UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED

No. 876

September Term, 2016

ALFRED FIELDING

v.

STATE OF MARYLAND

No. 877

September Term, 2016

DONALD PETER WORKEMAN

v.

STATE OF MARYLAND

No. 1005

September Term, 2016

ROBERT IRVING METZGER

v.

STATE OF MARYLAND

No. 1008

September Term, 2016

REGINALD POWELL

v.

STATE OF MARYLAND

No. 1071

September Term, 2016

LUIS MANUEL ALVAREZ

v.

STATE OF MARYLAND

No. 1072

September Term, 2016

JASON ALLAN BEAVERS

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: May 31, 2017

In 2016, the State brought charges in the Circuit Court for Prince George's County against Alfred Fielding, Donald Peter Workeman, Robert Irving Metzger, Reginald Powell, Luis Manuel Alvarez, and Jason Allan Beavers ("Appellants") in six unrelated cases. In each, the State charged Appellants with the "flagship" offense of driving while under the influence of alcohol and/or drugs and sought an enhanced penalty based on a prior conviction. Each Appellant filed a motion to dismiss, arguing that the circuit court lacked jurisdiction because the maximum penalty for the driving offense was one year in jail, placing the case within the exclusive original jurisdiction of the district court. The State opposed the motions, arguing that because it had filed a notice to seek an enhanced penalty, which increased the possible sentence from one year to three years, the circuit court had jurisdiction concurrent with the district court. The circuit court heard and denied each of the Appellants' motions. Each Appellant filed an "Application for Leave to Appeal" the denials.[1] We granted Appellants' motions to consolidate the appeals. Because no statute or rule authorizes the appeal of these interlocutory orders and the collateral order doctrine does not apply, we shall dismiss the appeals.

DISCUSSION

Appellants argue that the circuit court erred when it denied their motions to dismiss the charges against them for lack of jurisdiction. The State responds that we should dismiss these interlocutory appeals because they are not authorized by statute or rule, or permitted

[1] The court treated these filings as direct appeals to this Court. *See, e.g.*, *State v. Fielding*, Case No. CT160295X.

under the common law collateral order doctrine. Appellants contend that the collateral order doctrine applies, but they concede that they do not satisfy the doctrine's fourth requirement because the issue they raise would *not* be "'effectively unreviewable on appeal from a final judgement.'" (Quoting *Harris v. State*, 420 Md. 300, 316 (2011)). Instead, Appellants contend that dismissing their appeal would result in piecemeal litigation—defeating the purpose of the final judgment rule—by creating a circumstance that could result in a trial in circuit court followed by an appeal, reversal, and a second trial in district court. In other words, Appellants ask us to overlook the requirements of the collateral order doctrine in the name of judicial economy.

Generally, appellate review is limited to final judgments. Maryland Code (1973, 2013 Repl. Vol.), Courts. & Judicial Proceedings Article ("CJP") § 12-301. In Maryland, however, there are three limited exceptions to the final judgment rule: "appeals from interlocutory orders specifically allowed by statute; appeals allowed under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine."[2] *Salvagno v. Frew*, 388 Md. 605, 615 (2005). As we just explained,

[2] Neither side argues the applicability of the statutory or rule-based exceptions. No statutory source, including CJP § 12-302 (allowing appeals from certain interlocutory criminal orders, including orders granting motions to dismiss indictments and motions to suppress evidence on constitutional grounds) and CJP § 12-303 (governing "interlocutory orders entered by a circuit court in a civil case[,])" allows an appeal in the present case. Maryland Rule 2-602 permits a court, in a written order, to expressly determine there is "no just reason for delay" and to enter a final judgment "with respect to one or more but fewer than all of the claims or parties" despite not having adjudicated the entire claim.

Appellants contend that the latter of these three exceptions applies here. We shall limit our discussion accordingly.

The collateral order doctrine is "'a judicially created fiction, under which certain interlocutory orders are considered to be final judgments, even though such orders are clearly *not* final judgments.'" *Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 546 (2017) (quoting *Dawkins v. Baltimore City Police Dep't.*, 376 Md. 53, 64 (2003)) (emphasis in *Dawkins*), *reconsideration granted* (Feb. 21, 2017), *reconsideration denied in part* (Mar. 27, 2017). The Court of Appeals has "made clear . . . that the collateral order doctrine is a *very narrow* exception to the general rule that appellate review ordinarily must await the entry of a final judgment disposing of all claims against all parties." *Pittsburgh Corning v. James*, 353 Md. 657, 660-61 (1999) (emphasis added). Thus, we apply the doctrine very "sparingly in only the most extraordinary circumstances." *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 572 (2010) (citation omitted).

