Circuit Court for Baltimore County
Case No. 03-C-17-010806

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 440

September Term, 2018

BALTIMORE COUNTY GOVERNMENT

v.

RONALD ENSOR

Graeff,
Shaw Geter,
Ripken, Laura S.,
(Specially Assigned)

JJ.

Opinion by Ripken, J.

Filed: July 3, 2019

*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.

The Employees' Retirement System of Baltimore County (the "ERS"), appellant, challenges the April 3, 2018 order of the Circuit Court for Baltimore County denying (1) ERS's Motion to Stay Enforcement of an administrative agency's ruling that Roland Ensor, appellee, could remove his former girlfriend, Darlene Ruth Wentz, as his beneficiary for his retirement benefit, and (2) ERS's Motion to Join Ms. Wentz as a Necessary Party. The ERS contends that the administrative agency improperly interpreted the code, and the agency and the circuit court denied Ms. Wentz procedural due process by failing to include her as a necessary party before taking away her property interest in the survivor benefit.

We will not address these contentions on the merits because, as explained below, the appeal is not from a final judgment, and the April 3, 2018 order is not otherwise appealable. Accordingly, the appeal is dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

Roland Ensor was an employee of Baltimore County. Upon retirement, Mr. Ensor elected a discontinued service retirement benefit designating his then wife as the beneficiary. In 2011, Mr. Ensor and his wife divorced. Mr. Ensor subsequently designated his then girlfriend, Ms. Wentz, as the beneficiary. By 2017, Mr. Ensor and Ms. Wentz had separated and were no longer in a relationship. Mr. Ensor attempted to remove Ms. Wentz as his beneficiary. The ERS informed Mr. Ensor that the only way Ms. Wentz could be removed as his beneficiary was in the event of her death, the only other option being divorce, which was not applicable. Mr. Ensor then appealed this decision to the Office of

Administrative Hearings ("OAH"). The OAH denied Mr. Ensor's appeal.

Mr. Ensor appealed the OAH ruling to the Board of Appeals of Baltimore County ("CBA"). The appeal was on the record, and the CBA reversed the OAH order, allowing Mr. Ensor to remove Ms. Wentz as his beneficiary. The CBA found that the only issue was one of law, i.e. interpretation of the Baltimore County Code, and thus no deference was due to the OAH ruling.

The ERS filed a Petition for Judicial Review in the Circuit Court for Baltimore County. The ERS also filed a Motion to Stay the CBA Order and a Motion to Join Darlene Wentz as a Necessary Party. On April 3, 2018, the court denied the ERS's Motion to Stay the CBA Order and denied ERS's Motion to Join Ms. Wentz as a Necessary Party. Of note, no hearing was held in the circuit court, nor was a decision rendered on the merits of the CBA finding.

After the motions to stay and to join Ms. Wentz as a party were denied, Mr. Ensor removed Ms. Wentz as his beneficiary and named a new beneficiary. The ERS noted its appeal.

DISCUSSION

The ERS argues that the circuit court order is a final judgment and is appealable because it terminates the rights of Ms. Wentz to receive the survivor benefits. Mr. Ensor argues that the circuit court order does not constitute a final judgment because the court did not intend its ruling to be a final disposition of the matter, nor is it an appealable interlocutory order. For these reasons, Mr. Ensor contends that the appeal before this Court

should be dismissed as the appeal is not allowed by law. We agree.

Ordinarily, a party may appeal only from a final judgment. Md. Code (2013 Repl. Vol.) § 12-301 of the Courts and Judicial Proceedings Article ("CJP"); *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989). A final judgment must "(1) be intended by the court as an unqualified, final disposition of the matter in controversy, … (2) adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record …." *Rohrbeck*, 318 Md. 28 at 41. With respect to the first attribute, we look to whether "there was any contemplation that a further order was to be issued or that anything more was to be done." *Id.* at 42. As to the second attribute, we look to whether the circuit court adjudicated or completed the adjudication of all claims against all parties. Maryland Rule 2-602(a) provides that "an order 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." The third *Rohrbeck* attribute is that the clerk must make a final record. Rule 2-601(c) requires the clerk to "(1) record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court and (2) note on the docket the date the clerk sent copies of the judgment …." The clerk is required to enter the judgment as directed by the court. *Rohrbeck*, 318 Md. 28 at 46 (citing *Hudson Bldg. Supply Co. v. Stulman,* 258 Md. 304 (1970)).

