

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0541

September Term, 2014

STATE OF MARYLAND

v.

WILLIAM L. McDONALD

Zarnoch,
Leahy,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: June 22, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The State appeals an order of the Circuit Court for Anne Arundel County imposing a monetary sanction on the Anne Arundel State's Attorney's Office for an alleged discovery violation in a criminal case. For the following reasons, we conclude that this interlocutory appeal is not authorized under Maryland law. Therefore, we grant Appellee William McDonald's motion to dismiss.

FACTS AND LEGAL PROCEEDINGS

On December 16, 2011, the State indicted William McDonald on charges of first degree murder, armed robbery, and related handgun offenses. During the initial discovery phase, the State disclosed to McDonald that the Montgomery County Police Department and the County State's Attorney's Office were involved in the investigation of the charges against him. On September 11, 2013, McDonald sought discovery of:

all materials and information currently in the possession or control of the Office of the State's Attorney for Anne Arundel County, members of its staff, or any other person, organization or agency that either reports regularly to the Office of the State's Attorney for Anne Arundel County or had reported to it in regard to this case, including, but not limited to: the Office of the State's Attorney for Montgomery County [including the Montgomery County Police Department].

Unsatisfied with the State's response, McDonald filed a "Motion to Compel and for Sanctions for Refusal to Provide Discovery and Motion to Shorten Time to Respond." On October 8, 2013, the circuit court issued an order requiring the State, by October 15, 2013, to disclose to McDonald the information held by Montgomery County with respect to appellee's case.

On October 16, 2013, the circuit court conducted a hearing on the alleged failure of the State to comply with the court's order. At this hearing, the State acknowledged the role

the Montgomery County Police Department played in the investigation, but did not reveal that the Montgomery County State's Attorney's Office reported to the Anne Arundel County State's Attorney's Office. At this stage, the circuit court found that the State had not committed a discovery violation because it had turned over some information from the Montgomery County Police Department. The first trial started on October 17, 2013, but ended in a mistrial after the prosecutor revealed for the first time in her opening statement that a key witness for the State, Kim Smith, had been offered immunity more than two years earlier in exchange for her cooperation. A letter, which mentioned the immunity agreement and which was signed by Assistant State's Attorneys from both Anne Arundel and Montgomery Counties, was later turned over to McDonald.

On January 10, 2014, McDonald filed a "Motion to Compel Discovery and/or Impose Sanctions" and the circuit court conducted a motions hearing on February 4, 2014. Detective Springer of the Montgomery County Police Department was called to testify at the hearing and said that throughout the investigation, he had "cooperated" with the Anne Arundel County Police Department and the Anne Arundel County State's Attorney's Office. The retrial was scheduled for April 7-16, 2014 in the Circuit Court for Anne Arundel County. On February 28, 2014, prior to the start of the second trial, the State informed the circuit court that it had turned over to McDonald all of Montgomery County's evidence relating to Kim Smith and that it would provide any open investigative reports to the circuit court for McDonald to review *in camera*. On April 3, 2014, McDonald renewed his "Motion to Compel Discovery and/or To Impose Sanctions," contending that the information provided by the State was incomplete and "interfered with [McDonald's]

ability to investigate, cross examine and impeach key prosecution witnesses, and therefore with his ability to prepare and present his defense.”

The circuit court held a hearing April 7, 2014 to decide McDonald’s motion to compel discovery. The circuit court granted McDonald’s motion and, in apparent reliance on Md. Rule 4-263, imposed a monetary sanction, requiring the “State’s Attorney’s Office for Anne Arundel County [to] reimburse [the] Court Administrator for fees paid to jurors brought in for trial today; the total of which is \$1,620.00, to be paid within 30 days.” The circuit court denied McDonald’s request to have the charges against him dropped, stating that dismissal would have been a “draconian result to this discovery violation.” The State appealed the circuit court’s decision to this Court on May 2, 2014. McDonald filed a motion to dismiss the State’s appeal. Additional facts will be provided in our discussion as necessary.

QUESTIONS PRESENTED

Appellant presents the following question for our review:

Did the circuit court abuse its discretion in imposing monetary sanctions against the State’s Attorney’s Office for an alleged discovery violation?

However, a preliminary question must first be answered: Does the State have the right to an interlocutory appeal to this Court? Answering that question in the negative, we will grant McDonald’s Motion to Dismiss.

