IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEBORAH H. WINDOM, as next friend of BRANDON WINDOM, a minor,	§	No. 415, 2004
Plaintiff Below-Appellant,	§	Court Below---Superior Court of the State of Delaware, in and for New Castle County C.A. No. 01C-10-196
v.	§	
CAPITOL TRAIL JR. FOOTBALL LEAGUE, INC. t/a NCCFL, WILLIAM C. UNGERER, W.C. UNGERER INSURANCE AGENCY, MICHAEL T. ALPAUGH, MICHAEL T. ALPAUGH INSURANCE AGENCY and PAWTUCKET MUTUAL INSURANCE COMPANY,	§	
Defendants Below-Appellees.	§	

Submitted: December 13, 2004
Decided: January 20, 2005

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

O R D E R

This 20th day of January 2005, it appears to the Court that:

(1) On September 22, 2004, plaintiff-appellant Deborah H. Windom, as next friend of Brandon Windom, a minor ("Windom"), filed an appeal from the Superior Court's July 22, 2004 order granting summary judgment in favor of

defendants-appellees William C. Ungerer and W.C. Ungerer Insurance Agency (collectively, "Ungerer"), the Superior Court's July 22, 2004 order granting summary judgment in favor of defendants-appellees Michael T. Alpaugh, and Michael T. Alpaugh Insurance Agency (collectively, "Alpaugh") and the Superior Court's August 24, 2004 order denying Windom's motion for reargument.

(2) Ungerer and Alpaugh each filed a motion to dismiss on the ground that the appeal was interlocutory. At that point, Pawtucket Mutual Insurance Company ("Pawtucket") remained as a party in the case.[1] In her response to the motions to dismiss, Windom took the position that her appeal was from a final order, since all issues relating to Ungerer and Alpaugh had been resolved in the Superior Court's August 24, 2004 order, a default judgment had been entered against Capitol Trail Jr. Football League, Inc. ("Capitol Trail") and Pawtucket had been dismissed from the case by stipulation filed on October 12, 2004.

(3) On November 12, 2004, Alpaugh filed a second motion to dismiss on the ground that, assuming arguendo that the October 12, 2004 stipulation dismissing Pawtucket was a final order, Windom had failed to file a second notice of appeal within 30 days of that date.[2] Windom then filed a response to that motion, this time arguing that the stipulation of dismissal was not a final order

[1] Supr. Ct. R. 42.
[2] Supr. Ct. R. 6(a) (1).

because the Superior Court had not yet approved it on behalf of Brandon, Windom's minor child,[3] had not yet signed it, and had not yet scheduled an inquisition hearing to determine the amount of damages owed by Capitol Trail following the entry of default judgment against it.

(4) At the request of this Court, Ungerer and Alpaugh filed replies to Windom's response. In its submission, Ungerer states that, depending upon the relationship of Pawtucket and Capitol Trail, the October 12, 2004 stipulation of dismissal may have disposed of Windom's claims against Capitol Trail as well as her claims against Pawtucket,[4] but, if not, the appeal is interlocutory. In its submission, Alpaugh reiterates its initial position that Windom's appeal is interlocutory and, therefore, must be dismissed.

(5) It appears that there are outstanding issues to be determined by the Superior Court in this case. Specifically, the Superior Court has not yet approved the dismissal of Pawtucket on behalf of the minor child, has not yet signed the stipulation of dismissal as an order, and has not yet determined if an inquisition hearing should be scheduled to determine the amount of damages owed by Capitol Trail. All parties agree that, in its present posture, Windom's appeal is

[3] Del. Code Ann. tit. 12, § 3901(k) (2001).
[4] It appears that the Superior Court has not made any findings with respect to that issue.

interlocutory. We conclude that Windom's appeal is interlocutory[5] and, because Windom has failed to comply with the procedural requirements of Rule 42(c) and (d), we decline to exercise our appellate jurisdiction.[6]

NOW, THEREFORE, IT IS ORDERED that Ungerer's and Alpaugh's motions to dismiss are GRANTED and the appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[5] *Showell Poultry v. Delmarva Poultry Corp.*, 146 A.2d 794, 795-96 (Del. 1958).
[6] *Stroud v. Milliken Enterprises, Inc.*, 552 A.2d 476, 481-82 (Del. 1989).