

Circuit Court for Howard County
Case No. 13-C-55-045573

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 945

September Term, 2016

WON SUN LEE

v.

WON BOK LEE

Eyler, Deborah S.,
Reed,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: August 24, 2017

*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.

This appeal arises at the intersection of three important rules that govern the entry of circuit court judgments. The first is the “*separate document rule*,” which requires that every judgment must be written on its own document. Md. Rule 2-601(a)(2); *see also URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 65 (2017) (explaining that either the judge or the clerk of the circuit court must sign a separate document memorializing the circuit court’s judgment before the clerk of the court enters the judgment); *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 480 (2014) (explaining that the “separate-document rule must be mechanically applied in determining whether an appeal is timely ... to fulfill its purpose of providing clear and precise judgments and to eliminate uncertainty as to when an appeal must be filed”). The second rule is the “*entry of judgment rule*,” which determines that the date of a judgment is the date that the clerk of the circuit court enters the judgment on the court’s electronic case management system—not the date that the judgment is pronounced nor the date on which the judge signs a separate document. *See* Md. Rule 2-601(d) (explaining that “regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on [its] electronic case management system”). In that regard, whether a signed separate document or the entry of the judgment on the circuit court’s electronic case management system comes first, a judgment is not entered until both exist simultaneously. *See Hiob*, 440 Md. at 480, 500 (explaining that “the time for filing a notice of appeal does not begin until the separate document is entered on the

docket consistent with [the Rules],” and that “docket entries could not substitute for a separate document”).

Finally, the third rule is the “30 day rule,” which states that this Court only has jurisdiction to consider an appeal if a notice of appeal is filed in the circuit court within 30 days of the entry of judgment. Md. Rule 8-202(a). This 30-day rule is iron-clad; we have no power to grant exceptions. *Lovero v. Da Silva*, 200 Md. App. 433, 449 (2011) (explaining that “the failure to comply with Rule 8–202(a) is a ‘jurisdictional defect,’ ... which requires that the appeal be dismissed”). Thus, the critical question in a case such as this is (1) whether an appeal was noted within 30 days of the date on which (2) a judgment on a separate document was (3) entered on the circuit court’s electronic case management system.

Won Bok Lee, the appellee here, argues that the circuit court entered judgment against the appellant, Won Sun Lee, denying his motion to vacate,¹ on June 3.² In support, Won Bok Lee notes that the clerk of the circuit court stamped “ENTERED” on an Order denying Won Sun Lee’s motion on June 3. Moreover, he points to one of the circuit court’s docket entries that indicate that “copies [were] mailed” on June 3:

¹ Neither the merits of the motion to vacate nor the long history of the litigation are relevant to this appeal.

² All events described in this Opinion occurred in 2016.

<u>Num/Seq</u>	...	<u>Description</u>	...	<u>Entered</u>
00006000		Motion to Vacate Judgment And Request for Hearing 04/20/16 per Judge Bernhardt: Set for hearing 06/03/16 copies mailed		03/24/16

(emphasis added). Won Bok Lee reads this March 24 entry “06/03/16 copies mailed” to mean that on that date the circuit court mailed copies of the Order to Won Sun Lee.³ Therefore, he argues, both the June 3 “ENTERED” stamp on the circuit court’s Order and the March 24 docket entry are evidence that the circuit court entered the Order against Won Sun Lee on June 3. From that, Won Bok Lee argues that, to be timely, Won Sun Lee’s appeal had to have been filed by July 3. Because Won Sun Lee’s appeal was filed after that, on July 6, Won Bok Lee reasons that it was untimely. And as a result, Won Bok Lee continues, we should affirm the circuit court’s order striking Won Sun Lee’s appeal.

Won Sun Lee, by contrast, argues that the critical date of entry of judgment was June 6. His argument is based on his interpretation of the circuit court’s docket entry dated June 6, which is reproduced here:

<u>Num/Seq</u>	...	<u>Description</u>	...	<u>Entered</u>
00014000		Open Court Proceeding Hearing [on] Motion [Defendant’s] Motion to Vacate Judgment is denied [Plaintiff] to prepare and submit Order		06/06/16

³ Nobody has ventured an explanation, nor can we invent one, to explain why the portion of the docket entry that says “06/03/16 copies mailed” was made on (or added to) the March 24 docket entry.

Won Sun Lee argues that this June 6 docket entry specifically states that his “Motion to Vacate Judgment is denied,” and, therefore, the date of entry of judgment was June 6. He contends that because judgment was entered on the circuit court’s electronic case management system on June 6, he had until July 6 to file a notice of appeal, which he did. Therefore, he argues, we should reverse the circuit court and reinstate his notice of appeal.

ANALYSIS

In our view, there is no way that June 3 can be the date of entry of judgment. Neither of the pieces of evidence to which Won Bok Lee directs our attention is sufficient to constitute proof of the entry of judgment. First, although we don’t know what the March 24 entry means when it says that copies were mailed on June 3, we do know that the mailing of copies isn’t an event that constitutes an entry of judgment. Likewise, the June 3 stamping of the word “ENTERED” on the order isn’t an event that can constitute the entry of judgment. Thus, we reject Won Bok Lee’s claim that June 3 is the triggering date.

On the evidence in the record, however, we cannot be sure whether June 6 is, as Won Sun Lee argues, the date of entry of judgment either. That is because we don’t know whether the circuit court ever signed a document that conformed to the separate document rule. The record contains two contradictory pieces of evidence. First, the

record contains a signed June 3 Order that denies Won Sun Lee’s motion to vacate. That may have been a separate document (albeit, one that was not entered onto the electronic case management system until June 6). On the other hand, the record also contains a docket entry notation, dated June 6, that states “[Plaintiff] to prepare and submit Order,” implying that the circuit court had yet to sign a separate document as of June 6 (and maybe still hasn’t).

We think that there are only three logical explanations. The *first possibility* is the circuit court recorded the judgment on a separate document before June 6. If that is the case, because the judgment was entered on the circuit court’s electronic case management system on June 6, the date of entry of judgment was June 6, and Won Sun Lee’s appeal, noted on July 6, was timely. The *second possibility* is that judgment was not recorded on a separate document as of June 6, but was later put on a separate document. We don’t know on what date the circuit court signed that separate document, but assuming it did, then the July 6 notice of appeal was either timely or premature, but is now ripe to proceed. *See Bussell v. Bussell*, 194 Md. App. 137, 155 (2010) (holding that, although the appellant noted his appeal prior to the circuit court entering a separate document, because the circuit court entered a docket entry contemplating a separate order, appellant’s premature appeal became ripe to proceed). The *third possibility* is that the judgment was never put on a separate document. If that is the case, the judgment

has still not become final and Won Sun Lee's July 6 notice of appeal was, and remains, premature.

Under none of these three possible scenarios was Won Sun Lee's appeal late. For that reason, we reverse. But, as we have explained, the record doesn't disclose when (or if) the judgment was ever placed on a separate document, and so we don't know whether Won Sun Lee's notice of appeal is timely or is premature. We, therefore, must remand the matter to allow the circuit court to determine if there is a judgment that complies with the separate document rule and, if a judgment that complies with the separate document rule has not yet been created, to create one. Once the circuit court determines either that there is an existing judgment that complies with the separate document rule or creates a new judgment that complies with the separate document rule, Won Sun Lee's appeal can proceed.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY REVERSED
AND REMANDED FOR THE CIRCUIT
COURT TO DETERMINE DATE OF
ENTRY OF JUDGMENT OR TO ENTER
THE JUDGMENT ON A SEPARATE
DOCUMENT. COSTS TO BE PAID BY
APPELLEE.**