Circuit Court for Allegany County
Case No.: C-01-CV-24-000119

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1316

September Term, 2024

WAYNE RESPER

v.

SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, *et al.*

Shaw,
Ripken,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 1, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Wayne Resper, appellant, is incarcerated in the Western Correctional Institution in Cumberland. In March 2024, Resper and six other incarcerated individuals sued the Department of Public Safety and Correctional Services and other State agencies (collectively, "the Department"), appellees, in the Circuit Court for Allegany County, seeking injunctive relief. Soon after, Resper and his co-plaintiffs filed a motion asking the court to: (1) execute a permanent injunction; (2) certify the plaintiffs as a class; (3) appoint them experienced counsel; and (4) appoint a monitor and investigative researchers to the case. The court denied the motion. The court also observed that it has received evidence that only Resper has received inadequate medical treatment and expressed concern that, since neither Resper nor any of his co-plaintiffs are members of the Maryland bar or represented by one, the request to certify them as a class "would amount to the unauthorized practice of law[.]" Consequently, the court dismissed Resper's co-plaintiffs from the case. Resper appealed.

We must first define the scope of our review. In Maryland, "the right to seek appellate review is statutory[.]" *Douglas v. State*, 423 Md. 156, 170 (2011) (cleaned up). Section 12-301 of the Courts & Judicial Proceedings Article provides that, generally, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court." Here, the circuit court's order is not appealable as a final judgment because it did not "adjudicate or complete the adjudication of all claims against all parties;" Resper's claims remain pending. *Waterkeeper All., Inc. v. Md. Dep't of Agric.*, 439 Md. 262, 278 (2014).

There are, however, three exceptions to the final judgment rule: "(1) appeals from interlocutory orders specifically allowed by statute; (2) immediate appeals permitted when a circuit court enters final judgment under Maryland Rule 2-602(b); and (3) appeals from interlocutory rulings allowed under the common law collateral order doctrine." *In re O.P.*, 470 Md. 225, 250 (2020) (footnote omitted). The provisions of the court's order here denying class certification, appointment of counsel, and appointment of a monitor and investigative researchers do not fall within any of these exceptions. They are not specifically allowed by statute or Rule and do not fall within the collateral order doctrine because they remain reviewable after a final judgment. *See* Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 12-303; *Ford Motor Co. v. Ferrell*, 188 Md. App. 704, 714–15 (2009).

On the other hand, the provision of the court's order denying an injunction is immediately appealable under CJP § 12-303(3)(iii). We review a court's decision to grant or deny a preliminary injunction[1] for an abuse of discretion. *See Ademiluyi v. Egbuonu*, 466 Md. 80, 93 (2019). Maryland Rule 15-505(a) forbids a court from issuing a preliminary injunction "without notice to all parties and an opportunity for a full adversary hearing on the propriety of its issuance." The court here observed that there had not been notice to all the parties regarding an injunction or an opportunity for an adversary hearing. It therefore did not abuse its discretion in refusing to issue an injunction.

JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[1] Resper's motion asked the court to issue a "permanent injunction." Given the procedural posture of the case, however, it functionally sought a preliminary injunction.