Circuit Court for Prince George's County
Case No. CAL 17-21172

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 398

September Term, 2019

GEORGE GEORGAKOPOULOS

v.

IOANNIS GEORGAKOPOULOS, ET AL.

Kehoe,
Nazarian,
Reed,
JJ.

Opinion by Kehoe, J.

Filed: February 4, 2021

*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. *See* Md. Rule 1-104.

This is an appeal from a judgment of the Circuit Court for Prince George's County entered in civil action between George Georgakopoulos and Geva Logistics, Inc. (collectively "Geva"), on the one hand, and Ioannis Georgakopoulos and Eagle Van Lines, Inc. (collectively "Eagle"), on the other.[1] Geva presents two issues on appeal, which we have reworded:

(1) Did the trial court err when it denied Geva's request for injunctive relief?

(2) Did the trial court err when it denied Geva's request for attorney's fees?[2]

Along with addressing the merits of Geva's substantive contentions, Eagle has moved to dismiss Geva's appeal because it was not timely filed.

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[1] From time to time in this opinion, we will refer to the Messrs. Georgakopoulos by their respective first names. We do this for purposes of clarity and brevity and mean no disrespect to either individual by doing so.

[2] In its brief, Geva articulates the issues thus:

> A. Did the trial court err in denying the Appellants' request to enter injunctive relief, as the court had advised the parties it planned to do, and to enter final judgment on the ground that the trial court's order of January 8, 2019 constituted a final judgment that could not be modified?
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> B. Did the trial court err in denying the Appellants an award of attorneys' fees and legal costs when the parties' agreement provides that attorneys' fees and legal costs shall be indemnified by Appellees as an element of damages arising from any breach?

Background

George and Ioannis are brothers who, along with their father, owned Eagle Van Lines, Inc., a moving and logistics company headquartered in Marlow Heights. Eventually, the business relationship soured, and the parties entered what they called a "Contribution, Separation and Distribution Agreement." (We will refer to this document as "the agreement.")

Although the agreement is not in the record extract[3] and the parties' briefs are vague as to its terms, it is clear that the agreement called for George's surrender of his interest in Eagle in return for the transfer of certain assets of Eagle and some of its subsidiaries to a new company to be established by George.[4] Among the assets to be transferred were cash or cash equivalents, Eagle's rights under a contract between Eagle and the Turkish government to provide transportation services to the latter, balances due on certain accounts that were transferred to Geva, and certain business records.

The agreement also contained an indemnification provision wherein Eagle and Ioannis agreed to indemnify Geva and its officers "from and against any and all Damages incurred

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[3] There is no question that the agreement, although perhaps not all of its exhibits, should have been included in the extract. *See* Md. Rule 8-501(c) (a record extract "shall contain all parts of the record reasonably necessary for the determination of the questions presented by the appeal[.]).

[4] When the parties entered into the agreement, Geva had not been formed. The agreement refers to the assignee of Eagle's assets by the placeholder "Newco." We will substitute "Geva" for "Newco" without brackets when quoting from the agreement.

or suffered by Geva . . . arising out of or in connection with . . . [a]ny breach by Eagle" of its obligations in the agreement." "Damages" is a defined term in the agreement and its meaning includes "reasonable attorney's fees incurred in connection with investigating, prosecuting or defending a claim or action[.]"

Eagle breached the agreement: It failed to pay money that it owed Geva and refused to turn over the business records to Geva as required by the agreement. So Geva filed a civil action to enforce the agreement. In its operative complaint, Geva asserted claims for breach of contract and intentional interference with contractual rights. Geva sought compensatory and punitive damages that included attorney's fees as spelled out by the agreement's indemnity provision, and an injunction ordering Eagle to share or turn over to it two types of business files, specifically what the parties call the "ITO account files" and certain client or customer files.

The case was tried before the circuit court without a jury. After the trial began, Eagle agreed to pay Geva nearly $40,000 in damages after conceding that it breached the agreement. And Eagle acknowledged that it was required to turn over the ITO account files and the client files to Geva under the agreement, and it agreed to the entry of an injunction requiring it to do so. Eagle asserted, however, that it was not obligated to pay Geva's attorney's fees.

