

SUPREME COURT OF THE STATE OF DELAWARE

Abbott v. Vavala

Abbott v. Vavala · No. No. 210, 2021 · Decided July 12, 2021

SUMMARY

The Delaware Supreme Court refused Richard L. Abbott’s petition for interlocutory review of the Court of Chancery’s denial of motions for a temporary restraining order and expedited proceedings. The Court held that the application did not satisfy the strict standards for interlocutory review under Supreme Court Rule 42 and denied Abbott’s recusal motion as moot.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                           |
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| COURT                 | Supreme Court of the State of Delaware                                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Per Curiam; Ridgely, Justice; Newell, Chief Judge; Danberg, Chief Judge                                                                                                                                                                                                                                                   |
| JURISDICTION          | Delaware                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | July 12, 2021                                                                                                                                                                                                                                                                                                             |
| DOCKET                | No. 210, 2021                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Abbott petitioned for acceptance of an interlocutory appeal under Delaware Supreme Court Rule 42 from the Court of Chancery's denial of motions for a temporary restraining order and expedited proceedings. The Court of Chancery denied certification, and the Delaware Supreme Court refused the interlocutory appeal. |
| STANDARD OF REVIEW    | Applications for interlocutory review are addressed to the Delaware Supreme Court's sound discretion, with great weight given to the trial court's review and the strict standards for certification under Supreme Court Rule 42.                                                                                         |
| PRECEDENTIAL VALUE    | Published opinion; no reporter citation appears in the source text.                                                                                                                                                                                                                                                       |
| PARTIES               | Richard L. Abbott v. Kathleen M. Vavala, David A. White, Collins J. Seitz, Jr., James T. Vaugh, Jr., Tamika R. Montgomery-Reeves, Gary F. Traynor, Karen L. Valihura                                                                                                                                                      |

TOPICS

interlocutory appeal

appellate procedure

civil procedure

## PRACTICE AREAS

appellate procedure

civil procedure

## QUESTIONS PRESENTED

1. Whether Abbott satisfied the strict requirements for certification of an interlocutory appeal under Delaware Supreme Court Rule 42.
2. Whether exceptional circumstances or benefits sufficient to justify interlocutory review existed.
3. Whether Abbott's motion to recuse members of the panel should be considered after the interlocutory appeal was refused.

## HOLDINGS

1. The application for interlocutory review did not satisfy the strict standards for certification under Delaware Supreme Court Rule 42 and was refused.
2. The motion to recuse was denied as moot after the Court refused the interlocutory appeal.

## KEY QUOTATIONS

*“Applications for interlocutory review are addressed to the sound discretion of the Court.” (2)*

*“Exceptional circumstances that would merit interlocutory review of the Court of Chancery’s decision do not exist in this case, and the potential benefits of interlocutory review do not outweigh the inefficiency, disruption, and probable costs caused by an interlocutory appeal.” (2)*

## FACTUAL BACKGROUND

Abbott sought a temporary restraining order and expedited proceedings in the Court of Chancery. After the Court of Chancery denied those requests and declined to certify an interlocutory appeal, Abbott sought interlocutory review in the Delaware Supreme Court. He also moved to recuse three justices who had participated in an earlier order cited by the Court of Chancery.

## PROCEDURAL HISTORY

The Court of Chancery denied Abbott's motions for a temporary restraining order and expedited proceedings on June 3, 2021. On June 30, 2021, it denied Abbott's application for certification because no substantial issue or Rule 42(b)(iii) criterion supported interlocutory review and the benefits did not outweigh the costs of piecemeal litigation. Abbott filed his notice of appeal and certification application on July 1, 2021. The Delaware Supreme Court refused the interlocutory appeal and denied as moot his motion to recuse three members of the Court.

## DISPOSITION

other

OPINION

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF DELAWARE RICHARD L. ABBOTT, § § Plaintiff Below, § No. 210, 2021 Appellant, § § Court Below—Court of Chancery v. § of the State of Delaware § KATHLEEN M. VAVALA, DAVID § C.A. No. 2021-0409 A. WHITE, COLLINS J. SEITZ, § JR., JAMES T. VAUGH, JR., § TAMIKA R. MONTGOMERY- § REEVES, GARY F. TRAYNOR, § and KAREN L. VALIHURA, § § Defendants Below, § Appellees. § Submitted: July 2, 2021 Decided: July 12, 2021 Before RIDGELY, Justice,\* NEWELL and DANBERG, Chief Judges,\*\* PER CURIAM: ORDER This 12th day of July, 2021, it appears to the Court that: (1) The plaintiff/appellant, Richard L. Abbott ("Abbott"), has petitioned this Court, pursuant to Supreme Court Rule 42, to accept an interlocutory appeal from the Court of Chancery's June 3, 2021 denial of Abbott's motions for temporary \* Sitting by designation pursuant to Del.

Const. Art. IV, § 38, 29 Del. C. § 5610(a)(2) and Supreme Court Rule 2(a). \*\* Sitting by designation pursuant Del. Const. Art. IV, § 12 and Supreme Court Rule 2(a). restraining order and for expedited proceedings. On June 30, 2021, the Court of Chancery denied Abbott's application for certification on the grounds that Abbott identified no substantial issue that justifies an appeal before final judgment, that he failed to demonstrate that any of the eight criteria identified in Supreme Court Rule 42(b)(iii) support certification, and that on balance and after fully considering Abbott's arguments, there is no benefit to certification that could outweigh the costs of piecemeal litigation.

(2) Abbott filed his notice of appeal and application for certification of interlocutory appeal with exhibits on July 1, 2021. He also filed on July 1, 2021 a motion to recuse from all involvement in this appeal Chief Justice Seitz, Justice Traynor and Justice Montgomery-Reeves, the Panel which entered an order on May 18, 2021 that was cited by the Court of Chancery.

(3) By Order dated July 2, 2021, this Panel was designated by the Chief Justice pursuant to Del. Const. Article IV, §§ 12 and 38, 29 Del. C. § 5610(a)(2) and Supreme Court Rule 2(a) to consider Abbott's application for certification of interlocutory appeal.

(4) Applications for interlocutory review are addressed to the sound discretion of the Court.<sup>1</sup> In the exercise of its discretion and giving great weight to the trial court's review, this Court has concluded that the application for 1 Del. Supr. Ct. R. 42(d)(v). 2 interlocutory review does not meet the strict standards for certification under Supreme Court Rule 42(b).

Exceptional circumstances that would merit interlocutory review of the Court of Chancery's decision do not exist in this case,<sup>2</sup> and the potential benefits of interlocutory review do not outweigh the inefficiency, disruption, and probable costs caused by an interlocutory appeal.<sup>3</sup> NOW, THEREFORE, IT IS ORDERED that the interlocutory appeal is REFUSED.

The motion to recuse is DENIED as MOOT. 2 Del. Supr. Ct. R. 42(b) (ii). 3 Del. Supr. Ct. R. 42(b)(iii). 3

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