Circuit Court for Prince George's County
Case No. CAL21-14906

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1830

September Term, 2022

CYNTHIA FARMER, ET AL.

v.

MAURICE BOWIE, ET AL.

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

JJ.

Opinion by Arthur, J.

Filed: July 9, 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).

The Circuit Court for Prince George's County stayed a petition to confirm an arbitration award because a related case to vacate the award was pending in the Superior Court for the District of Columbia. The parties who sought to confirm the award took this appeal.

Although the order granting a stay is not an ordinary final judgment, we have jurisdiction to decide the appeal under the collateral order doctrine. On the merits, we conclude that the circuit court did not abuse its discretion in granting the stay.

FACTUAL AND PROCEDURAL HISTORY

Cynthia Farmer and her sister, Francine Watson, owned a property located in Washington, D.C. Between 2013 and 2015, Farmer and Watson entered into several construction contracts with Bowie Construction LLC for the complete renovation of the property. The total price of the contracted work was $340,000.00.

The contractor allegedly failed to complete the work under the contract, failed to follow drawings, and did substandard work. The contractor allegedly terminated the contract, and Farmer and Watson allegedly had to hire additional contractors to repair and complete the unfinished work.

The contract contained a clause that requires the parties to resolve any disputes in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (AAA). The clause is silent as to where arbitration is to be held and in what jurisdiction the parties can petition to enforce an arbitration award.

Farmer and Watson filed a claim with the American Arbitration Association against Bowie and Bowie Construction LLC on August 22, 2019. The parties jointly filed a pre-arbitration statement, stipulating, among other things, that the arbitration was governed by the law of the District of Columbia, that "Maurice Bowie is not a party to any agreement with [Farmer and Watson]," and that "the matter should be dismissed" as to him.

The arbitration hearing took place virtually on August 12 and 13, 2021. The arbitrator issued the award on September 27, 2021.

In the award, the arbitrator found in favor of Farmer and Watson and awarded damages to them in the amount of $170,024.33. The award styled the case as "*In the Matter of the Arbitration between Cynthia D. Farmer and Francine Watson vs. Maurice Bowie dba Bowie Construction, LLC*."

On September 28, 2021, the day after the arbitrator issued the award, Bowie emailed the arbitrator, requesting that he be removed as a party to the case, per the agreement of both parties in the pre-arbitration statement. Farmer and Watson opposed the modification of the award.

On October 1, 2021, Bowie sent a letter to the American Arbitration Association, requesting an amendment of the award to reflect that he was not a party to the case. Farmer and Watson opposed the amendment. The arbitrator denied Bowie's request and issued a final award on October 12, 2021.

To turn the arbitration award into a judgment, Farmer and Watson had to obtain a court order confirming the award. Bowie could oppose confirmation by asking the court to modify or vacate the award.

The Uniform Arbitration Act, which is in force in different forms in both Maryland and the District of Columbia, authorizes the prevailing party to file a petition or motion asking the court to confirm the award. Maryland Code (1974, 2020 Repl. Vol.), § 3-227(a) of the Courts and Judicial Proceedings Article ("CJP"); D.C. Code § 16-4422 (2008). The act imposes no deadline by which the prevailing party must file the petition or motion to confirm the award. *See* CJP § 3-227(a); D.C. Code § 16-4422.

When a party files a petition to confirm an arbitration award in Maryland, the court must confirm the award unless the opposing party has filed a motion to vacate, modify, or correct the award within the deadlines dictated by the act. CJP § 3-227(b). Similarly, when a party files a motion to confirm an arbitration award in the District, the court must confirm the award by issuing "a confirming order" unless the award is modified, corrected, or vacated. D.C. Code § 16-4422.

The Uniform Arbitration Act authorizes the losing party in arbitration to ask a court to vacate an arbitration award on certain limited grounds. In general, under Maryland law, the party must file the petition to vacate "within 30 days after delivery of a copy of the award to the petitioner." CJP § 3-224(a). By contrast, under District of Columbia law, the party generally has 90 days after it receives notice of the award or of a

modified or corrected award to file a petition to vacate an award. D.C. Code § 16-4423(c).

In this case, Farmer and Watson filed a petition to confirm the award in the Circuit Court for Prince George's County on November 30, 2021. Although the arbitration concerned a property in the District of Columbia and although the parties agreed that District of Columbia law governed the dispute in the arbitration case, Farmer and Watson petitioned to confirm the award in Prince George's County because, they say, Bowie resides in Prince George's County and his LLC is chartered in Maryland. The arbitration agreement itself is silent on the question of where the prevailing party may seek to confirm the award.

