Circuit Court for Baltimore City
Case No. 24-C-20-002618

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 297

September Term, 2021

JUAN MCLENDON

v.

STATE OF MARYLAND

Beachley,
Shaw,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: March 28, 2022

Juan McLendon, appellant, appeals from an order issued by the Circuit Court for Baltimore City denying his request to waive prepayment of sheriff's fees for serving summonses on defendants against whom he had filed suit. He presents a single question for our review, which we have rephrased slightly as follows:[1]

> Did the circuit court abuse its discretion by denying appellant's request to waive prepayment of sheriff's fees for service of summonses despite its having found that he was an indigent prisoner whose claims were not facially frivolous?

Rather than reach the merits of this appeal, we will dismiss for want of appellate jurisdiction.

BACKGROUND

Appellant is a former inmate at the Maryland Reception, Diagnostic, and Classification Center ("MRDCC"). On June 8, 2020, he filed a *pro se* complaint against the State of Maryland, the Secretary of the Department of Public Safety and Correctional Services ("the Secretary"), the Commissioner of the Division of Corrections ("the Commissioner"), and various MRDCC officials and correctional officers (collectively,

[1] Appellant's original question presented was as follows:

> Did the circuit court abuse its discretion by denying Juan McLendon's "Motion to Waive Prepaid Costs for the Service of Process on the Defendants by the Baltimore City Sheriff" when Juan McLendon established that he is an indigent prisoner, that he previously was granted a "Motion to Waive Prepaid Costs for the Filing Fee," and the multiple authorities that clearly establish that the circuit court was authorized to waive the "Sheriff's fee" for service of process on the defendants.

(Some capitalization omitted).

"the defendants"). The complaint set forth a veritable laundry list of torts that appellant had allegedly suffered at the hands of correctional officers while incarcerated at the MRDCC. He attributed that purported "pattern and practice of improper conduct," in part, to the failure of the Secretary and the Commissioner to "establish effective procedures, rules, orders, and practices to ensure that 'use of force' violations do not occur[.]" Contemporaneously with the filing of his complaint, appellant filed a "Request for Waiver of Prepaid Costs," in which he claimed to have been "unable to prepay the prepaid costs in this matter because of poverty" due, at least in part, to his having been "a pre-trial detainee waiting to be transported from State prison to the local detention facility." That request was accompanied by a financial statement, in which appellant averred that he possessed neither income nor assets and owed $4,000 in credit card debt.

In an order entered on July 17, 2020, the court granted appellant's request, finding that: (i) he met "the financial eligibility guidelines of the Maryland Legal Services Corporation"; (ii) he was "unable by reason of poverty to pay the prepaid costs"; and (iii) his complaint did not appear frivolous on its face. That same day, the court issued summonses for the defendants. Those summonses were not, however, served on the defendants within 60 days after the date they were issued. On November 9, 2020, appellant

attempted to revive the then dormant summonses by filing a "Written Request for the Renewal of the Summonses under Maryland Rule 2–113," which read, in pertinent part:[2]

> Upon renewal of the summonses issued on July 17, 2020, under Maryland Court Rule 2–112(a) the Plaintiff requests the Clerk of the Circuit Court to deliver the summonses to the Sheriff of Baltimore City, Maryland. Under Maryland Court Rule 1–325(e) the Plaintiff was found by reason of poverty unable to pay a prepaid cost. The Plaintiff requests the Court to grant a "waiver of prepaid costs" for the service of process on the defendant(s) by the Sheriff of Baltimore City based on Maryland Court Rule 1–325(b).

In an order entered on January 13, 2021, the court denied appellant's request for waiver of prepaid sheriff's fees, determining that "there is no authority for waiver of the sheriff's fee."[3] Although it denied that fee waiver request, the record reflects that summonses were reissued on or around January 19, 2021. According to affidavits signed by Sarah McLendon (whom appellant's complaint identified as a "family member") and filed on April 27th, those summonses were served on the Maryland Attorney General by certified mail, restricted delivery, return receipt requested on March 8th—two weeks after appellant noted the instant appeal. *See* Md. Rule 2–124(k) ("Service is made on an officer or agency

[2] Maryland Rule 2–113 provides: "A summons is effective for service only if served within 60 days after the date it is issued. A summons not served within that time shall be dormant, renewable only on written request of the plaintiff."