The Court of Appeals was asked in *Rohrbeck* to determine whether a final judgment was entered prior to the trial court considering proposed Qualified Domestic Relations Orders ("QDROs") that were to be submitted by counsel for the court's consideration. In

Rohrbeck, a hearing was held with respect to the parties' divorce that resolved the pertinent issues, with the exception of the husband's pension plans, which were to be reflected in the form of QDROs. The court agreed to counsel's request, allowing the proposed QDROs to be submitted at a later date for the court to review. Upon receipt of the proposed QDROs, the court declined to sign them, indicating that a final judgment had been entered pursuant to the hearing.

The *Rohrbeck* Court held there was not a final judgment, explaining:

> To be final and conclusive in that sense, the ruling must necessarily be unqualified and complete, except as to something that would be regarded as collateral to the proceeding. It must leave nothing more to be done in order to effectuate the court's disposition of the matter. In the first instance, that becomes a question of the court's intention: did the court intend its ruling to be the final, conclusive, ultimate disposition of the matter?

Id. at 41.

The Court further held the trial court's determination that a final judgment had been entered was error, as a "final, effective determination by the court did not come until … consider[ation] was [given to] the proposed orders." *Id.* at 43. Therefore, the first factor was not satisfied since there was not an unqualified disposition of the matter in controversy. With respect to the second prong, the Court ruled there was no final judgment as there were claims in the case that remained unresolved since the trial court had allowed counsel to prepare and submit the QDROs for the court's review. *See id.* at 44-45. Until there was a determination on the QDROs, there could not be a final adjudication. *Id.* Last, the *Rohrbeck* Court, upon review of the hearing docket entry, found that judgment was not properly

recorded because the docket entry "did not reflect the recording of a judgment 'as directed by the court.'" *See id.* at 46 (citing Rule 2-601). Thus, the third factor was not satisfied.

In the case at bar, we look to the *Rohrbeck* attributes to determine whether there was a final judgment. Of note, the circuit court hearing was held on March 22, 2018, regarding the aforementioned motions. The court and counsel made the following relevant comments:

> [Court]: "It looks like the trial date is April or May."
>
> [Mr. Bauhof]: "May 3, Your Honor."
>
> [Court]: "Okay."
>
> [Mr. Bauhof]: "There was a motion to dismiss deadline of 2/8, and all motions, excluding motions in limine, 3/24, so that's kind of coming up."
>
> …
>
> [Court]: "***It's got a May trial date.*** I completely agree with you that the matter needs to be promptly heard and promptly resolved, so that whatever your client's ability is to change this, it's honored, but I don't see a basis to stay at the present time."

(emphasis supplied).

Based on this exchange, it is evident that the intent of the court was that a trial was to be held and a further order was to be issued by the court. Specifically, there were upcoming motion deadlines and a trial date was set. Therefore, clearly the court did not intend for the order in question to be "an unqualified, final disposition of the matter in controversy." *See id.* at 41. We are, thus, not persuaded that the order in question meets the first *Rohrbeck* attribute.

As to the second attribute, the circuit court order denying the Motion to Stay and the Motion to Join did not adjudicate all the claims. The matter in controversy in the present case is the merits of the CBA decision regarding the interpretation of the county code, as it relates to the conditions for removing a beneficiary, which was not resolved by the circuit court's order. The Motion to Stay and the Motion to Join Ms. Wentz as a Necessary Party were ancillary motions to the Petition for Judicial Review. They did not address the merits of the CBA's interpretation of the Code and, thus, did not adjudicate or complete the adjudication of all claims against all parties. Hence, the second *Rohrbeck* attribute was not met.

As to the third attribute, upon review of the order in the case *sub judice*, there is no language instructing the clerk to enter judgment. The order specifically indicates that the matter was before the court on judicial review, noting the intended future proceedings. The clerk was not instructed by the language of the order to enter judgment. Therefore, the third attribute has not been met.

We conclude based on the relevant rules, statutes, and Maryland case law, there has not been a determination on the merits of the case and thus, the circuit court order is not a final judgment.

In the absence of a final judgment, we consider the three exceptions articulated in *Ford Motor Co.* that provide a mechanism for an appeal. "A party may only appeal a non-final judgment: (1) from the specific orders enumerated by the Courts and Judicial Proceedings Article; (2) when the trial court determines there is no just reason for delay

and directs the entry of a final judgment on one or more but fewer than all of the claims or parties pursuant to Maryland Rule 2-602(b); or (3) from orders that fall under the collateral Order doctrine." *Ford Motor Co. v. Ferrell*, 188 Md. App. 704, 712 (2009).

