

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	§
	§
Petitioner Below-	§ No. 522, 2001
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware,
	§ in and for Sussex County
CALVIN HARDY,	§ Nos. 0004005099 and
	§ 0103017446
Respondent Below-	§
Appellee.	§

Submitted: November 5, 2001  
Decided: November 29, 2001

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

**ORDER**

This 29th day of November 2001, it appears to the Court that:

(1) The State of Delaware filed a notice of appeal in this case from a bench ruling made by the Family Court at a hearing held on September 25, 2001. At the conclusion of the hearing on Calvin Hardy's pretrial motion to dismiss, the Family Court indicated that it agreed with Hardy's position and would dismiss the case on constitutional grounds. The Family Court further stated, however, that it wanted the parties to file written briefs in support of their respective arguments and that thereafter the court would issue a written decision. The State instead filed a notice of appeal.

(2) This Court directed the State to show cause why the appeal should not be dismissed as an impermissible interlocutory appeal. Upon consideration of the State's response to the notice to show cause, it is manifest that this appeal is interlocutory. The record reflects that the Family Court's bench ruling, among other things, requested the parties below to submit written briefs in support of their respective oral arguments on the motion to dismiss. The Family Court indicated that it would further consider the motion to dismiss and write an opinion in support of its decision.

(3) The further action required by the Family Court in this matter did not involve a purely ministerial act but an exercise of discretion by the Family Court in fashioning an appropriate order. The bench ruling is interlocutory in nature because it did not finally determine and terminate the cause before the Family Court. *See Julian v. State*, Del. Supr., 440 A.2d 990 (1982); *Lipson v. Lipson*, Del. Supr., 2001 WL 710201, \*2 (June 21, 2001).

NOW, THEREFORE, IT IS ORDERED that the State's appeal from the Family Court's interlocutory ruling is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland  
Justice