

Circuit Court for Baltimore County
Case No. C-03-FM-21-002528

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 69

September Term, 2022

KIZITO ADETOKUNBO TAIWO

v.

FELICITAS ADEDAYO TAIWO

Beachley,
Arthur,
Woodward, Patrick, L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: February 9, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On May 25, 2021, appellee, Felicitas Adedayo Taiwo (“Wife”), filed a complaint for absolute divorce in the Circuit Court for Baltimore County against appellant, Kizito Adetokunbo Taiwo (“Husband”). On August 20, 2021, Husband filed a motion to dismiss the divorce action for lack of subject matter jurisdiction, arguing that Nigeria—where a divorce proceeding was presently pending between the parties—had jurisdiction under the principles of comity. On December 14, 2021, and February 4, 2022, the circuit court held a hearing on Husband’s motion to dismiss. On March 3, 2022, the circuit court issued an order denying Husband’s motion to dismiss, concluding that the court did have subject matter jurisdiction over the matter. Husband noted an appeal from the denial of his motion to dismiss, and raises one question for our consideration:

Did the trial court err, or abuse its discretion, in denying the motion to dismiss for lack of subject matter jurisdiction?

As a preliminary matter, Wife seeks the dismissal of the instant appeal, because (1) a ruling denying a motion to dismiss is reviewable on appeal only when a final judgment has been rendered by the circuit court, which has not taken place in the instant case, and (2) the four requirements necessary for the collateral order doctrine to apply have not been satisfied. For the reasons set forth herein, we shall dismiss the instant appeal.

BACKGROUND

Husband and Wife were married on January 9, 2003, in a civil and religious ceremony in Lagos, Nigeria. Both parties are citizens of Nigeria. After living a short time in Lagos, the parties relocated from Nigeria to Maryland in early 2004, and resided together in a home located in Pikesville, Maryland for the duration of the marriage. Husband and

Wife have since returned to Nigeria only for events such as funerals and weddings, and never for an extended period of time. Husband and Wife have no children together.

Husband is a dual citizen of the United States and Nigeria, but his “primary residence” has been in the United States since 1975. Husband has owned property in the United States since around 1981. Husband pays a mortgage and taxes on the marital home in Pikesville. Husband is employed as a structural engineer in Maryland. Prior to his marriage with Wife, Husband had been divorced twice in Maryland. Husband is registered to vote in Maryland and pays taxes in Maryland.

Wife, on the other hand, has a green card and is a permanent resident of the United States. Husband and Wife separated in January of 2019, with Wife leaving the marital home to move in with her sister in Elkridge, Maryland. Wife has resided in Elkridge since the separation.

On February 19, 2020, Husband filed for divorce in Nigeria because, despite residing in Maryland, he was “domiciled in Nigeria for purposes of Nigerian matrimonial law.” Thereafter, service of the Nigerian divorce petition was attempted twice on Wife at her residence in Elkridge, Maryland, but was unsuccessful both times. On March 19, 2020, Husband withdrew the divorce petition that he filed in Nigeria.

On October 28, 2020, Husband again filed for divorce in Nigeria, this time listing Wife’s address for service purposes as that of her family in Lagos, Nigeria. Wife had not resided in her family home for over twenty years. On November 3, 2020, Husband filed a motion for substituted service, claiming that Wife’s last known address was the Lagos,

Nigeria address listed in the divorce petition. The Nigerian court granted the motion on December 7, 2020, ordering that Wife be served via courier service at her family's home in Lagos, Nigeria. Substituted service was made at such address. Once Wife learned of the Nigerian divorce proceedings, she filed a preliminary objection to the Nigerian court's jurisdiction on June 29, 2021, on the grounds that substituted service was improper.

Meanwhile, on May 25, 2021, Wife filed a complaint for absolute divorce in the Circuit Court for Baltimore County, alleging adultery, cruel and excessively vicious conduct, and twelve-month separation as the grounds for divorce. On June 22, 2021, Husband was properly served with Wife's divorce complaint.

Husband subsequently filed a motion to dismiss for lack of subject matter jurisdiction in the circuit court on August 20, 2021. In his motion to dismiss, Husband argued that the Nigerian court had superior jurisdiction over the divorce proceeding because Husband filed for divorce in Nigeria before Wife filed for divorce in Maryland. Specifically, Husband argued:

Applying the principles of Comity to the case at bar, it is clear that [Husband]'s petition for divorce duly filed in Nigeria is subject to recognition by this Court and should be allowed to proceed to completion given that the petition was filed and served first.

On September 7, 2021, Wife filed an opposition to Husband's motion to dismiss, in which she argued that Maryland is the appropriate jurisdiction to hear the divorce

proceeding because both parties are residents of Maryland, the grounds for divorce occurred in Maryland, and any and all marital property is located in Maryland.¹

On December 14, 2021, and February 4, 2022, the circuit court conducted a hearing on Husband’s motion to dismiss. At this hearing, Husband and Wife both testified, as well as Husband’s attorney who represented him in Nigeria, and a friend of Wife.