With respect to the first exception, we turn to the specific orders enumerated in CJP § 12-303, which provides:

> A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:
>
> ***(1) An order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order;***
>
> (2) An order granting or denying a motion to quash a writ of attachment; and
>
> (3) An order:
>
> (i) Granting or dissolving an injunction, but if the appeal is from an order granting an injunction, only if the appellant has first filed his answer in the cause;
>
> (ii) Refusing to dissolve an injunction, but only if the appellant has first filed his answer in the cause;
>
> (iii) Refusing to grant an injunction; and the right of appeal is not prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on behalf of any opposing party, nor by the taking of depositions in reference to the allegations of the bill of complaint to be read on the hearing of the application for an injunction;
>
> (iv) Appointing a receiver but only if the appellant has first filed his answer in the cause;
>
> (v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or

> discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court;
>
> (vi) Determining a question of right between the parties and directing an account to be stated on the principle of such determination;
>
> (vii) Requiring bond from a person to whom the distribution or delivery of property is directed, or withholding distribution or delivery and ordering the retention or accumulation of property by the fiduciary or its transfer to a trustee or receiver, or deferring the passage of the court's decree in an action under Title 10, Chapter 600 of the Maryland Rules;
>
> (viii) Deciding any question in an insolvency proceeding brought under Title 15, Subtitle 1 of the Commercial Law Article;
>
> (ix) Granting a petition to stay arbitration pursuant to § 3-208 of this article;
>
> (x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order; and
>
> (xi) Denying immunity asserted under § 5-525 or § 5-526 of this article.

(emphasis supplied).

The only potential applicable scenario is under CJP § 12-303(1), which this Court has explained, as follows:

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Knapp v. Smethurst, 139 Md. App. 676, 706 (2001) (citing *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

We are not persuaded that Ms. Wentz had a property interest in Mr. Ensor's benefits as Mr. Ensor was the only one who contributed to the benefits. There is no evidence that she had an "unilateral expectation of it" nor are we persuaded that the ERS has established Ms. Wentz had a "legitimate claim of entitlement" to said benefits. Therefore, the first exception under *Ford Motor Co.* is not satisfied.

As noted, the second *Ford Motor Co*. exception permits an appeal of an order that directed entry of a final judgment under Maryland 2-602(b). Maryland Rule 2-602(b) provides,

> 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:
>
> (1) as to one or more but fewer than all of the claims or parties; or
>
> (2) pursuant to Rule 2-501 (f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

As indicated *supra*, we determine whether the written order in the present case expressly contains such language. It does not. This exception is not applicable.

The last exception, the collateral order doctrine, provides jurisdiction over non-final orders under the following factors: (1) the order must conclusively determine the disputed question; (2) the order must resolve an important issue; (3) the order must resolve an issue that is completely separate from the merits of the action; and (4) the order must be effectively unreviewable if the appeal had to await the entry of a final judgment. *Stephens*

v. State, 420 Md. 496 (2011); *Ehrlich v. Grove*, 396 Md. 550, 563 (2007); *See Ford Motor Co.,* 188 Md. App. at 713-14 (citing *Royal Financial v. Eason,* 183 Md. App. 496, 499–500 (2008)).

In *Ford Motor Co.*, the appellees' filed a class action complaint against Ford Motor Credit Company. The trial court certified the action as a class action and appellant appealed, arguing that the collateral order doctrine applied. The *Ford Motor Co.* Court found that a class certification order did not constitute a final judgment and was not appealable under the collateral order doctrine. The appeal was dismissed. This Court there said that a class certification order does not completely determine that the action will proceed as a class action as said order can be revised. *Ford Motor Co*., 188 Md. App. at 714. Further, that a class certification order is unable to resolve important issues separate from the merits because "class certification involves considerations enmeshed in factual and legal issues comprising the plaintiff's cause of action." *Id.* at 715. Last, the Court indicated that it did not find the order was unreviewable if the appeal had to wait the entry of a final judgment as the class action status would not impose an "extraordinary and irreparable burden," nor would there be additional time and expense required. *Id.* at 716. Hence, in *Ford Motor Co*. this Court held the four factors were not met, and the collateral order exception did not apply. *See id.* 714-716.

Similar to *Ford Motor Co.*, in the present case, the motions in question did not conclusively determine the issue of judicial review. The motions solely address preliminary issues. Said motions do not conclusively resolve an important issue that is completely

separate from the merits. Hence, the first three factors are not satisfied. With respect to the fourth factor, we are not persuaded that the order would be effectively unreviewable if the appeal had to wait as there has been no evidence of an "extraordinary or irreparable burden." We therefore conclude that the collateral order exception is inapplicable.

Because the April 3, 2018 order is not a final judgment, nor is it an order that is otherwise appealable, the ERS appeal is dismissed.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.