IN THE SUPREME COURT OF THE STATE OF DELAWARE

RUSSELL STEEDLEY,	§
	§ No. 446, 2012
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
LINDA SURDO-GALEF et al.,	§ C.A. No. N11C-09-194
	§
Defendants Below-	§
Appellees.	§

Submitted: August 20, 2012 Decided: August 22, 2012

Before HOLLAND, BERGER and JACOBS, Justices

ORDER

This 22nd day of August 2012, it appears to the Court that:

(1) On August 10, 2012, the Court received Steedley's notice of appeal from the Superior Court's May 23, 2012 interlocutory order. The order stated that Steedley would have sixty days to file an affidavit of merit to support his claims of medical negligence or his complaint would be dismissed. On August 10, 2012, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing Steedley to show cause why his appeal should not be dismissed based upon his failure to comply with Rule 42 when taking an appeal from an apparent interlocutory order.

- (2) On August 20, 2012, Steedley filed a response to the notice to show cause. In his response, he states that, because his notice of appeal was filed within the thirty day period following the expiration of the sixty day period referenced in the Superior Court's May 23, 2012 order, his appeal is timely.
- (3) This Court does not have jurisdiction to entertain an appeal from an interlocutory order absent compliance with the requirements of Rule 42.¹ An order is deemed to be 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 before it.²
- (4) In this case, the Superior Court's May 23, 2012 order is an interlocutory, and not a final, order. The order states that, once the sixty day period has run without the filing of a certificate of merit, the Superior Court will issue another order dismissing the appellant's medical negligence claims, reflecting that the Superior Court did not consider its May 23, 2012 order to be its "final act." Thus, in the absence of compliance with the requirements of Rule 42, this appeal must be dismissed. Once the Superior Court's final order is issued, the appellant may file his appeal.

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

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

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 29(b), this appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger Justice