Circuit Court for Wicomico County
Case No. C-22-CV-23-000122

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2339

September Term, 2023

ASHLEY MOORE

v.

CVS PHARMACY INC., ET AL.

Arthur,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 6, 2025

* This is an unreported opinion. This 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).

This appeal arises from a negligence action against multiple defendants. The Circuit Court for Wicomico County granted summary judgment in favor of two defendants, but the court has not adjudicated other claims against a third defendant.

For the reasons set forth in this opinion, we will remand this case to the circuit court under Md. Rule 8-602(g)(1)(B) for the circuit court to decide whether to direct the entry of final judgment as to one or more but fewer than all of the parties.

BACKGROUND

On the afternoon of December 10, 2019, Ashley Moore was shopping at a CVS Pharmacy store located on South Salisbury Boulevard in Salisbury, Maryland. Maria Belfort attempted to park her vehicle in a parking space near the front entrance to the store. Ms. Belfort's vehicle crashed through the glass entrance doors and collided with Ms. Moore as she was exiting the store.

On September 26, 2022, Ms. Moore filed a complaint in the Circuit Court for Baltimore City against Ms. Belfort and three companies: a Rhode Island corporation named CVS Pharmacy, Inc.; a Rhode Island limited liability company named CVS 8281 MD, LLC; and a Maryland limited liability company named Clairmont Center, LLC. The complaint alleged that the three corporate defendants "owned, operated, maintained, and managed" the CVS store in Salisbury.

The complaint alleged that, if the defendants had installed bollards or other protective devices between Ms. Belfort's parking space and the front entrance, then Ms. Moore would not have been injured. The complaint also alleged that the three corporate defendants knew that the premises lacked the devices necessary to protect store patrons

from the hazard of vehicles crashing through storefront entrances and failed to protect patrons or to warn them of the dangerous condition.

In Count I of the complaint, Ms. Moore raised a negligence claim against Ms. Belfort. The complaint alleged that the crash resulted from Ms. Belfort's careless operation of her vehicle.

In Count II, Ms. Moore raised negligence claims against the three corporate defendants. The complaint alleged that those three defendants "retained exclusive ownership, possession, control, and/or supervision" of the premises. The complaint also alleged that those defendants breached a duty to exercise ordinary care to keep the premises reasonably safe for invitees, including Ms. Moore.

Count III of the complaint raised claims against the three corporate defendants for premises liability. The complaint alleged that those defendants knew that placing parking spaces in front of the entrance doors, without bollards or other protective devices, presented an unreasonable risk of harm to invitees. The complaint also alleged that those defendants breached a duty of care by failing to keep the premises reasonably safe for invitees and by failing to warn them of the risk of harm.

In each count, Ms. Moore alleged that she suffered "serious, painful, and permanent physical and emotional injuries[,]" as well as "a substantial disruption to her quality of life." Ms. Moore alleged that, as a result of her injuries, she required extensive medical treatment and will continue to require medical care in the future.

Although the complaint named "CVS Pharmacy, Inc." and "CVS 8281 MD, LLC," as defendants, a party identifying itself as "Defendant Maryland CVS Pharmacy,

LLC, improperly pled as CVS Pharmacy, Inc., and CVS 8281 MD, LLC[,]" filed an answer and denied liability. That party continued to use that designation for subsequent filings in the action.

In an introduction to one of its motions, Maryland CVS Pharmacy, LLC, stated: "The correct corporate entity that owns and operates this CVS store is Maryland CVS Pharmacy, L.L.C. . . ., which is a Maryland limited liability company with its principal place of business in Rhode Island." The motion acknowledged that CVS Pharmacy, Inc., is a Rhode Island corporation and that CVS 8281 MD, LLC, is a Rhode Island limited liability company. The motion nevertheless referred to those two named defendants as "the erroneous entities" that Ms. Moore sued.

