UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

MARK MEADE

v.

KIDDIE ACADEMY DOMESTIC FRANCHISING, LLC

No. 0940, September Term, 2014

LAUREN MEADE

v.

KIDDIE ACADEMY DOMESTIC FRANCHISING, LLC

No. 1074, September Term, 2014

Eyler, Deborah S.,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: October 20, 2015

Kiddie Academy Domestic Franchising LLC ("Kiddie Academy") brought claims against Mark Meade and his daughter Lauren Meade, seeking to recover a debt that they had guaranteed, as well as contract-based attorneys' fees and litigation costs. After Kiddie Academy prevailed at trial, the trial court issued what it called a judgment for $253,043.31, representing the principal amount owed by the Meades. The court, however, expressly reserved judgment on the damages for attorneys' fees.

The Meades, representing themselves, separately filed two notices of appeal from the court's order. Thereafter, the court entered a judgment against the Meades for $234,004.96 in attorneys' fees. The Meades did not appeal from that final judgment.

We must dismiss the appeals in this case because the Meades noted their appeals before the entry of final judgment.

PROCEDURAL BACKGROUND

Kiddie Academy is a limited liability company with principal offices in Bel Air, Maryland. In 2006, Kiddie Academy entered into franchise agreement with Dasoda Corporation, which the Meades owned. Under this agreement, Kiddie Academy authorized Dasoda to operate a child care learning center in Jackson, New Jersey, as a franchise of Kiddie Academy. As part of the agreement, Dasoda agreed to pay royalties and advertising fees based on a percentage of the franchise's gross revenue. The Meades, owners and principals of Dasoda, signed a guaranty agreement in which they agreed to be personally liable for Dasoda's obligations.

On January 10, 2011, Kiddie Academy filed a complaint against the Meades in the Circuit Court for Harford County. According to the complaint, Dasoda had failed to pay royalties and advertising fees under the agreement. Kiddie Academy asked the court to enter a judgment against the Meades, as guarantors, for the unpaid balance of all royalties and advertising fees, interest, late fees and penalties, "plus the costs of attorneys' fees associated with these proceedings[.]" The complaint relied on a contractual provision in which Dasoda promised to "reimburse [Kiddie Academy] for all reasonable costs incurred by [Kiddie Academy] in pursuing the enforcement of th[e] Agreement," including but not limited to "court costs [and] reasonable attorney's fees[.]"

Mark Meade, representing himself, filed a counterclaim against Kiddie Academy and joined three of Kiddie Academy's officers. Mr. Meade sought millions of dollars in damages for, among other things, fraud, breach of contract, and violations of the Maryland Franchise Registration and Disclosure Law, the Securities Exchange Act of 1934, and the Federal Trade Commission Act.[1]

Kiddie Academy and its officers moved to dismiss Mr. Meade's claims, citing a release in a 2009 forbearance agreement. On January 26, 2012, the court granted the motion as to all claims that had arisen before the effective date of the release. Mr. Meade responded by filing a notice of appeal from the court's interlocutory order. On the appellees' motion, this Court dismissed that premature appeal, and the Court of Appeals

[1] Mr. Meade expressed an intention to join CIT Small Business Lending and one of its account managers on other statutory fraud claims related to a small business loan. The docket contains nothing to indicate that Mr. Meade ever effectuated service of process on either of those parties or that they became parties to the case.

denied Mr. Meade's petition for certiorari. *Mark Meade v. Kiddie Academy Domestic Franchising, LLC, et al.*, No. 2851, Sept. Term 2011 (filed Aug. 22, 2012), *cert. denied*, 429 Md. 83 (2012).

After the circuit court dismissed the remaining claims against Kiddie Academy's corporate officers, the case proceeded to a jury trial on Kiddie Academy's claims against the Meades. At the close of all evidence, the court granted Kiddie Academy's motion for judgment on its claim for breach of contract.

In an order entered on July 10, 2014, the court ordered the entry of judgment against the Meades, jointly and severally, in the amount of $253,043.31. In that order, the court formally dismissed the remaining counterclaims that Mr. Meade had asserted against Kiddie Academy. The order, however, expressly reserved judgment on the issue of Kiddie Academy's contract-based claims for attorneys' fees. Both the court's written order and the accompanying docket entry stated that "Plaintiff's request for attorney's fees is reserved."

Five days later, Mark Meade, representing himself, filed another notice of appeal, purportedly from the circuit court's order of July 10, 2014. Lauren Meade, also representing herself, filed her own notice of appeal a few weeks later. This Court later consolidated the two appeals.

Meanwhile, on September 8, 2014, Kiddie Academy filed a motion titled "Petition for Award of Attorney's Fees." The motion explained that "Kiddie Academy seeks recovery of its attorney's fees under the provisions of a contract." Kiddie Academy

attached documentation regarding the amount and reasonableness of its contractual fee request. The court granted the motion on the ground that it was unopposed.

