Circuit Court for Montgomery County
Case No. 444069V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 89

September Term, 2019

BRANDI HOOKER, et al.

v.

JN PROPERTY SOLUTIONS, LLC

Fader, C.J.,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: July 16, 2020

On March 9, 2018, JN Property Solutions, LLC, brought a multi-count complaint against Brandi J. Hooker, Judy C. Hooker, and 10 other defendants, in the Circuit Court for Montgomery County. JN alleged that the defendants defrauded the company of its investment in a real estate flipping venture. The complaint included a claim under the Maryland Securities Act.

The circuit court dismissed the claims against five of the defendants, with prejudice. The court dismissed the claims against two more of the defendants, Maurice Izzard and Styles Unlimited, Inc., without prejudice and with leave to amend. One of the defendants, Aikita Bowe, was never served. Another defendant, Millennium Title and Abstract Co., was served, but the claims against it were never adjudicated.

On February 4, 2019, the case proceeded to a bench trial against Brandi and Judy Hooker. On February 5, 2019, the circuit court found in favor of JN and awarded damages.

After the court announced its oral ruling, JN requested attorneys' fees, costs, and prejudgment interest under the Maryland Securities Act. The court allowed JN fifteen days to file a petition for the requested relief.

On February 12, 2019, before a hearing on the petition, the clerk of the court entered a "judgment" on the docket, reflecting the court's finding in favor of JN. On March 6, 2019, the Hookers filed an appeal of that "judgment" to this Court.

After a hearing on April 13, 2019, the court awarded JN its requested attorneys' fees, costs, and prejudgment interest. The court clerk entered another "judgment" for the award on May 30, 2019, which the Hookers did not appeal.

We must dismiss the appeal because it is premature, the circuit court having yet to adjudicate all claims against all parties.

"Generally, parties may appeal only upon the entry of a final judgment." *McLaughlin v. Ward*, 240 Md. App. 76, 82 (2019) (citing Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article). "One of the necessary elements of a final judgment is that the order must adjudicate or complete the adjudication of all claims against all parties." *Id*. (citing *Waterkeeper All., Inc. v. Maryland Dep't of Agric*., 439 Md. 262, 278 (2014); *Zilichikhis v. Montgomery County*, 223 Md. App. 158, 171-72 (2015)). "In other words, the judgment 'must leave nothing more to be done in order to effectuate the court's disposition of the matter.'" *Id*. (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). An order that "adjudicates fewer than all of the claims in an action . . . , 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).

"'This Court has jurisdiction over an appeal when the appeal is taken from a final judgment or is otherwise permitted by law.'" *McLaughlin v. Ward*, 240 Md. App. at 83 (quoting *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 661 (2014)).[1] If, however, an appeal is premature because it has been taken before the entry of a final

[1] Three limited exceptions apply to the final judgment rule: "(1) appeals from interlocutory rulings specifically allowed by statute . . . ; (2) immediate appeals permitted under Maryland Rule 2-602(b); and (3) appeals from interlocutory rulings allowed under the common law collateral order doctrine." *County Comm'rs for St. Mary's Cty. v. Lacer*, 393 Md. 415, 424-25 (2006). None of these exceptions apply to this appeal.

judgment, the appeal is "generally of no force and effect." *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. at 662 (internal citation omitted). If we lack appellate jurisdiction because an appeal is premature, we must dismiss the appeal. *See* Md. Rule 8-602(b)(1).

In this case, the appeal is premature, because the Hookers noted their appeal before the circuit court had adjudicated the rights and liabilities of all the parties to the action. The record shows that the court has never adjudicated any of the claims against Millennium Title. In addition, although the court dismissed the claims against Maurice Izzard and Styles Unlimited, Inc., without prejudice and with leave to amend, and JN failed to file an amended complaint, JN's right to relief from those defendants will not be formally extinguished until the court, on motion, enters an order dismissing the action. *See* Md. Rule 2-322(c); *Moore v. Pomoroy*, 329 Md. 428, 431 (1993) ("[w]here leave to amend is expressly granted in an order, the case remains pending in the trial court, whether or not an amended complaint is filed, until another order is entered disposing of the case"); *Doe v. Sovereign Grace Ministries*, 217 Md. App. at 661-62. Thus, at the time of the notice of appeal, the claims against three defendants were still pending.[2]

[2] For purposes of determining whether the court has adjudicated the claims against all of the parties, we look only to the defendants who were served with process; the claims against the unserved defendant, Aikita Bowe, do not count. *See Turner v. Kight*, 406 Md. 167, 172 n.3 (2008); *State Highway Admin. v. Kee*, 309 Md. 523, 529 (1987); *Worsham v. Fairfield Resorts, Inc.*, 188 Md. App. 42, 45 n.1 (2009).

The Hookers agree that the appeal is premature. Nonetheless, they argue that we should exercise our discretion under Maryland Rule 8-602(g)(1) to enter a final judgment on our own initiative. In the circumstances of this case, we decline to do so.