Prior to the decision of the circuit court, the Nigerian court, by order dated February 9, 2022, set aside the December 7, 2020 order granting substituted service on Wife. Wife filed a copy of this order with the circuit court on February 21, 2022. On March 3, 2022, the circuit court issued an order denying Husband’s motion to dismiss, concluding that “the Circuit Court for Baltimore County does have Subject Matter Jurisdiction over this case[,]” and “there is no final Judgment or other such final Order in any other Jurisdiction, foreign or otherwise, as of the date of this Order that would prevent this Court from hearing this matter.”

Husband filed this timely appeal. We shall provide additional facts as necessary to the resolution of the question presented.

MOTION TO DISMISS

Wife asks this Court to dismiss Husband’s appeal, arguing that the appeal is an impermissible interlocutory appeal, and that the collateral order doctrine is not applicable in this case. Husband acknowledges, in his opening brief to this Court, that this is an appeal

¹ On December 2, 2021, Wife filed an amended opposition to Husband’s motion to dismiss. The basis of the amended opposition remained the same as before, but included significantly more detail about Husband’s and Wife’s connections to Maryland, and lack of the same to Nigeria.

from an interlocutory order for which no statutory exemptions apply. Husband, however, argues that the common law collateral order doctrine applies because of the pending divorce action filed in Nigeria. Husband reasons that, “[i]f the trial court’s order . . . is not reversed at this time, the parties will have to litigate their respective divorce petitions at the *same time in different continents*, taking enormous time and resources.” (Emphasis in original). Husband further asserts that, “if the divorce proceedings [in both Maryland and Nigeria] result in final judgments, they may be inconsistent, leading to cross-motions to reject the respective judgments.”

In response, Wife argues that the collateral order doctrine only applies to appeals that satisfy four requirements set out by the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland),² none of which the present appeal satisfies. Further, Wife contends that, even assuming Husband’s argument is correct regarding inconsistent final judgments, “[i]f a final judgment is entered in the circuit court and if Nigeria was actually the proper venue, then the judgment will be reversed on appeal and the trial court will be directed to dismiss the action.”

In his reply brief, Husband expands on his original argument, explaining that the four requirements of the collateral order doctrine have been satisfied because “[t]he trial

² At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also*, Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . .”).

court’s order denying [Husband]’s motion to dismiss conclusively determined the disputed question, resolved an important issue, was separate from the merits of the case, AND is *effectively* unreviewable on an appeal from a final judgment.” (Emphasis in original).

After the filing of the parties’ briefs in this Court, Husband’s attorney sent a letter to us dated November 23, 2022, advising that on November 7, 2022, the Nigerian court dismissed Husband’s divorce petition, holding that Husband was not domiciled in Nigeria for purposes of Nigerian matrimonial law.³ In pertinent part, the Nigerian court concluded:

It is difficult to see how [Husband] arrived [at] the conclusion that he [is] domicile[d] in Nigeria[.]

[T]he place of domicile of [Husband] prior to Petition is Maryland USA. It is only the court in the USA that can handle this Petition. This court lacks the jurisdiction to entertain [Husband]’s Petition.

Husband’s counsel also advised this Court that, although the ruling of the Nigerian court is being appealed, “the ruling stands for now.”

DISCUSSION

I. Motion to Dismiss

This Court does not have jurisdiction over an appeal unless the appeal is from a final judgment, or the appeal is from an interlocutory order than falls within one of the exceptions to the final judgment requirement. *Bessette v. Weitz*, 148 Md. App. 215, 232 (2002) (citing Md. Code (1974, 2002 Repl. Vol.) Cts. & Jud. Proc. §§ 12-301, 12-303).

³ Husband’s counsel was unaware of the Nigerian court’s action prior to the filing of Husband’s reply brief on November 21, 2022.

The “exceptions” to the final judgment requirement, as summarized by the Supreme Court of Maryland, include: ““appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine.”” *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 84 (2006) (quoting *Salvagno v. Frew*, 388 Md. 605, 615 (2005)).

Husband does not argue that this is a final judgment or an appeal from an interlocutory order permitted by rule or statute. Rather, Husband suggests that the circuit court’s March 4, 2022 order denying his motion to dismiss is appealable under the collateral order doctrine. This common law doctrine “treats as final and appealable a limited class of orders which do not terminate the litigation in the trial court.” *Pub. Serv. Comm’n of Md. v. Patuxent Valley Conservative League*, 300 Md. 200, 206 (1984); *see also Pittsburgh Corning v. James*, 353 Md. 657, 660-61 (1999) (“We have made clear, time and again, as has the United States Supreme Court, 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.”). As summarized by our Supreme Court in *Pittsburgh Corning v. James*, the collateral order doctrine has four requirements:

It is applicable to a “small class” of cases in which the interlocutory order sought to be reviewed (1) conclusively determines the disputed question, (2) resolves an important issue, (3) resolves an issue that is completely separate from the merits of the action, *and* (4) would be effectively unreviewable if the appeal had to await the entry of a final judgment.