Clairmont Center answered the complaint and denied liability. Along with its answer, Clairmont Center moved to transfer the action to Wicomico County, arguing that the action should proceed in the county where the accident occurred. Maryland CVS Pharmacy, LLC, made a separate motion to transfer the action to Wicomico County. In January 2023, the Circuit Court for Baltimore City transferred the action to the Circuit Court for Wicomico County.

Maryland CVS Pharmacy, LLC, filed three separate pleadings in which it raised claims against Ms. Belfort for indemnification and contribution. First, in November 2022, Maryland CVS Pharmacy, LLC, filed what it designated as a cross-claim against Ms. Belfort. In May 2023, Maryland CVS Pharmacy, LLC, filed what it designated as a third-party claim against Ms. Belfort. In June 2023, Maryland CVS Pharmacy, LLC, again filed what it designated as a cross-claim against Ms. Belfort. In its pleadings,

Maryland CVS Pharmacy, LLC, claimed that, in the event that it might be found liable to pay damages to Ms. Moore, Ms. Belfort should be required to pay all or part of those damages.

Ms. Belfort filed an answer to Ms. Moore's complaint and denied liability. Ms. Belfort did not file any answer to the claims raised by Maryland CVS Pharmacy, LLC.

After the close of discovery, Clairmont Center moved for summary judgment in its favor. Clairmont Center admitted that it owns the shopping center located on South Salisbury Boulevard. Clairmont Center asserted, however, that it did not operate, maintain, or control the CVS store or parking area where the accident occurred and, therefore, did not owe a duty to Ms. Moore. In support of its motion, Clairmont Center provided a copy of a ground lease agreement from May 2011. Under that agreement, Clairmont Center leased the property to Maryland CVS Pharmacy, LLC, for the purpose of building and operating a CVS store.

Maryland CVS Pharmacy, LLC, filed its own motion for summary judgment. The motion asserted that Ms. Moore had produced no evidence of prior, similar incidents of vehicle crashes at the Salisbury CVS store or at certain other CVS stores within five years of the incident. The motion argued that Maryland CVS Pharmacy, LLC, did not have actual or constructive knowledge or notice of a dangerous condition created by the parking spaces near the entrance to the Salisbury CVS store.

Two named defendants—CVS Pharmacy, Inc., and CVS 8281 MD, LLC—filed a separate motion for summary judgment. Those defendants argued that they did not own, operate, control, or maintain the Salisbury CVS store and, therefore, did not owe a duty

of care to Ms. Moore. The motion asserted that "the corporate entity that owns, operates, manages, and controls the CVS store at issue is Maryland CVS Pharmacy, LLC." The motion asserted that CVS Pharmacy, Inc., is merely the parent corporation of Maryland CVS Pharmacy, LLC.

After her adversaries moved for summary judgment, Ms. Moore filed an "Amended Complaint by Interlineation." The amended complaint replaced the name CVS 8281 MD, LLC, with the name Maryland CVS Pharmacy, LLC. Otherwise, the claims from the original complaint, including the claims against CVS Pharmacy, Inc., remained unchanged.

Shortly after filing her amended complaint, Ms. Moore filed a stipulation of dismissal of her claims against Clairmont Center. The stipulation stated that Ms. Moore, Clairmont Center, and Maryland CVS Pharmacy, LLC, each agreed to the dismissal with prejudice of Ms. Moore's claims against Clairmont Center.

Opposing the summary judgment motions, Ms. Moore argued that genuine disputes of fact existed as to whether CVS Pharmacy, Inc., operates, manages, or controls the Salisbury CVS store. Ms. Moore also argued that genuine disputes of fact existed as to whether the accident was reasonably foreseeable and whether the defendants had notice of prior, similar incidents at other CVS stores.

On November 29, 2023, the circuit court held a hearing to consider the motions for summary judgment made by Maryland CVS Pharmacy, LLC, and CVS Pharmacy, Inc. At the end of the hearing, the court announced that it would grant the motions. In its oral ruling, the court concluded that CVS Pharmacy, Inc., did not exercise control over the

Salisbury CVS store. The court also concluded that Maryland CVS Pharmacy, LLC, lacked notice of a dangerous condition at the Salisbury CVS store.