At the close of trial, the court granted Eagle's motion to dismiss Geva's claims for punitive damages and intentional interference with contractual rights. It then directed Geva to submit proposed language for the injunction requesting the client files within five days and directed Eagle to respond within five days after that. Within a week, Geva and Eagle agreed to and submitted the proposed language to the court.

Then, the following occurred:

(1) On January 8, 2019, the court filed an opinion that ordered Eagle to pay Geva $39,141.54 in damages. The court also ordered Eagle to share the disputed *ITO account files* with Geva, ordered Geva to bill the accounts due from the customers and, when and if payment was received, ordered that the proceeds were to be divided between the parties as set out in the agreement. This order did not address Geva's request for an injunction for the *client files* nor did resolve Geva's request for an award of attorney's fees. The court ordered the case closed.

(2) On January 30, 2019, the court denied Geva's request for attorney's fees. (We will discuss the basis for the court's decision in part B of our analysis.) The court again concluded that the case was closed, even though it had yet to rule on Geva's request for an injunction for the client files.

(3) On March 8, 2019, Geva filed a motion requesting the court to "amend and finalize" its prior orders, and, specifically, that the trial court enter "an order concerning the injunctive relief pertaining to client files, after which final judgment can be entered on the docket and the matter resolved." In response, Eagle argued that Geva had waited too long

to modify either the January 8th or the January 30th orders under Maryland Rule 2-534, so the court could not enter an injunction.

(4) On April 1, 2019, the trial court denied Geva's motion. The court's order noted that, in its January 8th memorandum opinion and order, it stated that Eagle was to provide Geva "with any files needed to bill the ITO accounts," that Geva was to bill the accounts and to divide payments received, if any, with Eagle according to the terms of the agreement. The court found that this language was clear and unambiguous. Alternatively, and apparently proceeding on the assumption that its January 8th order was a final judgment, the court also concluded that Geva's motion was untimely under Md. Rule 2-534's ten-day limit for filing such motions.

(5) On April 30th, Geva filed its notice of appeal.

(6) Finally, on May 9th, the trial court entered separate orders awarding judgment to Geva against Eagle and Ioannis for $39,141.54.

Eagle's motion to dismiss the appeal.

Eagle has moved to dismiss this appeal. Its argument, at its root, is that Geva's notice of appeal was untimely because it was filed more than thirty days after entry of the court's January 30, 2019 order. According to Eagle, that order resolved all claims between the parties except for Geva's request for an injunction, which Eagle characterizes as a collateral matter whose pendency did not affect the finality of the January 30th judgment. In response, and relying only on *Rohrbeck v. Rohrbeck*, 318 Md. 28, 40–41 (1989), Geva argues that its appeal is timely because it filed its notice of appeal within thirty-days of the

trial court's April 1st order, which it argues was the final judgment in the case. These arguments are somewhat misdirected.

Subject to exceptions that are not relevant to this case, parties may appeal from only a "final judgment" entered by a circuit court. *See* Md. Code, Courts and Judicial Proceedings Article § 12-301; *URS Corp. v. Fort Myer Constr. Corp*., 452 Md. 48, 65 (2017); *Waterkeeper Alliance, Inc. v. Maryland Dept. of Agriculture*, 439 Md. 262, 278 (2014). In *URS Corp.*, the Court of Appeals explained (emphasis added):

> Under our rules and case law, a final judgment exists only when the trial court intends an unqualified, final disposition of the matter of the controversy that completely adjudicates all claims against all parties in the suit, and only when the trial court has followed *certain procedural steps* when entering a judgment in the record.
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> * * *
>
> One of the procedural steps for entry of final judgment—*the "separate document requirement"*—requires the trial court to memorialize the judgment in a separate document that is signed by either the court clerk or the judge and entered in the docket. Rule 2–601(a) and (b). . . . The separate document requirement is designed to eliminate confusion about what is the "entry of the judgment" from which the deadline [for filing a notice of appeal] is computed

452 Md. at 278 (cleaned up).

Many decisions of the Court of Appeals have made it clear that entry of judgments by means of a separate document is mandatory. *See, e.g., URS Corp*., 452 Md. 66; *Hiob v. Progressive Insurance Co*., 440 Md. 466, 477 (2014); *Suburban Hospital, Inc. v. Kirson*, 362 Md. 140, (2000); *see also* Kevin F. Arthur, FINALITY OF JUDGMENTS AND OTHER

APPELLATE TRIGGER ISSUES (3rd ed. 2018) 9–12 ("Finality of Judgments") (collecting cases).[5] In order to comply with the separate document 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." *Hiob*, 440 Md. at 478 (footnote omitted).

