

Circuit Court for Montgomery County  
Case No. C-15-CV-22-000884

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 190

September Term, 2023

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HDEEL ABDELHADY

v.

WILLIAM M. SAVAGE, ET AL.

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

JJ.

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Opinion by Graeff, J.

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Filed: September 6, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

In this interlocutory appeal, Hdeel Abdelhady, appellant, challenges the February 28, 2023 order of the Circuit Court for Montgomery County requiring her to pay \$200 to counsel for William M. Savage and Gregory M. Britto, appellees. Ms. Abdelhady contends that the court did not have authority to order the payment of money because the court “made no record findings or conclusions, did not conduct a hearing, did not receive or require a verified statement of any costs or monies requested, considered or did not affirmatively disregard ‘facts’ asserted without an affidavit, entered an order decided or recommended by a Special Magistrate acting without an order of reference, and repeatedly failed to enforce the Rules and the Scheduling Order.”

For the reasons set forth below, we shall dismiss the appeal.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

On February 23, 2022, Ms. Abdelhady, an attorney, filed a complaint against appellees, two of the substitute trustees in a prior foreclosure case, as well as Nationstar Mortgage and U.S. Bank (“Lender Defendants”), asserting claims for quiet title, declaratory judgment, and violations of the Maryland Mortgage Fraud Protection Act (“MMFPA”). The court issued a scheduling order that same day, which it revised on June 22, 2022, extending the deadline for the completion of discovery to January 3, 2023.

On May 3, 2022, appellees filed a motion to dismiss. The evening before the August 30, 2022 hearing, Ms. Abdelhady filed an amended complaint adding a fourth count under the MMFDA related to the appointment of a substitute trustee. At the hearing, the court

dismissed counts one and two of the complaint with prejudice, and it dismissed count three, the alleged violation of the MMFPA, with leave to amend within 30 days.

On October 3, 2022, Ms. Abdelhady filed a Second Amended Complaint. On October 18, 2022, appellees filed a motion to dismiss the second amended complaint, and the court scheduled a hearing for March 7, 2023. Because the court scheduled the motions hearing after the close of discovery, appellees requested that Ms. Abdelhady agree to an extension of the discovery deadlines, but Ms. Abdelhady did not consent.

On December 19, 2022, appellees advised Ms. Abdelhady that they would move the court to extend discovery. They also informed Ms. Abdelhady that they intended to depose her on January 3, 2023, the “concluded by” date for discovery under the scheduling order, unless she preferred to schedule the deposition for a later date after the hearing on the motions to dismiss. That same day, appellees sent a notice of deposition to Ms. Abdelhady, stating that they intended to depose her on January 3, 2023, at 10:00 a.m. The attached certificate of service noted that appellees served the notice of deposition on her via MDEC and email. A December 19, 2022 email to Ms. Abdelhady stated that “[a] hard copy w[ould] follow via first class mail.” On December 27, 2022, Ms. Abdelhady sent an email to appellees’ counsel advising that they did not comply with the 10-day notice provision in Md. Rule 2-412, and she would “not be attending [the] deposition on January 3.”

That same day, appellees’ counsel responded, stating that he timely served the notice of deposition and urging Ms. Abdelhady to reconsider her position. Counsel noted that failure to attend the deposition would “result in court action, including a motion for

immediate discovery sanctions, and a request to dismiss [the] lawsuit with prejudice.” Ms. Abdelhady replied, stating that she did not receive the notice of deposition in the mail within 10 days of January 3, and she did not consider the email threatening legal action to be a good faith effort to resolve the discovery dispute. Appellees offered to continue the deposition to a mutually agreeable date in February, noting that they gave timely notice of the deposition to her by email, MDEC, and U.S. mail.

**I.**

**First Motion for Protective Order**

On December 28, 2022, Ms. Abdelhady filed a motion for a protective order, alleging, *inter alia*, that appellees’ service of the notice of deposition was untimely pursuant to Maryland Rule 2-412(a), that the proposed deposition date was beyond the close of discovery, and that she had never consented to service by email. Ms. Abdelhady also alleged that appellees improperly filed discovery materials with the court, noting that the clerk had returned the notice of discovery to appellees for failure to file the required certificate of discovery. Ms. Abdelhady asked the court to enter a protective order authorizing her not to appear at the deposition. The court did not rule on the motion prior to January 3, 2023, and Ms. Abdelhady did not appear at the scheduled deposition.

