

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRYSTAL WHARTON,

Petitioner Below,
Appellant,

v.

KEVIN WHARTON and DENNIS
AND LINDA O'MALLEY,

Respondents Below,
Appellees.

No. 114, 2000

Court Below: Family Court of
the State of Delaware in and for
Sussex County

File No. CS99003575
Petition No. 99-10910

Submitted: July 11, 2000
Decided: July 14, 2000

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

O R D E R

This 14th day of July 2000, it appears to the Court that:

(1) On March 22, 2000, this Court received the appellant's notice of appeal from the Family Court's decision of February 24, 2000, which awarded guardianship of one of appellant's minor children to the grandparents and sole custody of two of appellant's minor children to the father, with limited visitation rights awarded to the mother.

(2) By order dated March 3, 2000, the Family Court granted appellees' motion to reopen, stayed visitation privileges of the appellant with her children, and scheduled a hearing on March 24, 2000. It is this Court's understanding that a further hearing is contemplated in Family Court.

(3) On July 5, 2000, the Assistant Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed for her failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order. In her response, appellant states she feels her case should not be dismissed because the motion in Family Court was only pertaining to her visitation and that she is not satisfied with the Family Court's decision to place custody of her three children with appellees.

(4) Absent compliance with Rule 42, the jurisdiction of this Court is limited to the review of final judgment of trial courts.¹ An order is deemed final if the trial court has clearly declared its intention that the order be the court's "final act" in the case.² At the time appellant filed her appeal in this Court, she was aware that the Family Court had not yet resolved the issue of visitation.

¹ *Julian v. State*, Del. Supr., 440 A.2d 990, 991 (1982).

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

Appellant's contention that the issue of visitation is a separate matter from the issue of custody "fails to appreciate the strong policy of this Court not to accept piecemeal appeals from a single proceeding in a trial court."³

(5) The proceedings before the Family Court involved rights of custody and visitation. Until the issue of visitation is also disposed of, the Family Court will not have resolved all the issues before it, and thus its judgment of February 24, 2000, is not final. Accordingly, an appeal from the Family Court to this Court is premature absent compliance with the requirements for taking an interlocutory appeal in accordance with Supreme Court Rule 42. Appellant has not attempted to comply with this Rule.

NOW, THEREFORE, IT IS ORDERED that appellant's appeal be, and it hereby is,

DISMISSED.

BY THE COURT:

s/Joseph T. Walsh
Justice

³ *Pinkowski v. Burris*, Del. Supr., No. 396, 1994, Walsh, J. (Jan. 30, 1995) (Order).