

Circuit Court for Baltimore County  
Case No. C16-10316

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 91

September Term, 2018

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TAAVON SOMERVILLE, *et al.*

v.

BUSH HOME SERVICES, LLC

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Friedman,  
Beachley,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: April 2, 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.

In 2016, Taavon and Christina Somerville, appellants, filed a complaint for breach of contract against Bush Home Services, LLC, appellee, in the Circuit Court for Baltimore County. On January 3, 2018, the case proceeded to trial and, following the close of the Somervilles’ case-in-chief, the court granted Bush Home Services’ motion for judgment. The court did not sign a written judgment memorializing its decision and the docket entries do not reflect that the court granted the motion.<sup>1</sup> On January 16, 2018, the Somervilles filed a motion for reconsideration, which the court denied on February 16, 2018.<sup>2</sup> The Somervilles then filed a notice of appeal on March 9, 2018. Because the court has not entered a final judgment, the appeal is premature and must be dismissed.

Generally, a party must await the entry of a final judgment before taking an appeal. *See* Md. Code Ann., Courts and Judicial Proceedings § 12–301. A final judgment exists only if: the order is intended by the court as an unqualified, final disposition of the matter; the order adjudicates or completes the adjudication of all claims against all parties; and the clerk makes a proper record in the docket. *See Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 489 (2014) (citation omitted). In addition, each judgment must be “set forth on a separate document.” Md. Rule 2-601(a). Entry of judgment by means of a separate document is mandatory. *See Hiob*, 440 Md. at. 477. To comply with the separate document

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<sup>1</sup> The docket entries only note that there was an “open court proceeding” on that date.

<sup>2</sup> The Somervilles’ motion was entitled “Motion for Reconsideration/Motion to Stay.” However, we do not construe it as a motion to stay as the Somerville’s did not request a stay or any other injunctive relief.

requirement, the court must state its judgment in a document that is “separate from an oral ruling of the judge, a docket entry, or a memorandum.” *Id.* at 478 (footnote omitted).

In the instant case, the court did not issue a separate document granting appellee’s motion for judgment or dismissing the Somervilles’ claims against them. Consequently, the separate docket requirement has not been satisfied. We note that the separate document requirement can be waived where the circuit court clearly intended that the clerk’s docket entries be a final judgment and where no party objects to the absence of a separate document. *See Suburban Hosp., Inc. v. Kirson*, 362 Md. 140, 156 (2000). But we will only find such a waiver when it is necessary “to *preserve* an appeal, rather than eliminate it as untimely.” *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 67 (2017) (emphasis in original). If the separate document requirement were waived in this case, the Somervilles’ appeal from the court’s oral order granting appellee’s motion for judgment would be untimely because their notice of appeal was not filed within thirty days from that order and their motion for reconsideration, which was filed more than ten days after that order, did not toll the time for filing an appeal.<sup>3</sup> Consequently, we decline to find a waiver

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<sup>3</sup> In fact, this case illustrates why the separate document requirement exists: “to eliminate confusion about what is the ‘entry of judgment’ from which the deadline [for filing a notice of appeal] is computed.” *Hiob*, 440 Md. at 475-76. Here, the Somervilles could not be expected to know when they needed to file a motion for reconsideration that would toll the time for them to appeal when it was not clear whether a final judgment had been entered on the docket.

of the separate document rule. Because the court has not entered a final judgment, the appeal must be dismissed.<sup>4</sup>

**APPEAL DISMISSED. COSTS TO  
BE PAID 50% BY APPELLANTS  
AND 50% BY APPELLEE.**

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<sup>4</sup> This dismissal is without prejudice to the Somervilles filing a new notice of appeal within 30 days after the court enters a final judgment on the docket consistent with Rule 2-601(a).