Circuit Court for Charles County
Case No. C-08-CV-18-401

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 651

September Term, 2018

CHARLES COUNTY COMMISSIONERS, et al.

v.

WILLIAM CHRISTIAN, III

Arthur,
Nazarian,
Wells,

JJ.

Opinion by Wells, J.

Filed: October 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.

The Charles County Commissioners (hereafter "the County"), appeal from an order that the Circuit Court for Charles County issued denying the County's motion to dismiss a petition Appellee, William Christian, III, filed for judicial review.[1] Officer Christian, a County employee, previously sought but was denied workers' compensation benefits based on his claim that he could no longer work due to hypertension.

In its brief, the County poses two issues for our review:

(1) Is the trial court's order denying the Appellant's motion to dismiss based on the statute of limitations an appealable interlocutory order under the collateral order doctrine?

(2) Does the trial court have jurisdiction to hear a petition for judicial review of an administration agency decision that is barred by the Statute of Limitations?

We answer the first question in the negative and dismiss the appeal. As a result, we decline to address the second question. In addition, we are aware that Officer Christian filed a motion to dismiss this appeal. Based on our holding, Officer Christian's motion is rendered moot.

[1] Appellant's Brief describes William Christian as a "public safety officer for Charles County," while Appellee's Brief does not refer to Mr. Christian by title. Yet, the "Notice of Employee's Claim," App. E-8, refers to William Christian's "Nature of Business" as "Deputy Sheriff" and his "work while injured" as "public safety" and his "Description of Accident" as "18 years of public safety." We will refer to Mr. Christian as "Officer Christian" to avoid any confusion.

FACTUAL AND PROCEDURAL SUMMARY

Appellee, William G. Christian, III, began employment with the Charles County Commissioners in 1999 as a public safety officer. In 2017, Officer Christian filed a claim with the Workers' Compensation Commission ("the Commission") stating that he could not work as of October 16, 2014 due to hypertension.

The Commission held a hearing on January 23, 2018, at which the Commissioners considered the "nature and extent of [Officer Christian's] disability." After considering whether Officer Christian's hypertension or coronary artery disease met the American Medical Association's requirements and Maryland's five statutory factors for impairment, the Commissioners decided that, based on those standards, Officer Christian did not qualify for permanent disability benefits.[2]

After the denial of his claim, Officer Christian filed two motions requesting a rehearing. One motion was filed on February 21, 2018 and the other was filed on February

[2] The requirement that permanent impairments meet the American Medical Association, or the state statutory requirements comes from the Workers' Compensation statute and its interpreting regulations. "When preparing an evaluation of permanent impairment, a physician . . . shall: (1) Generally conform the evaluation with the format set forth in . . . the American Medical Association's Guides to the Evaluation of Permanent Impairment" COMAR 14.09.09.03(B). Alternatively, the Labor and Employment Article has its own schedule of physical conditions that adhere to permanent partial disability benefits. In this case, because the complained of injury is heart disease, the injury falls into the schedule of "other cases," in which the Commission must assess a doctor's analysis of: (1) "the nature of the physical disability; and (2) the age, experience, occupation, and training of the disabled covered employee when the accidental personal injury or occupational disease occurred." Maryland Code (1991, 2016 Repl. Vol.), sec. 9-627(k)(2)(i)-(ii) of the Labor and Employment Article (1991).

26, 2018.[3] In at least one of the motions, Officer Christian provided a report from an Independent Medical Examiner (IME) intended to persuade the Commission to reconsider its decision. The Commission denied Officer Christian's requests for rehearing on March 8, 2018.

Thereafter, Officer Christian sought judicial review in the Circuit Court for Charles County. That circuit court accepts all court filings via electronic means, known as the MDEC system.[4] A major dispute is whether Officer Christian timely filed his petition. Although we will not reach the issue of timeliness in this appeal, for the sake of thoroughness we simply note that Officer Christian argues that after the Commission issued