DISCUSSION

The State contends that it could not be sanctioned by the circuit court because the Anne Arundel County State’s Attorney’s Office had no control over the actions of the

Montgomery County State’s Attorney or Police Department. Therefore, the State contends that it was an abuse of discretion to find a discovery violation. In his motion to dismiss, McDonald responds that this interlocutory appeal is not authorized under Md. Code (1973), 2013 Repl. Vol.), Courts and Judicial Proceedings (“CJP”), § 12-302. However, he responds that if this appeal is allowed, there was sufficient evidence to justify the circuit court’s finding of a discovery violation and that it was within the discretion of the court to sanction the State for its failure to provide him with the requested discovery relating to an important State witness.

“Whether a judgment is final, and thus whether this Court has jurisdiction to review that judgment, is a question of law to be reviewed *de novo*.” *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 381 (2014). A “final judgment from which a party may appeal is one which settles the rights of the parties or concludes the cause . . . and has been entered on the docket.” *Addison v. State*, 173 Md. App. 138, 152 (2007) (Citation and quotations omitted).

An interlocutory order could be appealed if it falls within one of the statutory exceptions set forth in CJP § 12–303 or 12-304. *See Baltimore Home Alliance, LLC*, 218 Md. App. at 383 (quoting *In re Samone H.*, 385 Md. 282, 298 (2005)). The statutory exceptions under CJP § 12-303 relate specifically to “interlocutory orders entered by a circuit court in a civil case” and provide an enumerated list of exceptions to the final judgment rule.¹

¹ A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case: (continued...)

The State appeals both the finding of a discovery violation and the monetary sanction levied against the Anne Arundel State's Attorney's Office.² An interlocutory

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- (1) An order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order;
 - (2) An order granting or denying a motion to quash a writ of attachment; and
 - (3) An order:
 - (i) Granting or dissolving an injunction . . .
 - (ii) Refusing to dissolve an injunction, but only if the appellant has first filed his answer in the cause;
 - (iii) Refusing to grant an injunction; . . .
 - (iv) Appointing a receiver . . .
 - (v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court;
 - (vi) Determining a question of right between the parties and directing an account to be stated on the principle of such determination;
 - (vii) Requiring bond from a person to whom the distribution or delivery of property is directed. . .
 - (viii) Deciding any question in an insolvency proceeding . . .
 - (ix) Granting a petition to stay arbitration . . .
 - (x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child . . .; and
 - (xi) Denying immunity. . .

CJP § 12-303.

² McDonald contends that a negative implication from CJP § 12-302(c) is controlling. CJP § 12-302(c) limits the State's ability to appeal in criminal cases, allowing appeal in certain situations. The State may appeal from a final judgment "granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition." CJP § 12-302(c)(2). The State may also appeal from a final judgment if the State alleges that the trial judge "(i) [f]ailed to impose the sentence specifically mandated by the Code; or (ii) [i]mposed or modified a sentence in violation of the Maryland Rules." CJP § 12-302(c)(3)(i)-(ii). The State is also allowed to appeal if the trial court's decision "excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the Constitution of the United States, the Maryland Constitution, or the Maryland Declaration of Rights." CJP § 12-302(c)(4). However, CJP § 12-302(c) does not authorize the State's right to appeal a discovery sanction related in a criminal case.

appeal would be allowed under CJP § 12-303 if this statute applied in a pending criminal case and if the sanction were considered “an order for the payment of money.”

Even if CJP § 12-303 were to apply here, this sanction does not fit the standards established for a “payment of money” interlocutory order. In *Anthony Plumbing of Maryland, Inc. v. Attorney Gen. of Maryland*, 298 Md. 11, 18 (1983), the court “assessed civil penalties, awarded costs, ordered money to be deposited with the clerk of the court to be held in escrow for costs associated with the master proceedings, and ordered the payment of restitution to those consumers who testified at trial.” The “history of § 12-303 thus indicates a legislative intent to allow interlocutory appeals only from those orders for the ‘payment of money’ which had traditionally been rendered in equity.” *Id.* at 20. According to the Court of Appeals, this included primarily family law orders like “orders for alimony, child support, and related counsel fees.” *Id.*

Ultimately, the Court of Appeals concluded that the order was not immediately appealable as an interlocutory appeal because the “order for the payment of civil penalties, costs of the action and costs of the master proceedings is not the type of interlocutory order appealable under [CJP § 12-303].” *Id.* at 23. The Court of Appeals further explained that a sanction order against an attorney would not be considered an order for the payment of money because the “order is not equitable in nature and it does not proceed directly to the person so as to make one against whom it operates directly and personally answerable to the court for noncompliance.” *Yamaner v. Orkin*, 310 Md. 321, 325 (1987).