**II.**

**Appellees’ Opposition to the Motion for Protective Order and Their Motion for Sanctions and to Compel**

On January 3, 2023, appellees filed the following three papers with the court: (1) a Motion to Modify Scheduling Order; (2) a Motion for Immediate Discovery Sanctions

Against Plaintiff Including Motion to Compel For Failure to Attend Deposition (And Request for Hearing); and (3) an Opposition to the Plaintiff’s Motion for Protective Order and Request for a Hearing. In their opposition to the motion for protective order, appellees noted that Ms. Abdelhady amended her complaint several times after the court dismissed her original three counts, which resulted in a protracted motions hearing schedule, but she refused to extend discovery. Appellees claimed that they properly served Ms. Abdelhady a notice of deposition by email, MDEC, and U.S. Mail on December 19, 2022, giving her “more than sufficient notice” under Maryland Rule 2-412.

Appellees also argued that, as a registered MDEC user, Ms. Abdelhady was able to receive electronic service via MDEC, and the MDEC access log showed that she accessed the notice of deposition on December 19, 2022, the date it was served.<sup>1</sup> They argued that their refiled notice of deposition — with the certificate of discovery that was initially omitted — related back to the date of the original filing, and therefore, it satisfied the ten-day notice requirement in Rule 2-412. Finally, appellees asserted that the deposition was properly scheduled for January 3, 2023, because the scheduling order provided for discovery to be completed *by* that date, not before then.

Appellees requested the court to order Ms. Abdelhady to appear for a deposition at a time and place convenient for the defendants. In addition, “given the lack of good faith merit” in her motion for protective order, appellees requested the imposition of discovery

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<sup>1</sup> Appellees noted that Ms. Abdelhady objected to service via MDEC, but she used MDEC to serve the motion for protective order and other pleadings on them.

sanctions, including precluding Ms. Abdelhady from presenting evidence of damages in the lawsuit and requiring her to pay the costs for the new deposition, as well as the costs and reasonable attorney's fees incurred in responding to her motion. Appellees requested approval to defer the filing of a supporting costs statement pursuant to Rule 2-433(e).<sup>2</sup>

In their motion for immediate sanctions and to compel, appellees incorporated by reference the arguments made in their opposition to Ms. Abdelhady's motion for protective order. Pursuant to Rule 2-433, appellees requested that the court bar Ms. Abdelhady from proffering any testimony at trial regarding the claims in her amended complaint, or, in the alternative, that she be compelled to appear for a deposition at a time and place convenient for appellees. Appellees also requested that the court order Ms. Abdelhady to pay all costs and fees related to the deposition, including court reporter fees and attorney's fees incurred to prepare for the rescheduled deposition. In addition, appellees requested attorney's fees incurred in preparing the motion for sanctions and opposition to the motion for protective order. Appellees again requested permission to defer filing of the supporting statement of costs pursuant to Rule 2-433(e). They requested a hearing on their motion and filed a Rule

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<sup>2</sup> Rule 2-433(e) provides that:

If a motion or a response to a motion contains a request for an award of costs and expenses, including attorneys' fees, the request shall (1) include, or (2) be separately supported by, a verified statement in conformance with Rule 1-341(b). With the approval of the court, the party requesting the award may defer the filing of the supporting statement until 15 days after the court determines the party's entitlement to cost and expenses, including attorneys' fees.

2-431 certification that they made a good faith effort to resolve the discovery dispute prior to seeking relief from the court.

On January 18, 2023, Ms. Abdelhady filed an opposition to appellees' motion for sanctions and to compel, arguing that relief under Rules 2-432 and 2-433 was improper because appellees failed to give Ms. Abdelhady adequate notice of the deposition. She reiterated the arguments made in her motion for protective order regarding her allegations of untimely service and the date for the close of discovery, adding that appellees did not specify the method of recording to be used at the deposition in violation of Rule 2-416. She also argued that appellees did not incur any costs related to the deposition because they knew in advance that Ms. Abdelhady did not plan to appear.<sup>3</sup> Ms. Abdelhady opposed appellees' request for a hearing on the motion for sanctions, claiming that she had "been unreasonably required to expend time and resources" addressing issues related to appellees' discovery requests. She did not, however, oppose a hearing on appellees' motion to modify the scheduling order.

