Circuit Court for Prince George's County
Case No.: CT190907X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0078

September Term, 2023

RICHARD JOHN TALLANT

v.

STATE OF MARYLAND

Leahy,
Zic,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: June 21, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is the second appeal in this Court stemming from Richard Tallant's second-degree sex offense conviction in the Circuit Court for Prince George's County. After appellant, Mr. Tallant, was convicted in December of 2019, he filed several pleadings, including a Supplemental Motion for New Trial and Request for a Hearing ("Supplemental Motion"). The State responded by filing a Motion to Strike Defendant's Supplemental Motion for New Trial and Motion to Seal ("Motion to Strike and Seal"). The circuit court granted the State's Motion to Strike and Seal, and Mr. Tallant noted his first appeal.

On appeal, we determined that the circuit court abused its discretion when it granted the State's Motion to Strike and Seal, and we reversed and remanded for further proceedings. *See Tallant v. State*, 254 Md. App. 665, 670-71 (2022). Following remand, on January 11 and 19, 2023, the circuit court held a two-day hearing on Mr. Tallant's Supplemental Motion. On January 18, prior to the second day of the hearing, Mr. Tallant filed a Motion to Disclose Grand Jury Minutes and Testimony and Request for a Hearing ("Grand Jury Motion"). On February 14, 2023, the court issued an order denying the Grand Jury Motion. On March 13, 2023, Mr. Tallant noted an appeal from that order.

Further, on March 6, 2023, the court issued an order granting the Supplemental Motion. Three days later, the victim filed a Motion to Vacate Order Granting Defendant's Amended Motion for New Trial and Conduct Another Hearing on the Motion ("Motion to Vacate"), asserting that she was never notified of the hearing on the Supplemental Motion in violation of Md. Code Ann., Criminal Procedure §§ 11-101 *et. seq*. On April 7, 2023, the court issued an order granting the Motion to Vacate and

ordered that another hearing on Mr. Tallant's Supplemental Motion be scheduled prior to June 2, 2023.

On April 10, 2023, Mr. Tallant noted an appeal from the order granting the Motion to Vacate. Accordingly, in this appeal, he challenges (1) the court's order denying the Grand Jury Motion and, (2) the court's order granting the Motion to Vacate. Mr. Tallant asserts two questions for our review, which we repeat verbatim:

> I. Did the circuit court err, or alternatively, abuse its discretion by denying Mr. Tallant's motion to disclose grand jury minutes and testimony and request for a hearing without holding a hearing as requested?
>
> II. Did the circuit court err or alternatively, abuse its discretion when, in response to a motion filed by the listed victim in the case on March 9, 2023, it vacated its March 6, 2023 order granting appellant a new trial noting it did so "pursuant" to this court's [] holding in *Lee*?

The State asserts that the appeal should be dismissed because neither order is a final, appealable judgment. We agree and shall dismiss the appeal.

"[T]he right to seek appellate review of a trial court's ruling ordinarily must await the entry of a final judgment[.]" *Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353, 382 (2005); *see also* Md. Code Ann., Courts & Jud. Proc. § 12-301 (providing that "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court."). An order that "adjudicates fewer than all of the claims in an action . . . is not a final judgment[.]" Md. Rule 2-602(a)(1). Instead, "[t]o qualify as a final judgment, the judgment must be 'so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject

matter of the proceeding.'" *State v. WBAL-TV*, 187 Md. App. 135, 143 (2009) (quoting *Quillens v. Moore*, 399 Md. 97, 115 (2007)) (quotation marks omitted).

Three exceptions exist to the final judgment rule: "(1) appeals from interlocutory orders specifically allowed by statute; (2) immediate appeals permitted when a circuit court enters final judgment under Maryland Rule 2-602(b); and (3) appeals from interlocutory rulings allowed under the common law collateral order doctrine." *In re O.P.*, 470 Md. 225, 250 (2020) (footnote omitted). Mr. Tallant does not dispute that neither order appealed is a final judgment. Instead, he asserts that the orders are appealable interlocutory orders because they fall within the third exception to the final judgment rule: the collateral order doctrine.

The Supreme Court of Maryland has made clear that the collateral order doctrine "is a very narrow exception to the general rule that appellate review ordinarily must await the entry of a final judgment disposing of all claims against all parties." *Dawkins v. Baltimore City Police Dep't*, 376 Md. 53, 58 (2003) (quotation marks and citation omitted). Indeed, an interlocutory order which properly falls within the collateral order doctrine exception must meet each of the following four requirements:

> (1) it must conclusively determine the disputed question; (2) it must resolve an important issue; (3) it must be completely separate from the merits of the action; and (4) it must be effectively unreviewable on appeal from a final judgment.

