Circuit Court for Montgomery County
Case No. 486117-V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 153

September Term, 2023

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LATONJA CARRERA

v.

NATIONAL CONGRESS OF PARENTS AND TEACHERS, ET AL.

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Graeff,
Arthur,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: February 14, 2024

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

This is an interlocutory appeal from a discovery order in which the Circuit Court for Montgomery County decreed that a party had waived her State and federal privileges against self-incrimination to the extent that she had testified about certain transactions at previous depositions. We shall dismiss the appeal on our own motion because it is not allowed by law. Md. Rule 8-602(b)(1).

**Factual and Procedural Background**

The appellant, Dr. Latonja Carrera, is the former president of the Maryland Congress of Parents and Teachers (the "Maryland PTA"). The Maryland PTA is organized under the direct authority of the National Congress of Parents and Teachers ("the National PTA"), the appellee in this case.

The National PTA alleges that in December 2020 it asked Dr. Carrera to relinquish her authority over the Maryland PTA's bank accounts because she was facing criminal charges in the District of Columbia. Dr. Carrera allegedly refused. As a consequence, the National PTA alleges, it revoked its charter of affiliation with the Maryland PTA.

According to the National PTA, Dr. Carrera responded to the revocation by informing the members of the Maryland PTA that she was operating a new organization and that the local members would have their charters revoked, would lose their tax-exempt status, and would forfeit their bank accounts unless they joined the new organization.

On June 14, 2012, the National PTA filed suit against Dr. Carrera and the Maryland PTA in the Circuit Court for Montgomery County. Among other things, the National PTA alleged that Dr. Carrera and the Maryland PTA continued to use the

National PTA's by-laws and trademarks and continued to collect dues from the local members in Maryland without remitting them to the National PTA. The National PTA has amended its complaint several times.

On October 4, 2022, the circuit court appointed a receiver for the Maryland PTA. On February 17, 2023, the receiver filed an interim report that asserted that Dr. Carrera had misappropriated funds from the Maryland PTA. The interim report included the draft of a cross-claim that the receiver proposed to file against Dr. Carrera.

Before the receiver filed the interim report, the National PTA had deposed Dr. Carrera a total of four times—twice in her individual capacity and twice as a representative of the Maryland PTA. After the receiver filed the report, the National PTA sought to depose her again.

At that deposition, Dr. Carrera responded to some of the questions by invoking her privilege against self-incrimination under the Fifth Amendment to the United States Constitution and Article 22 of the Maryland Declaration of Rights. In response, the National PTA moved for an order compelling Dr. Carrera to answer those questions. In support of its motion, the National PTA argued that Dr. Carrera had waived her privilege against self-incrimination through her testimony at the earlier depositions.

On March 14, 2023, the circuit court conducted a hearing on the National PTA's motion to compel. At the hearing Dr. Carrera's attorney cited *Choi v. State*, 316 Md. 529, 545 (1989), which states that Maryland has "expressly rejected the waiver rule now prevailing under the Fifth Amendment and adopted the English rule that a witness's testifying about a matter does not preclude invocation of the privilege for other questions

relating to the same matter."[1] The court disagreed with Dr. Carrera's interpretation of *Choi*, but ruled that she was entitled to a hearing to determine the topics, if any, on which she had waived her privilege against self-incrimination.

The court embodied its ruling in a written order dated March 17, 2023. The order reads, in pertinent part, as follows:

> [F]or purposes of the Fifth Amendment of the United States Constitution and Article 22 of the Declaration of Rights, Defendant has waived her right against self-incrimination only to the extent that she answered questions in the depositions of 11/23/21, 07/20/22, 11/22/22, and 12/01/22 on the specific subject matters for which Defendant otherwise could have invoked such right at the time she responded to the questions.

