

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SYDNEY R. BATES)

Plaintiff,)

v.)

C.A. No. N16C-12-235 FWW

CAESAR RODNEY SCHOOL)
DISTRICT, CAESAR RODNEY HIGH)
SCHOOL, BOARD OF EDUCATION)
OF THE CAESAR RODNEY)
SCHOOL DISTRICT, RICHARD)
“DICKIE” HOWELL, II,)

Defendants.)

ORDER DENYING LEAVE TO APPEAL FROM INTERLOCUTORY ORDER

Emily P. Laursen, Esquire and Lawrance Spiller Kimmel, Esquire, Kimmel, Carter, Roman, Peltz, & O’Neill, P.A., Plaza 273, 56 West Main Street, 4th Floor, Christiana, Delaware 19702, Attorneys for Plaintiffs.

David H. Williams, Esquire, James H. McMackin, III, Esquire, and Allyson Britton DiRocco, Esquire, Morris James LLP, 500 Delaware Avenue, Ste. 1500, P.O. Box 2306, Wilmington, Delaware 19899, Attorneys for Defendants Caesar Rodney School District, Caesar Rodney High School, Board of Education of the Caesar Rodney School District.

Gregory A. Morris, Esquire, Liguori & Morris, 46 The Green, Dover, Delaware 19901, Attorney for Defendant Richard “Dickie” Howell, II.

WHARTON, J.

This 31st day of December, 2018, after having considered Plaintiff Sydney R. Bates' ("Bates"), application under Rule 42 of the Supreme Court for an order certifying an appeal from the interlocutory order of this Court dated November 30, 2018; Defendants Caesar Rodney School District, Caesar Rodney High School, Board of Education of the Caesar Rodney School District (collectively "Caesar Rodney"), and Richard "Dickie" Howell, II, ("Howell") lack of responses, the Court finds that such order does not determine a substantial issue of material importance that merits appellate review before a final judgment and denies the application. In making this determination, the Court has considered the following criteria of Supreme Court Rule 42(b)(iii), and has concluded as follows as to each criteria:

1. **Rule 42(b)(iii)(A).** The Court agrees with Bates that the interlocutory order does contain a question of law resolved for the first time in this State. Specifically, in construing *Sherman v. State Dep't of Pub. Safety*¹ the interlocutory order held, at least in part, that the § 219 exception to § 228 of the Restatement (Second) of Agency does not apply to illegal teacher-student sexual relationships generally.² The issue of § 219's applicability to illegal teacher-student sexual relationships is one of first impression. The interlocutory order also held that, even if § 219 did apply to such illegal relationships generally, it did not apply under the

¹ 190 A.3d 148 (Del. 2018).

² *Bates v. Caesar Rodney*, Del. Super., C.A. N16-12-235 FWW, at 15, Wharton, J. (Nov. 30, 2018).

facts of this case.³ The Court finds the satisfaction of this criterion insufficient to warrant interlocutory review when considered in light of the Court's review of the other criteria below and the guidance of Rule 42(b)(ii).

2. **Rule 42(b)(iii)(B).** In her application, Bates argues that the interlocutory order conflicts with the Superior Court's decision in *Mojica v. Smyrna School District*.⁴ In denying the school district's motion to dismiss, the court in *Mojica* applied § 228 to similar facts under the guidance of *Doe v. State*.⁵ Leaving aside the question of whether an interlocutory order resolving a question of law for the first time can ever be in conflict on that question of law with an earlier decided case, the Court does not perceive a conflict between the interlocutory order and *Mojica* for two reasons. First, the *Mojica* court did not address § 219, and second, in *Sherman*, the Supreme Court specifically departed from its earlier ruling in *Doe*, the decision upon which *Mojica* was based.⁶

3. **Rules 42(b)(iii)(C)-(F).** Bates has not argued these portions of Rule 42 and the Court finds them not relevant.

³ *Id.*, at 16.

⁴ 2015 WL 1369693 (Del. Super. Dec. 17, 2015).

⁵ *Id.*, at *2, citing *Doe v. State*, 76 A.3d 774 (Del. 2913).

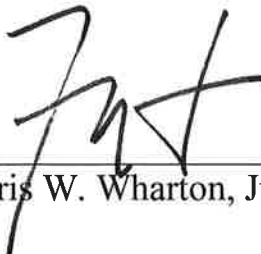
⁶ *Sherman*, 190 A.3d at 152.

4. **Rule 42(b)(iii)(G).** Bates asserts that review of the interlocutory order might terminate the litigation. While true as to Caesar Rodney, the litigation as to Howell, who did not seek summary judgment, continues.

5. **Rule 42(b)(iii)(H).** The last ground Bates offers in support of her application is that interlocutory review will serve considerations of justice. Her concern is that it would be unnecessarily burdensome to her to be required to proceed to trial against Howell before having the opportunity to seek review of the interlocutory order in the Supreme Court. Her concern can be alleviated, however, by seeking the entry of a final order against the Caesar Rodney defendants only under Superior Court Civil Rule 54(b).

THEREFORE, IT IS ORDERED that Plaintiff Sydney R. Bates' Application for Certification of Interlocutory Appeal to the Supreme Court in accordance with Rule 42 of that Court is **DENIED**.

Dated: December 31, 2018



Ferris W. Wharton, Judge