Circuit Court for Anne Arundel County
Case No. C-02-CV-21-001065

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1570

September Term, 2022

MICHAEL G. KNOEPFLE, ET AL.

v.

LOWER MAGOTHY COMMUNITY ASSOCIATION

Arthur,
Albright,
Harrell, Glenn T.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 8, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A pair of landowners claimed to have acquired title to all or part of a neighboring property. They asserted two legal theories in support of their claim. The Circuit Court for Anne Arundel County rejected one of the legal theories.

The landowners appealed even though the circuit court has yet to consider the merits of their second legal theory. We shall dismiss the appeal for want of appellate jurisdiction.

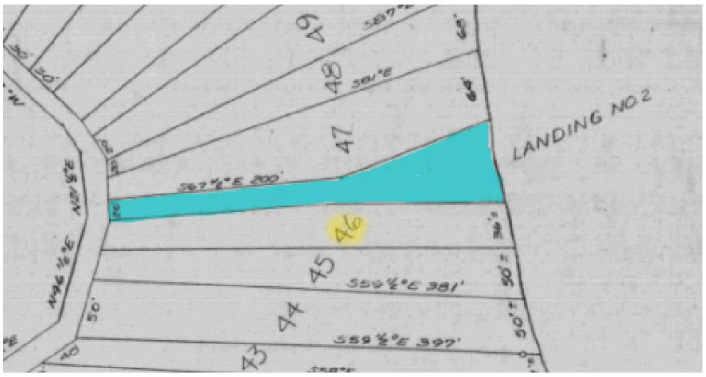
FACTUAL AND PROCEDURAL BACKGROUND

Appellants Michael and Laura Knoepfle own a waterfront property in the Magothy Beach subdivision of Severna Park. The property is designated as Lot 46 on the plat of Magothy Beach.

The Knoepfles' chain of title begins in 1927 with a deed from the developer to their predecessor-in-interest. The 1927 deed contained a detailed metes and bounds description of the boundaries of Lot 46. In addition, the deed describes Lot 46 as "binding" on two roads, including "a road leading to the public landing." The "road leading to the public landing" is known as "Landing 2."

The Lower Magothy Community Association ("LMCA") is the record owner of Landing 2 via a quitclaim deed executed in 1969.

A diagram showing the configuration of the lots appears below. Landing 2 is highlighted in blue.



On August 5, 2021, the Knoepfles filed suit against LMCA.[1] Their complaint presented two independent legal theories under which the Knoepfles claimed the right to all or part of Landing 2.

First, the Knoepfles asserted a claim of adverse possession. Second, the Knoepfles asserted that they had acquired title to half of Landing 2 through section 2-114(a) of the Real Property Article of the Maryland Code (1974, 2015 Repl. Vol.) ("RP").

Section 2-114(a) provides as follows:

> Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds.

In essence, the Knoepfles contended that the 1927 deed to Lot 46 granted land "binding" on a road, and thus a "street or highway"—Landing 2. Therefore, they concluded that their predecessors-in-interest had acquired title to half of Landing 2. Title

[1] The Knoepfles also filed suit against the owner of Lot 47, but dismissed all claims against her in 2022.

to the other half of Landing 2, according the Knoepfles, belonged to the owner of Lot 47, the lot on the other side of Landing 2. *See* RP § 2-114(b) (stating that "[i]f the transferor owns other land on the opposite side of the street or highway, the deed, will, or other instrument shall be construed to pass the right, title, and interest of the transferor only to the center of that portion of the street or highway upon which the 2 or more tracts coextensively bind").

On August 10, 2022, the Knoepfles moved for a preliminary ruling on issues of law under Maryland Rule 2-502.[2] The Knoepfles specifically asked the court 1) to determine that Landing 2 is a "road" within the meaning of section 2-114(a) of the Real Property Article; 2) to quiet title to Landing 2; 3) to determine that LMCA lacks standing to assert the rights of other lot owners with respect to a purported easement across Landing 2; and 4) to determine that there is no easement over Landing 2.

LMCA joined the Knoepfles' motion. LMCA argued, however, that section 2-114 did not apply to Landing 2 and thus that the court need not decide any questions concerning the purported easement.

[2] Rule 2-502 provides as follows:

> If at any stage of an action a question arises that is within the sole province of the court to decide, whether or not the action is triable by a jury, and if it would be convenient to have the question decided before proceeding further, the court, on motion or on its own initiative, may order that the question be presented for decision in the manner the court deems expedient. In resolving the question, the court may accept facts stipulated by the parties, may find facts after receiving evidence, and may draw inferences from these facts. The proceedings and decisions of the court shall be on the record, and the decisions shall be reviewable upon appeal after entry of an appealable order or judgment.

