

Circuit Court for Anne Arundel County
Case No. C-02-CV-16-000844

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
ON MOTION FOR RECONSIDERATION

No. 791

September Term, 2018

JOHN R. GREIBER, JR.

v.

SADIE CASTRUCCIO

Graeff,
Nazarian,
Arthur,

JJ.

Opinion by Nazarian, J.

Filed: November 27, 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.

This appeal is yet another of the many cases arising from the estate of Dr. Peter A. Castruccio, the late husband of Sadie Castruccio. In this case, Mrs. Castruccio accuses John R. Greiber, Jr., her late husband's attorney and the personal representative of his estate, of legal malpractice. Mr. Greiber appeals an interlocutory order of the Circuit Court of Anne Arundel County that had the effect of extending certain discovery, including designation of expert witnesses, beyond the original discovery deadline. He also seeks to raise issues relating to the merits of the underlying action.

Mrs. Castruccio filed a motion to dismiss on the ground that the order Mr. Greiber seeks to appeal is not appealable. We agree and dismiss the appeal.

I. BACKGROUND

On September 23, 2016, Mrs. Castruccio filed a First Amended Complaint alleging legal malpractice, under various theories, against Mr. Greiber and the Mason Law Offices. On September 29, 2016, the circuit court issued a scheduling order setting the following deadlines:

- November 14, 2016 – deadline to designate expert witnesses under Maryland Rule 2-402(g)(1), and
- February 27, 2017 – discovery deadline, including completion of all depositions.

Mrs. Castruccio did not designate any expert witness before the deadline and neither did the defendants.

The Mason Law Offices—but not Mr. Greiber—propounded written discovery requests on Mrs. Castruccio on December 22, 2016, more than thirty days before discovery closed. Mrs. Castruccio never responded to those requests, nor was she deposed, although

the circumstances of both are a matter of dispute.¹

On March 14, 2017, Mr. Greiber and the Mason Law Offices moved for summary judgment. The court heard arguments on the motion on June 19, 2017.

On March 29, 2017, the court held a pre-trial conference and scheduled trial for October 31, 2017.

Between August and October 2017, Mrs. Castruccio filed three motions to continue the trial date. The first motion, filed August 2, 2017, sought also to modify the scheduling order to permit designation of expert witnesses. The court denied that motion in its entirety, without explanation, on September 7, 2017. The court also denied the second motion to continue the trial, but granted the third due to Mrs. Castruccio's weakened health. Trial was rescheduled for February 22, 2018.

On November 6, 2017, the court granted the summary judgment motion as to the Mason Law Offices, which was dismissed from the case, but denied the motion as to Mr. Greiber on three of four counts.

On January 27, 2018, Mrs. Castruccio designated four expert witnesses. On February 2, 2018, Mr. Greiber filed a motion to strike Mrs. Castruccio's expert witness

¹ After we issued this opinion, Mrs. Castruccio filed a motion for reconsideration that took issue with the way we had described her participation in discovery. This litigation is contentious enough, even without the parties attempting to draw broader inferences from the background section of an opinion dismissing an appeal that indisputably never should have been filed, so we have granted the motion in part and issued this revised opinion in its place. For what it's worth, though, Mrs. Castruccio's brief never took issue with Mr. Greiber's characterization of her discovery conduct—the detail contained in the motion for reconsideration appears only in the tail portion of her Record Extract. And none of this matters anyway, since the order at issue wasn't appealable in the first place.

designation, arguing that it violated the original September 29, 2016 scheduling order. Mr. Greiber also filed a motion *in limine* to preclude Mrs. Castruccio from introducing evidence that she failed to produce in discovery and from calling expert witnesses.

On March 15, 2018, the circuit court denied both of Mr. Greiber’s motions and ordered Mrs. Castruccio to “hand over all requested discovery material to [Mr. Greiber] within fifteen (15) days of entry of this Order,” else the circuit court may grant Mr. Greiber’s motion *in limine*. The court also provided Mr. Greiber fifteen days to designate a rebuttal expert. Mrs. Castruccio did not produce any written discovery. Mr. Greiber designated a rebuttal expert on April 2, 2018.

