Circuit Court for Cecil County
Circuit Court Case No. 07-C-15-002008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1633

September Term, 2017

ELIZABETH L. HAMMOND, *et al.*

v.

MICHAEL COX, *et al*.

Graeff,
Berger,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: February 14, 2019

Anthony A. Hammond, Jr. died on December 20, 2012, as the result of a gunshot wound inflicted by Cpl. Michael Cox, a Maryland State Police officer who, at the time of the incident, was on duty and in pursuit of Hammond. Suit was filed in the Circuit Court for Cecil County on behalf of Hammond's estate and survivors against Cox, the Department of Maryland State Police, and the State of Maryland.[1] The complaint, as amended, was in six counts, three of wrongful death and three in the nature of a survivor action.[2] Counts 1 and 2 alleged intentional killing; Counts 3 and 4 alleged gross negligence; and Counts 5 and 6 alleged negligence.

After the remaining defendants answered, and discovery was conducted, the State moved for summary judgment, the outcome of which is the subject of this appeal. Following a comprehensive hearing on the State's motion for summary judgment, the court ruled:

> But based on the facts that I heard and the legal standards that are applicable to this case, I'm going to grant summary judgment ***on all counts***.

(Emphasis added).

Subsequently, the court entered an order intended to clarify its bench ruling:

> After reading the file and considering the argument of counsel, the Court finds that no reasonable interpretation of the facts or reasonable inference of the facts would permit a finding of *gross negligence or negligence* on the part of Trooper Cox.

[1] Plaintiffs in the action are Elizabeth L. Hammond, for herself as Hammond's mother and as Personal Representative of his estate; Anthony Hammond, Sr., his father; three adult children; and three minor children by their respective parents/next friends.

[2] The amended complaint eliminated the Department of Maryland State Police as a defendant after the State had filed a Motion to Dismiss addressing errors in the original complaint.

> It is thereupon the 18th day of October, 2017 **ORDERED** and adjudged that the Motion for Summary Judgment filed by the Defendants be and is hereby **GRANTED as to Counts I, II, III, and IV.**

(Bold in original) (Italics added).

Again, the wording of the order is contradictory, even though subsequent orders make clear that it was the court's intent to enter summary judgment in favor of appellee on the counts alleging intentional tort and gross negligence – Counts 1, 2, 3, and 4 – but to deny summary judgment as to the negligence counts – Counts 5 and 6 – thus leaving the negligence counts as a viable claim.

The parties then filed a Consent Motion to Certify as Final Judgment, pursuant to Maryland Rule 2-602(b), which the court granted by adopting the parties' proposed order:

> The foregoing consent motion having been read and considered, it is hereby ORDERED this 30th day of May 2018, that the court finds that there is no just reason for delay, and that the court directs the clerk to enter finals [sic] judgments as to count 1-4, for the reasons that, to not do so, may result in multiple trials, appeals, and waste of the court's and parties' time should all the counts not be finally determined together.

This appeal followed.

DISCUSSION

Preliminarily, we must determine whether this appeal is properly before this Court. Appellate review is authorized only after the trial court has entered a final judgment. Md. Code (1974, 2013 Repl. Vol.) Courts and Judicial Proceedings Article (CJP), § 12-301. As we pointed out in *Murphy v. Steele Software Sys. Corp*., 144 Md. App. 384 (2002), "[i]t is our duty, in appropriate cases, to raise, and decide, issues of our jurisdiction over cases

appealed to this Court." 144 Md. App. at 392 (citing *Harford Sands, Inc. v. Levitt & Sons, Inc*., 27 Md. App. 702 (1975)).

"As a general rule, under Maryland law, litigants may appeal only from what is known as a 'final judgment.'" *URS Corp. v. Fort Myer Constr. Corp*., 452 Md. 48, 65 (2017) (citing CJP § 12-301). "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.'" *Md. Bd. of Physicians v. Geier*, 451 Md. 526, 545 (2017) (quoting *Harris v. State*, 420 Md. 300, 312 (2011). A final judgment must "leave nothing more to be done in order to effectuate the court's disposition of the matter." *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989).