At the end of a hearing on October 14, 2022, the court issued an oral ruling. The court concluded that section 2-114(a) did not apply to Landing 2 and, thus, that the Knoepfles did not acquire title to half of the "road." The court reasoned that the deed to Lot 46—the Knoepfles' lot—contained "a very specific metes and bounds description," which did not include Landing 2. Because section 2-114(a) expresses a general rule that applies only "[e]xcept as otherwise provided," the court determined that the specific metes and bounds description put the case within the exception that overrode the general rule. The court declined to make additional preliminary determinations.

On October 17, 2022, the court entered an order on the motion for preliminary determination of questions of law, which stated as follows:

> 1) **ORDERED**, that the Court finds the metes and bounds description in the Plaintiffs' Deed (Lot 46) controls and thus MD Code, Real Property § 2-114 shall not be applied; and it is further
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> 2) **ORDERED**, that the Court finds that the Defendant Lower Magothy Community Association's Deed (1969 Deed), when read in concert with the Plaintiffs' Deed (Lot 46 Deed) adequately defines "Landing 2"; and it is further
>
> 3) **ORDERED**, that Defendant Lower Magothy Community Association is the fee owner of the parcel described as "Landing 2"; and it is further
>
> 4) **ORDERED**, that the Court declines to consider the remaining Preliminary Determinations of Law.

The order did not address the Knoepfles' adverse possession claim, which remains pending.

After the court denied their motion for reconsideration, the Knoepfles noted an appeal from this interlocutory order. For the reasons stated below, we shall dismiss the Knoepfles' appeal because we do not have jurisdiction to consider the issues presented.

DISCUSSION

Our power to decide appeals is derived from statute—principally, section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020 Repl. Vol.) ("CJP"). In general, under section 12-301, "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court."

To qualify as a final judgment, an order "must be 'so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.'" *Metro Maint. Sys. South, Inc. v. Milburn*, 442 Md. 289, 299 (2015) (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)) (emphasis in original); *accord Huertas v. Ward*, 248 Md. App. 187, 200 (2020). Ordinarily, an order "that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action . . . is not a final judgment[.]" Md. Rule 2-602(a).

Everyone agrees that the order at issue in this case is not a final judgment. The circuit court has decided a few legal issues, but the allegations of adverse possession remain pending. Under Md. Rule 2-602(a), the court's ruling "does not terminate the action as to any of the claims or any of the parties[.]" The order is interlocutory, in that it

"is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties." Md. Rule 2-602(a).

Recognizing that the Knoepfles did not appeal from a final judgment, LMCA has moved to dismiss the appeal. Even if LMCA had not done so, we would have the right and the obligation to inquire into whether we have jurisdiction to decide the case. *See, e.g., Zilichikhis v. Montgomery County*, 223 Md. App. 158, 172 (2015).

If an appeal has been taken before the entry of a final judgment, the appeal is "generally of no force and effect." *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 662 (2014) (internal citation omitted). If we lack appellate jurisdiction because an appeal is premature, we must dismiss the appeal. *See* Md. Rule 8-602(b)(1).

Maryland recognizes three limited exceptions to the statutory "final judgment" rule of section 12-301 of the Courts and Judicial Proceedings Article. The exceptions are: (1) appeals from interlocutory rulings specifically allowed by statute; (2) immediate appeals permitted under Maryland Rule 2-602(b); and (3) appeals from interlocutory rulings allowed under the collateral order doctrine. *See, e.g., County Comm'rs for St. Mary's County v. Lacer*, 393 Md. 415, 424-25 (2006).

The Knoepfles do not contend that they have the right to appeal under the collateral order doctrine. They do, however, contend that they have the right to appeal under a statutory exception to the final judgment rule and under Rule 8-602(g), which permits this Court to authorize an appeal that the circuit court could have authorized under Rule 2-602(b). We shall discuss each contention in turn.

The Knoepfles assert that they have a statutory right to appeal under CJP section 12-303(1). Section 12-303(1) permits an interlocutory appeal of an order "entered with regard to the possession of property with which the action is concerned[.]" The order in this case is not such an order.

