Circuit Court Montgomery County
Case No. 448034V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 325

September Term, 2019

JOHN EDMOND

v.

YVONNE MCDONALD

Fader, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 3, 2020

John Edmond, appellant, rented a room from Yvonne McDonald, appellee. In 2018, he filed a complaint against Ms. McDonald, in the Circuit Court for Montgomery County, raising claims of perjury, harassment, conspiracy, intentional infliction of emotional distress, breach of contract, and retaliatory eviction. Ms. McDonald filed an answer and raised counterclaims for unjust enrichment and conversion.

Ms. McDonald then filed a motion for summary judgment with respect to Mr. Edmond's claims only. Following a hearing, the circuit court granted the motion on April 5, 2019. Mr. Edmond filed a notice of appeal on April 17, 2019. A trial on Ms. McDonald's counterclaims was scheduled for June 19, 2019. However, Mr. Edmond did not appear in court on that date. After the case was called for trial, Ms. McDonald made an oral motion to dismiss her counterclaims without prejudice, which the trial court granted. Mr. Edmond did not file a new notice of appeal. On appeal, Mr. Edmond contends that the court erred in granting Ms. McDonald's motion for summary judgment. However, because Mr. Edmond did not appeal from a final judgment, we must dismiss his 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 McLaughlin v. Ward.*, 240 Md. App. 76, 83 (2019). The circuit court's April 5 order was not a final judgment because it did not dispose of Ms. McDonald's counterclaims against Mr. Edmond. *See Ruiz v. Kinoshita*, 412 Md. 230, 241 (2010) (noting that a "final judgment" is a judgment that "disposes of all claims in the action" (citation omitted)). The circuit court also did not direct entry of a final judgment pursuant to Maryland Rule 2-602. And the order was not appealable as an interlocutory order pursuant to § 12-303 of the

Courts and Judicial Proceedings Article or under the collateral order doctrine. Therefore, Mr. Edmond's notice of appeal was prematurely filed and subject to dismissal.

We note that, in certain cases, Rule 8-602(e)(1) allows this Court to treat a 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 is of no help to Mr. Edmond as the circuit court could not have properly certified the April 5 order as a final appealable order under Rule 2-602(b).

That is because 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, 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[.]" *Id*. at 668.

At the time Mr. Edmond filed his notice of appeal in the instant case, there was a trial date scheduled on Ms. McDonald's counterclaims less than three months away. And, as in *Doe*, nothing in the record indicates that waiting several more months to file the notice of appeal would have created an "undue hardship" or a "harsh economic effect" for Mr. Edmond that would have justified the circuit court making a discretionary departure from the usual rule establishing the time for appeal. Because certification of the April 5 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 Mr. Edmond's premature appeal.[1]

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

[1] If the requirements of Rule 8-602(e)(1) are satisfied, this Court may "as it finds appropriate" either dismiss the appeal or treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment. We note that, under the circumstances presented here, we would still elect to dismiss the appeal even if Rule 8-602(e)(1) was applicable.