[1] In *Choi* the Court relied on Chief Judge Alvey's opinion in *Chesapeake Club v. State*, 63 Md. 446, 457 (1885). For other authorities to the same effect, see *State v. Rice*, 447 Md. 594, 644 (2016) (citing *Choi v. State* for the proposition that on a few occasions Maryland has construed Article 22 more broadly than under the Fifth Amendment); *Doe v. Department of Public Safety and Correctional Services*, 430 Md. 535, 550-51 (2013) (citing *Choi v. State* for the proposition that in some contexts—including the Article 22 privilege against compelled self-incrimination—Maryland has departed from the analysis of parallel federal constitutional rights to ensure that rights provided under the Maryland Constitution are fully protected); *Marshall v. State*, 415 Md. 248, 259, 261 (2010) (citing *Choi v. State* for the proposition that the Article 22 privilege against self-incrimination has been viewed more broadly than the corresponding privilege under the Fifth Amendment); *Parker v. State*, 402 Md. 372, 400-01 (2007) (citing *Choi v. State* for the proposition that in some situations the privilege under Article 22 is viewed more broadly than the corresponding privilege under the Fifth Amendment); *Koshko v. Haining*, 398 Md. 404, 444 n.22 (2007) (citing *Choi v. State* for the proposition that Maryland has read the Article 22 protection against self-incrimination more broadly than the corresponding federal right); *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 482 n.10 (2007) (same); *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 621-22 (2002) (same); *Covel v. State*, 258 Md. App. 308, 325 n.6 (2023) (stating that the protection against compelled self-incrimination found in Article 22 is construed to provide the same protection as what is provided in the Fifth Amendment, with the exception of the broader protections discussed in *Choi v. State*), *cert. denied*, 486 Md. 157 (2023); Dan Friedman, *The Maryland State Constitution* 53 n.163 (2011) (observing that under Article 22 "the Court of Appeals has declined to infer a waiver of right against self-incrimination by a witness who has previously answered questions on the subject").

The Court envisioned that it would conduct a hearing to identify the issues on which Dr. Carrera had waived her privileges.

On March 24, 2023, the National PTA withdrew its motion to compel. The National PTA informed the court that, in place of the motion to compel, it sought an order stating that it, the receiver, and the Maryland PTA were "entitled to" and would "receive adverse inferences" against Dr. Carrera with respect to the questions that she had declined to answer on the basis of her privilege against self-incrimination.[2]

On April 12, 2023, after the National PTA had withdrawn its motion to compel her testimony, Dr. Carrera noted an interlocutory appeal from the circuit court's order of March 17, 2023.

## DISCUSSION

Dr. Carrera raises a number of interrelated questions pertaining to whether she waived her privilege under Article 22 by testifying at the earlier depositions, whether she waived her privilege against self-incrimination by testifying as a representative of the Maryland PTA, whether she was entitled to a hearing to determine the scope of any waiver, and whether her "penal interest" in contradicting her prior testimony allows her

[2] *See Robinson v. Robinson*, 328 Md. 507, 515-16 (1992) ("where a party in a civil proceeding invokes the Fifth Amendment privilege against self-incrimination in refusing to answer a question posed during that party's testimony, the fact finder is permitted to draw an adverse inference from that refusal").

to invoke the privilege against self-incrimination.[3] We shall not consider any of these issues because we lack the power to decide this interlocutory appeal.

Dr. Carrera's appeal is rife with procedural defects. First, the discovery order from which Dr. Carrera has appealed does not actually compel her to do anything. The order simply enunciates a legal principle (that Dr. Carrera has waived her privilege against self-incrimination as to the "specific," but unspecified," "subject matters" on which she previously testified). The order, however, does not apply that principle to any discrete set of facts. The court did not have the opportunity to delineate the scope of any waiver because the National PTA withdrew its motion to compel before the court could convene a further hearing.

Second, Dr. Carrera no longer faces the prospect of being compelled to incriminate herself at a deposition, because the National PTA has withdrawn its motion to

[3] Dr. Carrera phrased her questions as follows:

1. Can a Defendant waive his or her privilege against self-incrimination as secured by Article 22 of the Declaration of Rights?

2. Assuming *arguendo* that there could be a waiver, does providing testimony as a corporate representative waive privilege for the natural person who fulfilled such role?

3. Is a Defendant who has waived his or her privilege against self-incrimination entitled to a hearing to determine which topics such privilege has been waived [sic]?