353 Md. at 661. “[I]n Maryland the four requirements of the collateral order doctrine are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances.” *In re Foley*, 373 Md. 627, 634 (2003). Further, “[t]he four elements of the test are conjunctive in nature and in order for a prejudgment order to be appealable and to fall within this exception to the ordinary operation of the final judgment requirement, each of the four elements must be met.” *Id.* at 633-34 (quoting *In re Franklin P.*, 366 Md. 306, 327 (2001)).

Husband, in both his opening and reply brief, argues that the fourth requirement of the collateral order doctrine is satisfied, but fails to provide argument as to how the first three requirements are met. Instead, Husband simply concludes that the first three requirements are satisfied. Wife acknowledges such in her brief, stating, “[Husband] does not discuss the first three required considerations for the collateral order doctrine, however, even assuming *arguendo* that the first three requirements . . . were satisfied, a ruling denying a motion to dismiss is reviewable on appeal from a final judgment.” Accordingly, because Wife concedes the satisfaction of the first three requirements for the sake of argument, we shall only discuss whether the fourth requirement of the collateral order doctrine is met.

The Supreme Court of Maryland has explained that the fourth requirement of the collateral order doctrine, *i.e.*, that an issue would be effectively unreviewable if the appeal had to await the entry of a final judgment, should be deemed satisfied only in “very few . . . extraordinary situations. Otherwise . . . there would be a proliferation of appeals under

the collateral order doctrine. This would be flatly inconsistent with the long-established and sound public policy against piecemeal appeals.” *Bunting v. State*, 312 Md. 472, 482 (1988).

In this case, Husband predicates his argument—that the denial of his motion to dismiss would be effectively unreviewable if the appeal had to await the entry of a final judgment—on two contentions: (1) “[i]f the trial court’s order . . . is not reversed at this time, the parties will have to litigate their respective divorce petitions at the *same time* in *different continents*, taking enormous time and resources;” and (2) “if the divorce proceedings result in final judgments, they may be inconsistent[.]” Although two divorce proceedings between the parties at the same time may have been true when Husband submitted his argument to this Court, such factual predicate is no longer accurate because of the November 7, 2022 order by the Nigerian court dismissing Husband’s divorce petition. In other words, there is now no divorce action pending before the court in Nigeria. The only divorce action that still exists is the one filed by Wife in the Circuit Court for Baltimore County. Consequently, the parties will not be forced to litigate the same issues in two separate countries.⁴ Therefore, there is no longer a basis upon which this Court could conclude that the question raised in the instant appeal would be effectively unreviewable if the appeal had to await the entry of a final judgment. Indeed, once a final judgment in this case is entered in the circuit court, the issue of whether the circuit court

⁴ The only issue currently being litigated in Nigeria is the appeal of the dismissal of Husband’s divorce petition for lack of jurisdiction.

abused its discretion in denying Husband’s motion to dismiss will be reviewable by this Court.

II. Merits on the Denial of the Motion to Dismiss

Assuming, for the sake of argument, that this Court does in fact have jurisdiction over this appeal, we would nevertheless affirm the circuit court’s denial of Husband’s motion to dismiss.

In Maryland, “the pendency of an action in a foreign country is not a bar to the institution of another action between the same parties and for the same cause of action in a state court in the United State[s.]” *Apenyo v. Apenyo*, 202 Md. App. 401, 410 (2011). Under the principle of pre-trial comity, however, one court will defer to another court that has gone first. *Id.* In *Apenyo*, this Court explained: “As a matter of comity . . . the court of one state may stay or dismiss a proceeding pending before it on the ground that a case involving the same subject matter and the same parties is pending in a court of another state or foreign country.” *Id.* (citation and emphasis omitted).

In our view, the principle of pre-trial comity does not apply to the instant case, notwithstanding the fact that Husband filed his divorce petition first in Nigeria. There is only one pending case and that is the one instituted by Wife in the Circuit Court for Baltimore County. Regardless of the appeal of the dismissal of Husband’s divorce petition in Nigeria, the status as of the entry of our opinion in this case is that there is no case in Nigeria.

Furthermore, even if Husband's divorce petition in Nigeria had not been dismissed, or his petition is reinstated by a Nigerian appellate court, Wife was never served with Husband's Nigerian divorce petition. The Nigerian court initially granted Husband's motion for substituted service, and Husband effectuated service on Wife at her family home in Nigeria. The Nigerian court, however, later set aside this order, thereby nullifying any service on Wife in Nigeria. Accordingly, we would conclude that the circuit court did not err or abuse its discretion by denying Husband's motion to dismiss.

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