[3] From the documents we have it is unclear the difference, if any, between the two Motions for Reconsideration. The record extract submitted by both Appellant and Appellee contains the "Request for Rehearing," dated February 13, 2018, [App. E-27; Appellee Appendix 2], and then two different orders from the Commission, one that begins, "under date of February 21, 2018 Request for Rehearing," [Appellee Appendix 3], and another that begins, "under date of February 26, 2018 Request for Rehearing," [App. E-28], which both deny the motions for rehearing on the same grounds, but on different dates. However, neither the February 21st nor the February 26th motions for rehearing are in the record extract. In the February 13, 2018 submitted request for rehearing, [App. E-27; Appellee Appendix 2], Christian wrote, "During the aforementioned hearing Claimant's counsel stated we could provide an addendum from Claimant's IME doctor . . . to address the concerns listed in the Order. We received the addendum from [the doctor], dated February 16, 2018, which confirms his rating was based on the 4th edition of the AMA guides . . . . Based on this newly obtained evidence we respectfully request a re-hearing or reconsideration as to permanency." "Request for Rehearing," 2/13/2018 [App. E-27].

[4] Maryland Electronic Courts or MDEC is designed "to create a judiciary-wide integrated case management system that will enable courts at all levels to collect, store, process, and access records electronically." *www.mdcourts.gov/MDEC/about*. MDEC has been implemented throughout Maryland save for the busiest jurisdictions, namely Prince George's and Montgomery Counties, and Baltimore City. Charles County adopted the MDEC system in June 2017.

an order on March 8, 2018, denying him a rehearing, he filed a petition for judicial review on April 6, 2018 at 4:14 p.m. The County asserts that Officer Christian filed the petition on April 20, 2018 at 11:21 a.m., per the docket entries available on MDEC. In other words, the County maintains that Officer Christian filed his petition eleven (11) days after the deadline for filing expired.

Neither party disputes that on April 27, 2018, the County filed: (1) a motion to dismiss the petition for judicial review, and (2) a response to the petition itself. Three days later, Officer Christian filed a response to the motion to dismiss. The County replied on May 1, 2018. Without conducting a hearing, the circuit court issued a brief, one sentence order dated May 10, 2018 that denied the County's motion to dismiss without setting forth an explanation or rationale for its decision. The County subsequently noted this appeal.

DISCUSSION

The County argues that the circuit court's order denying the County's motion to dismiss is among the class of interlocutory orders that is immediately appealable as a collateral order. We disagree and explain.

The County acknowledges there is no final judgment from the circuit court. Generally, appellate courts will only consider issues arising from final judgments. *Schuele v. Case Handyman*, 412 Md. 555, 565 (2010). A final judgment is a "judgment, decree, sentence, order, determination, decision or other action by a court . . . from which an appeal, application for leave to appeal, or petition for certiorari may be taken." Md. Code Anno., Cts. & Jud. Proc. Art. § 12-101(f) (2006). To constitute a final judgment, a trial court's

ruling "must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding." *Maryland Board of Physicians v. Geier*, 451 Md. 526, 545 (2017) (*quoting Harris v. State*, 420 Md. 300, 312 (2011)).

There are, however, some judgments from which appeals may be properly taken that are not final judgments. The exceptions are: "(1) appeals from interlocutory orders specifically allowed by statute; (2) immediate appeals permitted under Maryland Rule 2-602; and (3) appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Id.* at 546 (*citing Salvagno v. Frew*, 388 Md. 605, 615 (2005)). Neither party says that this is an appealable interlocutory order by statute or rule. Instead the dispute is whether the order is appealable under the common law collateral order doctrine.

The common law collateral order doctrine is, "based upon a judicially-created fiction, under which, certain interlocutory orders are considered to be final judgments, even though such orders are clearly *not* final judgments." *Geier* at 545 (*quoting Dawkins v. Baltimore City Police Dep't.*, 376 Md. 53, 64 (2003)). As has developed in our jurisprudence, four elements must be met for an interlocutory order to qualify as appealable under the collateral order doctrine.[5] *First*, the order "must conclusively determine the disputed question." *Washington Suburban Sanitary Com'n ("WSSC") v. Bowen*, 410 Md.

[5] In federal jurisprudence an order must satisfy three elements to qualify as a collateral order. An order must: (1) conclusively resolve the dispute, (2) resolve an important issue that is separate from the merits of the case, and (3) be unreviewable on appeal. *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978), discussed *infra*. Essentially, our second and third elements are combined into one element in the federal analysis.

