

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MOUNTAIRE FARMS, INC.,	§
	§
Appellee Below-	§ No. 9, 2003
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
JAIMEY SHOWELL,	§ in and for Sussex County
	§ C.A. No. 02A-06-003
Appellant Below-	§
Appellee.	§

Submitted: February 12, 2003

Decided: February 28, 2003

Before **VEASEY**, Chief Justice, **WALSH**, and **HOLLAND**, Justices.

**ORDER**

This 28<sup>th</sup> day of February 2003, upon consideration of the appellee's motion to dismiss or remand this appeal and the appellant's untimely response thereto, it appears to the Court that:

(1) The appellant filed this appeal from an order of the Superior Court, which reversed a decision of the Industrial Accident Board and remanded the matter for further action. The appellee filed a motion to dismiss or remand this appeal to the Superior Court on the ground that there is a fee application pending in the Superior Court, which makes this appeal

interlocutory. The appellant filed an untimely response in opposition to the appellee's motion.<sup>1</sup>

(2) We hold that that the appeal must be dismissed because it was taken from an unappealable interlocutory order and was not filed in compliance with Supreme Court Rule 42. Although neither party addressed it, we find that the Superior Court's order remanding this case to the Industrial Accident Board is not a final order because it required the Board to take further action that was more than "purely ministerial" in nature.<sup>2</sup> The further action required by the Board in fashioning an appropriate final judgment in this case renders the appellant's appeal to this Court interlocutory.

NOW, THEREFORE, IT IS ORDERED that the within appeal hereby is DISMISSED.

BY THE COURT:

s/Joseph T. Walsh  
Justice

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<sup>1</sup> The appellant was required to respond to the motion to dismiss on or before January 23, 2003. The appellant did not file its response in this case until February 12, 2003. Although the appellant's response could be stricken as a nonconforming document under Supreme Court Rule 34, and dismissal of the appeal could be deemed unopposed under Supreme Court Rule 3(b)(2)(a), it is not necessary to do so because the appellant's response does not alter our holding in this case.

<sup>2</sup> *Pollard v. The Placers, Inc.*, 692 A.2d 879, 880-81 (Del. 1997).