

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	§
DEPARTMENT OF	§
TRANSPORTATION,	§ No. 554, 2002
	§
Defendant Below-	§
Appellant,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ C.A. No. 00C-04-156
DANA BAXTER (SCHEWE),	§
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 11, 2002  
Decided: November 27, 2002

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

**ORDER**

This 27<sup>th</sup> day of November 2002, it appears to the Court that:

(1) The defendant-appellant, State of Delaware Department of Transportation, has petitioned this Court, pursuant to Supreme Court Rule 42, to appeal from the Superior Court's interlocutory ruling on September 6, 2002, denying DelDOT's motion for summary judgment.<sup>1</sup> Because DelDOT's interlocutory appeal does not meet the criteria of Rule 42, it must be REFUSED.

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<sup>1</sup>DelDOT also filed, in the alternative, an appeal from a purportedly final collateral order. *DelDOT v. Baxter*, No. 572, 2002.

(2) On April 18, 2000, the plaintiff-appellee, Dana Baxter (Schewe), filed a personal injury action in the Superior Court based on injuries she sustained when she was hit by an object thrown from a mowing apparatus operated by DelDOT while her vehicle was stopped at an intersection in Newark, Delaware. DelDOT subsequently filed a motion for summary judgment on the grounds that it was immune from suit because sovereign immunity had not been waived<sup>2</sup> and that Schewe would not be able to prove at trial that it had acted with “gross or wanton negligence.”<sup>3</sup> The Superior Court denied DelDOT’s motion, determining, first, that there were material issues of fact in dispute regarding the nature of the mowing apparatus in use at the time of the accident<sup>4</sup> and, second, that whether DelDOT had acted with gross or wanton negligence was a jury issue.<sup>5</sup>

(3) On October 10, 2002, the Superior Court refused to certify an interlocutory appeal to this Court pursuant to Rule 42 because its denial of DelDOT’s motion for summary judgment did not determine a substantial issue and establish a legal right.

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<sup>2</sup>DEL. CODE ANN. tit. 18, § 6511. DOT argued that the State of Delaware’s self-insurance plan does not cover injuries resulting from the operation of machinery that is part of mobile equipment such as the mowing apparatus in this case.

<sup>3</sup>DEL. CODE ANN. tit. 10, § 4001.

<sup>4</sup>*Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

<sup>5</sup>DOT has not presented any argument regarding this aspect of the Superior Court’s decision and, therefore, we will not consider it.

(4) Applications for interlocutory review are addressed to the sound discretion of this Court and are granted only in exceptional circumstances.<sup>6</sup> We have examined the Superior Court's September 6, 2002 decision according to the criteria set forth in Rule 42. In the exercise of its discretion, this Court has concluded that exceptional circumstances do not exist in this case to merit interlocutory review of the decision of the Superior Court. The Superior Court did not determine that the doctrine of sovereign immunity did not apply; it merely decided that the issue was not ripe for determination because there were material issues of fact with regard to sovereign immunity that remained in dispute. Thus, the Superior Court's denial of DeIDOT's motion for summary judgment did not determine a substantial issue and establish a legal right.

NOW, THEREFORE, IT IS ORDERED that the within interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Myron T. Steele  
Justice

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<sup>6</sup>SUPR. CT. R. 42(b).