

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	§
DEPARTMENT OF	§
TRANSPORTATION,	§ No. 572, 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 28, 2002
Decided: November 27, 2002

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

ORDER

This 27th day of November 2002, it appears to the Court that:

(1) The defendant-appellant, State of Delaware Department of Transportation, filed an appeal from the Superior Court's September 6, 2002 order denying DelDOT's motion for summary judgment.¹ Because DelDOT's appeal is from an unappealable interlocutory order, it must be DISMISSED.

(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

¹DelDOT also filed, in the alternative, an interlocutory appeal pursuant to SUPR. CT. R. 42. *DelDOT v. Baxter*, No. 554, 2002.

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 waived² and that Schewe would not be able to prove at trial that it had acted with “gross or wanton negligence.”³ 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 accident⁴ and, second, that whether DelDOT had acted with gross or wanton negligence was a jury issue.⁵

(3) On October 16, 2002, the Clerk issued a notice directing DelDOT to show cause why this appeal should not be dismissed pursuant to Supreme Court

²DEL. CODE ANN. tit. 18, § 6511. DelDOT 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.

³DEL. CODE ANN. tit. 10, § 4001.

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

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

Rule 29(b) for failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order. On October 28, 2002, DelDOT filed a response to the notice to show cause. In its response, DelDOT argued that the Superior Court's September 6, 2002 order is appealable as a final order under the collateral order doctrine.

(4) 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.”⁶

(5) In this case, the Superior Court's order denying DelDOT's motion for summary judgment is not appealable as a collateral order because it did not determine a “claim of right” with respect to DelDOT.⁷ Specifically, 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. On the record before us, we cannot say that the Superior Court abused its

⁶*Evans v. Justice of the Peace Court No. 19*, 652 A.2d 574, 576 (Del. 1995) (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949)).

⁷*Id.*

discretion in so deciding. Thus, because this Court lacks jurisdiction to hear DeIDOT's interlocutory appeal,⁸ it must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Justice

⁸SUPR. CT. R. 29(b).