## IN THE SUPREME COURT OF THE STATE OF DELAWARE

HENRY BLACK, MARY LOU BLACK, RAYMOND BUCHTA, W. SCOTT BLACK, and BLACKBALL PROPERTIES, LLC,	§ No. 637, 2012 § § §
	§ Court Below—Court of Chancery
Defendants Below,	§ of the State of Delaware
Appellants,	§
	§ C.A. No. 7439
v.	§
	§
GARY STAFFIERI and ADRIA	§
CHARLES STAFFIERI,	§
	§
Plaintiffs Below, Appellees.	§

Submitted: March 4, 2013 Decided: March 13, 2013

Before BERGER, JACOBS, and RIDGELY, Justices.

## ORDER

This 13<sup>th</sup> day of March 2013, upon consideration of the appellees' motion to dismiss and the response and reply thereto, it appears to the Court that:

(1) The defendants-appellants appealed from a post-trial order of the Court of Chancery dated October 24, 2012, as well as from two orders dated November 7, 2012. The October 24, 2012 post-trial order upheld plaintiffsappellees' claimed easement rights and permanently enjoined defendants

from interfering with those rights. The post-trial order also denied plaintiffs' claim for damages, but granted plaintiffs' request for attorney's fees and costs based on defendants' bad faith conduct. The amount of the attorney's fees award was left open for further determination.

- (2) Defendants appealed on December 5, 2012. Plaintiffs moved to dismiss on the ground that the appeal is interlocutory and was not filed in compliance with Supreme Court Rule 42. In their response, defendants contend that the appeal is not interlocutory, because the plaintiffs' complaint did not properly assert a claim for attorney's fees. Thus, defendants argue, the award of attorney's fees is simply an award of costs and does not affect the finality of the post-trial order.
- (3) We disagree. An order is deemed final and appealable if the trial court has declared its intention that the order be the court's "final act" in disposing of all justiciable matters within its jurisdiction. The further action required by the Court of Chancery in this matter did not involve a purely ministerial act but an exercise of discretion by the court in fashioning an appropriate order to implement its ruling that defendants had acted in bad faith, and that plaintiffs were therefore entitled to an award of attorney's

<sup>&</sup>lt;sup>1</sup> J. I. Kislak Mortg. Corp. v. William Matthews, Builder, Inc., 303 A.2d 648, 650 (Del. 1973).

fees. The ruling from which the appeal is taken is interlocutory in nature, because it did not finally determine and terminate the cause below.<sup>2</sup> Furthermore, defendants have failed to comply with the requirements of Rule 42 in seeking to appeal from an interlocutory order.<sup>3</sup>

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

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<sup>&</sup>lt;sup>2</sup> See Lipson v. Lipson, 799 A.2d 345, 348 (Del. 2001).

<sup>&</sup>lt;sup>3</sup> See Julian v. State, 440 A.2d 990 (Del. 1982).