On the hearing date, the circuit court filed an unsigned document titled "Hearing Sheet." The document stated: "Court grants Motion for Summary Judgment as to both Defendants, CVS Pharmacy, Inc. and Maryland CVS Pharmacy, LLC." Five days later, on December 4, 2023, the court filed another copy of the hearing sheet, which included the judge's signature.

On December 11, 2023, Ms. Moore filed a timely motion for reconsideration under Md. Rule 2-534.[1] Ms. Moore asked the court to reconsider its summary judgment rulings in favor of CVS Pharmacy, Inc., and Maryland CVS Pharmacy, LLC. In the alternative, Ms. Moore asked the court to "reissue its summary judgment order" with specific language directing the entry of final judgment as to those defendants under Md. Rule 2-602(b).

CVS Pharmacy, Inc., and Maryland CVS Pharmacy, LLC, opposed the motion for

[1] Rule 2-534 authorizes a party to move to alter or amend a judgment "within ten days after entry of judgment[.]" If we treat the signed hearing sheet as the separate document required by Maryland Rule 2-601(a), Ms. Moore filed the motion within seven days of the judgment. Even if the unsigned hearing sheet somehow qualifies as an order granting summary judgment, the motion was timely under Md. Rule 2-534. A motion asking the court to revise a judgment, "'however labeled,'" is treated as a motion under Md. Rule 2-534 if the motion is filed within the 10-day period after entry of judgment. *White v. Prince George's County*, 163 Md. App. 129, 140 (2005) (quoting *Sieck v. Sieck*, 66 Md. App. 37, 44 (1986)). The circuit court entered the unsigned hearing sheet onto the docket on November 29, 2023. The tenth day after that docket entry was Saturday, December 9, 2023. Where a filing deadline ends on a Saturday, the filing period "runs until the end of the next day that is not a Saturday, Sunday, or holiday[.]" Md. Rule 1-203(a)(1). Ms. Moore filed her motion for reconsideration on Monday, December 11, 2023.

reconsideration. In addition, they argued that the circuit court should decline to direct the entry of final judgment under Md. Rule 2-602(b).

On February 6, 2024, the circuit court entered an order denying the motion for reconsideration. One day after the entry of that order, Ms. Moore filed a notice of appeal.

Five days after she filed her notice of appeal, Ms. Moore filed a stipulation of voluntary dismissal, without prejudice, of her claims against Ms. Belfort. Maryland CVS Pharmacy, LLC, has not dismissed its cross-claims (or third-party claims) against Ms. Belfort for indemnification and contribution.

DISCUSSION

In this appeal, Ms. Moore seeks the reversal of the orders granting summary judgment in favor of CVS Pharmacy, Inc., and Maryland CVS Pharmacy, LLC. She contends that the circuit court erred when it concluded that there were no genuine disputes of material fact and that the defendants were entitled to judgment as a matter of law. Her appellate brief presents the following questions:

> 1. Did the circuit court err by granting summary judgment to [CVS Pharmacy, Inc.] finding that Ms. Moore was not "entitle[d] . . . to have a cause of action against CVS Pharmacy, Inc."?
>
> 2. Did the circuit court err by granting [Maryland CVS Pharmacy, LLC]'s motion for summary judgment and finding that the Incident was not foreseeable to [Maryland CVS Pharmacy, LLC]?

In their appellate brief, CVS Pharmacy, Inc., and Maryland CVS Pharmacy, LLC, contend that the circuit court did not err when it granted summary judgment. They argue that this Court should affirm the order granting summary judgment in their favor.