On April 3, 2018, Mr. Greiber filed a motion for default on the ground that Mrs. Castruccio had failed to respond to written discovery. Later the same day, Mrs. Castruccio filed a “Motion for Clarification of the [March 15, 2018] Order,” and represented that her counsel could find no written discovery requests from *Mr. Greiber*, but could only find such requests propounded by the *Mason Law Offices*, which had since been dismissed from the case. Mr. Greiber opposed the motion.

On May 29, 2018, the circuit court ordered Mrs. Castruccio “to respond to the discovery requests that were properly served on [her] by the individual Defendant, John R. Greiber, if any, within 10 (ten) days” Mr. Greiber appeals that order, arguing that he will be prejudiced by Mrs. Castruccio’s late designation of an expert witness and lack of discovery responses. Mrs. Castruccio filed a motion to dismiss the appeal, arguing that the May 29, 2018 order is not an appealable order under the collateral order doctrine.

II. DISCUSSION

Mr. Greiber concedes that the May 29, 2018 order is not a final judgment, but contends that it is nevertheless appealable as a collateral order. The collateral order doctrine is a very limited exception to the final judgment rule. *Silbersack v. ACandS, Inc.*, 402 Md. 673, 678 (2008) (“[T]here is a long-standing bedrock rule of appellate jurisdiction, practice, and procedure that, unless otherwise provided by law, the right to seek appellate review in [the Court of Appeals] or the Court of Special Appeals ordinarily must await the entry of a final judgment that disposes of all claims against all parties.”); *In re Foley*, 373 Md. 627, 634 (2003) (“The [collateral order] doctrine is a very limited exception to the principle that only final judgments terminating the case in the trial court are appealable . . .”). To qualify as an appealable collateral order, the order must satisfy four criteria—it must:

- (1) conclusively determine[] the disputed question,
- (2) resolve[] an important issue, (3) resolve[] an issue that is completely separate from the merits of the action, and (4) [] be effectively unreviewable if the appeal had to await the entry of a final judgment.

Erlich v. Grove, 396 Md. 550, 563 (2007) (quoting *Pittsburgh Corning v. James*, 353 Md. 657, 660–661 (1999)).

Discovery orders like this one generally are not appealable. *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 87–88 (2006); *In re Foley*, 373 Md. at 634; see *Goodwich v. Nolan*, 343 Md. 130, 141 n.8 (1996). One “rare” exception to that general rule is when discovery is sought from high level-government officials. *Hudson v. Housing Authority of Balt. City*, 402 Md. 18, 27 (2007). But that exception does not apply

here, and Mr. Greiber has identified no other exception or reason why the collateral order doctrine should apply.

We acknowledge Mr. Greiber’s frustration with Mrs. Castruccio’s participation in discovery in an action *that she filed*. But as is usually the case with discovery orders, the order here fails at least to meet the third and fourth elements of an appealable collateral order. *First*, the order is not separate from the merits of the litigation—it orders the production of material that would assist in discovering the facts on which the outcome of the litigation could depend. *In re Foley*, 373 Md. at 635. *Second*, the order is not effectively unreviewable on appeal because Maryland Rule 8-131(d) permits Mr. Greiber to challenge it and other interlocutory orders on appeal from a final judgment. *See Hudson*, 402 Md. at 26–27 (observing that a discovery order is reviewable on appeal from a final judgment and citing cases). For those reasons, the May 29, 2018 order is not appealable. *Kurstin v. Bromberg Rosenthal, LLP*, 420 Md. 466, 480 (2011) (affirming dismissal of appeal of circuit court’s discovery order in a malpractice case on ground that, among other things, the order denying a motion to quash deposition and holding that the attorney-client privilege had been waived was not separate from the merits of the action and the order would be reviewable on appeal).

**APPEAL DISMISSED. APPELLANT TO
PAY COSTS.**