[3] Although filed on November 9, 2020, appellant's initial request to waive prepayment of sheriff's fees was not docketed until January 13, 2021. Accordingly, appellant filed a subsequent request for renewal of summonses on December 29, 2020, wherein he again asked the court to waive the prepaid sheriff's fees for service of summonses pursuant to Rule 1–325(e). The court denied that request in an order entered on February 4th, ruling: "There is no authority for waiver of costs associated with service of process." Appellant's brief neither challenges nor so much as mentions that order. He has, therefore, abandoned any appellate challenge thereto. *See* Md. Rule 8–504(a)(6).

of the State of Maryland by serving (1) the resident agent designated by the officer or agency, or (2) the Attorney General or an individual designated by the Attorney General in a writing filed with the Clerk of the Court of Appeals.").

Despite his having noted the instant appeal on February 22, 2021, on December 7, 2021, appellant filed a motion for an order of default with the circuit court.[4] On January 11, 2022, the circuit court ordered that appellant's request be held in abeyance pending our return of the record.

DISCUSSION

Although the State failed to file an appellate brief, the finality of a judgment is "a jurisdictional fact that is a prerequisite to the viability of an appeal." *Bussell v. Bussell*, 194 Md. App. 137, 147 (2010) (quotation marks and citation omitted). *See also Baltimore Home Alliance, LLC v. Geesing*, 218 Md. App. 375, 381 (2014) ("The requirement that a party appeal from only a final judgment is a jurisdictional requirement."). As such, if noticed, an appellate court must raise the issue of finality on its own motion. *See, e.g., Waterkeeper Alliance, Inc. v. Md. Dep't of Agric.*, 439 Md. 262, 276 n.11 (2014) ("[T]his Court is permitted to raise jurisdictional questions *sua sponte*."); *Johnson v. Johnson*, 423 Md. 602, 605–06 (2011) ("[A]n order of a circuit court must be appealable

[4] The record was forwarded to this Court prior to appellant's having requested an order of default and does not, therefore, contain any mention thereof. We nevertheless take judicial notice of the docket entries related to that request, as they are available on the Maryland Judiciary website. *See Lewis v. State*, 229 Md. App. 86, 90 n.1 (2016) ("We take judicial notice of the docket entries . . . found on the Maryland Judiciary CaseSearch website, pursuant to Maryland Rule 5–201."), *aff'd*, 452 Md. 663 (2017).

in order to confer jurisdiction upon an appellate court, and this jurisdictional issue, if noticed by an appellate court, will be addressed *sua sponte*."); *Stachowski v. State*, 416 Md. 276, 285 (2010) ("Although none of the parties raised a jurisdictional issue in these cases, this Court is obligated to address *sua sponte* the issue of whether we can exercise jurisdiction.").

Generally, appeals may only be taken from final judgments. *See* Md. Code (1974, 2020 Repl. Vol.), § 12–301 of the Courts and Judicial Proceedings Article. "Whether a judgment is final ... is a question of law to be reviewed *de novo*." *Geesing*, 218 Md. App. at 381. To be "final," a court's judgment must ordinarily satisfy the following three criteria:

> (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy[;] (2) unless the court acts pursuant to Maryland Rule 2–602(b) to direct the entry of a final judgment as to less than all of the claims or all of the parties, it must adjudicate or complete the adjudication of all claims against all parties; (3) it must be set forth and recorded in accordance with Rule 2–601.

Metro Maint. Sys. S., Inc. v. Milburn, 442 Md. 289, 298 (2015). An order that does not fully resolve the merits of the parties' underlying dispute nevertheless constitutes a final judgment, however, if it "has the effect of put[ting] the [party] out of court." *Monarch Acad. Balt. Campus, Inc. v. Balt. City Bd. of Sch. Comm'rs*, 457 Md. 1, 43 (2017) (cleaned up). In other words, a ruling that lacks the traditional attributes of a final judgment is nevertheless appealable if "it terminates the proceedings in that court and denies a party

the ability to further prosecute or defend the party's rights concerning the subject matter of the proceeding." *Id*. (quotation marks and citation omitted).

The court's order denying appellant's sheriff's fee waiver request clearly did not amount to an unqualified, final disposition of the matter, as it did not remotely address—much less resolve—the allegations raised in appellant's complaint. In order to constitute a final judgment, the court's order must, therefore, have denied appellant "the means of further prosecuting . . . the suit" in the Circuit Court for Baltimore City. *Brewster v. Woodhaven Bldg. and Dev., Inc.*, 360 Md. 602, 613 (2000) (quotation marks and citation omitted).

Maryland Rule 2–121(a) governs the traditional methods of serving process, and provides:

> Service of process may be made within this State or, when authorized by the law of this State, outside of this State (1) by delivering to the person to be served a copy of the summons, complaint, and all other papers filed with it; (2) if the person to be served is an individual, by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion; or (3) by mailing to the person to be served a copy of the summons, complaint, and all other papers filed with it by certified mail requesting: "Restricted Delivery--show to whom, date, address of delivery."