The parties' respective arguments as to when the judgment in this case became final fail to take into account either the substantive requirement for a final judgment, *viz*., that it must "completely adjudicate[] all claims against all parties in the suit, or the procedural requirement that judgment be entered as a "separate document," or both. When the substantive and procedural requirements for finality are applied to the present case the following emerges:

(1) The trial court's January 8th order was neither final (because it did not adjudicate Geva's claims for injunctive relief and attorney's fees) nor did it comply with Md. Rule 2-601 because the relief it granted was part of the court's memorandum opinion addressing the parties' substantive contentions.

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[5] All practitioners should also be familiar with the ways that Md. Rule 2-601's filing requirements interact with Maryland's electronic court management system and the Judiciary's publicly-accessible case search system. There is no better first step in this endeavor than the opinions of this Court and the Court of Appeals in *Won Sun Lee v. Won Bok Lee,* 240 Md. App. 47, 65, *cert. granted*, 463 Md. 637 (2019), and *aff'd*, 466 Md. 601 (2020); *see also* Finality of Judgments at 9–16.

(2) The court's January 30th order (even when considered in conjunction with the January 8th order) was not a final judgment because it did not adjudicate Geva's request for injunctive relief for the client files.

(3) The court's April 1st order finally adjudicated Geva's request for an injunction regarding the client files in the sense that it implicitly denied it. Because that order contained a one-page plus explanation of the court's reasoning, the order did not comply with the separate document requirement.

(4) The court's May 9th orders complied with the separate document requirement. Judgment was final as of that date.

Geva's notice of appeal was filed on April 30th, which was within thirty days of the trial court's judgment on the last of the parties' outstanding claims but before actual entry of the final judgment. Generally, premature appeals are ineffective, and courts routinely dismiss them. However, dismissal of an appeal because the underlying judgment failed to comply with the separate document requirement is not required when the oversight is purely technical—as is the case in this appeal—and no party objects "to the absence of a separate document after the appeal is noted." *URS Corp.*, 452 Md. at 68 (citing *Bankers Trust Co. v. Mallis*, 435 U.S. 381 (1978), and *Suburban Hospital, Inc. v. Kirson*, 362 Md. 140 (2000)).

Eagle moved to dismiss Geva's appeal on the mistaken assumption that it was filed too late. This is certainly not the same thing as arguing that the appeal should be dismissed as premature because the trial court had yet to comply with the separate document requirement. We will treat the defect in the court's judgment as waived and address the merits of Geva's appeal.

Analysis

A. Geva's request for injunctive relief

An injunction is "a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience. Thus, injunctive relief is a preventative and protective remedy, aimed at future acts, and is not intended to redress past wrongs." *El Bey v. Moorish Science Temple of America*, 362 Md. 339, 353 (2001) (quoting *Maryland Commission on Human Relations v. Downey Communication*s, 110 Md. App. 493, 515 (1996)). An injunction "must be sufficiently specific to give a defendant a fair guide as to that expected of him." *Harford County Educ. Assn v. Board of Ed. of Harford County*, 281 Md. 574, 587 (1977). To that end, "[a]n order granting an injunction shall (1) be in writing, (2) be specific in its terms, and describe in reasonable detail, and not by reference to the complaint or another document, the act sought to be mandated or prohibited." Md. Rule 15-502(e).

We "review the exercise of the trial court's discretion to grant or deny a request for injunctive relief under an abuse of discretion standard." *Plank v. Cherneski*, 469 Md. 548, 608 (2020) (citations omitted).

At trial, there were clearly two categories of Eagle's business records at issue, ITO account files and client files. At trial, Eagle agreed to provide access to the ITO account files and agreed to the entry of an injunction for the production of the client files. Although the parties agreed as to the language of the injunction and submitted a proposed order to the court, the court never acted on it. We recognize that the trial court might have changed its mind as to whether entry of an injunction is appropriate but the court's explanation of its reasoning referenced the ITO account files and not the customer files. Under the circumstances, it is appropriate to vacate this part of the court's judgment and to remand this issue to the circuit court so that the court can address the client files issue and explain the basis of its resolution of the matter.

