

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH A. GREEN,	§
	§ No. 385, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
JANE DOE, a minor, by BRENDA	§ C.A. No. 06C-04-005
CLEMENTS as next friend of Jane	§
Doe,	§
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 18, 2008  
Decided: December 22, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 22<sup>nd</sup> day of December 2008, upon consideration of the appellant’s opening brief and the appellee’s motion to dismiss, it appears to the Court that:

(1) The defendant-appellant, Kenneth A. Green, filed an appeal from the Superior Court’s July 21, 2008 order granting the motion of the plaintiff-appellee, Jane Doe, for a new trial. In lieu of an answering brief, Doe filed a motion to dismiss.<sup>1</sup> For the reasons that follow, we conclude

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<sup>1</sup> Supr. Ct. R. 29(b).

that Doe's motion must be granted and Green's appeal must be DISMISSED.

(2) In April 2006, Doe filed a civil complaint against Green alleging that, during an eight-month period in 2006, Green repeatedly sexually molested her. At the time of the attacks, Green was 37 years old and Doe was a 12 year-old minor. After a 5-day trial in the Superior Court, the jury found that Green's acts were reckless, intentional and/or outrageous and proximately caused injury to Doe. The jury awarded Doe \$12,500 in compensatory damages and \$200 in punitive damages. Doe subsequently filed a motion for additur or for a new trial. On July 21, 2008, the Superior Court granted Doe's request for a new trial.

(3) In its order, the Superior Court stated the following: "The jury's verdict is so grossly out of proportion to the psychological injuries suffered by Doe that it does shock my conscience and sense of justice. Green is a child molester. He repeatedly raped Doe, leaving her suffering from post-traumatic stress disorder and needing counseling for an extended period of time. Notwithstanding this, the jury only awarded her a paltry sum of money. This verdict is truly shocking to me. Therefore, I have granted Doe's motion for a new trial."

(4) The record reflects that Green did not originally designate the transcript in his notice of appeal. Following the issuance of a briefing schedule in this Court, Green filed a motion in the Superior Court for a copy of the transcript at State expense. On August 25, 2008, the Superior Court denied the motion. Green subsequently filed two motions in this Court requesting an extension of time in which to file his opening brief. The second motion stated that he was attempting to obtain the trial transcript.

(5) On October 2, 2008, the Clerk of the Court received a letter from Green asking whether an appellant is responsible for ordering the trial transcript. In a letter dated October 3, 2008, the Clerk informed Green that the time for ordering the transcript had expired and that, if he still wanted a copy of the transcript, he should file an out-of-time motion to file directions to the court reporter and, then, if the Court granted the motion, file directions to the court reporter for the transcript. On October 14, 2008, rather than filing an out-of-time motion, Green filed directions to the court reporter for the transcript and certified that the cost of the transcript would be paid promptly.

(6) On November 14, 2008, Green filed his opening brief and appendix. In his brief, Green claims that the Superior Court “overstepped its authority” when it granted Doe’s motion for a new trial. He further argues

that, “[e]vidence was presented to raise serious questions as to how [Doe] received injury and no evidence was presented to show any monies spent or to be spent by [Doe] to treat any injuries and most importantly the jury decided, based on evidence, [that Green] was not the proximate cause of injury to [Doe].” While the brief purports to paraphrase the trial testimony, it does not cite to the transcript or attach a copy of the transcript itself.

(7) The Supreme Court Rules direct each party to include in his or her appendix those portions of the record relevant to any claims on appeal.<sup>2</sup> The Rules also place the burden on the appellant of producing such portions of the trial transcript as are necessary to give this Court a fair and accurate account of the context in which the alleged error occurred.<sup>3</sup> The record provided to this Court by an appellant must include a transcript of all evidence relevant to the challenged finding or conclusion.<sup>4</sup> A civil litigant does not have an absolute right to a copy of a transcript at State expense.<sup>5</sup> Even an appellant who is permitted to proceed in forma pauperis is required to make his or her own financial arrangements to obtain the necessary transcripts.<sup>6</sup>

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<sup>2</sup> Supr. Ct. R. 9(e) (ii) and 14(e).

<sup>3</sup> *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987).

<sup>4</sup> *Id.*

<sup>5</sup> *Porter v. Mannion*, Del. Supr., No. 535, 2003, Berger, J. (July 20, 2004).

<sup>6</sup> *Smith v. Deptula*, Del. Supr., No. 333, 2003, Holland, J. (Dec. 8, 2003).

(8) Green has failed to provide the Court with those portions of the trial transcript bearing on his claims. As such, this Court is without an adequate basis for evaluating those claims, precluding appellate review. Green's appeal must, therefore, be dismissed.

NOW, THEREFORE, IT IS ORDERED that the instant appeal is DISMISSED.<sup>7</sup>

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>7</sup> Supr. Ct. R. 29(b).