

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELMARVA WAREHOUSE, INC.,	§
	§ No. 200, 2001
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
PHINEAS YODER,	§ in and for New Castle County
	§ C.A. No. 99C-10-016
Plaintiff Below-	§
Appellee.	§

Submitted: June 18, 2001
Decided: June 25, 2001

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

ORDER

This 25th day of June 2001, upon consideration of the appellee's motion to dismiss and the appellant's response thereto, it appears to the Court that:

(1) The appellant, Delmarva Warehouse, Inc., filed this appeal from an opinion of the Superior Court granting the appellee's motion for summary judgment. The Superior Court's opinion directed the parties to confer and to submit a proposed form of order implementing the substance of the court's opinion. The parties submitted a proposed form of order as directed, but to date, no final order has been docketed in the case.

(2) The appellee, Phineas Yoder, has filed a motion to dismiss this appeal on the ground that the Superior Court's summary judgment opinion is interlocutory and that Delmarva has not complied with Supreme Court Rule 42, which governs appeals from interlocutory orders. Yoder contends that until the Superior Court docket a final order entering judgment in his favor, the summary judgment opinion is not final or appealable.

(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 did not involve a purely ministerial act but an exercise of discretion by the court in fashioning an appropriate implementing order. 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. *See Julian v. State*, Del. Supr., 440 A.2d 990 (1982). Furthermore, appellants have failed to comply with the requirements of Rule 42 in seeking to appeal from an interlocutory order.

NOW, THEREFORE, IT IS ORDERED that Yoder's motion to dismiss is granted. This appeal is hereby DISMISSED.

BY THE COURT:

s/Joseph T. Walsh
Justice