287, 296 (2009) (*quoting County Commissioners for St. Mary's County v. Lacer*, 393 Md. 415, 428 (2006)). *Second*, consideration of the collateral issue must resolve an "important" issue. *Id*. *Third*, the interlocutory order must be independent from the "merits of the action." *Id*. *Fourth*, the issue must be one that cannot be reviewed after a final judgment is rendered. *Id*.

In this case, the County argues, *first* that the circuit court's order conclusively determines whether the statute of limitations has expired. The County claims that if the statute of limitations has expired, then no appellate court has jurisdiction to consider the appeal. For support, the County cites the Court of Appeals' holdings in *Houghton v. County Commissioners of Kent County*, for the proposition that the timeliness of an order noting an appeal is, "jurisdictional; if the requirement is not met, the appellate court acquires no jurisdiction and the appeal must be dismissed." 305 Md. 407, 413 (1986), *superseded by Rule on other grounds as stated in Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466 (2014). *See also, Griffin v. Lindsey*, 444 Md. 278 (2015); *Rosales v. State*, 463 Md. 552 (2019).

Second, the County asserts the order resolves an important issue, specifically, whether it is even necessary to have a trial concerning Officer Christian's workers' compensation claim. The County reasons if the statute of limitations expired before Officer Christian filed suit, then his claim is extinguished. The County cites *Colao v. County Council of Prince George's County*, 346 Md. 342 (1997) and *Chance v. Washington Metropolitan Area Transit Authority*, 173 Md. App. 645 (2007), for the proposition that

courts must strictly enforce statutes of limitations in workers' compensation cases to provide finality of resolution. Specifically, the Court of Appeals expressed "concern[] that [workers' compensation] cases, having already been through an often exhaustive administrative process, not linger unnecessarily in the court system, making the 30-day requirement for filing the petition in the nature of an absolute statute of limitation." *Colao*, 364 Md. at 364. In short, the County urges us to strictly enforce the limitations provision.

Third, the County maintains that whether the statute of limitations expired is independent from the merits Officer Christian's alleged entitlement to workers' compensation benefits. The County insists that we determine whether there is jurisdiction for the appeal before tackling the merits of Christian's workers' compensation claim.

Fourth, the County urges us to review this interlocutory order now, rather than later, because the County asserts that determination of whether a trial is even necessary would be defeated after a trial was concluded. On this point, the County relies on our holding in *City of District Heights v. Denny*, 123 Md. App. 508, 521 (1998) in which we held that denial of an absolute immunity defense, in certain instances, may be unreviewable on appeal. The County argues by analogy that the defense of immunity from prosecution is similar to the expiration of the statute of limitations. In other words, the County argues that if we do not consider the application of the limitations defense in this appeal, then the parties will have to expend resources to prosecute and defend a suit when, in the County's opinion, it is likely that there would be no trial in the first instance.

Not surprisingly, Officer Christian disagrees. He argues that the collateral order doctrine does not apply to the circuit court's order. In this regard, Officer Christian focuses exclusively on the fourth element of the collateral order doctrine, namely, whether limitations may be reviewed after a final judgment. In Officer Christian's view, even though the trial court denied the County's motion to dismiss, the County is not foreclosed from seeking review of whether the statute of limitations precluded Officer Christian from obtaining the workers' compensation benefits. According to Officer Christian, the denial of the motion to dismiss merely postponed the County's limitations argument until after trial.

Both parties agree that if we considered this appeal, we: (1) would "conclusively determine" whether the statute of limitations expired prior to Officer Christian filing his petition, *Bowen*, 410 Md. at 296; (2) would resolve the "important" issue of whether the County must defend the decision of the Commission, *id.*; and, (3) the resolution of the statute of limitations issue is independent from "the merits of the action." On these points, we also agree. As to the fourth prong, however, we determine that the County's limitations defense should properly be reviewed after the circuit court renders a final judgment on Officer Christian's workers' compensation claim.