4. Does one's penal interest in providing testimony which may conflict with prior testimony provide a testifying witness with privilege against self-incrimination in and of itself?

compel her testimony and has foresworn any intention to depose her again. At oral argument, counsel for the National PTA confirmed that her client had no intention of re-deposing Dr. Carrera and that it would, instead, ask the factfinder to draw an adverse inference from her refusal to answer questions. In these circumstances, it is difficult to avoid the conclusion that the appeal is moot. What difference does it make if the court erred in gauging the extent of Dr. Carrera's right to refuse to answer questions at a deposition that will never take place?[4]

Finally, our power to decide appeals is derived solely from statute—principally, section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020 Repl. Vol.) ("CJP"). Under CJP section 12-301, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court." *See Huertas v. Ward*, 248 Md. App. 187, 200 (2020).

[4] At oral argument, Dr. Carrera theorized that, at trial, the court might compel her to answer questions despite her insistence that she has not waived her privilege against self-incrimination. The short answer to Dr. Carrera's theoretical concern is that, if a trial occurs, if someone calls her to testify, if she is asked questions as to which she asserts the privilege, and if the court rejects her assertion of privilege and orders her to answer, she will have remedies at that time. She can take an appeal from a final judgment on the merits. And, in the unlikely event that the court holds her in civil contempt for exercising her privilege against self-incrimination, she will have a statutory right to an immediate appeal. Maryland Code (1974, 2020 Repl. Vol.), § 12-304 of the Courts and Judicial Proceedings Article.

At oral argument, Dr. Carrera also argued that we could decide a moot question under the exception for issues that are capable of repetition, but will evade review. We decline to do so for three reasons. First, the issue will not evade review: if it arises at trial, we can review the court's decision on an appeal from a final judgment. Second, where moot issues are capable of repetition, but will evade review, we have discretion to consider them, but we are not required to consider them. Finally, as explained below, we lack appellate jurisdiction to decide the merits of this case.

"In general, an order is not a final judgment unless it fully adjudicates all claims in the case by and against all parties to the case." *Huertas v. Ward*, 248 Md. App. at 200 (citing Md. Rule 2-602(a)). "An interlocutory order, i.e. any order that is not a final judgment, ordinarily is not appealable." *Id.* (citing *Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 383 (2014)). "The purpose of requiring parties to await [the entry of a] final judgment before taking an appeal is to avoid 'piecemeal appeals,' which may result in disruption and inefficiency." *Id.* (quoting *Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of Sch. Comm'rs*, 457 Md. 1, 42-43 (2017)).

Dr. Carrera recognizes that she has not appealed from a final judgment. She contends, however, that she has the right to appeal under the collateral order doctrine, a judge-made gloss on the final judgment rule of CJP section 12-301. *See Dawkins v. Baltimore City Police Dep't*, 376 Md. 53, 64 (2003) (stating that the collateral order doctrine "is based upon a judicially created fiction, under which certain interlocutory orders are considered to be final judgments, even though such orders clearly are *not* final judgments") (emphasis in original).

The collateral order doctrine is a "very narrow exception" to the final judgment rule. *See*, *e.g.*, *Dawkins v. Baltimore City Police Dep't*, 376 Md. at 58. To qualify as a collateral order, a ruling must satisfy four criteria: "(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." *See*, *e.g.*, *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 285 (2009); *Maryland Bd. of Physicians v. Geier*, 225 Md. App. 114, 131

(2015). "[T]he four requirements of the collateral order doctrine are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances." *In re Foley*, 373 Md. 627, 634 (2003); *accord Maryland Board of Physicians v. Geier*, 451 Md. 526, 546 (2017).

In general, discovery orders, like the order at issue in this case, do not meet the requirements of the collateral order doctrine. *See*, *e.g.*, *In re Foley*, 373 Md. at 634; *see id.* at 636 (stating that "discovery orders are only rarely appealable under the collateral order doctrine"). In most cases, discovery orders fail to meet the third requirement of the collateral order doctrine: they are not completely separate from the merits, because they are "aimed at ascertaining critical facts upon which the outcome of the" proceeding "might depend." *Id.* at 635; *accord St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 87 (2006); *see also Harris v. State*, 420 Md. 300, 320-21 (2011). And in most cases, discovery orders also fail to meet the fourth requirement of the collateral order doctrine, because they are not effectively unreviewable on appeal from a final judgment on the merits.