Although no party has questioned whether this Court has appellate jurisdiction,

this Court is authorized to raise the issue of appellate jurisdiction on its own initiative. *See, e.g.*, *In re Trust Under Item Ten of Last Will & Testament of Lanier*, 262 Md. App. 396, 411 (2024). Our review of the procedural record leads us to conclude that the appeal is not properly before us.

The principal statute governing the right of appeal to this Court provides that a party may appeal from a "final judgment" entered by the circuit court in a civil case. Md. Code (1974, 2020 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article. By rule, "an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action . . . is not a final judgment[.]" Md. Rule 2-602(a)(1).

Under Rule 2-602(a), an order in a civil case is not a final judgment unless it adjudicates or completes the adjudication of all claims against all parties. *See, e.g.*, *Carver v. RBS Citizens, N.A.*, 462 Md. 626, 633 (2019) (citing *Smith v. Lead Indus. Ass'n, Inc.*, 386 Md. 12, 21 (2005)). "It is a 'long-standing bedrock rule of appellate jurisdiction, practice, and procedure that, unless otherwise provided by law, the right to seek appellate review in [Maryland's appellate courts] ordinarily must await the entry of a final judgment that disposes of all claims against all parties.'" *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 220-21 (2010) (quoting *Silbersack v. ACandS, Inc.*, 402 Md. 673, 678 (2008)).

The ordinary method to assess whether all claims have been fully adjudicated is to

compare all claims raised in the pleadings with all claims resolved in the court's order or series of orders. *See Waterkeeper All., Inc. v. Maryland Dep't of Agric.*, 439 Md. 262, 280 (2014). In her amended complaint, Ms. Moore raised the following claims: a negligence claim against Ms. Belfort (Count I); claims against CVS Pharmacy, Inc., for negligence and premises liability (Counts II and III); claims against Maryland CVS Pharmacy, LLC, for negligence and premises liability (Counts II and III); and claims against Clairmont Center, LLC, for negligence and premises liability (Counts II and III).

Ms. Moore noted her appeal one day after the circuit court denied her motion to alter or amend the summary judgment order. Before that ruling, Ms. Moore had previously dismissed her claims against Clairmont Center, LLC, with prejudice. The summary judgment order disposed of Ms. Moore's claims against CVS Pharmacy, Inc., and Maryland CVS Pharmacy, LLC. The summary judgment order did not dispose of Ms. Moore's negligence claim against Ms. Belfort. Because the negligence claim against Ms. Belfort remained unadjudicated, the summary judgment order did not qualify as a final judgment. *See Barclay v. Briscoe*, 427 Md. 270, 278 & n.6 (2012).[2]

When Ms. Moore moved for reconsideration of the summary judgment order, she correctly recognized that "an order adjudicating less than all claims in an action is not

[2] If the summary judgment order fully adjudicated all remaining claims, the order would qualify as a final judgment even if it did not expressly mention the earlier dismissal of claims against Clairmont Center. *See Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 484 & 484 n.15 (2014). When a court issues a separate document to embody a final judgment, "[t]he better practice" is "to acknowledge the resolution of each claim" in the document. *Id.* at 484 n.15. Nevertheless, as long as the order finally resolves all claims, "[t]he failure to mention all claims is not a jurisdictional error." *Id.*

final for the purposes of appeal." Ms. Moore observed that the summary judgment order "does not adjudicate all claims against all parties because [Ms. Moore's] negligence claim against [Ms. Belfort] (Count 1) remains."

In addition to Ms. Moore's pending claims against Ms. Belfort, Maryland CVS Pharmacy, LLC, had raised its own claims against Ms. Belfort for indemnification and contribution. Maryland CVS Pharmacy, LLC, characterized these claims as either cross-claims or third-party claims. The summary judgment order did not qualify as a final judgment under Md. Rule 2-602(a) because the order did not dispose of the cross-claims (or third-party claims) against Ms. Belfort. It may be true that, as a practical matter, these claims for indemnification and contribution were no longer viable once the court determined that Maryland CVS Pharmacy, LLC, had no liability. Nevertheless, "[i]f the court has not adjudicated a defendant's cross-claims or third-party claims," the court's ruling is not a final judgment, "even if those claims have become 'groundless'" because of a ruling granting summary judgment against the plaintiff. *Zilichikhis v. Montgomery County*, 223 Md. App. 158, 172 (2015) (quoting *Estep v. Georgetown Leather Design*, 320 Md. 277, 286 (1990)).

