

Circuit Court for Howard County
Case No. C-13-CV-21-000215

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2329

September Term, 2023

JENNIFER ANUKEM

v.

FRED LEWIS, *et al.*

Nazarian,
Arthur,
Zic,

JJ.

Opinion by Arthur, J.

Filed: December 19, 2024

*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).

Appellant Jennifer Anukem commenced this action on March 17, 2021, by filing a complaint in the Circuit Court for Howard County against her neighbors, appellees Fred and Jill Lewis. In her complaint, Anukem, a lawyer who was represented by her own law firm, alleged that the Lewises had violated certain covenants or restrictions regarding their use of their land. She asserted a right to her attorneys' fees under the document that created or imposed the covenants or restrictions.

On June 17, 2021, the circuit court dismissed most of Anukem's complaint on the ground that it was moot: Based on Anukem's representations on the record, the Lewises were no longer violating any covenants or restrictions. Anukem's claim for attorneys' fees remained pending.

The Lewises sought discovery about the fees that Anukem claimed to have incurred. They deposed Anukem, who claimed to have no knowledge of the fees and directed them to her officer manager, Kimberly Kight.

The Lewises sought to depose Kight, a non-party. Kight not did appear at her deposition, claiming that she had not been served with a subpoena. Kight moved to strike the Lewises' affidavit of service; the Lewises moved to compel Kight to testify and for immediate discovery sanctions, including attorneys' fees under Maryland Rule 2-433(d).

On November 1, 2022, the circuit court denied Kight's motion to quash the affidavit of service, compelled her to appear at a deposition, and ordered her pay the attorneys' fees "associated with the missed deposition and resulting work." On February 7, 2023, the court ordered that the trial judge would determine the amount of fees that Kight was obligated to pay.

The case came to trial in September 2023. The trial court initially intended to decide Anukem’s claim for attorneys’ fees against the Lewises and the Lewises’ claim for attorneys’ fees against Kight in the same proceeding. It became apparent, however, that the court could not decide both issues in the time allotted. Consequently, the court (in its words) “bifurcated” the proceeding—it proceeded to adjudicate Anukem’s claim against the Lewises and deferred the Lewises’ claim against Kight until another day.

In a written order dated September 22, 2023, the court granted the Lewises’ motion for judgment against Anukem because Anukem had “failed to meet her burden of proof.” In the order, the court expressly denied or dismissed the balance of Anukem’s claims that had not been otherwise denied or dismissed by the order of June 17, 2021.

On October 2, 2023, Anukem filed a timely motion to alter or amend the judgment or for a new trial. The court denied her motion on October 23, 2023. Anukem did not note an appeal within 30 days of the denial of her motion.

On February 1, 2024, the court ordered Kight, the non-party, to pay \$7,500.00 in attorneys’ fees to the Lewises. Kight did not file a notice of appeal. On February 2, 2024, however, Anukem filed a notice of appeal.

In their appellate brief, the Lewises have included a motion to dismiss Anukem’s appeal, as they are entitled to do under Maryland Rule 8-603(c). The Lewises argue, among other things, that the court entered a final judgment against Anukem on October 23, 2023, when it denied her post-judgment motion to alter or amend the judgment or for a new trial. Because Anukem failed to note an appeal with 30 days of the denial of her post-judgment motion, the Lewises conclude that the appeal is untimely. We agree.

Under section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020 Repl. Vol.) (“CJP”), “a party may appeal from a final judgment entered in a civil or criminal case by a circuit court.” Maryland Rule 8-202(a) requires that the notice of appeal “be filed within 30 days after entry of the judgment or order from which the appeal is taken.”

The Lewises’ motion requires us to decide when the circuit court entered a final judgment and whether Anukem noted an appeal within 30 days of the entry of that judgment. More specifically, the case requires us to decide whether the court entered a final judgment when it denied Anukem’s motion to alter or amend on October 23, 2023, or only when it quantified the amount of fees that the discovery ruling required Kight, a non-party, to pay to the Lewises on February 1, 2023.

The term “[f]inal judgment’ means a judgment, decree, sentence, order, determination, decision, or other action by a court, including an orphans’ court, from which an appeal, application for leave to appeal, or petition for certiorari may be taken.” CJP § 12-101(f). By defining a “final judgment” in this circular fashion, the General Assembly implicitly has left it to the appellate courts to develop a definition of finality. *See Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 297 & n.7 (2015).

“[A] ruling must ordinarily have the following three attributes to be a final judgment: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court acts pursuant to Maryland Rule 2-602(b) to direct the entry of a final judgment as to less than all of the claims or all of the parties, it must adjudicate or complete the adjudication of all claims against all parties; [and] (3) it

must be set forth and recorded in accordance with Rule 2-601.” *Metro Maint. Sys. South v. Milburn, Inc.*, 442 Md. at 298 (citing *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)); see also *Maryland Bd. of Physicians v. Geier*, 225 Md. App. 114, 129-30 (2015).

“To have the attribute of finality, the ruling must be so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.” *Rohrbeck*, 318 Md. at 41 (citations omitted). “To be final and conclusive in that sense, the ruling must necessarily be unqualified and complete, except as to something that would be regarded as collateral to the proceeding.” *Id.*

Under Maryland law, claims for attorneys’ fees based on a statute or rule are deemed to be “collateral” to the merits of an action. For example, in *Blake v. Blake*, 341 Md. 326 (1996), the Court held that the pendency of a former wife’s claim for counsel fees under the Family Law Article did not deprive the divorce judgment of finality. The Court reasoned that the claim for fees was “collateral” to the claims for relief on the merits. *Id.* at 337. Because the wife did not note an appeal until the court decided the issue of fees, long after the entry of the divorce judgment itself, her appeal from the divorce judgment was untimely. Her appeal was timely only as to the denial of a motion for reconsideration of the divorce judgment under Maryland Rule 2-535(a). *Id.* at 338.

