

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IMO: THE LIVING TRUST OF §  
ELEANOR A. WILSON, § No. 118, 2011  
DECEASED, and THE LIVING §  
TRUST OF SAMUEL C. WILSON, § Court Below-Court of Chancery  
DECEASED § of the State of Delaware  
§ C.A. No. 4474-MA

Submitted: March 30, 2011

Decided: April 12, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 12<sup>th</sup> day of April 2011, it appears to the Court that:

(1) On March 8, 2011, the Court received the appellant's notice of appeal from the Court of Chancery's February 9, 2011 order denying the appellant's exceptions to the Master in Chancery's order as without merit and permitting the sale of real estate in accordance with the contract executed by the Trustee. Because the order from which the appeal is taken is interlocutory, the appeal must be dismissed.

(2) The record before us reflects that the Master in Chancery ordered the sale of real estate out of the living trust of Eleanor A. Wilson and Samuel C. Wilson (the "Trust"). One of the two beneficiaries of the Trust, Sandra Kelsch, filed exceptions to the Master's order. The Court of Chancery determined that the exceptions involved issues that were

premature and not ripe for decision. Moreover, in the absence of any evidence reflecting that the exceptant had made a timely offer to purchase the property to the Trustee, the Court of Chancery determined that she now was foreclosed from asserting any claims involving the sale of the property.

(3) On March 9, 2011, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed for failure to comply with Rule 42(d) when filing an appeal from an interlocutory order. In her response, the appellant argues that the appeal is from a final, and not interlocutory, order because the Court of Chancery's order was final as to the sale of the real estate and, further, the appeal falls within the collateral order doctrine.<sup>1</sup>

(4) In their replies to the appellant's response, Linda Wilson, the second beneficiary of the Trust, and the Trustee argue that the appeal is interlocutory and should be dismissed. They dispute the applicability of the collateral order doctrine in this instance because the Court of Chancery's order a) does not determine a matter independent of the issues in the underlying proceeding; and b) does not bind any party who was not a party in the underlying proceeding.<sup>2</sup>

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<sup>1</sup> *Evans v. Justice of the Peace Court No. 19*, 652 A.2d 574 (Del. 1995).

<sup>2</sup> *Id.* at 576.

(5) The Court has considered the above arguments and has concluded that the collateral order doctrine does not apply in this instance. As such, the Court of Chancery's February 9, 2011 order is an interlocutory, rather than a final, order.<sup>3</sup> Because the appellant has failed to comply with the procedural requirements of Rule 42(c) and (d), this Court must decline to exercise its appellate jurisdiction.<sup>4</sup> Therefore, the instant appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED that this appeal is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>3</sup> *Showell Poultry v. Delmarva Poultry Corp.*, 146 A.2d 794, 796 (Del. 1958).

<sup>4</sup> *Stroud v. Milliken Enterprises, Inc.*, 552 A.2d 476, 481-82 (Del. 1989).