There are only a few, narrow exceptions to the rule that parties ordinarily must await the final adjudication of all claims against all parties before taking an appeal. *See, e.g.*, *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 273 (2009). The only exception that could potentially apply here is Maryland Rule 2-602(b).[3]

[3] The other two recognized exceptions—interlocutory appeals permitted by statute and appeals under the collateral order doctrine—are entirely inapplicable here. Although

Maryland Rule 2-602(b) creates a limited exception to the final judgment requirement for certain orders in cases involving multiple claims or multiple parties. It provides, in pertinent part: "If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment . . . as to one or more but fewer than all of the claims or parties[.]" Md. Rule 2-602(b)(1). This provision "allows a party to appeal from a judgment not disposing of an entire action, and one that is not otherwise a final judgment, if a court expressly determines in a written order that there is no just reason for delay and directs the entry of a final judgment as to one or more but fewer than all of the claims or parties." *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 244-45 (2010).

Under Maryland Rule 8-602(g)(1)(C), an appellate court has authority to enter a final judgment on its own initiative "[i]f the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b)[.]" The appellate court's authority to direct the entry of final judgment is limited to circumstances in which the circuit court could have properly directed the entry of final judgment as to fewer than all of the claims or parties. *See*

section 12-303 of the Courts and Judicial Proceedings Article authorizes appeals from certain types of interlocutory orders in a civil case, no statute authorizes interlocutory appeals from an order granting summary judgment in favor of some but not all defendants in a negligence action. The collateral order doctrine is satisfied "only when the issues resolved in the appealed order do not relate to the merits of the case." *Waterkeeper All., Inc. v. Maryland Dep't of Agric.*, 439 Md. at 286. The summary judgment order, however, "was tied directly to the merits of the case." *Id.* at 287.

Brown & Williamson Tobacco Corp. v. Gress, 378 Md. 667, 677 (2003). If the appellate court enters a final judgment under this provision, "it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the appeal." Md. Rule 8-602(g)(3).

When Ms. Moore moved for reconsideration of the summary judgment ruling, she asked the circuit court to direct the entry of final judgment as to fewer than all of the claims and parties under Md. Rule 2-602(b). Ms. Moore argued that it could "cause a tremendous drain of judicial resources[] and potentially inconsistent outcomes" to require her to litigate her negligence claims against Ms. Belfort before an appeal of the judgment against her on the claims against CVS Pharmacy, Inc., and Maryland CVS Pharmacy, LLC. Specifically, Ms. Moore mentioned the "potential" of "a second trial" against those two defendants, after a first trial against Ms. Belfort.

In their opposition to the motion for reconsideration, CVS Pharmacy, Inc., and Maryland CVS Pharmacy, LLC, argued that Ms. Moore would not suffer any hardship by delaying her appeal until after the resolution of her claims against Ms. Belfort. They noted that the trial in the case was scheduled to occur within four months and suggested that a trial against Ms. Belfort alone "could be as short" as one or two days. They also asserted that "Ms. Belfort may settle" the claims against her and that Ms. Moore "could file an immediate appeal" after a settlement.

When the circuit court denied Ms. Moore's motion for reconsideration, the court did not expressly address her request to direct the entry of a final judgment under Md. Rule 2-602(b). The court wrote only: "Motion for Reconsideration is denied."