An order entered with regard to the possession of property is one that divests a party of a possessory right to the property. *See Bledsoe v. Bledsoe*, 294 Md. 183, 185 n.1 (1982); *City of Baltimore v. Kelso Corp.*, 281 Md. 514, 517 n.2 (1977); *Bussell v. Bussell*, 194 Md. App. 137, 147 (2010). For example, in *City of Baltimore v. Kelso Corp.*, 281 Md. at 517, the Court held that it had the power to consider an appeal from an interlocutory order that dismissed the City's quick-take condemnation claim and divested the City of the right to immediate possession, which it had acquired under the quick-take ordinance. In *Bledsoe v. Bledsoe*, 294 Md. at 185 n.1, the Court held that it had the power to consider an interlocutory appeal from a use and possession order in a domestic case that gave sole possession of the marital home to one spouse during the pendency of the litigation. Similarly, in *Bussell v. Bussell*, 194 Md. App. at 147, this Court recognized that "a *pendente lite* order granting use and possession of a family home, though not a final judgment . . . , is immediately appealable as an interlocutory order, pursuant to C.J.P. § 12-303." In each of these cases, the order in question adjudicated the possessory rights to the property.

By contrast, this Court has repeatedly held that CJP section 12-301(1) does not authorize an appeal from an interlocutory order that merely relates in some way to rights in property, but that does not concern the right to possess property. *See, e.g., Abner v.*

Branch Banking & Trust Co., 180 Md. App. 685, 691-93 (2008) (holding that section 12-303(1) did not authorize an appeal from an interlocutory order dismissing a claim alleging that the sale of assets was a fraudulent conveyance); *Rustic Ridge, L.L.C. v. Washington Homes, Inc.*, 149 Md. App. 89, 96, 98-99 (2002) (holding that section 12-303(1) did not authorize an appeal from an interlocutory order declaring that one party was the rightful owner, but not addressing possession); *McCormick Constr. Co. v. 9690 Deerco Rd. Ltd. P'ship*, 79 Md. App. 177, 181 (1989) (holding that § 12-303(1) did not authorize an appeal from an interlocutory order that stayed a mechanic's lien action pending arbitration even though the imposition of a mechanic's lien might result in a right of possession); *see also Lewis v. Lewis*, 290 Md. 175, 184 (1981) (holding that § 12-303(1) did not authorize an appeal from an interlocutory order determining that military retirement pay was not part of marital estate).

In the instant matter, the ruling from which the Knoepfles seek to appeal has no direct bearing on the possession of Landing 2. The ruling determines that the Association has record title to Landing 2 and that Knoepfles' predecessors-in-interest did not acquire title to half of Landing 2 by virtue of section 2-114 of the Real Property Article. The ruling, however, does not address the question of possession. In particular, it does not address the Knoepfles' pending allegation that they and their predecessors-in-interest have exercised adverse possession over Landing 2 and have thereby acquired title to the property.

Like the order in *Rustic Ridge, L.L.C. v. Washington Homes, Inc.*, 149 Md. App. at 96, which declared that one party was the "rightful owner" but did not address the

question of possession, the order here is not an appealable interlocutory order under CJP section 12-303(1). Although the order declares that LMCA is the "fee owner" of Landing 2, the order does not award a possessory right in the property to anyone. Nor does the order divest anyone of a possessory right in the property at issue or address the Knoepfles' adverse possession claim, which remains pending. Therefore, the order is not immediately appealable as "[a]n order entered with regard to the possession of property," within the meaning of § 12-303(1).[3]

Alternatively, the Knoepfles argue that we should exercise our discretion under Md. Rule 8-602 to enter a final judgment on our own initiative. In the circumstances of this case, we are not authorized to do so.

Md. Rule 8-602(g)(1) gives this Court the power to "enter a final judgment on its own initiative" if "the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(b)[.]" Rule 2-602(b) permits a court to direct "the entry of a final judgment . . . as to one or more but fewer than all the claims or parties" "[i]f the court expressly determines in a written order that there is no just reason for delay[.]"

Our discretion to enter a final judgment pursuant to Rule 8-602(g) is no broader than that of the circuit court under Rule 2-602(b). *See Zilichikhis v. Montgomery County*, 223 Md. App. at 172 n.7 (concerning a prior iteration of the rule). "An appellate court

[3] The Knoepfles, in their brief, state that they "believe that the trial court intended that the issue of adverse possession be the subject of future factual development, but the plain text of the order does not leave room for such events" because as entered, "it simply awards title." We disagree. The language of the order does not purport to consider, much less dispose of, the Knoepfles' adverse possession claim which constitutes the bulk of their complaint.

'should be reluctant' to enter judgment on its own initiative" under Rule 8-602(g) "when no party asked the circuit court to exercise its authority under Rule 2-602(b)." *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 505 (2014) (quoting *Smith v. Lead Indus. Ass'n, Inc.*, 286 Md. 12, 26 (2005)) (concerning a prior iteration of the rule).