As previously stated, the arbitrator had issued the final award on October 12, 2021. Consequently, when Farmer and Watson petitioned the Maryland court to confirm the award on November 30, 2021, the 30-day deadline had already passed for Bowie to move to vacate the award under Maryland law. Because Bowie had not moved to vacate the award in Maryland within 30 days after the award was delivered to him, a Maryland court was arguably required to confirm the award. CJP § 3-227(b). As Farmer and Watson put it, the right to vacate the award was "procedurally unavailable" to Bowie in Maryland. *See Board of Educ. of Charles County v. Educ. Ass'n of Charles County*, 286 Md. 358, 364 (1979) (explaining that "the time constraint in [CJP § 3-224] is mandatory").

Under District of Columbia law, however, Bowie had 90 days after the award was delivered to him—or until approximately January 10, 2022—to move to vacate the award. Thus, had Farmer and Watson moved to confirm their award in the District (rather than Maryland) on November 30, 2021, Bowie would still have had a considerable amount of time to move to vacate the award and to prevent the court from confirming it. In these circumstances, it appears that Farmer and Watson sought to exploit a difference between the two versions of the "uniform" act in order to prevent Bowie from moving to vacate the award.[1]

Farmer and Watson served Bowie with their petition to confirm on December 23, 2021. On December 26, 2021, Bowie moved to vacate the award in the Superior Court of the District of Columbia. The motion, which was timely under District of Columbia law, reiterated that the parties had previously stipulated that Bowie was not a party and that the matter should be dismissed as to him.

On January 11, 2022, Bowie moved to dismiss the petition to confirm the award in Prince George's County. Farmer and Watson opposed the motion, arguing, among other things, that Maryland could assert personal jurisdiction over Bowie and his LLC and that Prince George's County was a proper venue under Maryland law. They contended that Bowie's ability to vacate the award in the District of Columbia was, in their words,

[1] Farmer and Watson assert that Bowie "elected" not to file a petition to vacate in Maryland within 30 days of the award. It is more likely that Bowie assumed that the confirmation proceedings would take place in the District, where he had a full 90 days to move to vacate the award, because D.C. law governed the underlying dispute, because the property was located there, and because the contract was performed there.

"preempted" by the filing of their petition to confirm in Maryland in November 2021. The Circuit Court for Prince George's County denied Bowie's motion to dismiss on February 18, 2022.

On March 3, 2022, Bowie moved, *nunc pro tunc*, to extend his time to move to vacate the award in Prince George's County. Bowie also moved to stay the Prince George's County case. Farmer and Watson opposed the motions.

While the petition to confirm the award was pending in Prince George's County, Bowie's parallel suit proceeded in the District of Columbia. Farmer and Watson moved to stay the proceedings in the District, citing the doctrine of comity. Because Farmer and Watson had filed first, in Maryland, the Superior Court of the District of Columbia stayed the proceedings to allow a Maryland court to hear the case. In essence, the Superior Court determined that the Circuit Court for Prince George's County should decide whether the case would proceed in Maryland or in the District of Columbia.

After a hearing on November 22, 2022, the Circuit Court for Prince George's County granted Bowie's motion to stay the proceedings in Maryland pending the resolution of the District of Columbia case. The court reasoned that because Bowie's motion to vacate was timely only in the District, the District was the only forum where the matter could be resolved on its merits.[2]

[2] The court orally announced at the hearing that Bowie's motion to extend the time to move to vacate the award in Maryland was moot.

On December 23, 2022, Farmer and Watson noted an interlocutory appeal to this Court.

QUESTIONS PRESENTED

Farmer and Watson present two questions for review:

1. Is the trial court's decision to grant Appellee's Motion to Stay an appealable interlocutory order?

2. Did the trial court err in granting Appellee's Motion to Stay and procedurally failed [sic] to confirm, enforce, and enter judgment against Appellee as required by the [Maryland Uniform Arbitration Act]?

We hold that the circuit court's order is appealable under the collateral order doctrine, an exception to the general rule that a party may appeal only from a final judgment. On the merits, we hold that the trial court did not abuse its discretion in granting the motion to stay.

DISCUSSION

I. Appellate Jurisdiction

"The issue of whether the circuit court's [s]tay [o]rder is a final and appealable judgment, or is appealable even if not a final judgment . . . , is a question of law that an appellate court reviews *de novo*." *Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of School Comm'rs*, 457 Md. 1, 40 (2017).

Generally, parties appeal only upon the entry of a final judgment from the circuit court. *See* CJP § 12-301. "The statute does not define finality, but instead leaves it to this Court to determine what makes a judgment 'final.'" *Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 297 (2015).

"If a ruling of the court is to constitute a final judgment, it must have at least three attributes: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601." *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989). In addition, "'[e]ach judgment'" must "'be set forth on a separate document,'" and "'[a] judgment is effective only when so set forth.'" *Hiob v. Progressive American Ins. Co.*, 440 Md. 466, 478 (2014) (quoting Md. Rule 2-601(a)).

