UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0779

September Term, 2014

RANI ELAINE BROOKS

v.

JOSEPH WILLIAM BROOKS

---

*Zarnoch,
Graeff,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: October 21, 2015

*Zarnoch, Robert A., J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

On August 27, 2013, the Circuit Court for Prince George's County held a hearing addressing appellee Joseph Brooks's ("Husband") petition for an absolute divorce on the grounds of appellant Rani Brooks's ("Wife") adultery. The parties stipulated that Wife had committed adultery in August 2011. Wife defended against the grounds of divorce, arguing that Husband had forgiven her adultery. At the conclusion of the hearing, the court determined that Husband and Wife had continued to have a sexual relationship after Husband learned of Wife's adultery, which constituted Husband's condonation of Wife's affair. Accordingly, the court denied Husband's petition for divorce.

Husband filed a motion for reconsideration. On April 24, 2014, the court held a hearing on Husband's motion. The court stated that it had reconsidered the evidence and the testimony of the parties. Although the court determined that there had been one instance of sexual relations between the parties after Husband learned of Wife's adultery, the court found that Husband had not forgiven Wife's conduct. The court, therefore, granted an absolute divorce based on Wife's adultery. Wife noted this appeal and presents one question for review:

> Did the trial court err as a matter of law when it granted Appellee an absolute divorce on the grounds of adultery, after finding Appellee had condoned such adultery?

As Wife has appealed from a non-appealable order, however, we shall dismiss the appeal.

DISCUSSION

We must address a procedural matter that neither party discussed in the briefs. The Court of Appeals has held: "Generally, under [Maryland Code (1974, 2013 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP")] Section 12-301, a party may appeal only from a final judgment entered in a civil or criminal case by a circuit court." *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 261 (2009). There are, however, three exceptions to the final judgment rule: "'appeals from interlocutory orders specifically allowed by statute [CJP § 12-303]; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory orders allowed under the common law collateral order doctrine.'" *Falik v. Hornage*, 413 Md. 163, 175-76 (2010) (internal citations omitted) (quoting *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 84 (2006)).

The Court of Appeals has held that in order to be final, a judgment must have three attributes: "(1) the court must intend it to be 'an unqualified, final disposition of the matter in controversy;' (2) 'it must adjudicate or complete the adjudication of all claims against all parties;' and (3) 'the clerk must make a proper record of it' on the docket." *Balt. Cnty. v. Balt. Cnty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 563-64 (2014) (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). In this case, the court's June 19, 2014 judgment of absolute divorce was not a final order, as it contemplated further proceedings: "ORDERED, that this case is referred to calendar management to schedule a one half (1/2) day hearing on any remaining issues raised by either party's pleadings not addressed by this

Order." Similarly, the accompanying opinion stated: "The parties elected to have property disputes scheduled for another day with this Court. The parties, through counsel, agreed that this Court retain jurisdiction for more than ninety (90) days beyond the date of this Judgment of Divorce to address any remaining property issues that the parties were unable to resolve." Additionally, the docket entry for this judgment does not include a record of it being a final judgment.

As "'appellate jurisdiction . . . is statutorily granted[,]'" if Wife has appealed from an unappealable order, we would lack jurisdiction to review her case. *Stephens v. State*, 420 Md. 495, 501 (2011) (quoting *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 565 (2010)).

The judgment of absolute divorce is not one of the permitted statutory appealable interlocutory orders. *See* CJP § 12-303. It also does not constitute an appealable order pursuant to the collateral order doctrine.[1] We are left then, with Rule 2-602(b), which provides: "If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment" for fewer than all of the claims

[1] In order to be an appealable collateral order, the judgment in question must: (1) "'determine the disputed question;'" (2) "'resolve an important issue;'" (3) "'be completely separate from the merits of the action;'" and (4) "'be effectively unreviewable on appeal from a final judgment.'" *Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 148 (2010) (quoting *Town of Chesapeake Beach v. Pessoa Constr. Co., Inc.*, 330 Md. 744, 755 (1993)), *aff'd*, 420 Md. 466 (2011). The judgment of absolute divorce is not completely separate from the claims in this action and would also be reviewable on appeal from a final judgment.

or parties. The court did not direct the entry of a final judgment for the judgment of absolute divorce.

Rule 8-602(e)(1)(C), however, permits an appellate court to enter a final judgment on its own initiative, if it determines that the trial court had discretion to direct the entry of final judgment pursuant to Rule 2-602(b). *See Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 171-72 & n.7 (2015), *cert. denied*, 444 Md. 641. We decline to do so in this case. As the Court of Appeals has noted, "the underlying purpose of the final judgment rule [is] to promote judicial efficiency by avoiding piecemeal appeals." *Metro Maint. Sys. S., Inc. v. Milburn*, 442 Md. 289, 298 (2015) (citing *Brewster v. Woodhaven Bldg. & Dev., Inc.*, 360 Md. 602, 616 (2000)). The Court of Appeals has also held that Rule 2-602(b) "is to be reserved only for the 'very infrequent harsh case.'" *Addison*, *supra*, 411 Md. at 268. This is not one of those cases. The determination of Wife's question would be reviewable on appeal from a final judgment.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.