Addison v. Lochearn Nursing Home, LLC, 411 Md. 251, 285 (2009). These requirements "are very strictly applied, and appeals under the [collateral order] doctrine may be entertained only in extraordinary circumstances." *In re Foley*, 373 Md. 627, 634 (2003).

As an initial matter, Mr. Tallant asserts no argument in support of his position that the order denying the Grand Jury Motion satisfies all, or any, of the collateral order doctrine requirements. Instead, we note that because discovery orders, such as the order denying the Grand Jury Motion, are "interlocutory in nature, [they] are not ordinarily appealable prior to a final judgment terminating the case in the trial court." *Harris v. State*, 420 Md. 300, 314 (2011) (quotation marks and citation omitted); *see also Falik v. Hornage*, 413 Md. 163, 177 (2010) (quoting *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs.*, 392 Md. 75, 87 (2006) ("It is well established in Maryland that generally 'interlocutory discovery orders do not meet the requirements of the collateral order doctrine and are not appealable under that doctrine.'").[1] Accordingly, because the order denying the Grand Jury Motion is not permitted under the collateral order doctrine and is not otherwise appealable, it is not properly before us.

Nor are we persuaded that the order granting the Motion to Vacate falls within the "very narrow" collateral order doctrine exception. *Dawkins*, 376 Md. at 58. Mr. Tallant asserts that the order granting the Motion to Vacate is appealable because:

[1] In support of his position that the court erred in denying the Grand Jury Motion, Mr. Tallant cites to *Causion v. State*, 209 Md. App. 391 (2013), where we determined that the order denying a motion to disclose grand jury records, filed over a decade after the defendant plead guilty to first-degree murder, was appealable. *Id*. at 402. However, there, we held that because there was no litigation pending at that time, that the order was a final judgment because it "settled the rights of the parties and terminated the cause." *Id*. (quotation marks and citation omitted). Here, it is undisputed that the order denying the Grand Jury Motion was not a final judgment. Indeed, Mr. Tallant noted his appeal just one week after the circuit court issued the order granting Mr. Tallant's Supplemental Motion, granting him a new trial. Thus, *Causion* is inapplicable to the case before us.

> Delaying review of the Court's Order vacating its Order granting a new trial would have the effect of forcing Mr. Tallant to meet the burden anew, and if he succeeds, it would not carry much weight for it to be reviewed years from now, following another trial, the outcome of which cannot be known. Such delay will only imperil Mr. Tallant's right to a speedy trial, and fly in the face of his due process rights.

He cites to one case in support of his position – *Mann v. State's Att'y for Montgomery County*, 298 Md. 160 (1983) – where the substantive issue before the Supreme Court of Maryland was "whether a defendant in a criminal case, having been found incompetent to stand trial, thereby becomes incompetent to waive constitutional rights guaranteed by the Fifth and Sixth Amendments." *Id*. at 168. In that case, after Mann was found incompetent to stand trial, he agreed to an interview with the prosecution and the media, and the circuit court determined that the interview could take place. *Id*. at 165. Counsel for Mann appealed, asserting that Mann "may not validly waive his Fifth Amendment right against self-incrimination." *Id*. at 167. On appeal, the Court concluded that the order permitting the interview was an appealable collateral order, noting that the order "would be effectively unreviewable on appeal from a final judgment in the criminal case since by that time it could well be too late to cure any damage done by whatever is revealed in the interviews." *Id*. at 165.

The circumstances in *Mann* are inapplicable to the case before us. As the State put succinctly, "[t]he effect of the order [denying the Motion to Vacate] is to return the parties to the status quo as of January 11, 2023, before the hearing on the supplemental motion for new trial began." Mr. Tallant points to no potential "damage" that would need to be cured as a result of the order, and he does not allege that the order is

"effectively unreviewable" on appeal. Indeed, his assertion that review of the order once a final judgment is entered "would not carry much weight" acknowledges the opposite; that the order is in fact reviewable upon the entrance of a final judgment. Finally, although Mr. Tallant asserts that the order granting the Motion to Vacate will result in "delay" and him needing to "meet the burden anew," these assertions do little to demonstrate that the order falls within the collateral order exception. As the Supreme Court has made clear, the collateral order doctrine "should be applied sparingly in only the most extraordinary circumstances[,]" and Mr. Tallant points to no such circumstances in the facts before us. *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 572 (2010).

Accordingly, because neither order appealed constitutes a final judgment or an appealable order, this appeal is not properly before us and must be dismissed. Md. Rule 8-602(b).

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.