In this case, the order granting the stay fails to meet at least two of these requirements. First, the order was not "intended by the court as an unqualified, final disposition of the matter in controversy[.]" *Rohrbeck v. Rohrbeck*, 318 Md. at 41. The court merely intended to postpone the final disposition of the matter until the Superior Court of the District of Columbia had adjudicated the parallel case pending in that forum. Second, the order does not "adjudicate or complete the adjudication of all claims against all parties[.]" *Id.* Instead, those claims will remain pending and unadjudicated while the parallel case proceeds to a conclusion in the District. The order granting the stay, therefore, is not an ordinary final judgment from which Farmer and Watson can appeal.

In civil litigation, there are three exceptions to the general rule that a party can appeal only from a final judgment that disposes of all claims against all parties: (1) appeals from interlocutory orders specifically allowed by statute; (2) immediate appeals permitted under Maryland Rule 2-602(b); and (3) appeals from interlocutory rulings

allowed under the collateral order doctrine. *See*, *e.g.*, *In re C.E.*, 456 Md. 209, 221 (2017).

Farmer and Watson do not contend that they have a statutory right to appeal. Rather, they contend, in substance, that they have the right to appeal under Rule 2-602(b). They are incorrect.

Rule 2-602(b) permits a circuit court to direct the entry of a final judgment if its order disposes of "one or more but fewer than all of the claims or parties[.]" To direct the entry of a final judgment, however, the circuit court must "expressly determine[] in a written order that there is no just reason for delay[.]" *Id.* In this case, the circuit court made no such determination.

Farmer and Watson argue that the absence of that determination is not an obstacle to their appeal. They point out that under Rule 8-602(g)(1) this Court may enter a final judgment on its own initiative if the circuit court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(b). They fail to appreciate that the circuit court would not have had discretion to direct the entry of a final judgment in this case.

Rule 2-602(b) typically comes into play in one of two scenarios: first, when the circuit court has disposed of all claims involving one or more, but fewer than all, of the parties; and second, when the circuit court has disposed of one or more, but fewer than all, of the claims in the case. This case does not involve either scenario.

The court has not disposed of all of the claims involving one or more, but fewer than all, of the parties. All of the original parties to the case—Farmer, Watson, Bowie, and Bowie's LLC—are still parties to the case in the circuit court.

Nor has the court disposed of one or more, but fewer than all, of the "claims" in the case, as Maryland appellate courts have construed that term. As used in Rule 2-602(b), "claim" is a term of art. "A claim for purposes of [Rule 2-602(b)] must at least be a complete cause of action[.]" *East v. Gilchrist*, 293 Md. 453, 459 (1982). "Different legal theories for the same recovery, based on the same facts or transaction, do not create separate 'claims' for purposes of the rule." *Id.*; *accord County Comm'rs for St. Mary's County v. Lacer*, 393 Md. 415, 426 (2006); *see also Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric.*, 439 Md. 262, 279 (2014) (stating that "[a]lternative legal theories and differing prayers for relief do not constitute separate 'claims' so long as they arise from a single asserted legal right").

When the circuit court stayed this case to allow the parallel case to proceed in the District of Columbia, the court rejected a legal theory or an argument that supports the claim for relief asserted by Farmer and Watson. The court, however, did not dispose of one or more, but fewer than all, of the "claims[,]" within the meaning of Rule 2-602(b). Their claim—their putative right to have the arbitration award confirmed against Bowie and his LLC—has not been adjudicated. Therefore, the circuit court did not have discretion to direct the entry of a final judgment as to the ruling in which it granted the stay. And as our discretion under Rule 8-602(g) is no broader than that of the circuit

court under Rule 2-602(b), we, too, cannot direct the entry of a final judgment. *See Zilichikhis v. Montgomery County*, 223 Md. App. 158, 172 n.7 (2015).

But even though Farmer and Watson are incorrect in arguing that they have the right to appeal under Rule 2-602(b) and Rule 8-602(g), our analysis does not end here. We have the right and duty to examine the question of appellate jurisdiction on our own motion. Therefore, we consider whether Farmer and Watson have the right to an interlocutory appeal under the collateral order doctrine.

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." *Dawkins v. Baltimore City Police Dep't*, 376 Md. 53, 64 (2003) (emphasis in original). To qualify as a collateral order under this "very narrow exception" to the final judgment rule (*id*. at 58), 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." *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 285 (2009); *accord Maryland Bd. of Physicians v. Geier*, 225 Md. App. 114, 131 (2015).

A decision is typically 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. 627, 636 (2003) (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).

