

Circuit Court for Anne Arundel County
Case No. C-02-CV-23-001374

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 10

September Term, 2024

ERIC TUBLIN

v.

WALMART, INC.

Nazarian,
Zic,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: July 11, 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 Maryland Rule 1-104(a)(2)(B).

Eric Tublin, appellant, filed a class action complaint against Walmart, Inc. (“Walmart”), appellee, in the Circuit Court for Anne Arundel County, alleging a violation of Maryland’s Consumer Protection Act (“MCPA”)¹ and negligent misrepresentation. Walmart moved to dismiss the action with prejudice, arguing that Mr. Tublin failed to exhaust his administrative remedies or, in the alternative, state a claim for which relief could be granted. Following a hearing, the court granted Walmart’s motion but permitted Mr. Tublin leave to amend his complaint. Mr. Tublin appealed the court’s order without amending his complaint or moving for a final order of dismissal pursuant to Maryland Rule 2-322(c).

Mr. Tublin raises two questions on appeal.² For the following reasons, we dismiss without reaching the merits of the issues presented.

BACKGROUND

On March 11, 2023, Mr. Tublin purchased an American flag and various other items from a Walmart-owned store in Gaithersburg, Maryland. The sales receipt indicated that Walmart charged Mr. Tublin a sales tax on his purchase. Mr. Tublin believes the sales tax was improper because, under § 11-205 of the Tax-General (“TG”)

¹ The MCPA is codified at §§ 13-101–501 of the Commercial Law Article (1975, 2013 Repl. Vol., 2018 Supp.) of the Maryland Code.

² Mr. Tublin phrases the issues as follows:

1. Whether the [c]ircuit [c]ourt erred in dismissing [Mr. Tublin’s] action[.]
2. Whether [Mr. Tublin] is entitled to recover an improper fee from the person who charged him the improper fee[.]

Article (1988, Repl. Vol. 2022) of the Maryland Code, sales of American flags are exempt from Maryland sales tax. Several months after his purchase, in July 2023, Mr. Tublin filed a class action lawsuit against Walmart in which he claimed that Walmart’s practice of charging sales tax on tax-exempt flags constituted a violation of the MCPA and negligent misrepresentation.

In September 2023, Walmart moved to dismiss Mr. Tublin’s class action, and Mr. Tublin opposed. Following a hearing on February 12, 2024, the circuit court granted Walmart’s motion. The corresponding written order permitted Mr. Tublin leave to amend his complaint on or before February 22, 2024, after which time the matter would be dismissed with prejudice. Mr. Tublin did not file an amended complaint or move for a final order dismissing his complaint. On March 1, 2024, Mr. Tublin filed the instant appeal challenging the court’s dismissal of the underlying action with prejudice.

DISCUSSION

I. THE CIRCUIT COURT’S ORDER GRANTING MR. TUBLIN LEAVE TO AMEND HIS COMPLAINT IS NOT A FINAL JUDGMENT.

We first address *sua sponte* whether Mr. Tublin’s appeal is properly before us. *Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 241 (1998) (citing *Smith v. Taylor*, 285 Md. 143, 147 (1979)). Unless constitutionally authorized, Maryland appellate courts have jurisdiction only where granted by the Legislature. *Dvorak v. Anne Arundel Cnty. Ethics Comm’n*, 400 Md. 446, 450 (2007). Pursuant to § 12-301 of the Courts and Judicial Proceedings Article (1974, 2020 Repl. Vol.) of the Maryland Code, this Court generally reviews only appeals taken from final judgments. An order entered

pursuant to Maryland Rule 2-322(c), i.e., one that dismisses the action but expressly grants a plaintiff leave to amend the complaint, “is not a final judgment and therefore is not appealable[.]” *Moore v. Pomory*, 329 Md. 428, 431 (1993). Instead, after the period prescribed for amendment has expired, “the [circuit] court, on motion, may enter an order dismissing the action.” Md. Rule 2-322(c).

Here, Mr. Tublin’s appeal is taken from an order by the circuit court that grants Walmart’s motion to dismiss and expressly permits Mr. Tublin leave to amend his complaint. Mr. Tublin did not amend his complaint, and neither party requested that the court enter an order dismissing the action as required by Rule 2-322(c). Thus, the order now before us is not a final judgment, *Moore*, 329 Md. at 431, and we dismiss.

**APPEAL DISMISSED; COSTS TO BE PAID
BY APPELLANT.**