B. Geva's request for attorney's fees

As part of the relief it requested at trial, Geva sought an award of attorney's fees and expenses in the amount of $64,367.96. The court denied the motion. In its order doing so, the court stated:

> On December 19, 2018, the Court issued an Order as to Count I of the Amended Complaint [awarding] Plaintiff[s] $39,141.54 for Breach of Contract.
>
> The award of attorneys' fees in this case is permissive and not required under Maryland Rules 2-703 and 2-704. Due to the nature of this case, damages

> being significantly lower that the amount requested in attorneys' fees, and this Court [having] granted Defendant's motion for Judgment on Counts II and III of the Amended Complaint it is . . .
>
> ORDERED, the Plaintiff's Motion for Attorneys' Fees is Denied.

In a footnote, the court explained that it granted Eagle's motion for judgment on counts I and III of the amended complaint "because [Geva] failed to produce sufficient evidence."

Geva contends that the trial court erred as a matter of law when it concluded that an award of attorney's was permissive. Geva also argues that the court's analysis was "factually unsound." Geva is correct on both scores.

As we have explained, the agreement between the parties contained an indemnification provision wherein Eagle agreed to indemnify Geva and its officers "from and against any and all Damages incurred or suffered by Geva . . . arising out of or in connection with . . . [a]ny breach by Eagle" of its obligations in the agreement." "Damages" is a defined term in the agreement and its meaning includes "reasonable attorney's fees incurred in connection with investigating, prosecuting or defending a claim or action[.]"

It is clear beyond cavil that Eagle breached the agreement—it refused to pay money it owed to Geva under the agreement and it refused to turn over the business records as required by the agreement. Eagle conceded as much at trial. Because Eagle breached the agreement, and Geva filed an action to enforce it, Geva was entitled to indemnification by Eagle for damages incurred by it as a result of Eagle's breach. The agreement makes it clear that the "damages" that Geva is entitled to recover included "reasonable attorney's fees incurred in connection with investigating [and] prosecuting" its claim against Eagle.

Therefore, the trial court erred as a matter of law when it concluded that an award of attorney's fees was "permissive."

Md. Rule 2-704, which addresses claims for attorney's fees allowed by a contract as an element of damages, applies to this case. Subsection (e) of that rule states that, in cases tried by the court, the court shall first determine "whether an award of attorneys' fees is required or permitted." We hold that an award is required. Because an award is required, we are vacating the trial court's fee request ruling and remanding the case for the court to evaluate Geva's fee request according to the "standards set forth in Rule 2-703(f)(3)[.]" Md. Rule 2-704(e)(2).[6] Md. Rule 2-703(f)(3) provides that the factors to be considered by the court are:

> (A) the time and labor required;
> (B) the novelty and difficulty of the questions;
> (C) the skill required to perform the legal service properly;
> (D) whether acceptance of the case precluded other employment by the attorney;
> (E) the customary fee for similar legal services;
> (F) whether the fee is fixed or contingent;
> (G) any time limitations imposed by the client or the circumstances;
> (H) the amount involved and the results obtained;
> (I) the experience, reputation, and ability of the attorneys;
> (J) the undesirability of the case;
> (K) the nature and length of the professional relationship with the client; and

[6] Rule 2-704(e)(4) sets out an alternative and less complicated procedure to determine the amount of an award of attorney's fees. Rule 2-704(e)(4) does not apply to this case because its application is limited to cases in which the requested fees "do not exceed the lesser of 15% of the principal amount found to be due or $4,500[.]"

(L) awards in similar cases.[7]

Conclusion

Neither party has challenged the trial court's award of damages and we affirm it. But we vacate the circuit court's disposition of the claims for injunctive relief and attorneys' fees and remand the case for further proceedings consistent with this opinion.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED IN PART AND VACATED IN PART. THIS CASE IS REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

APPELLEES TO PAY COSTS.

[7] We express no opinion as to whether Geva can file for an additional award of fees arising out of this appeal. *See* Md. Rule 2-706.