

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MODERN MATURITY CENTER, INC.,	§ §
Appellee Below- Appellant,	§ No. 197, 2003 §
v.	§ Court Below—Superior Court § of the State of Delaware, § in and for Kent County
BRENDA LEE COWARD,	§ C.A. No. 01A-07-003 §
Appellant Below- Appellee.	§ §

Submitted: April 29, 2003

Decided: May 16, 2003

Before **VEASEY**, Chief Justice, **BERGER**, and **STEELE**, Justices.

**ORDER**

This 16<sup>th</sup> day of May 2003, upon consideration of the appellee's motion to dismiss and the appellant's motion to remand, 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 to the Board for further action. The appellee has filed a motion to dismiss this appeal on the ground that there is a fee application pending in the Superior Court, which renders this appeal interlocutory. The appellant did not file a response to the motion to dismiss, but instead filed a motion requesting that this

Court remand the appeal to Superior Court, with jurisdiction retained, for resolution of the pending fee application.

(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>1</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.<sup>2</sup> A determination of the fee application would not cure the interlocutory nature of the Superior Court's remand order. Accordingly, a remand to the Superior Court for consideration of the fee application would serve no purpose.

NOW, THEREFORE, IT IS ORDERED that the motion to remand is DENIED. The appeal hereby is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele  
Justice

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<sup>1</sup> *Pollard v. The Placers, Inc.*, 692 A.2d 879, 880-81 (Del. 1997).

<sup>2</sup> *Mountaire Farms, Inc. v. Showell*, 2003 WL 728558 (Del. Feb. 29, 2003).