

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN J. NICHOLS,	§
	§ No. 128, 2007
Plaintiff Below-	§
Appellant,	§
	§
v.	§ Court Below—Court of Chancery
	§ of the State of Delaware,
JOANNE B. LEWIS, ANNE M.	§ in and for New Castle County
BARCZEWSKI, STEPHEN J.	§ C.A. No. 1758-N
BARCZEWSKI, and GEORGE A.	§
BARCZEWSKI, SUSAN ARDAY,	§
and DAVID R. ARDAY,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: April 4, 2007

Decided: May 1, 2007

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

ORDER

This 1st day of May 2007, upon consideration of the appellees' motion to dismiss and the appellant's response thereto, it appears to the Court that:

(1) The plaintiff-appellant, Stephen J. Nichols, filed this appeal from a decision of the Court of Chancery dismissing all counts of Nichols's complaint against the defendants-appellees. The trial court, however, expressly allowed Nichols the opportunity to re-plead and bring a claim of defamation against defendants-appellees, the Ardays.

(2) The defendants-appellees have filed a motion to dismiss Nichols' appeal on the grounds that the Court of Chancery's order is interlocutory and that Nichols has not complied with Supreme Court Rule 42, which governs appeals from interlocutory orders. The appellees contend that the dismissal of less than all of the claims against all the defendants-appellees in the case renders the present appeal interlocutory.

(3) In his response to the motion to dismiss, Nichols contends that the Court of Chancery's order was final because it disposed of *all* the claims in his Second Amended Verified Complaint. Nichols apparently argues that the filing of another amended complaint in the same case did not affect the finality of the Court of Chancery's ruling dismissing the Second Amended Verified Complaint.

(4) We disagree. An order is deemed final and appealable if the trial court has clearly declared its intention that the order be the court's "final act" in disposing of all justiciable matters within its jurisdiction.¹ Permitting Nichols to file another amended complaint *in the same case* against the Ardays clearly reflects the trial court's intention that the dismissal of the Second Amended

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

Verified Complaint was *not* the court's final act in the case.² Nichols did not seek the entry of a final judgment under Court of Chancery Rule 54(b), nor did he attempt to comply with the provisions of Supreme Court Rule 42 in attempting to appeal from the trial court's interlocutory ruling. Accordingly, this appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED that the appellees' motion to dismiss is GRANTED. This appeal is hereby DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

² *Braddock v. Zimmerman*, 906 A.2d 776, 783-84 (Del. 2006).