Therefore, the only remaining course available to the State’s Attorney is an interlocutory appeal under the common law collateral order doctrine. The doctrine “treats

as final and appealable interlocutory orders that (1) conclusively determine the disputed question; (2) resolve an important issue; (3) resolve an issue that is completely separate from the merits of the action; and (4) would be effectively unreviewable on appeal from a final judgment.” *St. Joseph Med. Ctr., Inc.*, 392 Md. at 85-86 (citing *Dawkins v. Baltimore Police Dep’t*, 376 Md. 53, 58 (2003)). Courts have applied this common law doctrine very narrowly in Maryland. *Id.* at 86. Specifically, “the fourth prong, unreviewability on appeal, is not satisfied except in extraordinary situations.” *Id.* (Quotations omitted). Consequently, interlocutory discovery orders typically “do not meet the requirements of the collateral order doctrine [. . . since m]ost discovery orders do not comply with the third requirement of the collateral order doctrine, as they generally are not completely separate from the merits of the lawsuit.” *Id.* at 87. Discovery orders are reviewable “on appeal from a final judgment” and “rarely involve an ‘extraordinary situation’ which is part of the collateral order doctrine’s fourth element.” *Id.* (Citation omitted).

The Court of Appeals has noted that “an extraordinary situation may arise when a discovery order is directed at ‘high level government decision makers.’” *Ehrlich v. Grove*, 396 Md. 550, 562 (2007) (quoting *Montgomery Cnty. v. Stevens*, 337 Md. 471, 480 (1995)). Traditionally, State agencies can make use of the defense of sovereign immunity for their actions: “Absolute immunity is designed to free the *judicial process* from the harassment and intimidation associated with litigation.” *Simms v. Constantine*, 113 Md. App. 291, 313 (1997) (emphasis in original). Specifically, with respect to “damages against state agencies, counsel for the agency may not waive sovereign immunity unless the Legislature has authorized waiver, and this Court under appropriate circumstances will address the

issue sua sponte.” *Maryland-Nat’l Capital Park & Planning Comm’n v. Crawford*, 307 Md. 1, 10 n.3 (1986).

When the defense of “common law sovereign immunity, governmental immunity, public official immunity, statutory immunity, or any other type of immunity” is rejected by an interlocutory order, the decision would not appear to be appealable under the collateral order doctrine. *Dawkins*, 376 Md. at 65. According to the Court of Appeals,

[w]hether, and under what circumstances, interlocutory orders overruling immunity defenses asserted by the Governor, Lieutenant Governor, Comptroller, Treasurer, Attorney General, Speaker of the House, President of the Senate, or judges as defined in Article IV, § 2, of the Maryland Constitution, are immediately appealable under the collateral order doctrine will have to be determined in any future cases that might arise.³

Id. Notably, the Court of Appeals did not mention the State’s Attorney in this list. The Court also stated that “[i]nterlocutory trial court orders overruling immunity claims by *other* government officials, employees, departments, agencies, entities, units, or subdivisions, or by private persons or entities, are not appealable under the doctrine.” *Id.* (Emphasis added). This does not mean that the State’s Attorney does not enjoy immunity here.⁴ It just means that we cannot resolve this issue at this time.

³ Maryland’s restrictive rule on interlocutory appeals is contrary to the practice in federal courts. See *S. Carolina State Bd. of Dentistry v. F.T.C.*, 455 F.3d 436 (4th Cir. 2006).

⁴ Md. Rule 8-607(e) expressly waives immunity for the payment of costs on appeal. No similar waiver is found in Md. Rule 4-263 for monetary sanctions imposed on the government.

Here, the circuit court issued sanctions against the “State’s Attorney’s Office for Anne Arundel County” to “reimburse Court Administrator for fees paid to jurors brought in for trial today; the total of which is \$1,620.00, to be paid within 30 days.” Yet jury costs “are generally not understood to be ‘court costs,’ and are usually not included within the costs imposed by courts in civil and criminal cases.” *Gantt v. State*, 109 Md. App. 590, 597 (1996). And although Md. Rule 2-509 allows a court to assess jury costs in *civil* cases, the Rule does not apply to *criminal* cases. Nevertheless, this is an issue we cannot resolve in this appeal.⁵

Therefore, in our view, the State’s appeal of a monetary sanction against the Anne Arundel State’s Attorney’s Office is not a permissible interlocutory appeal.

APPELLEE’S MOTION TO DISMISS IS GRANTED. APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

⁵ *See Cant v. Bartlett*, 292 Md. 611 (1982), where the Court of Appeals dismissed an interlocutory appeal but at the same time went on in pointed *dicta* to address the underlying issue for the guidance of the circuit court.