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FAST FIVE

RHODE ISLAND APPELLATE PRACTICE

THE MCAUSLAN DOCTRINE

In its decisions this term, the Rhode Island Supreme Court addressed at length the McAuslan Doctrine, a judicial exception to the general rule that interlocutory orders are not immediately reviewable. The Court's decisions address the procedure for invoking the doctrine and illustrate the circumstances in which application of the doctrine is both proper and improper.

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(1) THE MCAUSLAN DOCTRINE PROVIDES A JUDICIAL EXCEPTION TO THE GENERAL RULE THAT INTERLOCUTORY ORDERS ARE NOT IMMEDIATELY REVIEWABLE.

Interlocutory orders "'are those that are provisional or temporary, or that decide some immediate point or matter but are not a final decision on the whole matter.'" Coit v. Tillinghast, No. 2013-197-Appeal at 9 (quoting *Simpson v. Vose*, 702 A.2d 1176, 1177 (R.I. 1997)).

It is well settled that interlocutory orders, generally are not subject to immediate appellate review unless the order or decree falls within one of the statutory exceptions to the final

judgment rule. *Id*. (citing R.I. Gen. Laws § 9-24-7)). This principle has been addressed at length in prior Court decisions. Past editions of the Fast Five on Appellate Procedure have addressed such decisions.

In *Coit*, the Rhode Island Supreme Court addressed a second, long established judicial exception to the general rule that interlocutory orders are not subject to appellate review. First recognized by the Supreme Court in *McAuslan v. McAuslan*, 83 A. 837, 841 (R.I. 1912), the McAuslan Doctrine provides that an interlocutory order may be reviewed before a case has concluded when the order "'has such an element of finality as to require immediate review by [the Supreme] Court to avoid possible injurious consequences.'" *Id*. (quoting *Chiaradio v. Falck*, 794 A.2d 494, 496 (R.I. 2002)). The judicially crafted exception is designed to prevent clearly imminent and irreparable harm that would otherwise result if judicial review was not available. *Id*. (citing *Town of Lincoln v. Cournoyer*, 375 A.2d 410, 412-13 (R.I. 1977)).

(2) MCAUSLAN DOCTRINE IS PROPERLY INVOKED IN A DIRECT APPEAL; PETITION FOR WRIT OF CERTIORARI IS NOT NECESSARY.

There has long been confusion over whether the McAuslan Doctrine should be invoked in the context of a direct appeal or a petition for writ of certiorari. While the Rhode Island Supreme Court did not directly address that issue in *Weeks v. 735 Putnam Pike Operations, LLC*, No. 2012-356-Appeal, its decision strongly suggests that the doctrine may be invoked in the context of a direct appeal.

In *Weeks*, the defendant argued that the plaintiff's appeal was interlocutory in nature and should be dismissed because the plaintiff chose to file a direct appeal instead of filing a petition for writ of certiorari. *Id*. at 3-4. Although recognizing that as a general rule, appeals from interlocutory orders are not permitted, the Supreme Court noted that interlocutory appeals are

permitted if they all within the McAuslan Doctrine. *Id*. at 5. Under the McAuslan Doctrine, the Court will permit appellate review of "an order or decree which, although in a strict sense interlocutory, does possess such an element of finality that action is called for before the case is finally terminated in order to prevent clearly imminent and irreparable harm." *Id*. (quoting *Town of Lincoln v. Cournoyer*, 375 A.2d 410, 412-13 (R.I. 1977). If the Court deems the appeal appropriate under McAuslan, it will treat it as a final order. *Id*.

Applying the McAuslan Doctrine, the Court held that although the trial justice's order directing the parties to resolve their dispute through binding arbitration was interlocutory in nature, the plaintiff's appeal was proper under McAuslan. *Id*.

(3) MCAUSLAN DOCTRINE INVOKED TO REVIEW ORDER DENYING MOTION TO QUASH SUBPOENA.

In *DePina v. State*, No. 2011-259-Appeal, the Supreme Court concluded that an order denying a motion to quash a subpoena, while interlocutory in nature, was reviewable under the McAuslan Doctrine. *Id*. at 6. Although recognizing its long-standing practice of declining to address on appeal an interlocutory order that lacks finality, the Supreme Court held that application of the McAuslan Doctrine was not only proper but necessary in the context of that case. *Id*. at 5-6.

In *DePina*, in connection with his application for postconviction relief, the plaintiff had filed a subpoena seeking discovery of the mental health records of an eyewitness in his 1998 murder trial. *Id*. at 3. The eyewitness moved to quash the subpoena and after the motion was denied, appealed to the Supreme Court. *Id*. On appeal, the eyewitness argued that the consequences of the trial court's order were imminent and irreparable because upon release of

her medical records, the confidential nature of those documents would be irremediably breached. *Id*. at 6.

Agreeing with the eyewitness, the Supreme Court concluded that the trial court's order "possesse[d] the requisite element of finality and potential for irreparable harm to warrant . . . immediate review." *Id*.

(4) MCAUSLAN DOCTRINE DID NOT PROVIDE EXCEPTION FOR APPEAL FROM DENIAL OF MOTION FOR LEAVE TO AMEND.

In *Cayer v. Cox Rhode Island Telecom, LLC*, No. 2012-23-Appeal, after the trial court granted summary judgment in favor of one of the defendants, it granted that defendant's motion for a Rule 54(b) judgment. *Id*. at 9. The plaintiff, in turn, plaintiff moved for leave to amend her complaint to include a claim against another party. *Id*. The trial court denied that motion and the plaintiff appealed. *Id*.

On appeal, the Supreme Court held that the plaintiff's appeal was interlocutory and, therefore, not properly before the Court. In so holding, the Court recognized that generally, interlocutory orders are not subject to review unless (1) "the order or decree falls within one of the exceptions set forth in G.L. 1956 § 9-24-7" or (2) the "order [falls] within the ambit of [the McAuslan Doctrine, a] judicially created rule that permits review of an interlocutory order that has such an element of finality as to require immediate review by [the Supreme Court] to avoid possible injurious consequences." *Id*. at 9-10. For purposes of the McAuslan Doctrine, consequences are injurious "when their occurrence is imminent and the damage they will work irreparable." *Id*. at 10.

Against this backdrop, the Supreme Court concluded that the denial of the plaintiff's motion for leave to amend did not fall within either exception and, accordingly, the Court declined to entertain it. *Id*.

(5) DID YOU KNOW?

The Rhode Island Supreme Court often will raise issues related to the permissibility of an appeal during the required prebriefing conference? *See* Coit v. Tillinghast, No. 2013-197-Appeal at 8 (Court raised issue concerning the interlocutory nature of the appeal during the prebriefing conference and directed the parties to file supplemental memoranda addressing whether the order from which the appeal was taken was interlocutory).

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