Circuit Court for Montgomery County
Case No. C-15-CV-23-000197

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 619

September Term, 2024

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DAVID LAWRENCE CLARK

v.

DARCARS LEASING, INC.

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Arthur,
Beachley,
Ripken,

JJ.

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Opinion by Arthur, J.

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Filed: January 14, 2025

*This is an unreported opinion. The 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).

David Lawrence Clark has appealed from what he describes as an "oral ruling and written order ruling in favor of" appellee Darcars Leasing, Inc., "and awarding it compensatory and punitive damages." Clark admits that as of the date of his brief—and, thus, as of the date of the notice of appeal, which was filed months before his brief—"a final judgment ha[d] not been entered."

For the reasons stated below, we conclude that Clark's notice of appeal was premature. Consequently, we shall dismiss the appeal on our own initiative on the ground that it is not allowed by the Maryland Rules or by other law. Md. Rule 8-602(b)(1).

**I.**

Darcars commenced this action in the Circuit Court for Montgomery County by filing a complaint alleging Clark had committed various species of fraud and other related torts. The circuit court conducted a bench trial on April 24, 2024.

On April 25, 2024, the circuit court delivered an oral ruling in which it found Clark liable to Darcars for fraud and conversion. In its oral ruling, the court indicated that it would award $50,905.35 in compensatory damages and $50,905.35 in punitive damages, for a total of $101,810.70. The punitive damages figure did not account for the attorneys' fees that Darcars had incurred in pursuing this action.

In its closing argument, Darcars cited *St. Luke Evangelical Church, Inc. v. Smith*, 318 Md. 337, 354 (1990), which holds that, "to aid the jury in calculating an amount of punitive damages that will deter a party from future wrongful conduct, evidence of reasonable attorney's fees may be considered by the jury whenever punitive damages are

appropriate." Darcars argued that the award of punitive damages in this case should include the attorneys' fees that Darcars had incurred in obtaining a judgment. In its oral ruling, the circuit court appears to have agreed, because it directed Darcars to submit an affidavit concerning the attorneys' fees that it had incurred.

On the same day as its oral ruling, the court completed a document titled Civil Courtroom Hearing Sheet. The document recited that the court had found in favor of Darcars and against Clark "in the amount as set forth on the record." The document added that an "Order" was "to be submitted." The Civil Courtroom Hearing Sheet did not mention the potential of an additional award of attorneys' fees as a component of Darcars' punitive damages.

On May 10, 2024, Darcars filed a motion for attorneys' fees, with supporting exhibits. In the motion, Darcars requested $39,776.84, representing the fees that it claimed to have incurred in this case through April of 2024. On May 13, 2024, Clark opposed the motion for attorneys' fees.

On May 24, 2024, Clark noted this appeal. At that time, the circuit court had yet to adjudicate Darcars' entitlement to its attorneys' fees as an additional component of the award of punitive damages.

On August 28, 2024, the circuit court entered what it called a "Judgement [sic] Order." In that document, the court found that Darcars had incurred $39,776.84 in attorneys' fees "during the course of these proceedings[.]" The court ordered Clark to pay $50,905.35 in compensatory damages within 60 days, to pay $50,905.35 in punitive damages within 60 days, and to reimburse Darcars for $39,776.84 in attorneys' fees. If

Clark failed to remit those payments to Darcars within 60 days, the court ordered that judgment would be entered against him in the amount of $141,587.54, the sum of the three.

On October 29, 2024, the sixty-first day after the entry of the "Judgement Order," Darcars moved for the entry of a final judgment. The circuit court entered a final judgment on December 26, 2024.

**II.**

In general, a party may appeal only "from a final judgment entered in a civil or criminal case by a circuit court." Maryland Code (1974, 2020 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings ("CJP") Article. "A 'final judgment' is a judgment that 'disposes of all claims against all parties and concludes the case.'" *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 660 (2014) (quoting *Miller & Smith at Quercus, LLC v. Casey PMN, LLC,* 412 Md. 230, 241 (2010)).

"[A] ruling must ordinarily have the following three attributes to be a final judgment: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court acts pursuant to Maryland Rule 2-602(b) to direct the entry of a final judgment as to less than all of the claims or all of the parties, it must adjudicate or complete the adjudication of all claims against all parties; [and] (3) it must be set forth and recorded in accordance with Rule 2-601." *Metro Maint. Sys. South v. Milburn, Inc*., 442 Md. 289, 298 (2015) (citing *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)).

"To have the attribute of finality, the ruling must be so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding." *Rohrbeck v. Rohrbeck*, 318 Md. at 41 (citations omitted) (emphasis in original). "To be final and conclusive in that sense, the ruling must necessarily be unqualified and complete, except as to something that would be regarded as collateral to the proceeding." *Id.*

When Clark noted his appeal on May 24, 2024, the circuit court had made no ruling that satisfies the requirements of a final judgment. The court had not rendered "an unqualified, final disposition of the matter in controversy[.]" *Metro Maint. Sys. South v. Milburn, Inc*., 442 Md. at 298. Nor had the court "adjudicate[d] or complete[d] the adjudication of all claims[.]" *Id.* The court had found Clark liable to Darcars for fraud and other torts; it had quantified the award of compensatory damages; it had decided to impose punitive damages and had quantified part of the award of punitive damages; but it had not yet decided how much, if anything, in attorneys' fees it would award to Darcars as part of the award of punitive damages.

The court did not render "an unqualified, final disposition of the matter in controversy" or "adjudicate or complete the adjudication of all claims" until December 26, 2024, when it entered a final judgment against Clark. Clark's appeal, noted seven months earlier, was therefore premature. As such, his notice of appeal was "of no force and effect." *Makovi v. Sherwin-Williams Co*., 311 Md. 278, 283 (1987); *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. at 662.

