

Circuit Court for Wicomico County
Case No.: C-22-CV-20-000401

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1059

September Term, 2022

TYBOIA BROWN

v.

KATHERINE WARD, *et al.*

Reed,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 30, 2023

*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Tyboia Brown, appellant, sued Shorlock Home Inspections, LLC, appellee, for breach of contract, breach of fiduciary duty, negligence, and gross negligence in the Circuit Court for Wicomico County. After the close of discovery, the court granted partial summary judgment in favor of Shorlock on the claims of breach of fiduciary duty and gross negligence. Prior to trial, the parties entered into a consent judgment under which Shorlock was found liable for the two remaining counts and agreed to pay Brown the maximum damages provided in the exculpatory clause of the parties’ contract. Brown then noted this appeal and presents one issue for our review: Whether the trial court erred in granting summary judgment in favor of Shorlock on the issue of gross negligence.

We cannot, however, reach this issue because the appeal is from a valid consent judgment.¹ “[A] party may not appeal from a judgment to which [they] ha[ve] consented.” *Globe Am. Cas. Co. v. Chung*, 322 Md. 713, 716 (1991). Admittedly, Brown purports to appeal from the entry of partial summary judgment in favor of Shorlock on the issue of gross negligence. But a review of the record discloses that the grant of partial summary judgment was not a final order, that the parties entered into a consent judgment subsequent to the grant of partial summary judgment, and that the consent judgment became final on July 26, 2022, when the claims against all parties to the action were finally determined. “Where a party consents to judgment in a case, the party ordinarily may not appeal and obtain review of an earlier adverse ruling in that case.” *Id.* at 717.

¹ Although neither raises the point, we must always examine whether we may properly exercise jurisdiction in an appeal. *See Royal Ins. Co. of Am. v. Austin*, 79 Md. App. 741, 743 (1989); Md. Rule 8-602(b)(1).

To be sure, parties may stipulate in a consent order as to one party’s right to appeal the trial court’s prior adverse ruling. *See, e.g., Royal Ins. Co. of Am. v. Austin*, 79 Md. App. 741, 743–44 (1989). But such a stipulation must explicitly reserve the right to appeal from *that* order, not merely indicate a right to appeal the judgment. *See id.* at 743 (“The agreement contained a provision that purportedly preserved [the appellant’s] ‘right to appeal the [trial court’s] denial of defendant’s Motion for Summary Judgment.’”). The reasoning behind this requirement is that such a stipulation indicates that the order is “not a *true* consent judgment as to both liability and damages[.]” *Id.* at 744.

Here, the consent judgment lacked any explicit reservation of the right to appeal the trial court’s prior grant of partial summary judgment. It instead indicated merely that it “shall constitute a Final Order of the Court for purposes of any party’s right to appeal this judgment[.]” But, as indicated above, “a party may not appeal from a judgment to which [they] ha[ve] consented.” *Globe Am. Cas. Co.*, 322 Md. at 716. Consequently, this appeal must be dismissed.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.