A decision is deemed to be effectively unreviewable on appeal from a final judgment only when a party would suffer irreparable harm if it were required to await the entry of a final judgment before it could appeal. This fourth requirement "should be deemed satisfied only in 'a very few . . . extraordinary situations.'" *In re Foley*, 373 Md. at 636 (quoting *Bunting v. State*, 312 Md. 472, 482 (1988)). "'Otherwise, . . . there would be a proliferation of appeals under the collateral order doctrine.'" *Id.* (quoting *Bunting v. State*, 312 Md. at 482). "'This would be flatly inconsistent with the long-established and

sound public policy against piecemeal appeals.'" *Id.* (quoting *Bunting v. State*, 312 Md. at 482).

Except in the most extraordinary circumstances, discovery orders are not effectively unreviewable on an appeal from a final judgment. *See*, *e.g.*, *Maryland Board of Physicians v. Geier*, 451 Md. at 549; *Harris v. State*, 420 Md. at 320-21 (citing *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. at 87; *In re Foley*, 373 Md. at 635). Maryland courts have affirmed the use of the collateral order doctrine to permit an interlocutory appeal of a discovery order only when a court has compelled high-level government decision-makers to submit to depositions concerning their decisional processes (*see Montgomery County v. Stevens*, 337 Md. 471, 479 (1995); *Public Serv. Comm'n v. Patuxent Valley Conservation League*, 300 Md. 200, 207 (1984); *Maryland Bd. of Physicians v. Geier*, 225 Md. App. at 135-38), when a court has imposed discovery sanctions because of a high-level government decision-maker's refusal to produce documents concerning its decisional processes (*Maryland Bd. of Physicians v. Geier*, 451 Md. at 549-51), and when a court ordered the Governor to disclose information that he claimed was subject to executive privilege. *Ehrlich v. Grove*, 396 Md. 550, 571-72 (2007).

By contrast, Maryland courts have repeatedly rejected the use of the collateral order doctrine to permit an interlocutory appeal of a discovery order even when the lower court has compelled the production of information that is allegedly covered by an evidentiary privilege. *See*, *e.g.*, *Harris v. State*, 420 Md. at 323 (holding that an order compelling the production of records that were allegedly subject to psychotherapist-

patient privilege was effectively reviewable on an appeal from a final judgment); *Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 148-50 (2010) (holding that an order denying a motion to quash the deposition of a party's present attorney on grounds that deposition would invade the attorney-client privilege was effectively reviewable on an appeal from a final judgment); *Goodwich v. Nolan*, 343 Md. 130, 141-42 n.8 (1996) (stating in dicta that an order compelling the production of records that were allegedly subject to the statutory privilege for medical peer-review committees was effectively reviewable on an appeal from a final judgment); *see Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 109 (2009) (holding that an order compelling the production of documents allegedly protected by the attorney-client privilege was effectively reviewable on appeal from a final judgment, because "[a]ppellate courts can remedy the improper disclosure of privileged material in the same way they remedy a host of other erroneous evidentiary rulings: by vacating an adverse judgment and remanding for a new trial in which the protected material and its fruits are excluded from evidence"); *see also Plaintiff A v. Schair*, 744 F.3d 1247, 1254-55 (11th Cir. 2014) (holding that the prospect that a defendant might have to decide whether to waive his privilege against self-incrimination or risk an adverse inference did not present an "important" issue for purposes of the collateral order doctrine).[5]

[5] A party need not await the entry of a final judgment on the merits to challenge an order requiring the production of privileged information if the party refuses to comply with the order and is held in civil contempt: the order of civil contempt is, itself, a final judgment from which a party can appeal. CJP § 12-304; *see Sigma Reproductive Health Ctr. v. State*, 297 Md. 660, 671 (1983).

In summary, we have no power to decide this improper interlocutory appeal. We dismiss the appeal, as we are entitled to do,[6] on our own motion. Md. Rule 8-602(b)(1).

**APPEAL DISMISSED; APPELLANT TO PAY ALL COSTS.**

[6] *See*, *e.g.*, *Waterkeeper Alliance, Inc. v. Maryland Dep't of Agriculture*, 439 Md. 262, 276 n.11 (2014).