Circuit Court for Prince George's County
Case No. CAL18-08633

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 160

September Term, 2019

DARYL GREEN

v.

NICHOLE TILLMAN

Berger,
Leahy,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 17, 2020

*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 this appeal from a civil action in the Circuit Court for Prince George's County, Daryl Green, appellant, challenges the denial of a motion to dismiss, a motion to reconsider that denial (hereinafter "motion to reconsider"), a second motion to dismiss, a "Motion in Opposition to Discovery and for Protective Order" (hereinafter "motion in opposition to discovery"), and a "Motion to Raise Violations of MD Rule 2-311(f) & 2-322(b) and for Temporary/Permanent Injunctive/Declaratory Relief Against Illegal Discovery Under Duress Supported by Affidavit" (hereinafter "motion for relief"). For the reasons that follow, we shall dismiss the appeal.

On March 22, 2018, Nichole Tillman, appellee, on behalf of her minor daughter, A.J., filed a complaint against Mr. Green in which Ms. Tillman contended that during a "sleep over" at Mr. Green's residence, "an unrestrained dog owned by [Mr. Green] attacked [A.J.], biting the right side of her face and right hand, [and] inflicting severe damage." Ms. Tillman subsequently served Mr. Green with interrogatories and a request for production of documents. On September 27, 2018, Mr. Green filed a motion to dismiss, in which he contended that he "does not own a dog nor any other pet [and] is not responsible for any pet," and hence, Ms. Tillman "state[d] no claims upon which relief can be granted." On October 5, 2018, Ms. Tillman filed two motions to compel discovery, in which she contended that Mr. Green "failed to serve Answers or Objections to [her] discovery," and "failed to respond" to her request for "the availability of [Mr. Green] to take his oral deposition." On October 9, 2018, the court held a pre-trial conference, at which, according to the court's docket entries, the court denied Mr. Green's motion to dismiss.

On October 18, 2018, Mr. Green filed the second motion to dismiss, in which he contended that because he "does not own a dog nor any other pet" and "is not responsible for any pet," the "court lacks . . . proper jurisdiction," and Ms. Tillman "state[s] no claim upon which any relief could be granted." Mr. Green also filed the motion to reconsider, in which he raised the same contentions as in the motions to dismiss, and requested, among other relief, "injunctive relief in the form of both a temporary and permanent restraining order from further proceedings." On October 24, 2019, Mr. Green filed the motion in opposition to discovery, in which he again raised the same contentions as in the motions to dismiss and to reconsider, and again requested, among other relief, "an order of protection . . . from . . . further harassment." On January 8, 2019, the court issued two orders in which it granted Ms. Tillman's motions to compel discovery and ordered Mr. Green to "serve on [Ms. Tillman's] counsel, in writing and under oath, full and complete Answers to [Ms. Tillman's] Interrogatories and Request for Production of Documents," "submit to an oral deposition," and "turn over his homeowner's insurance information."

On January 16, 2019, Mr. Green filed the motion for relief, in which he again contended that because he "does not own a dog nor any other pets," Ms. Tillman "fail[s] to state a claim upon which relief can be granted," and the "court lacks both subject matter jurisdiction [and] jurisdiction *in personam*." Mr. Green also requested "injunctive relief in the form of a temporary and permanent restraining order from further proceedings." On February 5, 2019, the court issued an order in which it denied the motion.

Mr. Green contends that, for various reasons, the court erred in denying all of his motions. We first note that there is no indication in the record that the court expressly

denied the second motion to dismiss, motion to reconsider, or motion in opposition to discovery. Assuming, *arguendo*, that the court orally denied those motions, those denials, as well as the denial of the first motion to dismiss, do not constitute final or otherwise appealable judgments, *see McLaughlin v. Ward*, 240 Md. App. 76, 82 (2019) ("[g]enerally, parties may appeal only upon the entry of a final judgment," and "[o]ne of the necessary elements of a final judgment is that the order must adjudicate or complete the adjudication of all claims against all parties" (citations omitted)), or alternatively, any appeal from the denials is untimely. *See* Rule 8-202(a) ("[e]xcept as otherwise provided in this Rule or by law, [a] notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken"). Hence, any judgments with respect to the motions to dismiss, to reconsider, and in opposition to discovery are not before us.

