

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATHAN and AMY BURNETT	§
and RONALD and EDITH	§ No. 331, 2013
COUNCIL,	§
	§
Defendants Below-	§ Court Below—Superior Court
Appellants,	§ of the State of Delaware
	§ in and for New Castle County
v.	§ C.A. No. N12C-02-172
	§
DAVID and BARBARA KALB, as	§
Parents and Next Friends of	§
BRIANNA KALB, a minor,	§
	§
Plaintiffs Below-	§
Appellees.	§

Submitted: July 5, 2013
Decided: July 15, 2013

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

ORDER

This 15th day of July 2013, it appears to the Court that:

(1) On June 24, 2013, the Court received the notice of appeal of Jonathan and Amy Burnett (the “Burnetts”) from the Superior Court’s interlocutory order dated May 8, 2013, which denied their motion for summary judgment.¹ Pursuant to Supreme Court Rules 6 and 42, a timely

¹ The Superior Court’s order was docketed on May 9, 2013.

notice of appeal from the Superior Court's order should have been filed on or before June 10, 2013.²

(2) On June 24, 2013, the Clerk issued a notice pursuant to Rule 29(b) directing the Burnetts to show cause why the appeal should not be dismissed as untimely filed. The Burnetts, through counsel, filed a response to the notice to show cause on July 3, 2013. Counsel states that he believed he had 30 days from June 17, 2013, the date of the Superior Court's order denying certification of the interlocutory appeal, in which to file his notice of appeal. Counsel further requests that the Court rely upon Rule 42(c) (1) to extend the time for acceptance of the notice of appeal. Counsel, finally, represents that the issues involved in this appeal meet the criteria required for this Court's acceptance of an interlocutory appeal pursuant to Rule 42(b).³

(3) Rule 6(a) (1) requires that a notice of appeal be filed within 30 days after entry upon the docket of the judgment, order or decree from which the appeal is taken. Rule 42(d) (i) requires that the notice of appeal from an interlocutory order be filed in this Court within 30 days after the entry upon the docket of the order from which the appeal is taken. Pursuant

² Supr. Ct. R. 11(a). On July 5, 2013, the Court received the appeal of Ronald and Edith Council (the "Councils") from the same interlocutory order. In order to be timely, the Councils' notice of appeal should likewise have been filed on or before June 10, 2013.

³ On July 5, 2013, counsel for the Councils joined in the Burnetts' response to the notice to show cause.

to Rule 10(a), a notice of appeal must be received by the Office of the Clerk of this Court within the applicable time period in order to be effective. This Court has no jurisdiction to entertain the Burnetts' untimely appeal.⁴ Accordingly, their appeal must be dismissed.⁵

NOW, THEREFORE, IT IS ORDERED that the appeals are DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

⁵ The Councils' appeal also must be dismissed on the same ground.