On January 25, 2023, the court issued an order denying Ms. Abdelhady's motion for protective order. The court ordered Ms. Abdelhady to cooperate in the scheduling of, and appear for, a deposition at a time and place convenient to appellees. It ordered that, if she failed to attend the deposition, she would be barred from presenting any evidence of

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<sup>3</sup> Appellees filed a reply to Ms. Abdelhady's opposition, refuting her claims regarding untimely service and citing a matter pending in another jurisdiction in which Ms. Abdelhady was found to have violated the sham affidavit rule.

her alleged damages in the lawsuit. The court further ordered Ms. Abdelhady to “pay the costs, including court reporter fees for the new deposition.”

Ms. Abdelhady filed a motion for reconsideration of, and to vacate, the court’s denial of her motion for protective order. She argued, among other things, that the court improperly imposed sanctions without a hearing and verified statement of costs. She also requested that the court stay the order.

On February 2, 2023, while the motion for reconsideration was pending, appellees contacted Ms. Abdelhady to inform her they intended to take her deposition on March 1, 2023, but they provided alternative dates. They served Ms. Abdelhady with a notice of deposition for March 1, 2023 that same day. On February 8, 2023, the court denied Ms. Abdelhady’s motion for reconsideration.

### **III.**

#### **Second Motion for Protective Order**

On February 9, 2023, Ms. Abdelhady filed, without first responding to appellees’ correspondence regarding the proposed March 1, 2023 deposition date, an Emergency Motion for Protective Order or Alternative Relief, and Request for Emergency Hearing On or Before February 24, 2023 (“Second Motion for Protective Order”). She also served on appellees an objection to the form of the notice of deposition, alleging that appellees improperly noted a multi-day deposition without leave of the court and failed to specify the intended method of recording. She advised that she was unavailable for a deposition on March 1, 2023.



In her Second Motion for Protective Order, Ms. Abdelhady argued that the February 2, 2023 notice of deposition was “derivative of [appellees’] first notice of deposition” and thus improper. She asserted that a protective order was necessary to limit the method of recording, protect against harassment regarding circumstances from an unrelated case, limit the scope of discovery to documentation only, and prevent appellees from running up deposition costs. Ms. Abdelhady requested an emergency hearing on the motion and asked that the deposition be postponed until after the pretrial hearing scheduled for April.

Appellees opposed the motion, alleging that it was not made in good faith and there was no emergency other than that the court ordered Ms. Abdelhady to appear for a deposition. Appellees argued that the motion should be denied because Ms. Abdelhady did not respond to correspondence proposing alternate dates, violated Rule 2-431 by filing the motion without certification of her good faith efforts to resolve the dispute, and violated the court’s order requiring her to cooperate in the scheduling of her deposition.<sup>4</sup> Appellees stated that, upon receipt of the Second Motion for Protective Order and objection to the deposition notice, they advised Ms. Abdelhady that they would revise the notice to remove the language she opposed and schedule the deposition for an alternate date, February 27, 2023.<sup>5</sup> They also advised her that, although the court ordered her to pay the entire court

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<sup>4</sup> Ms. Abdelhady stated that, due to their attacks on her credibility, she “decline[d] to engage with [appellees’ counsel] in any format other than in a hearing or trial, subject to and in accordance with the Rules and other law.”

<sup>5</sup> The revised notice removed language regarding a multi-day deposition and the right to record the deposition via audio/visual means.

reporter costs in its January 25, 2023 order, they were asking her to pay only the \$200 “minimum cost for the [court reporter’s] appearance fee (rather than the additional[ ] hourly charge).” Appellees attached to their opposition an invoice for the court reporter’s appearance fee for the January 3, 2023 deposition. It was not verified by affidavit.

