

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY L. RHUDY, as personal	§
representative of the ESTATE OF	§
DENISE L. RHUDY, deceased, and	§
as guardian and next friend of	§
GARY E. RHUDY, EVA RHUDY,	§
MORGAN RHUDY and	§ No. 430, 2002
MADISON RHUDY, minors,	§
	§
Plaintiffs Below-	§
Appellants,	§ Court Below—Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ C.A. No. 01C-12-041
BOTTLECAPS INC., a Delaware	§
corporation d/b/a BOTTLECAPS	§
BAR & RESTAURANT and THE	§
WILMINGTON PARKING	§
AUTHORITY, a corporation of the	§
State of Delaware,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: September 20, 2002

Decided: October 8, 2002

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

ORDER

This 8th day of October 2002, it appears to the Court that:

(1) The plaintiffs-appellants, Gary L. Rhudy, as personal representative of the estate of Denise L. Rhudy and as guardian and next friend of Gary E.

Rhudy, Eva Rhudy, Morgan Rhudy and Madison Rhudy, minors (the “Rhudys”), filed an appeal from the Superior Court’s June 28, 2002 order granting summary judgment in favor of Defendant-Appellee Bottlecaps, Inc.¹ Bottlecaps subsequently filed a motion to dismiss the appeal on the ground that the Superior Court’s order was an interlocutory, and not a final, order.

(2) The test for whether an order is final and, therefore, ripe for appeal is whether the trial court has clearly declared its intention that the order be the court’s “final act” in a case.² The Superior Court’s June 28, 2002 order³ was not intended to be its final act for purposes of appeal, since the order did not dispose of the Rhudys’ claims against the Wilmington Parking Authority.⁴ Moreover, the

¹No ruling was made with respect to defendant Wilmington Parking Authority.

²*J.I. Kislak Mortgage Corporation v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

³Consisting of the transcript of the June 28, 2002 hearing on Bottlecaps’ motion for summary judgment.

⁴*Stroud v. Milliken Enterprises, Inc.*, 552 A.2d 476, 482 (Del. 1989).

Superior Court did not direct the entry of a final judgment upon the Rhudys claims against Bottlecaps in accordance with Superior Court Civil Rule 54(b).

(3) An appeal from the Superior Court's June 28, 2002 order, therefore, must satisfy the requirements for taking an interlocutory appeal pursuant to Supreme Court Rule 42. The Rhudys have not attempted to comply with that Rule. Accordingly, their appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED that this appeal is DISMISSED pursuant to Supreme Court Rules 29(b) and 42.

BY THE COURT:

s/ Joseph T. Walsh
Justice