

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CLAUDIA WILTBANK JOHNSON,	§
	§ No. 590, 2011
Defendant Below-	§
Appellant,	§
	§
v.	§
	§
KATHLEEN BROWN,	§ Court Below—Court of Chancery
	§ of the State of Delaware
Plaintiff Below-	§
Appellee,	§ C.A. No. 2170-MA
	§
and	§
	§
BENJAMIN WILTBANK, II, JUANITA	§
YVONNE WILTBANK, HOMEOWNERS	§
LOAN CORPORATION, and	§
MORTGAGE ELECTRONIC	§
REGISTRATION SYSTEMS, INC.,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: November 9, 2011
Decided: December 2, 2011

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

ORDER

This 2nd day of December 2011, upon consideration of appellee Kathleen Brown’s motion to dismiss, and the appellant's response thereto, it appears to the Court that:

(1) The appellant, Claudia Wiltbank Johnson (“Claudia”), filed this appeal from a decision and order of the Court of Chancery, dated October 13, 2011, which held, among other things, that the parties’ deceased father did not grant a life estate to Claudia in certain real property located in Lewes, Delaware. The trial court, therefore, granted Kathleen’s petition to partition the property. In so doing, the trial court directed Kathleen’s counsel to submit a proposed form of judgment providing for an independent appraisal of the property and setting forth a procedure for a sale of the property and distribution of the proceeds.

(2) Kathleen has moved to dismiss this appeal on the ground that the Court of Chancery’s October 13, 2011 order is interlocutory and that Claudia has not complied with Supreme Court Rule 42, which governs appeals from interlocutory orders. Kathleen contends that the matter below is not appealable until the Court of Chancery enters a final order setting forth the requirements for an appraisal of the property and prescribing a procedure for the sale and distribution of the proceeds between the parties.

(3) We agree. The Court of Chancery order clearly anticipated entering a final judgment in the matter after it received the additional information that the court requested from Kathleen’s counsel. The further action required by the

Court of Chancery in this matter is not purely ministerial, rather, it involves an exercise of discretion by the court in fashioning an appropriate implementing order. The ruling from which the appeal is taken is interlocutory in nature because it did not finally determine and terminate the case before the trial court,¹ and, Claudia has failed to comply with the requirements of Rule 42 in seeking to appeal from an interlocutory order.

NOW, THEREFORE, IT IS ORDERED that Kathleen's motion to dismiss is GRANTED. Claudia's filing fee paid in conjunction with this appeal shall be transferred to any later appeal from a final judgment entered by the Court of Chancery in this matter. This appeal is hereby DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹ See *Julian v. State*, 440 A.2d 990 (Del. 1982).