IN THE SUPREME COURT OF THE STATE OF DELAWARE

WAYNE F. BAILEY, JR.,[1]	§	
	§	No. 531, 2012
Petitioner Below-	§	
Appellant,	§	
	§	Court Below—Family Court
v.	§	of the State of Delaware
	§	in and for New Castle County
KIM R. WALKER,	§	File No. CS04-02974
	§	
Respondent Below-	§	
Appellee.	§	

Submitted: October 19, 2012
Decided: November 20, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

O R D E R

This 20th day of November 2012, it appears to the Court that:

(1) The petitioner-appellant, Wayne F. Bailey, Jr. ("Father"), filed an appeal from the Family Court's August 29, 2012 order awarding sole custody of the parties' minor child, Karen, to the respondent-appellee, Kim R. Walker ("Mother"), and visitation to Father.[2] The Court Appointed Special Advocate (the "CASA") has moved to dismiss the appeal on the ground of mootness. The appeal is interlocutory, and in the absence of compliance with Supreme Court Rule 42, we conclude that it must be dismissed.

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[1] The Court *sua sponte* assigned pseudonyms to the parties by Order dated October 2, 2012. Supr. Ct. R. 7(d). We also hereby assign a pseudonym to the parties' minor child.
[2] Father also appeals a number of interlocutory orders of the Family Court.

(2) The record before us reflects that, on August 31, 2012, two days after the issuance of the Family Court's August 29, 2012 order, Father filed a motion to modify the order to grant him emergency custody and placement of Karen. Following the issuance of an emergency *ex parte* order granting temporary custody and placement to Father, an evidentiary hearing was held in the Family Court on October 3, 2012. Based upon the evidence presented at the hearing, the Family Court found the existence of immediate and irreparable harm to Karen if she was permitted to remain in Mother's home. The Family Court ordered that temporary custody and placement of Karen was to remain with Father pending a full hearing on the merits on January 16, 2013.

(3) In its motion to dismiss, the CASA claims that, because Father has been awarded temporary custody and placement of Karen, he has been afforded the relief sought in his appeal. As a result, the CASA argues, Father's appeal is moot and should be dismissed. In his response to the motion to dismiss, Father states that his appeal should not be dismissed because there are outstanding issues remaining that have not been decided in the Family Court's October 3, 2012 order.

(4) Absent compliance with Rule 42, the jurisdiction of this Court is limited to the review of final judgments of trial courts.[3] An order is deemed to be final if the trial court has clearly declared its intention that the order be the court's

[3] *Julian v. State*, 440 A.2d 990, 991 (Del. 1982).

"final act" in the case.[4] If the order has not determined the substantial merits of the controversy, the matter is interlocutory and is not ripe for appeal.[5]

(5) The record clearly reflects that the Family Court's August 29, 2012 order is not its final order in this case. Father himself filed the motion that led to the Family Court's issuance of the order that placed Karen with Father pending a full hearing on the merits on January 16, 2013. Because this appeal is premature, we conclude that, absent compliance with Rule 42, it must be dismissed.

NOW, THEREFORE, IT IS ORDERED that this appeal is DISMISSED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[4] *J.I. Kislak Mortgage Corp. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).
[5] *Showell Poultry, Inc. v. Delmarva Poultry Corp.*, 146 A.2d 794, 796 (Del. 1958).