With respect to the denial of the motion for relief, *Security Admin. v. Balto. Gas & Elec.*, 62 Md. App. 50 (1985), is instructive. The case arose from

> a preliminary skirmish between Security Administration Services, Inc. (SASI) and Baltimore Gas and Electric Co. (BG & E) over who [was] responsible for defending an action brought by one Otis Lee Councill and for paying any judgment arising from that action.
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> Mr. Councill apparently collected workmen's compensation benefits through SASI's workmen's compensation insurance; he and the carrier then sued BG & E . . . in the Circuit Court for Baltimore City. BG & E . . . pled to the declaration and filed a third party claim against SASI. . . . .
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> SASI demurred to the third party claim on a number of grounds . . . . The . . . court overruled the demurrer without explanation and directed SASI to answer the third party claim.

> Unwilling to accept that decision, SASI sought another bite of the apple. With its answer . . . SASI filed . . . a cross-bill for declaratory judgment and injunctive relief and a motion for preliminary injunction. The cross-bill raised precisely the same issues raised in the demurrer . . . and it asked for a declaratory judgment to that effect. The cross-bill and the accompanying motion also sought a preliminary injunction restraining BG & E . . . from making any effort to enforce that provision against SASI . . . .
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> . . . . [T]he court . . . denied the motion, whereupon SASI, having been thwarted in its attempt at a second bite, brought [an] appeal.

Id. at 51-53.

On appeal, SASI "argue[d] that the cross-bill for declaratory relief and the petition for injunction injected new issues or facts into the case that were not considered, or may not have been considered, when the court ruled on the demurrer." *Id.* at 53. The Court reviewed the pleadings and noted that they "did not add any new issues to the case; at best, they were intended to bolster the contentions made in the demurrer, and could easily have been proffered to the court through a motion for summary judgment." *Id.* at 53. Dismissing the appeal, we stated:

> If there is one constant in the law of appellate procedure, it is that no appeal will lie from an interlocutory order overruling a demurrer. . . . . It is true that under [Md. Code], § 12-303(3)(iii) [of the Courts and Judicial Proceedings Article ("CJP")], an appeal will ordinarily lie from an interlocutory order refusing to grant an injunction, but that provision cannot be used, as it is attempted to be used in this case, as a transparent artifice for appealing that which is not appealable.
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> It is not hard to imagine the mischief that would result from allowing an appeal such as this to proceed under the guise of § 12-303. Every time a demurrer (under the new rules, a motion to dismiss), or a motion for more definite statement, or a motion to strike, or a motion for summary judgment, or a motion to transfer a case, or a discovery motion, or any other purely interlocutory motion is denied, the aggrieved party will simply . . . move to

> enjoin the winning party from proceeding as the court has allowed him to do, and then, upon losing the motion for injunction, interrupt the entire proceeding by taking an appeal.
>
> SASI will not be permitted to do indirectly what it plainly cannot do directly. Its motion for temporary injunction was nothing but an attempt to relitigate the interlocutory ruling on its demurrer and avoid the non-appealable status of an unfavorable ruling on a motion for summary judgment. It added nothing of substance to the case and was prompted by no new circumstance that disturbed the *status quo*.

Security, 62 Md. App. at 53-54 (citations omitted). *Accord Town of Chesapeake Beach v. Pessoa*, 330 Md. 744, 749-750 (1993).

We reach a similar conclusion here. Like in *Security*, the contentions in the motion for relief did not add any new issues to the case, were intended to bolster the contentions made in the first motion to dismiss, and could easily have been proffered to the court through a motion for summary judgment. Although CJP § 12-303(3)(iii) ordinarily allows an appeal from an interlocutory order refusing to grant an injunction, Mr. Green cannot use the provision to appeal that which is not appealable. We will not permit Mr. Green to do indirectly what he plainly cannot do directly, and hence, we dismiss the appeal.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.