Circuit Court for Howard County
Case No. C-13-CV-22-000660

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 413

September Term, 2023

CLIFTON T. PERKINS HOSPITAL, ET AL.

v.

SAMMY L. FRIERSON

Graeff,
Tang,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: May 16, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In this appeal, we are asked to determine whether a workers' compensation claimant qualifies as a "public safety employee" under Md. Code Ann., Lab. & Empl. ("LE") § 9-628(a) and was thus entitled to a higher compensation rate for his work-related injuries.[1] We cannot reach this question, however, because there is no final judgment. Accordingly, we must dismiss the appeal and remand the case to the circuit court for further proceedings.

FACTS AND PROCEDURAL HISTORY[2]

Sammy L. Frierson, the appellee, was a security attendant at Clifton T. Perkins Hospital. He filed two claims with the Workers' Compensation Commission because of injuries sustained while working at the hospital on April 8, 2020 (Claim No. W140796) and October 30, 2021 (Claim No. W170590).

On July 7, 2022, after a hearing, the Commission issued an order resolving each claim. The Commission found that the appellee was a "public safety [employee]" under LE § 9-628(a). It also ordered the hospital (the employer) and the State of Maryland (the employer's insurer), the appellants, to pay the appellee an award of compensation based on percentages of permanent partial disability determined by the Commission.

[1] Generally, an injured worker awarded less than 75 weeks of benefits is paid "compensation that equals one-third of the average weekly wage of the covered employee." LE § 9-628(f). But if the injured worker is a "public safety employee" as defined under LE § 9-628(a), the worker is entitled to an enhanced benefit of two-thirds of the average weekly pay. LE §§ 9-628(h), 9-629.

[2] Because we do not address the merits of the appeal, we need not provide a detailed recitation of the facts.

The appellants moved for a rehearing of both claims, arguing the Commission's finding that the appellee was a "public safety employee" was incorrect as a matter of law. The Commission denied the requests for a rehearing on July 26, 2022.

On August 2, 2022, in the Circuit Court for Howard County, the appellants appealed the "decisions" of the Commission. On September 29, 2022, the appellee filed cross-appeals in the circuit court challenging "the July 26, 2022[,] and July 7, 2022, Decisions" of the Commission.[3] The appeals and respective cross-appeals were docketed separately as C-13-CV-22-000660 (corresponding to Claim No. W140796) and C-13-CV-22-000661 (corresponding to Claim No. W170590) and later consolidated with the former serving as the lead case.

Each side raised different issues in challenging the Commission's decisions. The appellants challenged the Commission's finding that the appellee qualified as a "public safety officer employee" under LE § 9-628(a). In contrast, the appellee challenged the Commission's compensation awards, including the permanent partial disability percentages.

On February 27, 2023, the appellants moved for partial summary judgment on whether the appellee qualified as a "public safety employee" under LE § 9-628(a). The

[3] Both sides requested a jury trial scheduled to begin October 4, 2023, but the date was canceled when the appellants noted their appeal to this Court.

appellee opposed the motion, asserting that "there clearly is a factual dispute as to [his] employment status[.]"[4]

On April 7, 2023, the circuit court entered an order without a hearing, denying the appellants' partial motion for summary judgment. Within ten days, the appellants moved to reconsider the court's denial, which was also denied on May 1, 2023. That same day, the appellants noted an appeal.

On appeal, the appellants contend that the circuit court erred in denying their motion for partial summary judgment when it found that the appellee was a "public safety employee" under LE § 9-628(a).[5] However, the issue we raise *sua sponte* is whether this Court has jurisdiction to hear this appeal. *See Zilichikhis v. Montgomery Cnty.*, 223 Md.

[4] At oral argument, the appellee explained that a factual record needs to be developed concerning the job duties of a "state correctional officer" and his position as a security attendant at Clifton T. Perkins Hospital. He suggests that such evidence would be relevant to interpreting the statute and deciding whether a security attendant at the hospital is a "state correctional officer" and, therefore, a "public safety employee" under LE § 9-628(a). *See, e.g.*, *Shah v. Howard Cnty.*, 337 Md. 248, 252–53 (1995) (looking at evidence of the dichotomy between the daily functions of police officers and deputy sheriffs in counties with established police departments when interpreting whether deputy sheriffs are police officers, and by extension "public safety employee[s]," within the meaning of LE § 9-628).

[5] The Questions Presented in the appellants' brief were:

1. Did the Commissioner abuse their discretion in finding that the claimant, a security attendant for Clifton T Perkins Hospital/State of Maryland, was a public safety employee?

2. Did the Circuit Court err in denying the motion for partial summary judgment and reconsideration thereof?

App. 158, 172 (2015) ("Because the absence of a final judgment may deprive a court of appellate jurisdiction, we can raise the issue of finality on our own motion."). If we lack appellate jurisdiction, the appeal must be dismissed. *See McLaughlin v. Ward*, 240 Md. App. 76, 83 (2019); Md. Rule 8-602(b). Pursuant to this Court's order, the parties supplemented their briefs to address the issue.