To be appealable under the collateral order doctrine, a prejudgment order must: "'(1) conclusively determine the disputed question; (2) resolve an important issue; (3) resolve an issue completely separate from the merits of the action; and (4) [] **be effectively unreviewable on appeal from a final judgment**.'" *Nnoli v. Nnoli*, 389 Md. 315, 329 (2005) (citing *Dawkins*, 376 Md. at 58). The test is conjunctive so all four elements must be satisfied. *In re Franklin P.*, 366 Md. 306, 327 (2001). While each of the four elements are applied strictly, the fourth element, in particular, is satisfied only in "'extraordinary

situations.'" *Nnoli*, 389 Md. at 329 (quoting *Shoemaker v. Smith*, 353 Md. 143, 170 (1999)). The fourth element is at issue here.

Appellants concede that they do not satisfy the fourth element but ask us, in the name of judicial economy, to ignore the abundance of adjectives the Court of Appeals has employed to convey just how rarely this doctrine applies. Appellants point to no cases (and we have found none) that indicate that an exception to the collateral order doctrine exists when a party challenges the court's jurisdiction. In fact, in the civil context, the Court of Appeals has explained that:

> [t]he denial of a challenge to the jurisdiction does not settle or conclude the rights of any party or deny him the means of proceeding further. It settles nothing finally. An order which does none of these things is not appealable. Whenever a court makes a disposition or order, it does so on the basis that it has jurisdiction, and if its express announcement of that fact constituted an appealable order, it would be impossible for a court to proceed with the trial of any case in which its jurisdiction was challenged.

Eisel v. Howell, 220 Md. 584, 586 (1959) (internal citation omitted); *see also Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353, 384 (2005) ("The mere allegation that a clearly interlocutory order is jurisdictionally deficient should not serve to halt proceedings in the trial court while an appellate court considers whether the allegation has merit."); *Gruber v. Gruber*, 369 Md. 540, 546-48 (2002) (holding that the circuit court's order denying a challenge to its jurisdiction in the context of determining custody of the parties' minor child is a non-appealable interlocutory order (citations omitted)); *In re Franklin P.*, 366 Md. 306, 328 (2001) (holding that the circuit court's order denying appellant's motion

to dismiss for lack of jurisdiction because the case should have been brought in juvenile court was not an immediately appealable order).

Appellants ignore the practical consequences of their suggested approach, which would transform the collateral order test to one of pragmatism from one that requires strict application. The same argument could be made to appeal the denial of all jurisdictional questions since each inherently includes the same risk that judicial resources may be spent on a case that the appellate courts later determine was outside of the trial court's jurisdiction. The same could also be said for a circuit court's order that an administrative agency, and not the circuit court, has primary jurisdiction over a dispute. *See Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of Sch. Comm'rs*, 231 Md. App. 594, 615-17 & n.13 (2017) (holding that the collateral order doctrine did not apply to a circuit court's order directing the parties to first contest their grievance before the State Board of Education based on the court's conclusion that the Board had primary jurisdiction), *cert. granted sub nom. Monarch Acad. Baltimore Campus v. Baltimore City Bd. of Sch. Comm'rs*, ___ Md. ___, No. 7, September Term 2017 (Apr. 4, 2017). In none of these cases has this Court or the Court of Appeals set aside the strictly applied collateral order doctrine to carve out a special exception. One reason for this may be that the "strong policy consideration" sometimes stated as a preference for judicial economy is "more accurately described as a policy against piecemeal appeals." *Tharp v. Disabled Am. Veterans Dep't of Maryland, Inc.*, 121 Md. App. 548, 565-66 (1998) (citation omitted). Clearly, allowing the appeals here would run counter to our policy of disfavoring piecemeal appeals.

Again, it takes an "'extraordinary situation[]'" to satisfy the fourth element of the collateral order doctrine's conjunctive test, *Nnoli*, 389 Md. at 329 (citation omitted), and we do not believe this is one. Without an appealable order, Appellants' appeals are not properly before us and must be dismissed.

APPEALS DISMISSED. COSTS TO BE PAID BY APPELLANTS.