An exception to the finality rule is found in Md. Rule 2-602 – Judgments not disposing of entire action. Relevant to our discussion, that rule provides:

> (a) **Generally**. Except as provided in section (b) of this Rule, an order or other form of decision, however, designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counter claim, 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:
>
> (1) is not a final judgment;
>
> * * *
>
> (b) **When allowed**. 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:
>
> (1) as to one or more but fewer than all of the claims or parties; …

We begin with consideration of two overriding principles: first, that the certification permitted by Rule 2-602(b) is to be used "sparingly," *see, e.g. Md.-Nat'l Capital Park & Planning Comm'n v. Smith*, 333 Md. 3, 7 (1993), and only for the "very infrequent and harsh case[;]" *see, e.g., Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 136 (2010) (citations omitted); and, second, that the parties to litigation may not consent to confer jurisdiction on this Court. *National 4-H Club Found. of Am., Inc. v. Thorpe*, 22 Md. App. 1, 3 (1974) (citing *Lang v. Catterton*, 267 Md. 268, 275 (1972)). Our appellate courts have consistently said that, while the rule is designed to advance the cause of judicial economy, its concern is judicial economy for the appellate courts, not the trial courts. *See, e.g., USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 170-71 (2011) (citations omitted), *aff'd*, 429 Md. 199 (2012).

In the matter before us, it is apparent that the parties, and the court below, proceeded on the basis that appellants' six-count Complaint, as amended, included more than one claim. We are not persuaded to that approach. "A 'claim' under Rule 2-602(b) includes all the alternative legal theories that a party may assert in order to obtain redress for a wrong suffered in a particular, discrete transaction." Judge Kevin F. Arthur, FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES 74 (3d ed. 2018).

Here, appellants' claims are based on a "particular, discrete transaction" – the fatal shooting of appellants' decedent – about which there is no factual dispute. "When two counts are based upon the same facts, and merely represent different legal theories upon which the plaintiff can recover the same damages, the counts constitute a single claim." *Med. Mut. Liab. Ins. Soc'y of Maryland v. B. Dixon Evander & Assocs.*, 331 Md. 301, 310

(1993). "Different 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) (citations omitted). A grant of partial summary judgment by the trial court to one, or more, counts of a multicount complaint, all of which are based on a discrete factual situation, cannot implicate the application of Rule 2-602(b).

Moreover, the trial court's order recited only that a potential "waste of the court's and parties' time" was the basis for invocation of the rule. As we have noted, *supra*, the focus of the rule, in terms of judicial economy, is on the appellate courts, not the trial courts. *USA Cartage, supra*. On that point, we said in *Canterbury Riding Condo. v. Chesapeake Investors, Inc.*, 66 Md. App. 635 (1986) that:

> "A proper exercise of discretion under [the rule] requires the [trial] court to do more than just recite the … formula of 'no just reason for delay.' The court should clearly articulate the reasons and factors underlying its decision to grant … certification. '… It is essential … that a reviewing court have some basis for distinguishing between well-reasoned conclusions arrived at after a comprehensive consideration of all relevant factors, and mere boiler-plate approval phrased in appropriate language but unsupported by evaluation of the facts or analysis of the law….'"

66 Md. App. at 650-51 (quoting *Allis-Chalmers Corp. v. Philadelphia Elec. Co.*, 521 F.2d 360, 364 (3d Cir. 1975)).

No such analysis is apparent from the record, and convenience to the parties and trial court, absent more, is insufficient.

In *Murphy v. Steele Software, supra*, we noted that "the Court of Appeals [has] said that 'appellate jurisdiction cannot be conferred on a reviewing court by consent of the

litigants … [hence] this Court will dismiss an appeal *sua sponte* when it recognizes that appellate jurisdiction is lacking." 144 Md. App. at 394-95. We shall do so in this case.[3]

Because we dismiss the appeal, we need not consider the other questions raised by appellant.

APPEAL DISMISSED; COSTS TO BE SHARED BY THE PARTIES EQUALLY.

[3] Additionally, although not dispositive, the record reveals that the circuit court's order purporting to certify the judgment as final and appealable has not been properly docketed, pursuant to several provisions of Md. Rule 2-601. As provided in subsection (a)(4), "[a] judgment is effective only when so set forth and when entered as provided in section (b) of this Rule." Subsection (b)(2) requires that: "The clerk shall enter a judgment by making an entry of it on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate." An MDEC search reveals that the court's executed May 30, 2018 order certifying the judgments as final was included as the last page of the Consent Motion to Certify as Final Judgment, that was docketed as being filed on May 23, 2018. There is no separate filing or docket entry reflecting the court's order as required pursuant to Rule 2-601(a)(1) and (b)(2).