## IN THE SUPREME COURT OF THE STATE OF DELAWARE

NADIV SHAPRIA, M.D. and NADIV SHAPIRA, M.D., LLC,  Defendants Below-Appellants,  v.  JOHN HOUGHTON and EVELYN HOUGHTON, his wife,  Plaintiffs Below-Appellees.	§ No. 653, 2012 § Sourt Below—Superior Court § of the State of Delaware, § in and for New Castle County § C.A. No. N11C-06-092 § § § § § § § §
CHRISTIANA CARE HEALTH SERVICES, INC.,	§ § No. 654, 2012
Defendant Below- Appellant,	§ § §
v.	<ul><li>§ Court Below—Superior Court</li><li>§ of the State of Delaware,</li><li>§ in and for New Castle County</li></ul>
JOHN HOUGHTON and EVELYN HOUGHTON, his wife,	§ C.A. No. N11C-06-092 §
Plaintiffs Below- Appellees.	§ § §

Submitted: January 8, 2013 Decided: February 5, 2013

Before STEELE, Chief Justice, HOLLAND and BERGER, Justices.

## ORDER

This 5th day of February 2013, upon consideration of the notices to show cause and the respective responses and replies thereto, it appears to the Court that:

- (1) On November 14, 2012, following a jury trial, judgment was entered in favor of the plaintiffs-appellees, John and Evelyn Houghton ("the Houghtons"), and against the respective defendants-appellants, Nadiv Shapira, M.D., Nadiv Shapira, M.D., LLC (collectively, "Shapira"), and Christiana Care Health Services, Inc. ("CCHS"). On December 13, 2012, Shapira and CCHS each filed a notice of appeal from the Superior Court's judgment. On December 14, 2012, the Senior Court Clerk issued a notice to each appellant directing them to show cause why their respective appeals should not be dismissed for their failure to comply with Supreme Court Rule 42 when appealing an interlocutory judgment.
- (2) The record reflects that CCHS filed a motion in the Superior Court on November 27, 2012 seeking to reform the original jury verdict, which apportioned liability between the defendants, attributing Shapira's negligence at 65% and CCHS's negligence at 35%. The basis for the motion to reform was a supplemental verdict sheet that apportioned CCHS's negligence between its agent Shapira and CCHS's other agent, Dr. Castellano. In that supplemental verdict, the jury apportioned liability

through Dr. Castellano's conduct at 25% and through Dr. Shapira's conduct at 75%. CCHS thus argued in its motion to reform the verdict that its overall liability for the jury's \$4.4 million verdict should only be 8.75%. Shapira filed a response in opposition to CCHS's motion, arguing that CCHS's motion sought to "change the *substance*" of the verdict and should be denied

- (3) The appellants and appellees all appear to agree that the pending motion to reform the jury verdict does not affect the finality of the Superior Court's judgment. We disagree. Clearly, until the Superior Court resolves CCHS's motion, the apportionment of liability between the defendants remains an open, substantive issue.
- (4) A judgment is final for appeal purposes when it adjudicates the merits of the controversy or the rights of the parties and leaves nothing substantive for future consideration.<sup>1</sup> In this case, as Shapira argued below, CCHS's pending motion in fact seeks to substantively amend the jury's original verdict and to affect the parties' respective right and responsibilities. Until the Superior Court determines the appropriate apportionment of liability between the defendants, the jury's verdict and supplemental verdict

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

are not final and appealable.<sup>2</sup> Because the appellants have failed to comply with Supreme Court Rule 42, their respective appeals must be dismissed.<sup>3</sup> Filing fees for any future appeals from the Superior Court's final judgment shall be waived.

NOW, THEREFORE, IT IS ORDERED that these appeals are hereby DISMISSED.

BY THE COURT:

/s/ Randy J. Holland Justice

<sup>&</sup>lt;sup>2</sup> State Farm Mut. Auto. Ins. Co. v. Harris, 1999 WL 1319341 (Del. Dec. 6, 1999).

<sup>&</sup>lt;sup>3</sup> If the judgment is deemed interlocutory, Shapira has requested that the appeals be suspended and held pending disposition of the motion below. This Court, however, does not have a procedure to suspend interlocutory appeals. *See Tomasetti v. Wilmington Sav. Fund Soc'y*, 672 A.2d 61, 64 (Del. 1996).