Circuit Court for Baltimore County
Case No. C-03-CV-22-002792

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1878

September Term, 2024

IN THE MATTER OF BAHRAM SINA
LIVING TRUST

Nazarian,
Arthur,
Beachley,

JJ.

Opinion by Arthur, J.

Filed: February 3, 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).

The co-trustees of a trust moved to consolidate two pieces of litigation concerning the trust. The Circuit Court for Baltimore County denied the motion, and the co-trustees appealed. We shall dismiss the appeal because it is not allowed by the Maryland Rules or other law. Md. Rule 8-602(b)(1).

I.

Appellee Rokhsareh Asghari commenced this action in July of 2022 by filing a petition requesting that the court assume jurisdiction over a trust. As defendants, Asghari named the co-trustees of the trust, who include appellants Shaida Sina and Soraya Fattima Sina. We shall refer to the Sinas as the "co-trustees."

The co-trustees assert that, at a hearing in June 2024, Asghari, through counsel, "acknowledged" that she had "abandoned" a possessory interest in certain real property that was granted to her under the trust. The co-trustees assert that because the time for filing a counterclaim had passed, they did not raise the issue of "abandonment" in a counterclaim.[1] Instead, on August 29, 2024, the co-trustees filed a separate action for a declaratory judgment and to quiet title.

[1] Under Maryland Rule 2-331(d), "[i]f a party files a counterclaim . . . more than 30 days after the time for filing that party's answer, any other party may object to the late filing by a motion to strike . . . ." Thus, although the co-trustees might not have learned of the alleged "abandonment" until more than 30 days after the time for filing their answer, the rule did not prohibit them from raising the issue in a counterclaim. They could file a counterclaim, but it would be subject to a motion to strike, which the court would be required to grant "unless there [were] a showing that the delay [did] not prejudice the other parties to the action." *Id.*

On September 20, 2024, the co-trustees moved to consolidate their separate action with the action that Asghari had brought. Asghari opposed the motion. On October 21, 2024, the circuit court denied the motion.

The co-trustees promptly asked the court to reconsider its decision. On November 11, 2024, the court denied the motion to reconsider. On November 20, 2024, the co-trustees noted an appeal.

II.

Asghari has moved to dismiss the appeal on the ground that the co-trustees have not appealed from a final judgment or an appealable interlocutory order. Even if Asghari had not moved to dismiss the appeal, this Court has the power and duty to dismiss an appeal if it is not authorized by the Maryland Rules or other law. *See* Md. Rule 8-602(b)(1).

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)). The parties agree that the denial of a motion to consolidate is not a final judgment.

The 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. 163, 175-76 (2010). The parties agree that the circuit court did not certify its ruling as final under Rule 2-602(b). They also agree that an interlocutory order denying a motion to consolidate is not immediately appealable under CJP § 12-303. They dispute whether the order is immediately appealable under the collateral order doctrine.

The collateral order doctrine is a "'very narrow exception'" to the final judgment rule. *See, e.g.*, *Dawkins v. Baltimore City Police Dep't*, 376 Md. 53, 58 (2003) (quoting *Pittsburgh Corning v. James*, 353 Md. 657, 660 (1999)). 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). "[T]he four requirements of the collateral order doctrine are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances." *In re Foley*, 373 Md. 627, 634 (2003); *accord Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 546 (2017).

The collateral order doctrine originated in the federal courts, where it "was first articulated" in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 545-47 (1949). *Peat, Marwick, Mitchell & Co. v. Los Angeles Rams Football Co.*, 284 Md. 86, 92 (1978). The federal courts have uniformly held that orders granting or denying motions

to consolidate are not immediately appealable under the collateral order doctrine. *See, e.g.*, *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 372 (2d Cir. 1993); *United States v. Chelsea Towers, Inc.*, 404 F.2d 329, 330 (3d Cir. 1968) (per curiam); *NAACP of Louisiana v. Michot*, 480 F.2d 547, 548 (5th Cir. 1973) (per curiam); *Alpine Glass, Inc. v. Country Mut. Ins. Co*., 686 F.3d 874, 878 (8th Cir. 2012).

In rejecting the applicability of the collateral order doctrine to orders regarding consolidation, some authorities have drawn an analogy to orders regarding class certification, which are not immediately appealable under the doctrine. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 (1978). For example, in *In re Repetitive Stress Injury Litigation*, 11 F.3d at 372, the court wrote: "As was the case with the class certification issue in *Coopers & Lybrand,* consolidation orders may be modified or revised as the litigation proceeds." "Moreover, the merits of the consolidation orders are thoroughly 'enmeshed in . . . factual and legal issues.'" *Id.* (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. at 469). "Finally, the consolidation orders can be reviewed on appeal to the extent that consolidation affects substantive rights." *Id.*

Similarly, a leading authority on federal procedure wrote that, "[i]f class certification determinations are not appealable, it is difficult to suppose that collateral order reasoning can be used to support appeal from consolidation or severance orders." 15B Wright & Miller, *Federal Practice and Procedure* § 3914.20. Those determinations are not entirely separate from the merits—i.e., "collateral"—because the "[r]eview of such discretionary orders must involve the court in considering the nature of the claims

presented, the probable pretrial and trial procedures evolving from the claims, and the interests of the parties in pursuing what may be divergent positions." *Id.*

We are persuaded that the denial of a motion to consolidate is not immediately appealable under the collateral order doctrine. Under Maryland Rule 2-503(a)(1), a court may consolidate multiple actions only when they "involve a common question of law or fact or a common subject matter[.]" Thus, the question of whether a court should have exercised its discretion to consolidate two or more cases is "thoroughly 'enmeshed in . . . factual and legal issues.'" *In re Repetitive Stress Injury Litig.*, 11 F.3d at 372 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. at 469). The question of consolidation is not completely separate from the merits. Therefore, it fails to satisfy at least one of the four necessary conditions for the applicability of the collateral order doctrine.

Furthermore, we see no reason why the propriety of the order denying consolidation is effectively unreviewable on an appeal from a final judgment: if the court erred or abused its discretion in refusing to consolidate the two cases, an appellate court can correct the error by reversing the judgment and remanding for further proceedings. In this regard, we note that the co-trustees presumably can raise the issue of "abandonment" as a defense in the action that Asghari brought against them. And, to the extent that the co-trustees' separate action involves anything more than an effort to negate Asghari's claim for relief, the co-trustees' claim should not be barred by res judicata, if they are unable to raise it in Asghari's action. *See* Restatement (Second) of Judgments § 26(c).

In summary, the collateral order doctrine does not authorize the co-trustees' appeal. Because the co-trustees did not appeal from a final judgment and because no other exception to the final judgment rule applies, the appeal is not allowed by the Maryland Rules or other law. It must be dismissed. Md. Rule 8-602(b)(1).[2]

APPEAL DISMISSED.
APPELLANTS TO PAY COSTS.

[2] The court may have declined to consolidate the cases because it believed that consolidation would have interfered with the scheduled trial date of December 9, 2024. Asghari informs us, however, that the trial was postponed because of the unavailability of a judge. Moreover, MDEC informs us that, at present, the trial in the first action is not scheduled to begin until September 22, 2025. Because the order denying the motion to consolidate is an interlocutory order that "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)), the court is free to reconsider the issue of consolidation in light of the new trial date.