In an order entered on September 17, 2014, the court ordered the Meades to pay Kiddie Academy "reasonable attorney's fees in the amount of $234,647.96" and that judgment be entered in that amount against the Meades, jointly and severally. Kiddie Academy then alerted the court to a mathematical error in its fee calculation, and asked the court to reduce the judgment by several hundred dollars. On October 1, 2014, the court issued an order amending its prior judgment and entering a new judgment for $234,004.96 in attorney's fees. Neither Mark nor Lauren Meade filed a new notice of appeal.

QUESTIONS PRESENTED

In their appellate brief, the Meades, who are representing themselves, raise three substantive challenges to the judgment,[2] but we have no jurisdiction to address those

[2] The Meades' brief poses these questions:

I. WHETHER THE COURT BELOW MISAPPLIES APPLICABLE LAW AND CONTROLLING LAW AND EXCEEDS ITS AUTHORITY IN EXERCISING JURISDICTION OVER A FOREIGN DEFENDANT, WHEN THE COURT BELOW HAD NO JURISDICTION.

II. WHETHER THE TRIAL COURT AND THE MOTION COURT ERR AND MISAPPLY THE LAW AND EXCEED THEIR AUTHORITY BY ENFORCING THE EXCULPATORY CLAUSE WHICH IS AGAINST PUBLIC POLICY AND THE CONTROLLING LAW.

III. WHETHER THE TRIAL COURT ERRED AND MISAPPLIED THE RULES OF EVIDENCE WHICH UNJUSTLY DENIED THE APPELLANTS ADMISSABILITY OF ADMISSABLE [sic] EVIDENCE (continued…)

challenges. For the second time in this case, the Meades have appealed at the wrong time. The Meades noted their appeals before the court had fully adjudicated Kiddie Academy's claim for breach of contract by determining the amount of attorneys' fees awardable under the contract. Once again, therefore, we must dismiss the Meades' appeal because it was taken before the entry of final judgment. *See* Md. Rule 8-602(a)(1), (a)(3).

DISCUSSION

Appellate jurisdiction in Maryland is delimited by statutory provisions and rules. *See Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 240 (2010) (citing *Biro v. Schombert*, 285 Md. 290, 293 (1979)). Consequently, this Court, "on its own initiative, . . . may dismiss an appeal" if "the appeal is not allowed by [the Maryland Rules] of other law," or if "the notice of appeal was not filed with the [circuit] court" within the time prescribed by the Maryland Rules. Md. Rule 8-602(a)(1), (a)(3). This Court on its own motion will raise the jurisdictional matter of whether the trial court has entered an appealable order even if that issue goes unnoticed by the parties. *See Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 655, *cert. denied*, 440 Md. 116 (2014); *Barnes v. Barnes*, 181 Md. App. 390, 406 (2008); *Anne Arundel Cnty. v. Cambridge Commons L.P.*, 167 Md. App. 219, 225 & n.2 (2005); *Rustic Ridge, L.L.C. v. Washington Homes, Inc.*, 149 Md. App. 89, 92 & n.1 (2002); *Tharp v. Disabled Am. Veterans Dep't of Maryland, Inc.*, 121 Md. App. 548, 557 (1998).

RESULTING IN THE DISMISSAL OF THE JURY AND THE ENTERING OF SUMMARY JUDGMENT.

By statute, a party to a civil case may appeal from a final judgment entered by a circuit court. *See* Md. Code (1974, 2013 Repl. Vol., 2015 Supp.), § 12-301 of the Courts and Judicial Proceedings Article. Conversely, a party ordinarily cannot appeal a judgment that is not final. *Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric*., 439 Md. 262, 278 (2014) (citing *Nnoli v. Nnoli*, 389 Md. 315, 324 (2005)); *see Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 475 (2014) ("appellate jurisdiction in Maryland is ordinarily limited to review of final judgments"). Subject to only a few narrowly drawn exceptions, "'the right to seek appellate review of a trial court's ruling ordinarily must await the entry of a final judgment that disposes of all claims against all parties[.]'" *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 273-74 (2009) (quoting *Salvagno v. Frew*, 388 Md. 605, 615 (2005)).

The time for filing a notice of appeal is governed by Md. Rule 8-202, which states: "Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days *after* entry of the judgment or order from which the appeal is taken." (Emphasis added.) In civil cases, "the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within" that prescribed time period. Md. Rule 8-201(a). An appeal is jurisdictionally defective if a party files the notice of appeal before the entry of final judgment. *Sovereign Grace Ministries*, 217 Md. App. at 662 (citing *Jenkins v. Jenkins*, 112 Md. App. 390, 408 (1996)). A premature notice of appeal neither confers jurisdiction on the appellate court nor divests the trial court of jurisdiction to enter a final judgment in the case. *See Quillens v. Moore*, 399 Md. 97, 121 (2007) (citing *Makovi v. Sherwin-Williams Co.*, 311 Md. 278, 283 (1987)).

