

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHARON DORSEY-WILT,¹

Respondent Below,
Appellant,

v.

DUSTIN FALCONE,

Petitioner Below,
Appellee.

§

§ No. 376, 2021

§

§ Court Below—Family Court
§ of the State of Delaware

§

§ File No. CK03-03022

§ Petition No. 21-20655

§

§

§

Submitted: December 23, 2021

Decided: January 18, 2022

Before **SEITZ**, Chief Justice; **VALIHURA** and **VAUGHN**, Justices.

ORDER

Upon consideration of the order on appeal and the parties’ positions regarding the interlocutory nature of that order, it appears to the Court that:

(1) Respondent below-appellant, Sharon Dorsey-Wilt (“the Mother”), and petitioner below-appellee, Dustin Falcone (“the Father”), are the parents of a child born in 2013 (“the Child”). Under a 2017 custody order, the parents shared joint legal custody of the Child, the Mother had primary residential placement of the Child, and the Father had regular visitation with the Child.

¹ The Court previously assigned pseudonyms to the parties under Supreme Court Rule 7(d).

(2) On September 7, 2021, the Father filed a petition modify custody. On October 4, 2021, the Father filed a motion for an emergency *ex parte* order and a motion for interim relief. The Family Court denied the motion for emergency relief. On November 9, 2021, the Father filed another motion for an emergency *ex parte* order and an amended motion for interim relief. The Family Court scheduled a hearing on the motion for emergency relief.

(3) At the November 19, 2021 hearing on the motion for emergency relief, the Family Court heard testimony from the parents and a school district employee about the Child's frequent absences from school. The Family Court granted the Father's motion for emergency relief and amended the 2017 custody order to provide for the Father to have primary residential placement of the Child in Pennsylvania and for the Mother to have regular visitation with the Child. The November 19, 2021 order also provided that further proceedings on the Father's petition to modify custody would be scheduled in normal course.

(4) On November 29, 2021, the Mother filed an appeal in this Court. She also filed a motion for a stay of execution in this Court. The Mother was informed that a motion for a stay of a execution must be filed in the trial court in the first instance.

(5) On December 6, 2021, the Mother filed a notice of interlocutory appeal in place of the November 29, 2021 notice of appeal and an amended motion for a

stay of execution. The Court directed the parties to provide their positions on whether the November 19, 2021 order is interlocutory or final. The Mother contends that the order is interlocutory, but grants the final relief sought by the Father and should therefore be reviewed by this Court. The Father contends that the order is interlocutory because a full hearing on the petition to modify custody is scheduled for February.

(6) After careful consideration of the November 19, 2021 order and the parties' positions, the Court concludes that this appeal is interlocutory and must be dismissed. An order constitutes a final judgment when it "leaves nothing for future determination or consideration."² The November 19, 2021 order did not finally resolve the merits of the Father's petition to modify custody. A hearing on that petition is scheduled for February.

(7) Absent compliance with Supreme Court Rule 42, this Court's appellate jurisdiction is limited to final orders.³ The Mother has not complied with the requirements of Rule 42. Even if the Mother had complied with the requirements of Rule 42, this appeal would not meet the strict standards for certification under Rule

² *Werb v. D'Alessandro*, 606 A.2d 117, 119 (Del. 1992).

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

42(b). The Mother may appeal once the Family Court issues a final order on the Father's petition to modify custody.

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

BY THE COURT:

/s/ Karen L. Valihura

Justice