The order granting the motion to stay satisfies each of these four requirements. The order conclusively resolves the disputed question of where the litigation should proceed. The issue involved is important: a court will decide the merits of the controversy if, and only if, the case proceeds in the District of Columbia, because a Maryland court would have to confirm the award because of Bowie's failure to file a motion to vacate within 30 days of the final arbitration award. And the issue of which court should decide the case is completely separate from the underlying merits of the dispute between Bowie and his LLC's former customers. *See Town of Chesapeake Beach v. Pessoa Constr. Co.*, 330 Md. 744, 755 (1993).

Finally, this is one of the "extraordinary" cases in which the issue is effectively unreviewable on an appeal from a final judgment in the Maryland case: if the case proceeds to a conclusion in the Superior Court of the District of Columbia, that court's judgment will be res judicata or collateral estoppel in Maryland.[3] Once the District of

[3] In addition, the District of Columbia judgment may be entitled to full faith and credit. *See*, *e.g.*, *Prince George's Cnty. Off. of Child Support Enforcement v. Lovick*, 238 Md. App. 476, 482-83 (2018); *Hill v. Hill*, 118 Md. App. 36, 43 (1997); *Hughes v. State*, 56 Md. App. 12, 20 (1983).

Columbia court has decided the merits of this case, a Maryland court will have no choice but to enter a judgment in accordance with the judgment of the District of Columbia court. *See, e.g.*, *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 12 (1983). In those circumstances, it will make no difference whether the Maryland court abused its discretion in staying the proceedings before it and allowing the case to proceed in the District. The principles of res judicata and collateral estoppel will require a Maryland court to uphold the judgment even if a Maryland court should never have allowed a District of Columbia court to enter the judgment.

In summary, we conclude that we have jurisdiction to decide this appeal under the collateral order doctrine. Consequently, we shall proceed to the merits.

II. The Stay

"[A] court's decision to grant or deny a stay order is generally within its discretion, and is reviewed for an abuse of discretion." *Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of School Comm'rs*, 457 Md. at 40-41. We will reverse the circuit court's order if "'no reasonable person would take the view adopted by the [trial] court[.]'" *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. 534, 546 (2013) (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 418 (2007)). "We have found abuses of discretion where the trial court ruling was 'clearly against the logic and effect of facts and inferences before the court[] . . . or when the ruling is violative of fact and logic.'" *Fishman v. Murphy ex rel. Estate of Urban*, 433 Md. at 546 (quoting *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. at 418).

During the hearing on Bowie's motion to stay in the Circuit Court for Prince George's County, the court recognized that Bowie had filed a timely motion to vacate in the District of Columbia, but that he had not met the far shorter deadline in Maryland. The court expressed reservations about confirming the arbitration award because of Bowie's failure to file a timely motion to vacate in Maryland when he had filed a timely motion to vacate in the District. The court resolved what it called this "quandary" by staying the action in Maryland so that Bowie would have the "opportunity to have his action heard" on the merits in the District. This ruling has all the hallmarks of a careful and conscientious exercise of discretion.

Farmer and Watson argue that the court abused its discretion because, they say, the stay renders their Maryland action "moot," by which they mean that the District of Columbia judgment will be res judicata or collateral estoppel in their Maryland action. Their argument describes the effect of the ruling, but does not explain why the ruling represents an abuse of discretion. In any event, if the circuit court had denied Bowie's request for a stay, as Farmer and Watson encouraged it to do, then Bowie's District of Columbia action would have become just as "moot" as theirs is now. It seems, therefore, that if the circuit court abused its discretion by rendering an action "moot," as Farmer and Watson say, then the court would have also abused its discretion however it ruled in this case—which makes no sense.

Farmer and Watson also argue, in substance, that the court had no discretion to grant a stay. They contend that CJP § 3-227 required the court to confirm the award

because of Bowie's failure to file a petition to vacate in Maryland within 30 days of the award. We disagree. Section 3-227 does not address the "quandary" in this case—where actions to confirm or vacate the award are pending simultaneously in multiple jurisdictions. Even in the absence of a timely petition to vacate, CJP § 3-227 does not require a Maryland court to confirm an award against a party who has filed a timely motion to vacate the award in the jurisdiction whose substantive law governed the dispute, where the property involved was located, and where the contract at issue was performed—especially when the other jurisdiction is the only one with the capacity to decide the case on the merits.

In summary, the court in this case made a reasoned choice between two alternatives: confirming the award in Maryland because of Bowie's failure to file a timely petition to vacate in Maryland or staying the proceeding in Maryland to allow the parties to litigate the issue of confirmation in the District of Columbia, where Bowie had filed a timely motion to vacate. The reasoned choice between those two alternatives was not an abuse of discretion.

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

The correction notice(s) for this opinion(s) can be found here:

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