"An order will constitute a final judgment if the following conditions are satisfied: (1) 'it must be intended by the court as an unqualified, final disposition of the matter in controversy;' (2) 'it must adjudicate or complete the adjudication of all claims against all parties;' and (3) 'the clerk must make a proper record of it' on the docket." *Waterkeeper*, 439 Md. at 278 (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)); *see also Hiob*, 440 Md. at 489; Md. Rule 2-602(a) (providing that order or other form of decision that adjudicates less than an entire claim, or fewer than all claims in an action, is not final judgment and remains subject to revision at any time before entry of judgment that adjudicates all claims).

In the instant case, the Meades did not appeal from a final judgment. Although properly recorded and indexed by the clerk, the July 10 order (which dismissed their counterclaims and determined the Meades' primary liability for breach of contract) reflected only a qualified, non-final disposition of the case because it did not fully adjudicate the pending, contractual claim for attorneys' fees, an element of Kiddie Academy's breach of contract claim.

"In considering whether a particular court order or ruling constitutes a final, appealable judgment," the appellate court examines "whether the order was 'unqualified,' and whether there was 'any contemplation that a further order [was to] be issued or that anything more [was to] be done.'" *Miller & Smith at Quercus*, 412 Md. at 243 (quoting *Rohrbeck*, 318 Md. at 41-42); *see Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 299 (2015) ("[t]he order must be a complete adjudication of the matter in controversy, except as to collateral matters, meaning that there is nothing more to be done to effectuate

the court's disposition") (citing *Nnoli v. Nnoli*, 389 Md. at 324). The order from which the Meades appealed was plainly a qualified disposition of the breach of contract claim from Kiddie Academy's complaint: the written order as well as the accompanying docket entry expressly stated that a decision on Kiddie Academy's "request for attorney's fees [wa]s reserved."

Because the July 10 order did not decide the amount of contract-based attorneys' fees demanded in Kiddie Academy's complaint, the order did not fully adjudicate the underlying claim for breach of contract. "Unlike cases involving the recovery of statutorily-permitted or rules-based attorneys' fees, where we have determined that a claim to attorneys' fees is collateral to or independent from the merits of the action, . . . attorneys' fees awardable pursuant to a contract are an inherent part of a breach of contract claim[.]" *Monarc Construction, Inc. v. Aris Corp.*, 188 Md. App. 377, 393 (2009); *see AccuBid Excavation, Inc. v. Kennedy Contractors, Inc.*, 188 Md. App. 214, 230-31 (2009); *Schisler v. State*, 177 Md. App. 731, 748 & n.4 (2007); *Sea Watch Stores LLC v. Council of Unit Owners of Sea Watch Condo.*, 115 Md. App. 5, 51-52 (1997); *see also* Md. Rule 2-704 (rule governing claims for "attorneys' fees allowed by a contract as an element of damages").

A contract claim is not fully adjudicated, and thus no final judgment can be entered, until the court resolves pending claims for attorneys' fees that are based on a contractual right. *See G-C Partnership v. Schaefer*, 358 Md. 485, 486-88 (2000) (per curiam) (holding that appeal must be dismissed where guarantors appealed from orders granting summary judgment against them because "the counsel fees that were awardable

pursuant to the contract form part of the claim for breach of contract, but [those fees] had not been determined when the [] appeal was noted"); *Mattvidi Assocs. Ltd. Partnership v. NationsBank of Virginia, N.A.*, 100 Md. App. 71, 78 n.1 (where judgment against borrower and guarantors had been "entered on the awards of principal, interest, and late charges" and then court later issued order for attorneys' fees and litigation expenses, holding that judgment in the case "was not final until judgment on the attorneys' fees award was entered"), *cert. denied*, 336 Md. 277 (1994); *see also Northern Assurance Co. v. EDP Floors, Inc.*, 311 Md. 217, 221-22 (1987) ("counsel fees were sought as damages for breach of the insurance contract" and thus the "breach of contract claim was not finally adjudicated until the counsel fee was determined").

An appeal is premature when a party files a notice of appeal after the court makes a decision on the issue of breach of contract, but before the court determines the availability and the amount of counsel fees awardable pursuant to the contract. *See Carr v. Lee*, 135 Md. App. 213, 221-24 (2000), *cert. denied*, 363 Md. 206 (2001). In those circumstances, a party may preserve the right to appeal by filing another notice of appeal after the court has made a decision on the attorneys' fee issue (and has embodied its decision in a separate order that is properly entered on the docket). *See Mattvidi*, 100 Md. App. at 78 n.1. A party may, however lose the right to appeal altogether if he or she fails to file another notice of appeal after the court enters written orders awarding contract-based counsel fees.