This statutory "final judgment rule" has three, limited exceptions—judgments that a circuit court has properly certified as final under Maryland Rule 2-602(b), collateral orders that are completely separate from the merits and effectively unreviewable on appeal from a final judgment, and permissible interlocutory appeals under CJP § 12-303. *See*, *e.g.*, *Falik v. Hornage*, 413 Md. 164, 175 (2010). None of those exceptions applies in this case.

Under Rule 2-602(b), if a circuit court expressly determines in a written order that there is no just reason for delay, it may direct the entry of a final judgment as to one or more, but fewer than all, of the claims against a party. Here, however, the court had not adjudicated one or more, but fewer than all, of the claims against Clark when it announced its partial ruling on April 25, 2024. Rather, the court had adjudicated only part of a single claim and had not yet quantified the full amount of damages that it would award. *See Medical Mut. Liab. Ins. Soc'y v. B. Dixon Evander & Assocs.*, 331 Md. 301, 306-07 (1993). Furthermore, the court did not expressly determine in a written order that there was no just reason for delay. Rule 2-602(b) does not apply.

Under the collateral order doctrine, an otherwise interlocutory order is deemed to be a final judgment if it satisfies 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). Here, the court's partial ruling on compensatory and punitive damages was

enmeshed with the merits of the case; it was not "completely separate" from the merits (i.e., collateral). Nor would the ruling be unreviewable, effectively or otherwise, in an appeal from a final judgment. The collateral order doctrine does not apply.

CJP § 12-303 permits an immediate appeal of a small set of interlocutory rulings, typically equitable in nature. By way of a few examples, it generally permits an immediate appeal of certain orders pertaining to injunctions; of certain orders appointing receivers; of equitable orders requiring the sale, conveyance, or delivery of property or the payment of money; and of orders depriving a parent, grandparent, or natural guardian of the care and custody of a child. Nothing in CJP § 12-303 authorizes an appeal from an oral ruling in an action at law in which the court announces its finding on liability and its quantification of some, but not all, of the damages sought.

In summary, no exception to the final judgment rule applies. No exception saves Clark's premature appeal.

Maryland Rule 8-602(f), however, does save some premature appeals. It states: "A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket."

Rule 8-602(f) "covers the situation in which a circuit court has made a decision or signed an order that upon being entered on the docket will be [an appealable order]; but the notice of appeal was prematurely filed, before the entry on the docket." *Doe v.*

*Sovereign Grace Ministries, Inc.*, 217 Md. App. at 663.[1] But here, the notice of appeal was filed before the entry on the docket of something that was neither a final judgment nor an appealable order. *Id.* Clark noted his appeal after the court had resolved the issue of liability, computed Darcars' compensatory damages, and quantified some—but not all—of what Darcars characterized as its claim for punitive damages. Specifically, Clark noted his appeal before the court had determined how much, if any, of Darcars' attorneys' fees it should award as part of the claim for punitive damages.

Under Maryland law, claims for attorneys' fees based on a statute or rule are deemed to be "collateral" to the merits of an action. *Blake v. Blake*, 341 Md. 326, 335-38 (1996), *Johnson v. Wright*, 92 Md. App. 179, 182 (1992); *Larche v. Car Wholesalers, Inc.*, 80 Md. App. 322, 328 (1989). Consequently, the pendency of a statutory or rule-based claim for attorneys' fees does not deprive an otherwise final ruling of finality. *See, e.g.*, *Blake v. Blake*, 341 Md. at 335-38. If, however, the claim for attorneys' fees is part of a party's claim for damages, the judgment does not become final until the court has decided whether to award fees and, if so, in what amount. *See, e.g.*, *G-C P'ship v. Schaefer*, 358 Md. 485, 488 (2000); *Mattvidi Assocs. L.P. v. NationsBank of Virginia, N.A.*, 100 Md. App. 71, 78 n.1 (1994).

[1] By its literal terms, *Doe* says that the rule applies to a decision or order that upon being entered on the docket will be a "final judgment." *Id.* In fact, the rule is broader: it applies to a decision or order that upon being entered on the docket will be appealable, regardless of whether it will be a final judgment. *See Bussell v. Bussell*, 194 Md. App. 137, 147-55 (2010) (holding that the predecessor of Rule 8-602(f) applied to a decision or order that would have been appealable under CJP section 12-303 when it was entered on the docket).

In this case, Darcars' claim for attorneys' fees was part of its claim for relief. Therefore, the court had not fully adjudicated Darcars' claim for relief until it decided whether to award fees and quantified the amount of the award. The court did not decide to award fees and quantify the award at least until the "Judgement Order" of August 28, 2024. Clark noted his appeal three months before the court first announced its intended disposition of Darcars' case in its entirety. Therefore, he did not note the appeal "after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket[.]" The savings provision of Rule 8-602(f) does not apply.

Clark did note his appeal after something was entered on the docket—the Civil Courtroom Hearing Sheet, which said that the court had found in favor of Darcars and against Clark "in the amount as set forth on the record," noted that an "Order" was "to be submitted," and made no mention of the pending request of an additional award of attorneys' fees as a component of Darcars' punitive damages. The Civil Courtroom Hearing Sheet is akin to a diary entry recording what the court did on a particular date; it is not a "ruling, decision, order, or judgment" within the meaning of Rule 8-602(f). In fact, by its own terms, the Civil Courtroom Hearing Sheet envisions the submission and review of another "Order" that will embody the court's decisions.

As noted above, the court finally entered a final judgment on December 26, 2024. Clark has 30 days from the date of the final judgment to note a proper appeal. Md. Rule 8-202(a). His current appeal, however, is improper because it is premature.

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