For at least two reasons, this would not have been an appropriate case for a circuit court to direct the entry of a final judgment under Rule 2-602(b) even if anyone had asked the court to do so.

First, a court may direct the entry of a final judgment under Rule 2-602(b) if its order disposes of "one or more but fewer than all of the claims" in the case. As used in Rule 2-602(b), however, "claim" is a term of art. Under Rule 2-602(b), "[d]ifferent legal theories for the same recovery, based on the same facts or transaction, do not create separate 'claims' for purposes of the rule." *East v. Gilchrist*, 293 Md. 453, 459 (1982); *accord County Comm'rs for St. Mary's County v. Lacer*, 393 Md. at 426; *see also Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric.*, 439 Md. 262, 279 (2014) (stating that "[a]lternative legal theories and differing prayers for relief do not constitute separate 'claims' so long as they arise from a single asserted legal right"). Thus, it is untrue that each separate count in a complaint is necessarily a separate "claim" within the meaning of Rule 2-602(b). *See, e.g.*, *Medical Mut. Liab. Soc'y v. B. Dixon Evander & Assocs., Inc.*, 331 Md. 301, 312 (1993); *see also County Comm'rs for St. Mary's Cty. v. Lacer*, 393 Md. at 426 (stating that "the disposition of an entire count or the ruling on a particular legal theory does not mean, in and of itself, that an entire 'claim' has been

disposed of"); *Impac Mortg. Holdings, Inc. v. Timm*, 245 Md. App. 84, 106 (2020) (same).

The Knoepfles' complaint has two counts: one in which they claimed title to all or part of Landing 2 through RP section 2-114 and another in which they claimed title to all or part of Landing 2 through adverse possession. The two counts express "[d]ifferent legal theories for the same recovery, based on the same facts or transaction[.]" *East v. Gilchrist*, 293 Md. at 459. Therefore, they are not separate "claims," within the meaning of Rule 2-602(b). *Id.* Therefore, under Rule 2-602(b), the circuit court could not have directed the entry of a final judgment as to the order in which it determined that the Knoepfles did not acquire title to Landing 2 through section 2-114. *See id.* Accordingly, we cannot direct the entry of a final judgment as to that order under Rule 8-602(g).

Second, under the circumstances of this case, the circuit court could not reasonably determine that there was "no just reason to delay the entry of final judgment" as to the Knoepfles' allegations regarding RP section 2-114. In determining whether there is "no just reason" for delay, a circuit court considers several factors, including "[w]hether disposition of the remaining claims might moot the need for an immediate appeal." *Shofer v. Stuart Hack Co.*, 107 Md. App. 585, 595 (1996); *accord Len Stoler, Inc. v. Wisner*, 223 Md. App. 218, 227 (2015); *Canterbury Riding Condo. v. Chesapeake Investors, Inc.*, 66 Md. App. 635, 653 (1986). If the disposition of the remaining claims would moot the need for an immediate appeal, the court may not direct the entry of a final judgment under Rule 2-602(b). *Shofer v. Stuart Hack Co.*, 107 Md. App. at 596; *see also Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric.*, 439 Md. at 289 (holding

that "there [was] a very significant reason to defer [the] appeal" where a ruling on the remaining issues might "render moot" the issue on appeal); *McLaughlin v. Ward*, 240 Md. App. at 87-88 (stating that a court could not direct the entry of a final judgment under Rule 2-602(b) if the issue on appeal might become moot because of future rulings by the circuit court); *Collins v. Li*, 158 Md. App. 252, 273-74 (2004) (stating that a court could not direct the entry of a final judgment under Rule 2-602(b) where "additional proceedings below may moot certain of the issues" presented in the appeal).

In this case, it is obvious that the disposition of the Knoepfles' remaining claims may well moot the alleged need for an immediate appeal: if the Knoepfles prevail on their claim of adverse possession, they will establish their superior right to Landing 2 (or at least to the parts that they claim to have adversely possessed). In those circumstances, the question of whether the circuit court erred in its interpretation of RP section 2-114 will make little or no difference: the Knoepfles will have established a superior right to Landing 2 under an alternative theory.

In view of the distinct possibility that a ruling on the adverse possession claim may eliminate the need to decide whether the court erred in its interpretation of RP section 2-114, it would be a waste of judicial resources for this Court to review the ruling that the Knoepfles have appealed. Because there are many "just reason[s]" to delay the entry of final judgment as to ruling on appeal, the circuit court could not have directed the entry of final judgment as to that ruling under Rule 2-602(b). Consequently, we cannot do so under Rule 8-602(g).

APPEAL DISMISSED; COSTS TO BE PAID BY APPELLANTS.