Contrary to the prediction by the CVS defendants, a trial or settlement of the claims against Ms. Belfort did not occur within a matter of months after the summary judgment ruling. Apparently wishing to avoid the expense of going to trial against Ms. Belfort alone, Ms. Moore filed a stipulation in which Ms. Moore and Ms. Belfort agreed to the dismissal of her claims against Ms. Belfort, without prejudice.

In their respective appellate briefs, the parties have not questioned whether this Court has jurisdiction over this appeal. To the extent that the parties may have believed that Ms. Moore's dismissal of her claims against Ms. Belfort without prejudice eliminated any obstacle to appellate jurisdiction, this belief was mistaken. Ms. Moore filed the stipulation five days *after* her notice of appeal. Thus, even if the stipulation qualified as a final judgment, the notice of appeal would be premature and it would not be effective unless it related forward to the date of the stipulation. *See Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 662-63 (2014).

Even if the notice of appeal did relate forward, the stipulation was not a final judgment. A party's voluntary stipulation of dismissal of claims against one remaining defendant, after the grant of summary judgment in favor of all other defendants, is not a final judgment of the circuit court. *Hiob v. Progressive American Ins. Co.*, 440 Md. 466, 487-88 (2014). Because "a voluntary dismissal by stipulation is not a judgment," the filing of a stipulation of dismissal does not qualify as the entry of final judgment. *Id*. In those circumstances, no final judgment takes effect until the court signs and enters a separate document embodying the complete adjudication of all claims. *See id.* at 482, 503-04.

The lack of a separate document signed by the court is not the only remaining impediment to a final judgment. Maryland courts adhere to the rule that "'a plaintiff cannot appeal from the dismissal of some claims when the balance of [the plaintiff's] claims have been voluntarily dismissed *without prejudice*.'" *Collins v. Li*, 158 Md. App. 252, 267 (2004) (emphasis added) (quoting with approval *Smith v. Lincoln Meadows Homeowners Ass'n, Inc.*, 678 N.W.2d 726, 731 (Neb. 2004)). Where a court has disposed of claims against some defendants, a plaintiff's voluntary dismissal of "the remaining defendants without prejudice" may be deemed to be "an impermissible attempt to circumvent the final judgment rule." *Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. at 252 (discussing *Collins v. Li*, 158 Md. App. at 273). Here, if the circuit court issued an order embodying a dismissal of Ms. Moore's claims against Ms. Belfort without prejudice, the ruling might not qualify as a final judgment. *See Collins v. Li*, 158 Md. App. at 274; *see also Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. at 253.

In the present circumstances, therefore, Ms. Moore cannot obtain appellate review of the summary judgment ruling unless the ruling can properly be entered as a final judgment "as to one of more but fewer than all of the claims or parties" under Md. Rule 2-602(b)(1).

Maryland courts have entertained appeals from orders that dispose of a plaintiff's claims against the "central defendant[s]" in a case, even though a plaintiff still has unadjudicated claims against a relatively "minor defendant" in the case, where the plaintiff would be unable to obtain a full recovery from the remaining defendant.

McCormick v. Medtronic, Inc., 219 Md. App. 485, 505 (2014). In *Barclay v. Briscoe*, 427 Md. at 274-76, plaintiffs injured in a vehicle accident brought tort claims against the personal representative of a driver who had fallen asleep at the wheel after working a 22-hour shift, as well as claims against the driver's employers. The circuit court granted summary judgment in favor of the employers after determining that they could not be held liable for the driver's acts at the time of the accident: the driver was driving home from work and was not carrying out his duties of employment at the time of the accident, and the employers had no duty to protect third parties from fatigued employees acting outside the scope of employment in the absence of a "special relationship." *Id.* at 276-77 & n.5. The circuit court directed the entry of final judgments as to the employers under Md. Rule 2-602(b). *Id.* at 278 n.6.

