IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MICHAEL E. MANN, PH.D., *Plaintiff,* v. NATIONAL REVIEW, INC., *et al.*, *Defendants.*	Case No. 2012 CA 008263 B Judge Frederick H. Weisberg

Order Denying Defendants' Joint Motion for Interlocutory Certification of the Court's July 19, 2013 Orders under D.C. Code § 11-721

This matter is before the court on Defendants' Joint Motion to certify to the District of Columbia Court of Appeals the court's orders of July 19, 2013, denying Defendants' motions to dismiss Plaintiff's complaint. Ordinarily, of course, the denial of a motion to dismiss is an interlocutory order, which cannot be appealed until the conclusion of the litigation in the trial court. Defendants request that the court amend its July 19 orders to include the requisite findings so as to make the denial of the motions to dismiss immediately appealable. [1]

D.C. Code § 11-721(d) provides for interlocutory review of Superior Court orders when the trial judge certifies that "the ruling or order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal from the ruling or order may materially advance the ultimate termination of the litigation or case." Interlocutory appeal of otherwise non-appealable orders is the exception, not the rule. Only in

[1] Because this case was transferred from Judge Combs Greene to Judge Weisberg, it is not clear whether the case would need to be transferred back for Judge Combs Greene to amend her own Orders. That procedural question is presented only if the court would otherwise grant Defendants' motion.

rare cases is the interruption of the trial proceedings for an interlocutory appeal warranted. *See Plunkett v. Gill*, 287 A.2d 543, 545 (D.C. 1972).

The denial of defendants' motions to dismiss does not meet the statutory test. Although this case undoubtedly involves complex and important issues at the intersection of the First Amendment and the common law of defamation as applied to public figures, there is not "a substantial ground for a difference of opinion" on the controlling questions of law. The ruling represents an application of relatively settled law to the facts as articulated in the complaint, and a conclusion that plaintiff has alleged enough to move his case forward to the discovery stage. As such, the ruling is not exceptional and not appropriate for interlocutory appeal under § 11-721(d).[2]

Defendant argues that the Anti-SLAPP Act, D.C. Code § 16-5501 *et seq*., is intended, in part, to guarantee that public discourse on issues of public interest is not chilled by the threat of meritless defamation suits or the cost of defending such suits and that the reach of the statute has not been settled by the Court of Appeals.[3] In general, the Court of Appeals is in the best position to define the boundaries of any law when it has a fully developed record after trial. In any event, the Council did not to provide for interlocutory appeal in the Anti-SLAPP Act. The legislative history of the Act shows that the Council considered an automatic appeal provision but doubted its authority to create a right of appeal under the Home Rule Act. For whatever reason, the Council chose not to include a right to appeal in the statute, and for that reason appeal of

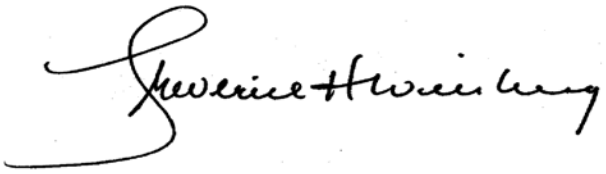
[2] Of course, if the interlocutory appeal were to be certified and the ruling were to be reversed, it would "materially advance the ultimate termination of the litigation." D.C. Code § 11-721(d). However, in the court's view, reversal is unlikely, and it is more likely that an interlocutory appeal would unnecessarily prolong the litigation.

[3] As an aside, the court observes that the litigation of this matter will be as expensive as the parties choose to make it. It appears that most of the relevant facts are well known. If the parties can get through the discovery stage with a minimum of acrimony, they should be able to advance the case to the summary judgment phase in relatively short order.

interlocutory orders involving the Anti-SLAPP Act, like other interlocutory orders, must be determined according to the standard of D.C. Code §11-721(d). [4]

Accordingly, it is this 12th day of September, 2013,

ORDERED that Defendants' Joint Motion for Interlocutory Certification be, and it hereby is, denied.



Judge Frederick H. Weisberg

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[4] In an unpublished, and therefore non-precedential, opinion, the Court of Appeals expressed the view of at least three judges that the Act does not permit interlocutory review. *Newmyer v. Sidwell Friends School*, 2012 D.C. App. LEXIS 733, No. 12-CV-847 (D.C. Dec. 5, 2012). Defendants suggest that even if the court denies their motion for certification of the appeal, they can appeal nonetheless under the collateral order doctrine. *See Cohen v. Beneficial Indus. Loan Corp*., 337 U.S. 541 (1949). While this court doubts that the denial of a motion to dismiss is a collateral order for purposes of that doctrine, that would be an issue for the Court of Appeals to decide if and when Defendants file such an appeal.