UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1977

September Term, 2015

HENRI JEAN-BAPTISTE

v.

AT&T WIRELESS, *et al*.

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 6, 2017

In July 2015, Henri Jean-Baptiste, appellant, filed an amended complaint, in the Circuit Court for Montgomery County, raising various claims against Shady Grove Adventist Hospital; Adventist Behavioral Health; Samina Yousufi, M.D.; the Montgomery County Police Department; Montgomery County Police Officer David Mitchell; Medical Emergency Professionals, LLC; William Dooley, M.D.; Nilantha Lenora, M.D.; AT&T Wireless (AT&T); and Vicki Jean-Baptiste, appellees. Those claims were apparently based on a 2012 incident where appellant was involuntarily committed for an emergency mental health evaluation as a result of an alleged suicide attempt.

On October 20, 2015, the circuit court issued an order dismissing appellant's claims against some, but not all, appellees. Appellant filed a notice of appeal from that order on November 16, 2015. On November 30, 2015, the circuit court entered an order dismissing appellant's remaining claims and dismissing his amended complaint without prejudice. Appellant did not subsequently file a new notice of appeal. For the reasons that follow, we dismiss the appeal.

This Court only has jurisdiction over an appeal when the appeal is taken from a final judgment or is otherwise permitted by law, and a timely notice of appeal is filed. *See Shofer v. Stuart Hack Co.,* 107 Md. App. 585, 592 (1996). The circuit court's October 20, 2015, order was not a final judgment because it did not dispose of all the claims against all the parties in appellant's amended complaint. *See Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 241 (2010) (noting that a "final judgment" is a judgment that "disposes of all claims against all parties and concludes the case"). Moreover, it was not appealable as an interlocutory order. *See* Md. Code (1973, 2013 Repl.Vol.), § 12-303 of

the Courts and Judicial Proceedings Article ("CJP") (setting forth the types of interlocutory orders that are immediately appealable). Therefore, appellant's notice of appeal was prematurely filed and his appeal is subject to dismissal. *See Jenkins v. Jenkins,* 112 Md. App. 390, 408 (1996) (noting that "[p]remature notices of appeal are generally of no force and effect," because a premature appeal is a "jurisdictional defect") *superseded by rule as stated in Bussell v. Bussell,* 194 Md.App. 137, 152–54 (2010).

Nor was his appeal permissible under either of the two provisions in Maryland Rule 8-602 which permit an appeal before a final judgment has been entered. First, Rule 8-602(d) permits such an appeal when a circuit court makes a decision or signs an order that, upon being entered on the docket, would be a final judgment; but the notice of appeal is filed, before the entry on the docket. Here, however, the notice of appeal was filed after the entry on the docket of an order that was not a final judgment.

And, second, when a final judgment is entered by the circuit court after a premature notice of appeal is filed, Rule 8-602(e)(1) allows this Court to treat the notice of appeal as having been filed after the entry of a final judgment if: (1) "the order from which the appeal is taken was not a final judgment when the notice of appeal was filed" and (2) "the lower court had discretion to direct entry of a final judgment pursuant Rule 2-602(b)." But this subsection of Rule 8-602 is of no help to appellant because the October 20, 2015, order could not have been properly certified as a final appealable order under Rule 2-602(b).

Indeed, the circuit court's "discretionary range" to direct entry of a final judgment under Rule 2-602(b) is very "narrow" and "circumscribed by strong policy considerations" disfavoring piecemeal appeals. *Canterbury Riding Condominium v. Chesapeake Investors,*

Inc., 66 Md. App. 635, 648 (1986). For example, in *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650 (2014), the circuit court entered an order that dismissed most of the appellants' claims with prejudice, but dismissed two of their claims without prejudice, granting them leave to amend their complaint within five days (partial dismissal order). *Id*. at 658-59. The appellants filed a premature notice of appeal from that order and, several weeks later, the circuit court entered a final order closing the case. *Id*. at 659-60. This Court dismissed the appeal as premature, holding that Rule 8-602(e)(1) did not apply because it would have been an abuse of discretion for the trial court to certify the partial dismissal order as a final order under Rule 2-602(b). *Id*. at 667-68. Specifically, there we noted that there was "nothing in the record to suggest that a delay in allowing the appellants to appeal from the dismissal of their claims [ ] would have worked a hardship on them" because: (1) within five days from the entry of the partial dismissal order, any party could have moved to dismiss the case if no amended complaint had been filed and (2) if a timely amended complaint had been filed, responsive pleadings would have been due within two weeks, at which point the court could have determined whether the appellants' amended claims survived and, if so, whether it would have been a hardship for them to separately pursue their appeals. *Id*.

At the time appellant filed his notice of appeal in the instant case, the circuit court had already scheduled a hearing for the following week to adjudicate a motion to dismiss that had been filed by the only appellees remaining in the case. If that motion were granted, as it, in fact, was, there would be a final order for appellant to appeal. If it was denied, then the trial court could have determined, at that point, whether it would have been a

hardship for appellant to pursue multiple appeals. As in *Doe*, nothing indicates that waiting an additional week to file the notice of appeal would have presented appellant with an "undue hardship" and, therefore, would have justified the court in making a discretionary departure from the usual rule establishing the time for appeal. Because certification of the October 20, 2015, order as a final order pursuant to Rule 2–602(b) would have constituted an abuse of discretion under the circumstances, Rule 8-602(e)(1) cannot save appellant's premature appeal.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.