In those circumstances, the Court held that the record supported the finding that there was no just reason to delay the entry of final judgment as to the employers. *Barclay v. Briscoe*, 427 Md. at 278 n.6. The Court reasoned: "Considering the limited recovery likely from the [driver's] estate, the trial judge may have recognized the financial hardship involved in [the plaintiffs] litigating against [the driver] prior to an appeal, when meaningful recovery was primarily reliant on the liability of [the employers]." *Id.* The Court further reasoned that "the risk was low . . . that an appellate court would be presented with the same issue in multiple appeals." *Id.* The Court noted that the driver's negligence was "not genuinely disputed" and that, if an appellate court affirmed a judgment in favor of the employers, the plaintiffs "would likely settle" with the driver's estate. *Id.* The Court further reasoned that "an appeal regarding [the employer's] alleged

vicarious and primary liability would not involve the same legal questions presented in an appeal regarding [the driver's] negligence," and "thus a partial ruling on appeal would not confuse the unresolved issues." *Id.*

The circumstances of the present case are reminiscent of the circumstances described in *Barclay v. Briscoe,* 427 Md. at 278 n.6. From the record, it appears that Ms. Moore seeks to recover damages that will exceed her potential recovery from an individual motorist and her insurer. Although Ms. Belfort has not conceded liability, it is difficult to imagine how her vehicle might have crashed into the CVS store without some fault on her part. Moreover, an appeal concerning the issues of whether the CVS defendants may be liable to Ms. Moore would not involve the same issues in an appeal regarding Ms. Belfort's negligence. Instead, they will involve questions about whether one or more of the CVS defendants had a duty to install safety bollards or other similar structures to protect a store's customers from the risk that motorists may crash into the store. The issues may also involve questions about the extent, if any, to which the parent corporation, CVS Pharmacy, Inc., operates, manages, or controls the CVS store in Salisbury.

The pending cross-claims (or third-party claims) raised against Ms. Belfort do not preclude a finding that there is no just reason for delay. In *Zilichikhis v. Montgomery County*, 223 Md. App. at 173-74, this Court exercised its discretion to enter a final judgment under the predecessor to Rule 8-602(g), where the circuit court had granted summary judgment in favor of all defendants but the court had never adjudicated various cross-claims among the defendants for indemnity and contribution. *Id.* at 173-74. The

Court explained that the record supported the conclusion that there was no just reason to delay the entry of final judgment as to the plaintiffs. *Id.* at 173. "Otherwise, the appeal could not proceed until [the defendants] had somehow resolved their cross-claims, which would be difficult for them to do without prejudicing their rights." *Id.* The Court observed that, "[i]n analogous circumstances," Maryland's highest court entertained an appeal under the predecessor to Rule 8-602(g) "where the circuit court entered summary judgment against the plaintiff, but did not dispose of a third-party claim against a third-party defendant[.]" *Id.* at 174 (citing *Shofer v. Stuart Hack Co.*, 324 Md. 92, 98 (1991)).

In our assessment, the present case satisfies the "threshold" requirements for the use of Md. Rule 8-602(g). *Brown & Williamson Tobacco Corp. v. Gress*, 378 Md. at 677. First, the notice of appeal was "premature" (*id.*), because Ms. Moore noted her appeal before the entry of final judgment disposing of all claims against all parties. Second, the circuit court "could have directed the entry of final judgment pursuant to Rule 2-602(b)" under the circumstances. *Id.* Certainly, Ms. Moore could have made a more compelling argument in support of her assertion that there was no just reason for delay. For example, Ms. Moore might have provided the court with information about matters such as the amount of damages sought, the potential recovery from Ms. Belfort and her insurer, and whether Ms. Belfort's liability is in genuine dispute. Nevertheless, it would not have been an abuse of discretion for a court to have directed the entry of final judgment under Md. Rule 2-602(b) based on the existing record.

If a case satisfies the two threshold requirements, Md. Rule 8-602(g) gives the appellate court discretion to select an appropriate course of action. *Brown & Williamson*

Tobacco Corp. v. Gress, 378 Md. at 677. The Rule states that the appellate court "may (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative, or (D) if a final judgment was entered by the lower court after the notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment." Md. Rule 8-602(g)(1). The final option, option (D), is unavailable because no final judgment has been entered after the notice of appeal was filed.