In *Carr v. Lee*, 135 Md. App. at 226, we explained that there "is more than a timing issue," but a fundamental jurisdictional problem, when a party appeals from an

order that does "not resolve all issues, and [that is] not a final judgment." While this application of the final judgment rule may appear harsh, a uniform final judgment rule itself serves "'to promote the judicial system's interest in finality of judgment and confidence in the judicial disposition of disputes.'" *Id.* at 229 (quoting *Jenkins*, 112 Md. App. at 408-09).

In this case, the damages for contractually-based counsel fees formed part of Kiddie Academy's breach of contract claim, and the court had expressly reserved judgment on that portion of the claim when the Meades noted their appeal. Under the circumstances, the court did not, and could not, enter a final judgment until September 17, 2014, at the earliest, when the clerk docketed an order that determined the Meades' liability for attorneys' fees and litigation costs under the contract. The Meades' appeals, which predated September 17, 2014, were, therefore, premature.[3]

In this case, the court ordered the entry of a "judgment" on the principal amount due on the guaranty even though it had yet not resolved the issue of Kiddie Academy's contractual right to attorneys' fees. As a consequence, the Meades, who are self-represented residents of another state (and who contested the circuit court's jurisdiction over them), have lost their right to seek review of the trial court's decisions. It is

[3] Federal law is different. In federal court, a contractual claim for attorneys' fees does not prevent a ruling on the merits from becoming a final judgment. Thus, in a federal case involving a contractual claim for attorneys' fees, a party must note an appeal from the decision on the merits in order to obtain appellate review of the decision on the merits. If the party waits until the court decides the issue of fees, the appeal on the merits is too late. *See Ray Haluch Gravel Co. v. Central Pension Fund of the Int'l Union of Operating Engineers*, ___ U.S. ___, 134 S. Ct. 773 (2014).

unfortunate that the Meades did not have a competent Maryland attorney who could have advised them to file notices of appeal after the court had issued its orders regarding attorneys' fees. Nevertheless, the Maryland Rules apply equally to self-represented litigants and represented parties alike. *See Tretick v. Layman*, 95 Md. App. 62, 68 (1993). The rules regarding the timing for a notice of appeal are not exceptional in that regard.[4]

Under the circumstances, we are constrained to conclude that we lack jurisdiction to consider the substantive issues in the Meades' appeals because they noted their appeals prematurely. Because these appeals are not permitted by rules or statute (Md. Rule 8-602(a)(1)), and because the notices of appeal in this case were not filed with the circuit

[4] In cases commenced on or after January 1, 2014, that involve a claim for attorneys' fees that are allowed by contract as an element of damages for breach, evidence concerning the fees "[g]enerally" should "be presented in the party's case-in-chief[.]" Md. Rule 2-704(d)(1). "[W]here the evidence regarding attorneys' fees is likely to be extensive," a committee note recognizes that "it may be expedient to defer the presentation of such evidence and resolution of that claim until after a verdict or finding by the court establishing an entitlement to an award." Committee Note to Md. Rule 2-704(c). But where the court chooses to defer the consideration of the fee award, it is "especially critical[] that, although the verdict or findings on the underlying cause of action should be docketed, no judgment should be entered thereon until the claim for attorneys' fees is resolved and can be included in the judgment." *Id.*; *see* Md. Rule 2-704(f) ("An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be separately stated").

court within the time period prescribed by Rule 8-202, we must dismiss these appeals on our own initiative. *See* Md. Rule 8-602(a)(3).[5]

APPEAL DISMISSED. COSTS TO BE EVENLY DIVIDED BETWEEN APPELLANTS AND APPELLEE.

[5] Mr. Meade has filed for protection from his creditors under the federal bankruptcy code, which has resulted in an automatic stay of Kiddie Academy's efforts to enforce the judgment against him. *See* 11 U.S.C. § 362(a)(1). The automatic stay, however, has no bearing on this Court's ability to dismiss Mr. Meade's appeal. The automatic stay "does not 'preclude another court from dismissing a case on its docket or . . . affect the handling of a case in a matter not inconsistent with the purpose of the automatic stay.'" *Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 966 F.2d 457, 458-59 (9th Cir. 1992) (quoting *Dennis v. A.H. Robins Co.*, 860 F.3d 871, 872 (8th Cir. 1988) (per curiam)). The dismissal of this appeal will not allow Kiddie Academy to execute on the judgment, nor will it elevate Kiddie Academy's rights over the rights of Mr. Meade's other creditors. Consequently, it would serve no statutory purpose to delay the dismissal of Mr. Meade's untimely appeal. *Indep. Union of Flight Attendants*, 966 F.2d at 459.