

Circuit Court for Prince George's County
Case No. CAL22-22028

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2250

September Term, 2023

ANTONIO BELL

v.

PRINCE GEORGE'S COUNTY,
MARYLAND

Zic,
Kehoe, S.
McDonald, Robert N.
(Senior Judge, Specially Assigned),
JJ.

Opinion by McDonald, J.

Filed: December 18, 2024

* Under Maryland Rule 1-104, an unreported opinion may not be cited as precedent as a matter of *stare decisis*. It may be cited for its persuasive value if the citation conforms to Rule 1-104(a)(2)(B).

This appeal poses a question concerning the appropriate procedural status of a county when a plaintiff sues county police officers as well as the county for various torts allegedly committed by the officers against the plaintiff. We do not answer that question because, for the reasons outlined below, we do not have appellate jurisdiction of this case. Accordingly, we dismiss this appeal.

Background

The Complaint and the Dismissal of the Count against the County

On July 21, 2022, Appellant Antonio Bell filed an eight-count complaint against three Prince George’s County police officers and the County seeking damages for police misconduct. Seven counts of the complaint sought damages from the three officers for various common law and constitutional torts that they had allegedly committed against Mr. Bell. The County was named as a defendant solely in the remaining count of the complaint – a count labeled “Respondeat Superior.” The complaint stated that notice of the claims had previously been given as required by the Local Government Tort Claims Act, Maryland Code, Courts & Judicial Proceedings Article (“CJ”), §5-301 *et seq.* (“LGTCA”).¹

The County filed a motion to dismiss the single count against it “with prejudice.” On November 27, 2023, the Circuit Court held a hearing on that motion and dismissed the

¹ Under the LGTCA, when a plaintiff sues local government employees, the local government provides a defense and, if the employees were acting within the scope of employment, is liable for the judgment (within statutory limits). CJ §§5-302, 5-303.

count against the County “with prejudice.”² The court did not dispose of the seven counts against the three officers. Indeed, as of that date the complaint had not yet been served on the officers.

The Appeal and the Question of Appellate Jurisdiction

Mr. Bell appealed the dismissal of the count against the County. In his brief, he presented the question whether the County was properly named as a defendant in the case and could be liable under a theory of *respondeat superior* for the constitutional torts committed by its employees. There is, however, a threshold question whether this Court has jurisdiction of this appeal.

Because the Circuit Court ruling did not resolve the case against the three individual defendants and the seven counts against them, there was no final judgment as to all claims and all parties, which would be the usual basis for appellate jurisdiction. *See* CJ §12-301.³ In the Civil Appeal Information Report filed with the notice of appeal, Mr. Bell’s counsel stated that there was appellate jurisdiction pursuant to Maryland Rule 2-602(b)(1). That

² At the oral argument of this appeal, the Deputy County Attorney stated that the County did not interpret the dismissal of the count against it “with prejudice” as absolving it from liability pursuant to the LGTCA for any judgment (within the LGTCA limits) against the three officers that might be entered in the case. Without deciding the issue here, we note that the County’s concession appears to be consistent with the fact that a local government’s liability under the LGTCA can be addressed in several different ways, including by means of a separate action after a plaintiff prevails in an action against the local government’s employees. *See Baltimore City Police Department v. Esteppe*, 247 Md. App. 476, 507-11 (2020), *aff’d*, 476 Md. 3 (2021).

³ The order of dismissal in this case is not the kind of interlocutory order for which the General Assembly has provided appellate jurisdiction or for which the courts have recognized appellate jurisdiction under the collateral order doctrine. *See* CJ §12-303; *Pattison v. Pattison*, 254 Md. App. 294, 307-10 (2022).

rule allows for a piecemeal appeal when the circuit court “expressly determines in a written order” that “there is no just reason” for delaying the appeal and orders entry of a final judgment as to fewer than all the claims or parties. No such written determination appeared in the Record Extract filed with Mr. Bell’s brief and it was not evident from the Circuit Court record that such a determination had been requested or made.

At this Court’s request, the Clerk sent a letter to counsel on November 7, 2024 asking counsel to identify the written determination and order under Rule 2-602(b). Mr. Bell’s counsel sent a timely response entitled “Memorandum to the Court” that did not answer the question posed by the Clerk’s letter. Instead, he asserted that there is appellate jurisdiction because the Circuit Court, in an order issued on February 11, 2024⁴ had authorized the reissuance of summonses as to the three defendant police officers and threatened to dismiss the complaint as to those defendants if they were not served within 60 days. Mr. Bell’s counsel stated that the officers had not been served within that time limit set by the Circuit Court’s order and that “by operation of” that order there was now a final judgment as to the officers. A review of the Circuit Court record on MDEC does not reveal any final order disposing of the claims against the officers.

At oral argument of this appeal on December 6, 2024, Mr. Bell’s counsel conceded that the Circuit Court had not issued a written determination pursuant to Rule 2-602(b) and had not been asked to do so. He maintained that this Court could find appellate jurisdiction based on the Circuit Court’s threat to dismiss the case against the officers for failure to

⁴ This was several weeks after Mr. Bell had filed his notice of appeal. It was the third time that the summonses had been reissued for service on the officers.

serve the summonses – even in the absence of a final order carrying out that threat – but cited no authority for that proposition.

Analysis

It is evident that we do not have appellate jurisdiction of this appeal pursuant to Rule 2-602(b) and no one now contends otherwise. Nor is there a final judgment as to all claims and all defendants. The Circuit Court has not actually issued an order dismissing the case as to the individual defendants and, contrary to the contention of Mr. Bell’s counsel, we cannot infer that disposition from the Circuit Court’s order reissuing the summonses for the officers. Indeed, although the Circuit Court had entered a similar order on a previous occasion when it had reissued the summonses, it ultimately did not dismiss the case against the officers when those summonses were not served before their expiration. Accordingly, we lack appellate jurisdiction of this case.

Conclusion

An appellate court has a duty to raise and decide the question of appellate jurisdiction when it appears that the requirements for that jurisdiction are not met. *Robert v. Robert*, 56 Md. App. 317, 324 (1983). If the appellate court determines that it lacks jurisdiction, dismissal of the appeal is appropriate under Maryland Rule 8-602(a), (b)(1) (dismissal of appeal on court’s own initiative when the appeal is not allowed by law).⁵ For

⁵ Rule 8-602(g) provides an option for an appellate court, on its own initiative, to enter a final judgment as to fewer than all of the claims or parties, if the circuit court could have issued a final judgment under Rule 2-602(b) but did not do so. The discretion under this rule has been described as “limited.” See Kevin Arthur, *Finality of Judgments and Other Appellate Trigger Issues*, VIII.K. [§43].

that reason, we shall dismiss this appeal without expressing a view on the merits of the question posed by Mr. Bell.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

In this case, Mr. Bell has indicated that his claims against the officers have, or may be, dismissed by the Circuit Court for lack of service. As one member of the panel noted at oral argument, that may raise a question as to how he can proceed against the County on a theory of *respondeat superior* even if he prevails on this appeal. And, of course, any issue with respect to dismissal of the counts against the officers is not before us in this appeal. We choose not to exercise our discretion under Rule 8-602(g) in this case.