This Court's discretion to use option (C), to enter a final judgment on its own initiative, comes with one important restraint. "[W]here a trial court has been invited to direct entry of a final judgment in a case in which that trial court has discretion to do so and that trial court expressly declines to do so, and the merits of that ruling is not appealed, [Rule 8-602(g)(1)(C)] does not authorize an appellate court nevertheless to enter final judgment on its own initiative." *Brown & Williamson Tobacco Corp. v. Gress*, 378 Md. at 682 (footnote omitted); *see Silbersack v. ACandS, Inc.*, 402 Md. at 681 (stating that "the appellate court's authority under [Rule 8-602(g)(1)(C)] to enter judgment on its own initiative may be exercised only when the circuit court has never exercised its own discretion in the matter and *not* when the trial court was asked to enter judgment under Rule 2-602(b) and expressly declined to do so") (emphasis in original); *Addison v. Lochearn Nursing Home, LLC*, 411 Md. at 264 (explaining that Rule 8-602(g) "only permits appellate certification as final when the judge overlooked the opportunity to certify, not when the judge acted and refused to certify").

In the present case, the record leaves it unclear whether the circuit court "expressly

decline[d]" (*Brown & Williamson Tobacco Corp. v. Gress*, 378 Md. at 677) to direct the entry of final judgment under Md. Rule 2-602(b) or whether the circuit court "overlooked the opportunity" (*Addison v. Lochearn Nursing Home, LLC*, 411 Md. at 681) to do so. Ms. Moore asked the court to employ Md. Rule 2-602(b) in the last few paragraphs of her motion for reconsideration, as an alternative form of relief. After her adversaries opposed the request, Ms. Moore filed a reply in support of her motion for reconsideration, which failed to mention her request to employ Md. Rule 2-602(b). The court never held a hearing to address the motion. When the circuit court denied the motion, the court did not expressly address Ms. Moore's request for entry of a final judgment under Md. Rule 2-602(b). The court did not make any findings on the issue of whether there was "no just reason for delay" of the entry of final judgment as to fewer than all of the claims or parties. The court wrote only: "Motion for Reconsideration is denied."[4]

Since the time when the circuit court denied Ms. Moore's motion for reconsideration, some of the circumstances relevant to the assessment of whether to enter a final judgment under Md. Rule 2-602(b) have changed. At the time of the decision in February 2024, the court had scheduled a trial to take place in April 2024. The scheduled trial never occurred, because Ms. Moore voluntarily dismissed her remaining claims against Ms. Belfort, without prejudice. That outcome makes it doubtful (*see Collins v.*

[4] Generally, "'[i]f the judge has discretion, [the judge] must use it and the record must show that [the judge] used it.'" *Maddox v. Stone*, 174 Md. App. 489, 502 (2007) (quoting *Nelson v. State*, 315 Md. 62, 70 (1989)).

Li, 158 Md. App. at 273-74) that this case will terminate in a final judgment as to all claims in the foreseeable future.

Under the circumstances, we decline to dismiss the appeal under Md. Rule 8-602(g)(1)(A) and instead remand this case to the circuit court, under Md. Rule 8-602(g)(1)(B), for the circuit court to decide whether to direct the entry of a final judgment as to fewer than all of the parties. The circuit court's determination should be based on the current circumstances, not the circumstances that existed in December 2023. To inform the court's determination, the parties may present updated or additional information by affidavit or in other appropriate form.

PURSUANT TO MD. RULE 8-602(G)(1)(B), CASE REMANDED TO THE CIRCUIT COURT FOR WICOMICO COUNTY TO DECIDE WHETHER TO DIRECT ENTRY OF FINAL JUDGMENT UNDER MD. RULE 2-602(B). COSTS TO BE PAID BY APPELLANT.