Rule 8-602(g)(1) gives this Court the power to "enter a final judgment on its own initiative" if "the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(b)."[3] Rule 2-602(b) permits a court to direct "the entry of a final judgment . . . as to one or more but fewer than all of the claims or parties" "[i]f the court expressly determines in a written order that there is no just reason for delay."

Our discretion to enter a final judgment pursuant to Rule 8-602(g) is no broader than that of the circuit court under Rule 2-602(b). *See Zilichickis v. Montgomery County*, 223 Md. App. at 172 n.7 (concerning a prior iteration of the rule). "An appellate court 'should be reluctant' to enter judgment on its own initiative" under Rule 8-602(g) "when no party asked the circuit court to exercise its authority under Rule 2-602(b)." *McCormick v. Medtronic, Inc*., 219 Md. App. 485, 505 (2014) (quoting *Smith v. Lead Indus. Ass'n, Inc.*, 386 Md. 12, 26 (2005)) (concerning a prior iteration of the rule).

[3] In full, Rule 8-602(g)(1) provides as follows:

> If 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, as it finds appropriate, 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.

Because of Maryland's strong policy against permitting piecemeal appeals, a court should employ Rule 2-602(b) "sparingly," reserving it for the "very infrequent and harsh case." *See, e.g., Waterkeeper All., Inc. v. Maryland Dep't of Agric.*, 439 Md. at 287-88. "Courts commonly find 'no just reason for delay' when delaying an appeal will have a significant adverse economic impact on the party requesting certification." *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 229 (2010) (citing *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1 (1980)).

In our judgment, no party will face any significant hardship if the decision in this appeal must await the formal resolution of the remaining claims against the remaining parties. It is a simple matter for any party, including the Hookers, to move the court for an order formally dismissing the action as to Maurice Izzard and Styles Unlimited, Inc. In addition, because Millennium Title does not appear to have filed an answer, it is an equally simple matter for JN to file a notice of dismissal under Md. Rule 2-506(a) if it does not wish to proceed against that defendant (which appears to be the case). Alternatively, if the court somehow dismissed Millennium Title, but failed to document its ruling (as JN suggests), it is also a simple matter for JN or the Hookers to obtain the order that the court should have signed. In short, this is not a case where there is no just reason to delay the entry of final judgment.

By declining to enter a final judgment on our own initiative under Rule 8-602(g), we are permitting the Hookers to obtain appellate review, provided that they note a timely appeal after the court has completed the adjudication of all claims against all parties.

In an untimely supplemental memorandum, JN asserts that the circuit court intended to adjudicate all claims against all defendants that have been served. "Upon knowledge and belief" of one of its attorneys, JN tells us that the court dismissed the claims against Millennium Title by a "bench ruling at one of the pretrial proceeding[s]." JN acknowledges that "no entry was made in the [c]ourt [d]ocket nor was a written [o]rder issued" to reflect the dismissal of the claims against Millennium Title. JN also acknowledges that there is no indication of any order, under Rule 2-322(c), dismissing the claims against Maurice Izzard or Styles Unlimited after the prescribed time for amending the complaint. JN nevertheless infers that, because the judge made a remark suggesting his intent to "close . . . out" the case, the court probably intended for the order of May 30, 2019, to be the final judgment.

JN's theory "ignores the need to provide the public, not just the litigants, with a clear indication of when judgment is entered." *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 495 (2014). Under Rule 2-601, a judgment becomes effective only when it is set forth on a separate document and entered onto the docket of the court's electronic management system. *See Lee v. Lee*, 466 Md. 601, 621 (2020). The separate-document requirement "'must be mechanically applied in determining whether an appeal is timely.'" *Hiob v. Progressive Am. Ins. Co.*, 440 Md. at 475 (quoting *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 386 (1978)) (further quotation marks and citation omitted). "[T]he mechanical application of the requirement is relaxed only when it will prevent the loss of a right to appeal." *Id.* at 475 (citing *Bankers Trust Co. v. Mallis*, 435 U.S. at 386-87). Docketing of the separate document is necessary to "ensure[] that 'litigants, third

parties, and the public have access to the disposition of every civil claim brought in Maryland's circuit courts.'" *Id.* at 500 (quoting *Tierco Maryland, Inc. v. Williams*, 381 Md. 378, 394 (2004)). Accordingly, even if the court intended to dismiss the claims against the other defendants, the final disposition of those claims must be set forth on a separate document and entered onto the docket.

On remand, the parties may obtain the resolution of the claims against the remaining defendants. Once the court has resolved those claims, it must reflect its decision in a separate document (*see* Md. Rule 2-601(a)(1)), which, when entered on the docket of the court's electronic case management system (*see* Md. Rule 2-601(b), (d)), will establish when the time to appeal begins to run. *See generally Lee v. Lee*; 466 Md. 601 (2020); *Hiob v. Progressive Am. Ins. Co.*, 440 Md. at 490, 503-04. The Hookers must then note a timely appeal. If the parties agree in a written motion in this Court, we will allow the briefs and record extract in this appeal to serve as the briefs and record extract in the Hookers' future appeal.

APPEAL DISMISSED. APPELLANTS TO PAY 50 PERCENT OF THE COSTS. APPELLEE TO PAY 50 PERCENT OF THE COSTS.