DISCUSSION

Parties may appeal only upon the entry of a final judgment, except under certain limited exceptions. *See Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 261 (2009); Md. Code Ann., Cts. & Jud. Proc. ("CJP") §§ 12-301, 12-303. 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. *See Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989); Md. Rule 2-602(a). In other words, the judgment "must leave nothing more to be done in order to effectuate the court's disposition of the matter." *Rohrbeck*, 318 Md. at 41. Except for the limited category of exceptions codified in CJP § 12-303[6] or under the collateral order doctrine, an appeal cannot be taken from an interlocutory order entered in a civil case. *See Highfield Water Co. v. Washington Cnty. Sanitary Dist*., 295 Md. 410, 414, 417 (1983). The underlying policy of the final judgment rule is to avoid piecemeal appeals. *Id*. at 417.

[6] CJP § 12-303 provides that a party may appeal from specific interlocutory orders entered by a circuit court in a civil case. None of the listed exceptions under the statute apply here.

Both sides agree that the appellee's cross-appeals filed in the circuit court, challenging the compensation awards, were not adjudicated and are still pending. They also agree, as do we, that the order denying the motion for partial summary judgment did not constitute a final judgment. *Potter v. Bethesda Fire Department, Inc*., 302 Md. 281 (1985) is on point. In that workers' compensation case, a salaried firefighter appealed from a partial summary judgment in which the circuit court had ruled that the employer and insurer were entitled to a credit against any compensation award in the amount of the disability retirement benefits that the claimant was receiving. *Id*. at 283–84. Other issues, including the extent of the disability, remained undecided in the circuit court. *Id*. at 286. The Supreme Court of Maryland dismissed the appeal, stating that the appellate court had no authority to hear the appeal on its merits because it was without jurisdiction. *Id*. at 286–87. It explained that despite the two issues, "[t]here was but one claim for relief in this case, an appeal from the Work[ers'] Compensation Commission. The fact that the appeal raised more than one issue makes no difference." *Id*. at 286; *see also Osborn v. Bunge*, 338 Md. 396, 402 (1995).

Recognizing that there is no final judgment, the appellants claim that this Court has jurisdiction to review the interlocutory order under the collateral order doctrine. The collateral order doctrine "permits immediate appeal of a narrow class of orders which are treated as final judgments without regard to the posture of the case." *Osborn*, 338 Md. at 403. To be appealable under this exception, an order must satisfy four requirements: (1) it

must conclusively determine the disputed question; (2) it must resolve an important issue; (3) it must be completely separate from the merits of the action; and (4) it must be effectively unreviewable on appeal from a final judgment. *Id*. (citation omitted).

"The four elements of the test are conjunctive in nature and in order for a prejudgment order to be appealable and to fall within this exception to the ordinary operation of the final judgment requirement, each of the four elements must be met." *Ehrlich v. Grove*, 396 Md. 550, 563 (2007) (citation omitted). These four requirements are "very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances." *Id*. (citation omitted). "In applying the collateral order doctrine, often the most decisive element is the last one—whether the order is effectively reviewable on appeal from a final judgment on the merits." Judge Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issues*, 51 (3d ed. 2018).

Before addressing the fourth requirement, we comment on the first—whether the order denying the appellants' motion for partial summary judgment conclusively determined the disputed question of whether the appellee was a "public safety employee." The appellants believe that the court's order did resolve the question, but the record does not indicate that it did. Instead, it appears the court exercised its discretion and deferred ruling on the issue until trial. *See Porter Hayden Co. v. Com. Union Ins. Co*., 339 Md. 150, 164–65 (1995) ("Even where there is no dispute as to the material facts, and the 'technical requirements for the entry of [summary] judgment have been met,' a Maryland trial court

has the discretion to deny a litigant's motion for summary judgment." (quoting *Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980))); *Basiliko*, 288 Md. at 29 ("[A] denial (as distinguished from a grant) of a summary judgment motion . . . involves not only pure legal questions but also an exercise of discretion as to whether the decision should be postponed until it can be supported by a complete factual record[.]").

Even if the circuit court conclusively decided the "public safety employee" issue, as the appellants believe, the denial order does not meet the fourth requirement of the collateral order doctrine. The appellants do not dispute that the order can be effectively reviewed on appeal from a final judgment on the merits. In *Osborn v. Bunge*, 338 Md. 396 (1995), the Supreme Court of Maryland dismissed an appeal of a workers' compensation case where the circuit court granted partial summary judgment on a legal issue but expressly contemplated further proceedings on the other issues raised in the cross-appeal. *Id*. at 400. The Court rejected the application of the collateral order doctrine because "nothing prevent[ed] effective appellate review of the circuit court's ruling on the [legal] issue after final judgment has been entered." *Id*. at 403. Because the same is true here, we shall dismiss the appeal.

APPEAL DISMISSED. CASE REMANDED TO THE CIRCUIT COURT FOR HOWARD COUNTY FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLANTS.