

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EUGENE A. MATTHEWS,	§
	§ No. 579, 2000
Plaintiff Below,	§
Appellant,	§ Court Below: Superior Court
	§ of the State of Delaware
v.	§ in and for Sussex County
	§
SHAWN LLOYD NEAL,	§ C.A. No. 00C-01-013
	§
Defendant Below,	§
Appellee.	§

Submitted: December 28, 2000

Decided: January 16, 2001

Before **WALSH, HOLLAND,** and **BERGER,** Justices.

ORDER

This 16th day of January 2001, it appears to the Court that:

(1) On December 18, 2000, this Court received the appellant's notice of appeal from the Superior Court's decision of December 8, 2000, which denied appellant's motion to add a party in the above-captioned matter.

(2) On December 18, 2000, the Assistant Clerk of the Supreme Court issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed for his failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order. Appellant filed a response to the Notice to Show Cause on December 28,

2000. In his response, appellant contends that the Superior Court's order is not interlocutory because the issue raised by his motion will not be decided at trial.

Appellant also contends that, should the individual in question not be added as a party before March 13, 2001, appellant will be barred by the statute of limitations from ever pursuing a claim against that individual.

(3) Absent compliance with Rule 42, the jurisdiction of this Court is limited to the review of a final judgment of the trial court.¹ An order is deemed final if the trial court has clearly declared its intention that the order be the court's "final act" in the case.² At the time appellant filed his appeal in this Court, he was aware that the Superior Court had not yet resolved all issues in the case.

(4) Under Superior Court Civil Rule 54(b), any order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the parties unless there is an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. The order of December 8, 2000 was not entered as a final judgment under Rule 54(b).

¹ *Julian v. State*, Del. Supr., 440 A.2d 990, 991 (1982).

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

(5) The proceedings before the Superior Court are ongoing. Until all issues are disposed of, the judgment of December 8, 2000 is not final. Accordingly, an appeal from the Superior Court to this Court is premature absent compliance with the requirements for taking an interlocutory appeal in accordance with Supreme Court Rule 42. Appellant has not attempted to comply with this Rule.

NOW, THEREFORE, IT IS ORDERED that appellant's appeal is DISMISSED.³

BY THE COURT:

/s/ Randy J. Holland
Justice

³ Of course, the dismissal of this appeal does not preclude the appellant from filing a notice of appeal once a final order has issued from the Superior Court. In the event the appellant files an appeal after the entry of a final judgment, the filing fee in that appeal will be waived.