We conclude that the County's reliance on *Denny* is tenuous, particularly when we consider the holding in *Dawkins v. Baltimore City Police Department, et al.*, 376 Md. 53 (2003), which effectively limited the types of immediately appealable immunity rulings under the collateral order doctrine. Eura Dawkins brought negligence, negligent

supervision, assault, battery, and civil rights violations claims against the Baltimore City Police Department. *Id*. at 54. The police department filed a motion to dismiss. *Id*. at 57. The police department argued that Dawkins could not maintain a legal cause of action against it as it was immune from suit based on several variants of sovereign immunity. *Id*. The Circuit Court for Baltimore City denied the police department's motion to dismiss, and the police department noted an appeal. *Id*.

Reversing its previous holding in *State v. Hogg*, 311 Md. 446 (1988), the Court of Appeals established the "general rule" that "interlocutory trial court orders rejecting defenses of" immunity from suit "are not appealable under the Maryland collateral order doctrine." *Dawkins*, 376 Md. at 65. The Court held that "interlocutory trial court orders overruling immunity claims by … subdivisions … are not appealable under the doctrine." *Id*. The Court reasoned that immunity defenses are not subject to interlocutory appeals because such claims may be reviewed after the issuance of a final judgment. *Id*. In light of *Dawkins*, we conclude that the County's argument, that the denial of a motion to dismiss based on limitations is comparable to this Court's immunity-based holding in *Denny*, is unavailing.

Admittedly, in the forty years since Maryland adopted the collateral order doctrine in *Peat, Marwick, Mitchell & Co. v. Los Angeles Rams Football Co.*, 284 Md. 86, 91-92 (1978), our precedents have not categorically stated whether an interlocutory appeal of a circuit court order based on an alleged violation of the statute of limitations is immediately appealable as a collateral order. Generally, Maryland courts have "consistently

emphasized that the [collateral order] doctrine is to be tightly construed." *Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 144 (2010). *Pittsburgh Corning v. James*, 353 Md.657, 660–61 (1999) ("We have made clear, time and again, as has the United States Supreme Court, that the collateral order doctrine is a very narrow exception to the general rule that appellate review ordinarily must await the entry of a final judgment disposing of all claims against all parties."); *In re Franklin P.*, 366 Md. 306, 327 (2001) ("It is a doctrine that is to be applied 'only sparingly.'"); *In re Foley*, 373 Md. 627, 634 (2003) ("[I]n Maryland, the four requirements of the collateral order doctrine are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances.").

Additionally, this Court has held that discovery rulings, with one exception, were not immediately appealable under the collateral order doctrine. In *Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 152 (2010), we explained that, "Maryland in this regard is essentially following the lead of the Supreme Court in rejecting cases under the collateral order doctrine not after a plodding case-by-case analysis but on a more sweeping categorical basis." *Id.*

Since the doctrine's origins are federal, we look to the federal courts for guidance as to the collateral order doctrine's scope and applicability. A review of federal precedent reveals that an interlocutory appeal based on limitations is not immediately reviewable as a collateral order.

In the oft-cited *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 545-547 (1949), the Supreme Court "carved out a narrow exception to the normal application of the final

judgment rule, which has come to be known as the collateral order doctrine." *Midland Asphalt Corp.*, 489 U.S. 794, 798 (1989). To fall within the limited class of final collateral orders, an order must (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits of the action," and (3) "be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978). An unreviewable order is one that has irreparable effects or "'affects rights that would be irretrievably lost in the absence of an immediate appeal.'" *Cobra Natural Resources, LLC v. Federal Mine Safety & Health Review Commission*, 742 F.3d 82, 91 (4th Cir. 2014) (*citing Johnson v. Jones*, 515 U.S. 304, 311 (1995); *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 376 (1981) ("irreparable"); *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 430-431 (1985) ("affects rights that would be irretrievably lost in the absence of an immediate appeal")).

Further, federal courts have consistently maintained that the requirements for the applicability of the collateral order doctrine are "stringent." *Midland Asphalt Corp.*, 489 U.S. at 799. Indeed, the Supreme Court has consistently held that those conditions must be strictly followed, otherwise the use of collateral orders could "overpower the substantial finality interests" of judicial efficiency, namely, "avoid[ing] the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise." *Firestone Tire & Rubber Co.*, 449 U.S. at 374.

