

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SUSAN L. FOSTER and JOHN	§	
C. FOSTER, <sup>1</sup>	§	No. 547, 2006
	§	
Respondents Below,	§	Court Below--Family Court of
Appellants,	§	the State of Delaware, in and
	§	for Kent County in File No.
v.	§	02185, Pet. No. 06-25269.
	§	
DIVISION OF FAMILY SERVICES,	§	
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: November 14, 2006

Decided: November 17, 2006

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

**ORDER**

This 17<sup>th</sup> day of November 2006, upon consideration of the amended notice of interlocutory appeal as cured<sup>2</sup> and the supplemental notice of interlocutory appeal filed by the appellants, Susan L. Foster and John C. Foster (“the Fosters”), it appears to the Court that:

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<sup>1</sup>This Order assigns pseudonyms to the appellants pursuant to Supreme Court Rule 7(c).

<sup>2</sup>The amended notice of interlocutory appeal corrected the original notice of interlocutory appeal which was filed without page two. Unfortunately, the amended notice of interlocutory appeal was filed without Exhibit B (one of two applications for certification) and Exhibit C (DFS’ response to the application for certification) as contemplated in paragraph two of the original, amended and supplemental notices of interlocutory appeal. The missing exhibits were filed on November 14, 2006, when the Clerk notified counsel of the oversight.

(1) On August 10, 2006, the Division of Family Services (DFS) applied for emergency temporary custody of the Fosters' two children, ages one and five, and Susan Foster's ten-year old child from a prior relationship. DFS alleged that the children were dependent, neglected and/or abused.

(2) By ex parte order dated August 10, 2006, the Family Court granted DFS' application for temporary custody of the Fosters' two children. By separate ex parte order issued on August 10, 2006, the Family Court granted DFS' application for temporary custody of Susan Foster's ten-year old child from a prior relationship. Each ex parte order directed that DFS file a written petition and supporting affidavit no later than Noon the following day, August 11, 2006.

(3) At the preliminary protective hearing on August 17, 2006, the Family Court granted the Fosters' request for additional time to review the DFS file. When the preliminary protective hearing reconvened on September 6, 2006, the Fosters moved to dismiss the dependency and neglect petition on the basis that DFS' supporting affidavit filed on August 11, 2006, was not properly verified. The Family Court denied the Fosters' motion to dismiss.

(4) On September 15, 2006, the Fosters' counsel filed two applications for certification of an interlocutory appeal from the Family Court's

September 6, 2006 bench ruling. One application was filed on behalf of the Fosters. The other application was filed on behalf of Susan Foster and the father of Susan Foster's ten-year old child.<sup>3</sup> By separate orders dated October 4, 2006, the Family Court denied the applications for certification.

(5) An application for interlocutory review is addressed to the sound discretion of this Court and is granted only in extraordinary cases. In the exercise of its discretion, this Court has concluded that the application for interlocutory review in this case does not meet the requirements of Supreme Court Rule 42 and should be refused.

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>3</sup>From the limited record available to the Court, it is not clear whether the Fosters' counsel also represents the father of the ten-year old child.