The *Blake* opinion discussed with approval *Johnson v. Wright*, 92 Md. App. 179 (1992). In that case, the appellant filed a notice of appeal more than 30 days after the order dismissing the complaint, and less than 30 days after the denial of a motion for attorneys’ fees under Rule 1-341. *Johnson v. Wright*, 92 Md. App. at 181. The Court

held that the pendency of a “collateral” motion for attorneys’ fees under Maryland Rule 1-341 did not enlarge the time for filing a notice of appeal from the judgment on the merits. *Id.* at 182.

The *Blake* and *Johnson* opinions also cited *Larche v. Car Wholesalers, Inc.*, 80 Md. App. 322 (1989), which involved a different procedural context. There, the Court concluded that the appellant filed a timely notice of appeal from a final judgment, even though the court had not yet resolved a claim for attorneys’ fees under a statute, the Magnuson-Moss Act. *Id.* at 327-28. The Court reasoned that the statutory claim for attorneys’ fees was “collateral to the principal action so that an appeal will lie from a final judgment on the underlying claim despite the pendency of a decision on the attorneys’ fees claim.” *Id.* at 328.

In *Mullaney v. Aude*, 126 Md. App. 639 (1999), this Court extended the reasoning of *Blake* to a claim for attorneys’ fees as a discovery sanction under Maryland Rule 2-433. *Mullaney*, 126 Md. App. at 650-53. The *Mullaney* case did not involve the timeliness of the notice of appeal. Rather, the appellant argued that the trial court lost its jurisdiction to adjudicate the request for discovery sanctions when the trial court entered a final judgment in the underlying tort action. *Id.* at 650. The Court saw “no reason to depart” from the cases holding that rule-based claims for attorneys’ fees are collateral merely because the award of fees “was the result of a discovery sanction under Rule 2-433.” *Id.* at 652. The Court concluded that the discovery sanction issue “was clearly collateral to the merits of the tort action.” *Id.* at 652-55; *see also Armstrong v. Mayor & City Council of Baltimore*, 409 Md. 648, 665 n.13 (2009) (holding that pendency of

“collateral” claim under fee-shifting statute did not deprive appellate courts of jurisdiction over judgment on the merits).

In this case, the Lewises’ claim for attorneys’ fees was doubly collateral. First, the claim for fees was based on the discovery rules. Second, the claim for fees concerned a non-party, Kight. Anukem had no liability for the fees that the Lewises sought to recover from Kight.

The court’s order of September 22, 2023, was a final judgment: it “determine[d] and conclude[d]” the rights of the parties—Anukem and the Lewises—and denied Anukem “the means of further prosecuting or defending [her] rights and interests in the subject matter of the proceeding.” *Rohrbeck*, 318 Md. at 41. By its very terms, the order denied or dismissed every one of Anukem’s claims that had not been otherwise denied or dismissed by the order of June 17, 2021.

Because Anukem filed a timely motion to alter or amend the judgment or for a new trial, her time to note an appeal from the judgment was extended until 30 days after the motion was withdrawn, denied, or disposed. Md. Rule 8-202(c). The court denied the motion on October 23, 2023. Therefore, Anukem had an additional 30 days to note her appeal. Because she failed to meet that deadline, her appeal is untimely and is subject to dismissal on motion or on this Court’s own initiative. Md. Rule 8-602(b)(2).

In opposing the Lewises’ motion to dismiss the appeal, Anukem cites *Rosales v. State*, 463 Md. 552 (2019), for the proposition that “timeliness is not jurisdictional, and is subject to ordinary principles of waiver and estoppel.” Anukem is correct that, under *Rosales*, Rule 8-202, which generally requires a party to note an appeal within 30 days

after the entry of judgment, is a claim-processing rule and not a limit on an appellate court’s jurisdiction. *Id.* at 583. “[A]s the Rule is not jurisdictional, a reviewing court must examine whether waiver or forfeiture applies to a belated challenge to an untimely appeal.” *Id.* at 568.

In this case, however, the Lewises have not made a “belated challenge to an untimely appeal.” To the contrary, they included a motion to dismiss in their brief, as they are entitled to do. Md. Rule 8-603(c). Although the Lewises could theoretically have moved to dismiss the appeal even before they filed their brief, they had no obligation to do so. The Lewises have not waived or forfeited their right to ask this Court to dismiss Anukem’s untimely appeal.

In summary, Anukem failed to file a timely appeal from a final judgment because she failed to note her appeal within 30 days after the circuit court denied her motion to alter or amend the judgment or for a new trial. The Lewises’ pending motion for attorneys’ fees did not deprive that judgment of finality, because the motion for fees was collateral to the merits—it was based on the discovery rules, and it concerned the obligation of a non-party. The Lewises moved to dismiss the appeal as soon as they were obligated to do so, so they have not waived or forfeited any rights. Consequently, we shall dismiss the appeal on the ground that “the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202.” Md. Rule 8-602(b)(2).

**APPEAL DISMISSED. APPELLANT
TO PAY COSTS.**