Our research has found that the Supreme Court has declined to find that interlocutory appeals of pretrial orders concerning discovery disputes or refusals to enforce settlement agreements may form the basis of a collateral order. For example, in *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100 (2009), the Supreme Court held that disclosure orders adverse to the attorney-client privilege do not qualify for immediate appeal under the collateral order doctrine, abrogating the Court's previous holdings in *In re: Napster, Inc. Copyright Litigation*, 479 F.3d 1078 (9th Cir. 2007) (*United States v. Philip Morris Inc*., 314 F.3d 612 (D.C. Cir.2003), and *In re: Ford Motor Co*., 110 F.3d 954 (3d Cir. 1997). *Mohawk*, 558 U.S. at 108.

And, in *Digital Equipment v. Desktop Direct, Inc.*, 511 U.S. 863 (1994), which involved a lawsuit claiming trademark infringement and unfair competition, the parties reached a settlement agreement, but Desktop later moved to vacate the voluntary dismissal and rescind settlement agreement claiming that Digital misrepresented material facts during the negotiations. *Id*. at 866. The United States District Court for the District of Utah granted Desktop's motion and Digital appealed. *Id*. The Court of Appeals dismissed the appeal and Digital filed a petition for writ of certiorari. *Id*.

The Supreme Court held that the refusal to enforce settlement agreement, which Digital claimed protected it from suit altogether, was not a basis for immediate appeal under collateral order doctrine. After analyzing Digital's claim that the agreement, essentially, gave it a "right not to stand trial altogether," *id*. at 869, Justice Souter, writing for the Court concluded that,

> [t]he words of [the Finality of Judgments Statute] have long been construed to recognize that certain categories of prejudgment decisions exist for which it is both justifiable and necessary to depart from the general rule, that "the whole case and every matter in controversy in it [must be] decided in a single appeal." But denying effect to the sort of (asserted) contractual right at issue here is far removed from those immediately appealable decisions involving rights more deeply rooted in public policy, and the rights Digital asserts may, in the main, be vindicated through means less disruptive to the orderly administration of justice than immediate, mandatory appeal. We accordingly hold that a refusal to enforce a settlement agreement claimed to shelter a party from suit altogether does not supply the basis for immediate appeal …

Id. at 884(citations omitted).

With regard to criminal appeals, the federal courts have specifically held that an order denying a motion to dismiss based on limitations do not provide a ground for interlocutory review as a collateral order. For example, in *United States v. Garib-Bazain*, 222 F. 3d 17 (1st Cir. 2002), the First Circuit Court of Appeals dismissed an appeal by a criminal defendant after the U.S. District Court issued an order denying his motion to dismiss predicated on his claim that the Government's charges of fraud and perjury were time-barred. *Id*. at 18.

In the second sentence of the opinion, the panel said:

> Because it is "well settled law" that such an order "is not immediately appealable under the collateral order doctrine," *United States v. Pi*, 174 F.3d 745, 750 (6th Cir.), *cert. denied*, 528 U.S. 825, (1999), we dismiss the appeal for lack of jurisdiction.

Garib-Bazain, 222 F.3d at 18. Four other federal circuits are in accord. *See*, *United States v. Weiss*, 7 F.3d 1088, 1089–90 (2d Cir.1993); *United States v. Rossman*, 940 F.2d 535, 536 (9th Cir.1991) (*per curiam*); *United States v. Davis*, 873 F.2d 900, 908–09 (6th Cir.1989) (cited in *Pi*, 174 F.3d at 750); *United States v. Levine*, 658 F.2d 113, 116–29 (3d

Cir.1981). From the cited federal cases we discern that the guiding principle underlying the collateral order doctrine is that the moving party is "vindicating or claiming a right to avoid trial." *Will v. Hallock*, 546 U.S. 345, 351 (2006). This over-arching principle is consistent, whether in the criminal or civil context. *Garib-Bazain, supra.; Mohawk, supra.; Digital Equipment, supra.*

We conclude that the County's defense of limitations does not permit it to avoid trial altogether. Indeed, Officer Christian may press his claim of entitlement to workers' compensation benefits and the County may defend itself by raising limitations. That defense is reviewable on appeal. In light of our appellate cases and the long-standing and consistent rulings from our federal counterparts, we hold that the circuit court's order denying the County's motion to dismiss is not immediately reviewable as a collateral order. Consequently, we dismiss this appeal.

APPEAL DISMISSED.
APPELLANT TO PAY
THE COSTS.