

Circuit Court for Baltimore County
Case No. C-03-CV-20-002197

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0463

September Term, 2022

SHARON SAUNDERS

v.

ELLEN GILMAN, ET. AL.

Friedman,
Zic,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Zic, J.

Filed: March 8, 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 appeal arises from a dispute regarding ownership of a 9,037 square-foot strip of land situated between neighboring properties in Baltimore County. In May 2020, appellant Sharon Saunders, M.D. (“Dr. Saunders”) filed a first amended complaint against the appellees, Steven and Ellen Gilman (the “Gilmans”). The Gilmans filed a first amended counterclaim against Dr. Saunders in July 2020. Upon a November 2020 motion by the Gilmans to sever the counts alleged by the parties, the Circuit Court for Baltimore County ordered in December 2020 that “Count I, (Declaratory Judgment), of the First Amended Complaint and Count I, (Adverse Possession), of the First Amended Counterclaim be, and hereby [are], **SEVERED** from the remaining [] counts in the First Amended Complaint.”¹

Dr. Saunders’ first amended complaint contained the following counts:

- Count I: declaratory judgment pursuant to Md. Code Ann., Real Prop. § 14-111(c);
- Count II: trespass;
- Count III: violation of Md. Code Ann., Nat. Resources § 5-409, which is titled “Permission required to alter merchantable trees or timber”;
- Count IV: conversion;
- Count V: intentional infliction of emotional distress; and
- Count VI: injunction.

The Gilmans’ first amended counterclaim contained a single count of adverse possession.

¹ The order also stated that after deciding the declaratory judgment and adverse possession counts in a “separate hearing,” there should be a “trial on the merits of the remaining counts.”

A judgment order from the circuit court filed on October 6, 2022 stated that the circuit court held a bench trial on “Count I of the Amended Complaint (Declaratory Judgment) and Count I of the Second Amended Verified Counterclaim² (Adverse Possession).” The Gilmans’ second amended verified counterclaim, filed in December 2020, alleged the following counts:

- Count I: adverse possession,
- Count II: intentional infliction of emotional distress,
- Count III: intrusion upon seclusion, and
- Count IV: nuisance.

The circuit court order also stated, “Count I of Plaintiff’s Amended Complaint seeking a Declaratory Judgment” is “**DENIED**,” and “Count I of Defendants’ Second Amended Verified Counterclaim seeking adverse possession of real property” is “**GRANTED**.” The order also declared the parties rights with regard to the adverse possession of all disputed property in favor of the Gilmans. No other claims were addressed in the circuit court’s October 2022 order. Based upon our review of the record, no other claims were disposed of beyond the counts addressed in the October 2022 order. For this reason, and as explained below, we shall dismiss the appeal for lack of a final judgment.

Although neither party raised any issue regarding the appealability of the circuit court order, this Court is obligated *sua sponte* to address the issue of appellate jurisdiction. *Johnson v. Johnson*, 423 Md. 602, 605-06 (2011) (citations omitted). For

² While the circuit court order severing the counts and the circuit court order stating the judgment of the court reference different iterations of the counterclaims filed by the Gilmans, both orders and both counterclaims identify count I as adverse possession.

this Court to have jurisdiction over an appeal, it must be taken from a final judgment or otherwise be permitted by law. *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 261-62, 273-74 (2009); Md. Code Ann., Cts. & Jud. Proc. § 12-301. “If we lack appellate jurisdiction, however, we must dismiss an appeal.” *McLaughlin v. Ward*, 240 Md. App. 76, 83 (2019) (citations omitted). The final judgment requirement “before permitting appeal reflects Maryland’s long-established policy against piecemeal appeals.” *Waterkeeper Alliance, Inc. v. Maryland Dep’t of Agriculture*, 439 Md. 262, 278 (2014) (citations omitted).

“A ‘final judgment’ is ‘a judgment, decree, sentence, order, determination, decision, or other action by a court . . . from which an appeal . . . may be taken.’” *Addison*, 411 Md. at 261 (quoting Cts. & Jud. Proc. § 12-101(f)). A final judgment is considered “‘final’ if it ‘disposes of all claims against all parties and concludes the case.’” *Matter of 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)). Maryland Rule 2-602(a) states that a judgment which does not dispose of all claims by and against all of the parties is not a final judgment. The rule states:

(a) Generally. Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:

(1) is not a final judgment;

- (2) does not terminate the action as to any of the claims or any of the parties; and
- (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

Md. Rule 2-602(a). A judge’s “order will constitute a final judgment if the following conditions are satisfied: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy; (2) it must adjudicate or complete the adjudication of all claims against all parties; and (3) the clerk must make a proper record of it on the docket. In other words, for an order to qualify as a final judgment, it must adjudicate each and every claim and be reflected in a docket entry.” *Waterkeeper*, 439 Md. at 278 (citations and quotation marks omitted).

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 judgement under Maryland Rule 2-602(b). *Johnson*, 423 Md. at 607 (citations omitted); *see also* Judge Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issues* 47 (3d ed. 2018).

Here, the circuit court’s October 6, 2022 order did not resolve all of the claims by and against the Gilmans and Dr. Saunders. The circuit court also did not “direct in the order the entry of a final judgment” or meet the requirements pursuant to Maryland Rule 2-602(b). Furthermore, the order in this case does not fall within the collateral order

doctrine³ or meet the exceptions enumerated in Cts. & Jud. Proc. § 12-303.⁴

Consequently, no final judgment had been entered when Dr. Saunders filed her notice of appeal.

Since no exception to the final judgment requirement applies, we must dismiss the appeal.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

³ In order “[t]o qualify as a collateral order,” this “very narrow exception” requires that “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.” *McLaughlin*, 240 Md. at 88 (quotation marks and citation omitted). The criteria are not met in this case.

⁴ This statute “authorizes an appeal from an array of interlocutory orders in cases in which an appellant’s rights might be lost or irreparably damaged if he or she is unable to challenge an erroneous ruling until after the entry of a final judgment.” *McLaughlin*, 240 Md. at 85 (citations omitted). The enumerated statutory provisions do not apply in this case.