

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|-------------------------|--------------------------------|
| JOHN P. McCAFFERTY and | § |
| MELISSA A. McCAFFERTY, | § No. 70, 2014 |
| | § |
| Defendants Below, | § Court Below—Superior Court |
| Appellants, | § of the State of Delaware, |
| | § in and for New Castle County |
| v. | § |
| | § C.A. No. N09L-10-243 |
| WELLS FARGO BANK, N.A., | § |
| | § |
| Plaintiff Below, | § |
| Appellee. | § |

Submitted: May 20, 2014

Decided: May 30, 2014

Before **BERGER, JACOBS, and RIDGELY**, Justices.

ORDER

This 30th day of May 2014, upon consideration of the appellee's motion to dismiss or affirm and the appellant's response, it appears to the Court that:

(1) The defendants-below/appellants, John and Melissa McCafferty, appeal from a Superior Court decision, dated January 14, 2014, which entered judgment in favor of the plaintiff-below/appellee, Wells Fargo Bank, in this mortgage foreclosure action. In its opinion, the Superior Court stated that the McCaffertys could file objections to the amount of the award, which they did. The Superior Court has not yet held a hearing to determine the damages award.

(2) Wells Fargo has moved to dismiss this appeal on the ground that the Superior Court's January 14, 2014 decision is interlocutory and that the McCaffertys have not complied with Supreme Court Rule 42, which governs appeals from interlocutory orders.

(3) Upon consideration of the parties' positions, we find it manifest that this appeal is interlocutory. The further action required by the Superior Court in this matter is not a purely ministerial act, but rather entails an exercise of discretion by the court in fashioning an appropriate damages award. The ruling from which the appeal is taken is interlocutory in nature because it did not finally determine and terminate the cause before the Superior Court. Furthermore, the McCaffertys have failed to comply with the requirements of Rule 42 in seeking to appeal from an interlocutory order. *

NOW, THEREFORE, IT IS ORDERED that Wells Fargo's motion to dismiss is GRANTED. The motion to affirm is moot. This appeal is hereby DISMISSED. Any filing fee paid by the McCaffertys in conjunction with this appeal shall be applied to any future appeal once the Superior Court enters a final order in the case.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

* See *Julian v. State*, 440 A.2d 990 (Del. 1982).