IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN A. MCLEOD,	§	
	§	No. 246, 2014
Plaintiff Below-Appellant,	§	
	§	
	§	
v.	§	Court Below—Superior Court
	§	of the State of Delaware,
HUGHEY F. MCLEOD,	§	in and for New Castle County
	§	C.A. No. N11C-03-111
Defendant Below-Appellee.	§	
	§	

Submitted: May 29, 2014
Decided: June 5, 2014

Before **STRINE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

ORDER

This 5th day of June 2014, it appears to the Court that:

(1) On May 15, 2014, the appellant, Steven McLeod, filed a notice of interlocutory appeal from an April 25, 2014 opinion of the Superior Court denying his motion to dismiss the counterclaims of the appellee, Hughey McLeod. The Clerk issued a Supreme Court Rule 29(b) notice directing the appellant to show cause why the appeal should not be dismissed for his failure to comply with Supreme Court Rule 42 ("Rule 42") in taking an appeal from an apparent interlocutory order.

(2) On May 29, 2014, the appellant responded to the notice to show cause. In his response, the appellant appears to assert that: (i) a ruling on a motion

to dismiss based upon the absolute litigation privilege is appealable as a collateral order; (ii) he complied with Rule 42 by applying for certification of an interlocutory appeal in the Superior Court after receiving the notice to show cause; and (iii) his failure to comply with Rule 42 should be excused by his *pro se*, incarcerated status. We find no merit to any of these arguments.

(3) The collateral order doctrine "only applies to 'that small class [of decisions] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.'" *Evans v. Justice of the Peace Court No. 19*, 652 A.2d 574, 576 (Del. 1995) (quoting *Cohen v. Beneficial Indus. Loan*, 337 U.S. 541, 546 (1949)). In denying the appellant's motion to dismiss based on the absolute litigation privilege, the Superior Court did not finally determine a claim of right of the appellant. The Superior Court found that the absolute litigation privilege might not apply because the record reflected that the appellant had allegedly made defamatory statements outside of the context of a judicial proceeding. The Superior Court noted that if discovery did not support the claim of defamatory statements outside of the judicial context, then the appellant could invoke the absolute litigation privilege in a summary judgment motion. The federal decisions that the appellant relies upon—*Scott v. Harris*, 550 U.S. 372 (2007) and *Mitchell v.*

Forsythe, 472 U.S. 511 (1985)—involved the assertion of qualified immunity by government officials for official conduct and are not relevant here. Accordingly, the Superior Court's denial of the appellant's motion to dismiss does not fall within the collateral order doctrine.

(4) Absent compliance with Rule 42, the jurisdiction of this Court is limited to the review of final judgments of trial courts.[1] The appellant's untimely application for certification of an interlocutory appeal in the Superior Court[2] did not cure his failure to file an application in the Superior Court before filing this appeal as required by Rule 42.[3] Rule 42(d)(iii) does not, contrary to the appellant's contentions, authorize his actions. That provision, which requires an appellant to file a supplementary notice of appeal if the appellant files a notice of appeal before the Superior Court has ruled on an application for certification, still presumes that the appellant filed an application for certification in the Superior Court before filing an appeal in the Supreme Court.[4] Finally, the appellant's *pro se*, incarcerated

[1] *Werb v. D'Alessandro*, 606 A.2d 117, 119 (Del. 1992).

[2] Supr. Ct. R. 42(c)(i) (requiring that application for certification of interlocutory appeal "be served and filed within 10 days of the entry of the order from which the appeal is sought or such longer time as the trial court, in its discretion, may order for good cause shown."). Under this rule, an application for certification of an interlocutory appeal from the Superior Court's April 25, 2014 was due, absent good cause shown, in the Superior Court by May 5, 2014.

[3] Supr. Ct. R. 42(c) (stating "[a]n application for certification of an interlocutory appeal *shall be made in the first instance to the trial court*") (emphasis added).

[4] Supr. Ct. R. 42(d)(iii).

status does not excuse his failure to comply with the requirements of Rule 42.[5] Thus, the Court concludes that this appeal must be dismissed.

NOW, THEREFORE, IT IS HEREBY ORDERED, under Supreme Court Rules 29(b) and 42, that the within appeal is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[5] *Hall v. Danberg*, 2010 WL 2624382 (Del. July 1, 2010).