

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DERRICK M. SPARKS, ¹	§	
	§	No. 635, 2012
Respondent Below,	§	
Appellant,	§	Court Below—Family Court
	§	of the State of Delaware, in and
v.	§	for Sussex County
	§	
PAULA D. MATTHEWS,	§	File No. CS09-02122
	§	Pet. No. 11-26647
Petitioner Below,	§	
Appellee.	§	

Submitted: February 13, 2013

Decided: March 13, 2013

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

ORDER

This 13th day of March 2013, upon consideration of the Clerk’s notice to show cause and the appellant’s response to that notice, it appears to the Court that:

(1) By order dated November 2, 2012, the Family Court granted a “Petition for Rule to Show Cause and Specific Performance” filed by the appellee, Paula D. Matthews (“Matthews”). The court’s decision, in part, ordered Matthews’ counsel to “promptly submit an affidavit . . . which itemizes any legal services rendered for expenses related to” the Petition.

¹ By Order dated November 30, 2012, the Court *sua sponte* assigned pseudonyms to the parties. See DEL. SUPR. CT. R. 7(d).

Matthews' counsel filed an application for attorney's fees and costs on November 7, 2012. On November 30, 2012, the appellant, Derrick M. Sparks ("Sparks"), *pro se*, appealed from that November 2, 2012 Family Court order.

(2) Absent compliance with Supreme Court Rule 42 governing interlocutory appeals, the jurisdiction of this Court is limited to the review of a trial court's final judgment.² The Court has consistently held that an order is not final and appealable until the trial court has ruled on an outstanding application for attorney's fees.³

(3) On February 4, 2013, the Clerk issued a notice directing Sparks to show cause why his appeal should not be dismissed for failure to comply with Supreme Court Rule 42(d) when appealing from an apparent interlocutory order. Sparks, through counsel, responded that, in the event that the Court dismisses his appeal as interlocutory, the Court should provide for a waiver of the Supreme Court filing fee if Sparks decides to appeal from the final judgment of the Family Court when it issues.

(4) It is clear that Sparks' appeal is interlocutory, because Sparks filed it before the Family Court ruled on Matthews' application for

² *Bailey v. Walker*, 58 A.3d 982, 2012 WL 5873655 (Del. Nov. 20, 2012) (TABLE).

³ *Callahan v. Artysiewicz*, 918 A.2d 1170, 2007 WL 148692 (Del. Jan. 22, 2007) (TABLE) (citation omitted).

attorney's fees and costs. Because Sparks did not file his appeal under Supreme Court Rule 42, the appeal must be dismissed.

(5) Sparks is not precluded from filing an appeal once the Family Court has issued a final judgment.⁴ In any future appeal, Sparks should file a motion to proceed *in forma pauperis* to determine if he is eligible for a waiver of the Supreme Court filing fee.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁴ *See Id.*