IN THE SUPREME COURT OF THE STATE OF DELAWARE

SUSAN SMITH,[1]	§	
	§	No. 593, 2010
Petitioner Below-Appellant,	§	
	§	
	§	Court Below–Family Court
v.	§	of the State of Delaware
	§	in and for New Castle County
COLIN VICTOR,	§	File No. CN00-06798
	§	Petition Nos. 10-03824
Respondent Below-Appellee.	§	10-10431
	§	10-03234

Submitted: September 29, 2010
Decided: October 11, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 11th day of October 2010, it appears to the Court that:

(1) On September 16, 2010, the petitioner-appellant, Susan Smith ("Mother"), filed a notice of appeal in this Court from the Family Court's September 2, 2010 order finding her in contempt for interfering with respondent-appellee Colin Victor's ("Father's") visitation with the parties' minor children.

(2) On September 20, 2010, the Clerk of the Court issued a notice pursuant to Supreme Court Rule 29(b) directing Mother to show cause why

[1] The Court *sua sponte* assigned pseudonyms to the parties by Order dated September 17, 2010. Supr. Ct. R. 7(d).

this appeal should not be dismissed for her failure to comply with Rule 42 when taking an appeal from an apparent interlocutory order.[2] On September 29, 2010, Mother filed a response to the notice to show cause. In the response, she stated that Father's motion for reargument was filed in the Family Court after she filed her appeal and, for that reason, the Court should not dismiss her appeal. On that same date, Father filed a reply to Mother's response. In the reply, Father stated that, although the appeal was untimely when filed, he had no objection to the appeal going forward because the Family Court had now decided the motion for reargument and the motion for fees and costs.

(3) Absent compliance with Rule 42, the jurisdiction of this Court is limited to the review of final judgments of trial courts.[3] An order is deemed to be final if the trial court has clearly declared its intention that the order be the court's "final act" in the case.[4] Following the appeal in this case, a timely motion for reargument as well as a motion for fees and costs was filed in the Family Court. As such, the Family Court's September 2,

[2] The Family Court docket reflected that a timely motion for reargument and a timely motion for fees and costs had been filed in the Family Court on September 13, 2010 and September 17, 2010, respectively, and had not yet been ruled upon.
[3] *Julian v. State*, 440 A.2d 990, 991 (Del. 1982).
[4] *J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

2010 order was not a final order for purposes of an appeal to this Court.[5] Moreover, the jurisdictional defect is not cured by Father's agreement to permit the appeal to proceed. This Court has long held that parties may not by agreement convert an otherwise interlocutory order into a final order.[6] We conclude, therefore, that this appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED that the appeal is DISMISSED.[7]

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[5] *Lipson v. Lipson*, 799 A.2d 345, 348-49 (Del. 2001).
[6] *Stroud v. Milliken Enterprises, Inc.*, 552 A.2d 476, 482 (Del. 1989).
[7] Mother's motion to proceed *in forma pauperis* is hereby denied as moot.