

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHIRLEY HARLEY BROWN,	§
	§ No. 52, 2012
Intervenor Below-	§
Appellant,	§
	§
v.	§
	§
STORNAWAYE CAPITAL	§
LLC/NEW FALLS CORPORATION,	§ Court Below—Court of Chancery
	§ of the State of Delaware
Plaintiff Below-	§
Appellee,	§ C.A. No. 18845
	§
v.	§
	§
SANDRA SMITHERS,	§
	§
Defendant Below-	§
Appellee.	§

Submitted: April 3, 2012  
Decided: April 10, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 10<sup>th</sup> day of April 2012, upon consideration of the notice to show cause, the appellant's response, and the appellees' respective replies thereto, it appears to the Court that:

(1) The appellant, Shirley Harley Brown (Brown), filed this appeal from an oral decision of the Court of Chancery, entered on January 24, 2012, ruling on the parties' cross-motions for summary judgment. At the

conclusion of the January 24 hearing, the trial court directed the plaintiff-appellee to prepare a form of order reflecting the substance of the court's oral ruling and to submit it for further review and consideration.

(2) After the appeal was filed, the Clerk of this Court issued a notice to Brown to show cause why the appeal should not be dismissed for her failure to comply with Supreme Court Rule 42 when appealing an apparent interlocutory order. Brown's response to the notice to show cause raises arguments directed to the merits of her appeal. The response does not address the interlocutory nature of this appeal.

(3) After careful consideration, we find that this matter must be dismissed. An order is deemed final and appealable if the trial court has declared its intention that the order be the court's "final act" in disposing of all justiciable matters within its jurisdiction.<sup>1</sup> The further action required by the Court of Chancery in this matter did not involve a purely ministerial act but an exercise of discretion by the trial court in fashioning an appropriate order to implement the substance of its January 24, 2012 oral ruling. The ruling from which the appeal is taken is interlocutory in nature because it did

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<sup>1</sup> *J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

not finally determine and terminate the cause below.<sup>2</sup> Furthermore, Brown has failed to comply with the requirements of Rule 42 in seeking to appeal from an interlocutory order.

NOW, THEREFORE, IT IS ORDERED that this appeal is hereby DISMISSED without prejudice to Brown's right to file a later appeal once a final order is entered in the case below. Any docketing fee that Brown paid in connection with this appeal shall be transferred to any later filed appeal from a final order in this case.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>2</sup> See *Julian v. State*, 440 A.2d 990 (Del. 1982).