Circuit Court for Prince George's County
Case No. CAL21-07800

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1663

September Term, 2021

CHRISTIE ADEMILUYI

v.

MARYLAND FARMS COMMUNITY SERVICES ASSOCIATION, INC., ET AL.

Beachley,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: October 28, 2022

This appeal arises from an order of the Circuit Court for Prince George's County striking a notice of appeal filed by appellant, Christie Ademiluyi. The only issue that could properly be before this Court is whether the court erred in striking the notice of appeal. Appellant, however, neither raises this question nor argues this issue in her opening brief. Instead, she raises and argues tangential issues that are not properly before us. Accordingly, we shall affirm the court's order striking the notice of appeal and dismiss the other issues raised by appellant.

FACTUAL AND PROCEDURAL BACKGROUND

Maryland Farms Community Services Association, Inc. ("Maryland Farms") is a condominium association where appellant once served as vice president and a general member of its board of directors. On July 7, 2021, Maryland Farms and the board's president, appellees (collectively, the "Association"), filed a complaint for, *inter alia*, declaratory and injunctive relief against appellant, stemming from her alleged unauthorized disclosure of confidential information and privileged documents to non-board members.[1]

The Association filed, contemporaneously with the complaint, an "Emergency Motion for Temporary Restraining Order and Preliminary Injunction," seeking to enjoin appellant from further disclosing to non-board members matters and documents obtained while she served on the board. On July 14, 2021, the court granted the Association's

[1] The complaint includes counts for "Temporary Restraining Order and Preliminary and Permanent Injunctive Relief," "Declaratory Judgment," and "Intrusion Into Seclusion and False Light Invasion of Privacy."

Motion for Temporary Restraining Order and scheduled for July 26, 2021 a full adversary hearing on the Motion for Preliminary Injunction.[2]

On July 26, 2021, following an adversary hearing, the court granted the Association's Motion for Preliminary Injunction and entered an order ("Injunction Order") requiring appellant to refrain from, *inter alia*, disclosing certain information and documents. The Injunction Order advised appellant that she could "apply for a modification or dissolution of this order" "pursuant to Md. Rule 15-502(f)[.]"

Appellant did not move for modification or dissolution of the Injunction Order pursuant to Rule 15-502(f). Instead, she filed, on August 23, 2021, a motion to dismiss the complaint for failure to state a claim upon which relief can be granted pursuant to Rule 2-322(b)(2). In the motion, appellant articulated the legal standard for evaluating a motion to dismiss, and she challenged the sufficiency of the allegations contained in the complaint. She outlined her defenses to the complaint predicated primarily on First Amendment protections, the Association's lack of standing, and its unclean hands. Appellant mentioned the adversary hearing and the Injunction Order in the motion: first, to provide procedural context leading up to filing of the motion; and second, to suggest that the court could rely on her July 26 testimony if it was "inclined to convert [the] motion to dismiss to a motion

[2] A temporary restraining order is "an injunction granted *without* opportunity for a full adversary hearing on the propriety of its issuance." Md. Rule 15-501(c) (emphasis added); *see* Md. Rule 15-504. By contrast, a preliminary injunction is "an injunction granted *after* opportunity for a full adversary hearing on the propriety of its issuance but before a final determination of the merits of the action." Md. Rule 15-501(b) (emphasis added); *see* Md. Rule 15-505.

for summary judgment." Nowhere in the motion did appellant expressly attack the entry of the Injunction Order or request that it be dissolved. Rather, appellant concluded the motion with a demand that "[t]his [c]ourt must dismiss this action with prejudice."

On October 19, 2021, the court entered an order "that [appellant's] Motion to Dismiss is DENIED" ("Denial Order"). The Denial Order made no reference to an injunction. Its entry automatically extended the time for appellant to file an answer to the complaint by fifteen days. *See* Md. Rule 2-321(c).