Appellees noted that Ms. Abdelhady had changed her position and now requested that the deposition take place **after** the pretrial conference and motions hearing, a request that appellees had made prior to the first notice of deposition, but that Ms. Abdelhady had rejected. Appellees asserted that she should be estopped from requesting postponement of the deposition based on her bad faith “gamesmanship.” Appellees requested that the court: (1) deny the motion for protective order; (2) order Ms. Abdelhady to appear for the February 27, 2023 deposition or be barred from presenting evidence of damages in her lawsuit; (3) order Ms. Abdelhady to pay the cost, including court reporter fees, of the new deposition (as required by the January 25 Order); and (4) award appellees costs and reasonable attorneys’ fees related to the Second Motion for Protective Order.<sup>6</sup>

On February 28, 2023, the court issued an order denying Ms. Abdelhady’s Second Motion for Protective Order, ordering her to appear for the deposition set for February 27, 2023, and ordering Ms. Abdelhady to pay appellees’ counsel the costs of the appearance of the court reporter, in the amount of \$200.00, within five days of entry of the order. The order stated that “in the event this Order is entered after 2/27/23, [Ms. Abdelhady’s]

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<sup>6</sup> Appellees requested approval to defer filing of their verified statement of costs until after the court’s ruling.

deposition shall be promptly rescheduled with [her] full cooperation.” The order was entered on February 28, 2023.

This appeal followed.

### **DISCUSSION**

Ms. Abdelhady contends that, for several reasons, the court did not have authority to order her to pay court reporter costs in denying her Second Motion for Protective Order. She argues that Maryland Rule 2-403, which addresses protective orders, does not provide for sanctions. Although Rule 2-432 and Rule 2-433 permit sanctions for the failure to attend a deposition, Ms. Abdelhady asserts that sanctions are authorized only where “proper notice” is given prior to the deposition, and where there was an opportunity for a hearing, conditions she argues were not met here. Additionally, Ms. Abdelhady argues that the court can only award sanctions after receipt of a verified statement of costs, and she asserts that the court here improperly based its assessment of costs solely on an invoice related to the January 3, 2023, deposition, which was attached as an exhibit to appellees’ opposition to her Second Motion for Protective Order. Finally, Ms. Abdelhady contends that the court did not exercise its discretion in resolving a discovery dispute, but instead, it “outsourced judicial functions to a Special Magistrate acting without an order of reference” and to appellees counsel, who drafted the proposed orders.

We will not consider these arguments on the merits because we do not have jurisdiction to consider this appeal. Accordingly, we will dismiss the appeal.

This Court has jurisdiction over an appeal only if it is taken from a final judgment or otherwise is permitted by law. *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 261-62, 273-74 (2009); Md. Code Ann., Cts. & Jud. Proc. (“CJ”) § 12-301 (2020 Repl Vol.). A final judgment is considered “‘final’ if it ‘disposes of all claims against all parties and concludes the case.’” *In re Donald Edwin Williams Revocable Trust*, 234 Md. App. 472, 490 (2017) (quoting *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 241 (2010)).

The final judgment requirement has three exceptions: if an appeal is specifically allowed by statute, if an appeal falls within the ambit of the common law collateral order doctrine, or if the circuit court directed entry of a final judgment under Maryland Rule 2-602(b). *See Johnson v. Johnson*, 423 Md. 602, 607 (2011); *see also* Judge Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issues* 47 (3d ed. 2018).

Here, appellees previously filed a motion to dismiss the appeal, alleging that the February 28, 2023 Order was not a final appealable order. On August 30, 2023, this Court issued an order permitting the appeal of the order requiring Ms. Abdelhady to pay appellees’ counsel \$200.00 as an appealable interlocutory order for the payment of money pursuant to Md. Code Ann., Cts. & Jud. Proc. (“CJ”) § 12-303 (2023 Supp.).

After reviewing the briefs and the caselaw, we conclude that the appeal is not permitted as an “order for the payment of money” under CJ § 12-303(3)(v). This Court has held that the phrase “order . . . [f]or . . . the payment of money” refers to orders that traditionally would issue from a court of equity, such as an order to pay child support. *See*

*Bussell v. Bussell*, 194 Md. App. 137, 147 (2010); *Della Ratta v. Dixon*, 47 Md. App. 270, 285 (1980). An order to pay attorney's fees as a sanction is not equitable in nature and not appealable under § 12-303. See *Yamaner v. Orkin*, 310 Md. 321, 324-25 (1987).

The order to pay court reporter fees is not an appealable interlocutory order. Accordingly, we dismiss the appeal.

**APPEAL DISMISSED. COSTS TO BE PAID  
BY APPELLANT.**