Should good faith efforts at effecting service pursuant to Rule 2–121(a) prove futile and the appellant files an affidavit to that effect, "the court may order any other means of service that it deems appropriate in the circumstances[.]" Md. Rule 2–121(c). A court's authority to order such substitute service is "restricted only by the need to be 'reasonably

calculated to give actual notice' to the defendant." *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 81 (2001) (quoting Md. Rule 3–121(a)).

Whether effected by traditional or alternative means, in an *in personam* proceeding, a summons need not be served by a sheriff. Rather, service may be made "by a competent private person, 18 years of age or older, including an attorney of record, but not by a party to the action."[5] Md. Rule 2–123(a).

As discussed *supra*, the record in this case reflects the defendants having been successfully served with summonses by certified mail, restricted delivery, return receipt requested on March 8, 2021.[6] Even if that were not the case, however, we could hardly hold that the court's order had the effect of denying appellant the ability to further prosecute the defendants, as there is no indication that he either exhausted the other traditional methods of service or sought substitute service pursuant to Rule 2–121(c). Appellant does not, moreover, cite any authority remotely suggesting that the court's denial of his waiver request constituted an appealable interlocutory order. Lacking jurisdiction to consider this premature appeal, we must dismiss on our own motion.[7]

[5] Writs of execution, replevin, or attachment of property or person, by contrast, must "be executed by the sheriff of the county where execution takes place, unless the court orders otherwise." Md. Rule 2–123(b). *See also Pickett*, 365 Md. at 86–87.

[6] Although the record does not indicate that the defendants were served with copies of his complaint, appellant's fee waiver requests did not address the costs associated therewith. That issue is not, therefore, properly before us.

[7] We note in passing that although the order at issue was entered on January 13, 2021, appellant's notice of appeal was received by the circuit court clerk—and was therefore

filed—on February 22, 2021. If the court's order had been a final judgment, this appeal would not have been timely noted pursuant to Maryland Rule 8–202(a). *See id.* ("Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken."). This is contrary to the certificate of filing attached to appellant's notice of appeal, wherein he attests:

> I am involuntarily confined under the authority of the Prince George's County Department of Corrections; I have no direct access to the U.S. Postal Service or to a permitted means of electronically filing the attached pleading or paper; on January 17, 2021 at approximately 11:33 p.m. I personally deposited this pleading for mailing in a receptacle designated by this facility for outgoing mail; and the item was in mailable form and had the correct postage on it. *This pleading or paper shall be deemed to have been filed on the date it was deposited by me into a receptacle designated by this facility for outgoing mail*.

(Emphasis added). Appellant seems to have here invoked the "prison mailbox rule." *See generally Hackney v. State*, 459 Md. 108 (2018). That rule is currently codified as Maryland Rule 1–322(d), which provides, in pertinent part:

> **(d) Filings by Self-Represented Individuals Confined in Certain Facilities**
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> (1) *Application of section.* This section applies only to self-represented individuals who (A) are confined in a correctional or other detention facility pursuant to a court order in a criminal or juvenile delinquency case, (B) have no direct access to the U.S. Postal Service or the ability to file an electronic submission under the Rules in Title 20, and (C) *seek relief from a criminal conviction or their confinement* by filing (i) a motion for new trial, an appeal, an application for review of sentence by a panel, a motion for modification of sentence, a petition for certiorari in the Court of Appeals, an application for leave to appeal, a motion or petition for a writ of habeas corpus or coram nobis, a motion or petition for statutory post-conviction relief, or a petition for judicial review of the denial of an inmate grievance complaint, or (ii) a paper in connection with any of those matters.
>
> (2) *Generally.* A pleading or paper filed under this section shall be deemed to have been filed on the date that the pleading or paper, in mailable form and with proper postage affixed, was deposited by the individual into a receptacle designated by the facility for outgoing mail or personally delivered

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

> to an employee of the facility authorized by the facility to collect such mail. The clerk shall record the date a filing was received by the clerk, docket the filing, and make a note for the court of any discernable filing date as defined in subsection (d)(3).

(Emphasis added). Although appellant was incarcerated when he noted the instant appeal and averred in his certificate of filing that he had "no direct access to the U.S. Postal Service or a permitted means of electronically filing" his notice of appeal, he does not seek relief from either his conviction or his confinement. The prison mailbox rule is, therefore, inapplicable. Accordingly, appellant's notice of appeal was filed on February 22, 2021—the date on which it was received by the clerk of court. *See* Md. Rule 1–322(a). If the order at issue had constituted a final judgment, appellant's notice of appeal would therefore have been untimely, as it was filed more than 30 days after that order had been entered.