IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

The Estate of NICOLE BENNETT, KEVIN BENNETT, Individually and as Administrator for the Estate and as next friend and Guardian ad Litem for LAUREN BENNETT, EMILY BENNETT and ALLIE BENNETT, Minors,	)	
Plaintiffs	)	**C.A. No. N13C-04-194 ALR**
v.	)	
REV. DANNY TICE, individually and as Pastor of BAY SHORE COMMUNITY CHURCH; BAY SHORE COMMUNITY CHURCH; BAY SHORE COMMUNITY CHURCH INC., a Delaware Corporation and MATTHEW BURTON,	)	
Defendants.	)	

Submitted: October 3, 2013
Decided: October 8, 2013

Upon Application of Defendants, Rev. Danny Tice, Bay Shore Community Church, and Bay Shore Community Church, Inc., for Certification of Interlocutory Appeal

DENIED

Bartholomew J. Dalton, Esquire, Wilmington, DE, *Attorney for Plaintiffs*

Kevin J. Connors, Esquire, Wilmington, DE, *Attorney for Defendants*

Rocanelli, J.

This 8th day of October, 2013, upon consideration of the Application of Defendants, Rev. Danny Tice, Bay Shore Community Church and Bay Shore Community Church, Inc. for Certification of Interlocutory Appeal, it appears to the Court as follows:

1. Defendants filed a Motion to Dismiss, which was denied by the Court. To the extent the motion was converted into a Motion for Summary Judgment, because matters outside of the pleadings were included, the Court denied the motion without prejudice.
2. A certification of interlocutory appeal is only appropriate where the Court determines the existence of a substantial issue, establishes a legal right, and meets one of the following criteria: (1) the criteria for consideration of a certified question of law pursuant to Rule 41; (2) a "controverted jurisdiction;" (3) the order has "reversed or set aside a prior decision of the court;" (4) the order has opened a judgment; or (5) a review of the order may terminate litigation.[1]
3. Here, the Court did not determine a substantial legal issue or establish a legal right. "A litigant has no absolute right to the entry of summary judgment."[2] "The application for summary judgment is always addressed to the discretion of the Trial Judge, and ordinarily[,] the denial of such a motion on the ground that there are insufficient facts in the record to determine that under all circumstances the moving party is entitled to summary judgment, will not be disturbed on appeal."[3] When the ruling is "merely to hold that the ultimate decision would depend upon facts which may be discovered and proven at a hearing on the merits," judicial opinions and impressions stated on the record, "especially those subject to change upon further evaluation of both sides of the case, are not judicial decisions and,

[1] Supr. Ct. R. 42(b).
[2] *Brunswick Corp. v. Bowl-Mor Co.*, 297 A.2d 67, 69 (Del. 1972).
[3] *Id.*

hence, are not appealable when contained within interlocutory rulings."[4] Further, the Court need not give reasons for denial of summary judgment on the record, but only needs "no more reason than to conclude, upon preliminary examination of the facts, that it f[inds] it desirable to inquire thoroughly into all the facts in order to clarify the application of the law."[5]

4. The Court denied Defendants' Motion to Dismiss and denied without prejudice Defendants' Motion for Summary Judgment. The Court held that, in viewing the facts in the pleading in a light most favorable to the pleading party, the claims were sufficient to meet the notice pleading standard and to survive a Motion to Dismiss. Further, to the extent that the Motion to Dismiss was converted into a Motion for Summary Judgment, the Court held that there were insufficient facts to decide the motion without further development of the record through discovery. As such, no legal rights were established, nor were substantial issues decided, and the Application for Interlocutory Appeal must be denied.

NOW, THEREFORE, it is HEREBY ORDERED this 8th day of October, 2013, that Defendants' Application for Certification of Interlocutory Appeal is DENIED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

[4] *Id.* at 69-70 (internal quotations omitted).
[5] *Cross v. Hair*, 258 A.2d 277, 279 (Del. 1969).