

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2053

September Term, 2014

JAMES M. DEVINE

v.

DEPARTMENT OF LABOR, LICENSING
AND REGULATION

Kehoe,
Leahy,
Raker, Irma S.,
(Retired, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: September 24, 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.

James Michael Devine has filed an appeal from an order of the Circuit Court for Washington County denying his Motion for Extension of Time for Filing an Administrative Mandamus, as well as his Motion for a Stay of the Order or Action of the Administrative Agency. The administrative agency in question is the Department of Labor, Licensing, and Regulation. The Department has filed a motion to dismiss this appeal because the circuit court has not yet resolved the underlying dispute between Mr. Devine and the Department. We will grant the Department's motion.

Background

The dispute between Mr. Devine and the Department began in November 2013, when a Department claims specialist issued a notice of benefit determination stating that Mr. Devine owed the Department \$1,560 in overpaid unemployment insurance benefits.

Mr. Devine appealed the claims specialist's decision to the Department's Lower Appeals Division. A telephone hearing, which the Department rescheduled at Mr. Devine's request, took place on January 13, 2014. Mr. Devine failed to appear at the telephone hearing and the chief hearing examiner dismissed Mr. Devine's appeal.¹

Mr. Devine filed a petition to reopen his appeal before the Lower Appeals Division, but his request was denied, again by the chief hearing examiner. Mr. Devine then appealed the denial of his request to reopen to the Board of Appeals. The Board of

¹The notice with which the Department provided Mr. Devine for the January 13, 2014, hearing explicitly advised that failure to appear would result in the dismissal of his appeal.

Appeals affirmed the decision of the chief hearing examiner. The Board of Appeals' decision was the final decision of the Department on the matter.

On September 12, 2014, Mr. Devine timely filed a petition for judicial review of the Department's decision. Among the preliminary motions that Mr. Devine filed in that action, are the two before us—a Motion for Extension of Time for Filing an Administrative Mandamus and a Motion for a Stay of the Order or Action of the Administrative Agency. The circuit court denied both motions in an order dated October 31, 2014.

As to the Motion for Extension of Time for Filing an Administrative Mandamus, the court noted that such actions are a means by which courts may review “a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.” *See* Maryland Rule 7-401. The court concluded that administrative mandamus was not available to Mr. Devine because there was a statutory authorization for judicial review of final decisions of the Department. *See* Labor and Employment Article § 8-5A-12(a).

With regard to Mr. Devine's Motion for a Stay of the Order or Action of the Administrative Agency, the court acknowledged that Mr. Devine was asking the circuit court to stay collection activities by the Department regarding the allegedly overpaid benefits. The court declined to issue a stay, concluding that it could not grant a stay on the basis of the facts before it. At issue before the circuit court was, and is, only the

Department’s decision to dismiss Mr. Devine’s appeal and, as the court noted, “[the] collection effort is collateral to the issues . . . on appeal.”

Analysis

I.

As a general matter, the jurisdiction of this Court is limited to appeals from final judgments. *See Nnoli v. Nnoli*, 389 Md. 315, 323 (2005) (“The general rule as to appeals is that, subject to a few, limited exceptions, a party may appeal only from a final judgment.”). With regard to the meaning of “final judgment,” we turn to *Nnoli v. Nnoli*, wherein the Court of Appeals provided the following explanation:

To constitute a final judgment, the trial court’s determination must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding. We look to whether any further order was to be issued or whether any further action was to be taken in a case to determine whether an order or ruling is a final, appealable judgment. An order that is not a final judgment is an interlocutory order and ordinarily is not appealable unless it falls within one of the statutory exceptions set forth in [Md. Code Courts and Judicial Proceedings Article] § 12-303.

Id. at 324 (internal citations omitted).

When we apply this standard to the case before us, it is clear that the circuit court’s order denying Mr. Devine’s motions does not amount to a final judgment. The subject matter before the court, pursuant to Mr. Devine’s petition for judicial review, was whether the Department erred in concluding that Mr. Devine’s appeal should be dismissed. Denial of Mr. Devine’s motions neither “decided and concluded” his rights

nor affected his ability to pursue his “rights and interests” in the circuit court proceedings. Accordingly, the order denying Mr. Devine’s motions is interlocutory, and not subject to review by this Court.²

We will not consider Mr. Devine’s contentions as to why the Department’s decision was in error because the circuit court has not yet decided the merits of Mr. Devine’s petition for judicial review. We do not have jurisdiction to consider those contentions unless and until the circuit court enters an appealable judgment in this matter and Mr. Devine files a timely notice of appeal.

II.

Mr. Devine has filed two motions with this Court that are still pending. The first is a motion asking us to certify as a final judgment the circuit court’s order denying his motion to stay and his motion for an extension of time to file an administrative mandamus. We deny the motion. Mr. Devine is correct that Md. Rule 8-602(e) authorizes us to enter final judgments in cases in which the circuit court’s order was not a final judgment at the time the notice of appeal was filed. However, the order in question in

²We recognize that there are exceptions to the final judgment rule. As the Court of Appeals stated in *Nnoli*, 389 Md. at 324: “There are three exceptions to the final judgment rule: appeals from interlocutory orders permitted by statute, appeals permitted under Md. Rule 2-602, and appeals permitted under the common law collateral order doctrine.” None of those exceptions are applicable here, however. For a more detailed discussion of the exceptions to the final judgment rule, see *Nnoli*, 389 Md. at 324-30, and *Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 131–51 (2010), *aff’d*, 420 Md. 466 (2011).

this case does not resolve *any* of the substantive issues between Mr. Devine and the Department. Granting the motion would expose the courts and the parties to the delays, inefficiencies and duplications of effort that result from multiple appeals. Avoiding piecemeal appeals is the reason for the final judgment rule in the first place.

The second motion is a request for oral argument. We deny that motion as well. Oral argument would serve no purpose because at this time we are without jurisdiction to consider the merits of Mr. Devine's contentions.

III.

We turn to the assessment of costs. Generally, the losing party, which in this case is Mr. Devine, pays the costs of the appeal, including printing costs incurred by the prevailing party. Md. Rule 8-607(a). However, in an appropriate case, this Court may allocate costs in a different manner. *Id.* Earlier in this litigation, this Court granted Mr. Devine's motion for a waiver of his obligation to pre-pay the filing fee because he is indigent. Under these circumstances, we believe that it is appropriate for each party to bear its own printing expenses.

**APPEAL DISMISSED. COSTS TO BE
PAID BY DEPARTMENT OF LABOR,
LICENSING AND REGULATION.**