to ensure that they preserved their opportunity to appeal.

In response to the notice to show cause, the appellants also state that the parties have conferred and now agree that the Court of Chancery has not yet entered a final, appealable order. (3) Absent compliance with Supreme Court Rule 42, the appellate jurisdiction of this Court is limited to the review of final orders.¹ An order is deemed final and appealable if the trial court has declared its intention that the order be the 1 Hines v. Williams, 2018 WL 2435551 (Del.

May 29, 2018); Julian v. State, 440 A.2d 990, 991 (Del. 1982). 2 court's final act in disposing of all justiciable matters within its jurisdiction. 2 At least one motion remains pending before the Court of Chancery, and the parties agree that the Court of Chancery has not entered a final order.

The appeal therefore must be dismissed. NOW, THEREFORE, IT IS ORDERED that this appeal is hereby DISMISSED without prejudice. Any docketing fee paid to this Court by the appellants in conjunction with this appeal may be applied to a future appeal filed by the appellants from the Court of Chancery's final order. BY THE COURT: /s/ Karen L. Valihura Justice 2 J.I.

Kislak Mortgage Corp. v. William Matthews, Builder, Inc., 303 A.2d 648, 650 (Del. 1973). 3