On November 3, 2021, appellant filed an answer to the complaint. She filed, that same day, a notice of appeal ("First NOA") stating that she, "under M[d] Cts. & Jud. Proc. § 12-303(3), having filed an answer in the cause, notes an appeal of the circuit court's granting an injunction and refusal to dissolve the injunction." The Association filed a motion to strike the First NOA as untimely. It argued that appellant's notice of appeal should have been filed on or before August 25, 2021, thirty days after the entry of the Injunction Order. Appellant opposed the motion to strike. She argued that she "timely filed a motion to dismiss the complaint for injunctive relief and damages and a notice of appeal of this court's refusal to do so." She explained that she could have filed a motion to dissolve the injunction and then appealed from that denial, but she "chose to address the dissolution of the injunction and dismissal of the complaint for injunctive relief and damages all in one motion" before her answer to the complaint was due. Appellant further suggested that the court lacked the authority to strike the First NOA.

On December 13, 2021, the court entered an order granting the Association's motion to strike the First NOA.[3]

On December 20, 2021, appellant filed a notice of appeal ("Second NOA") "of the circuit court's striking of the timely notice of appeal of the circuit court's refusal to dissolve an injunction."

DISCUSSION

In her opening brief, appellant, through counsel, raises three issues on appeal:[4]

1. Whether the *New York Times* rule applies to [a]ppellant's political speech[.][5]

2. Whether the [c]ircuit [c]ourt judge erred in denying a *pro-se* [appellant's] request for a continuance in order to secure legal counsel[.][6]

3. Whether [appellees'] [a]ttorneys violated their duty to provide candor toward the tribunal[.]

[3] Pursuant to Rule 8-203(a), the circuit court may strike a notice of appeal on four specified bases, including that the notice of appeal was filed untimely. "If an appeal is subject to dismissal for any reason other than the four articulated in Rule 8-203, it is the appellate court that must order the dismissal." *Cnty. Comm'rs of Carroll Cnty.*, 384 Md. at 42, *infra*.

[4] Counsel for appellant entered his appearance on April 2, 2022.

[5] Appellant refers to *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

[6] At the adversary hearing on July 26, 2021, appellant, *pro se*, made an oral motion to postpone the hearing because she had just received the summons and "need[ed] to do [her] response." The court denied appellant's postponement request. She asked the court to reconsider because she did not have the opportunity to obtain legal advice from counsel in advance of the hearing. The court indicated it had already ruled on the postponement request, and it proceeded with the hearing.

The questions presented in appellant's brief all bear on either the adversary hearing or the entry of the Injunction Order on July 26, 2021. To be sure, appellant frames the standard of review on appeal as one for "reviewing the grant of injunctive relief and, regarding preliminary injunctions[.]" She centers her arguments on "the first and fourth factor of the preliminary injunction analysis" (the likelihood of success on the merits and public interest factors, respectively). At the conclusion of the brief, appellant requests that this Court "dissolve the preliminary injunction in this matter and remand to the circuit court for prompt review of whether there is any reasonable chance that the [Association] can win on the merits in light of the established rights of all citizens to engage in political speech."

I.

The Association argues that issues pertaining to the entry of the Injunction Order are not properly before this Court because appellant did not timely notice an interlocutory appeal from the Injunction Order. We agree and explain.

Generally, an appeal will only lie from a final judgment. *Jackson v. State*, 358 Md. 259, 266 (2000). "[T]here are only three exceptions to that final judgment requirement: appeals from interlocutory orders specifically allowed by statute;[7] immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Salvagno v. Frew*, 388 Md. 605, 615 (2005). This case implicates the first category.

[7] An interlocutory order is "[a]n order that relates to some intermediate matter in the case; any order other than a final order." *Am. Bank Holdings, Inc. v. Kavanagh*, 436 Md. 457, 465 (2013) (quoting Black's Law Dictionary 1207 (9th ed. 2009)).

Section 12-303 of the Courts and Judicial Proceedings Article enumerates the interlocutory orders from which an appeal is statutorily permitted. In pertinent part, it permits an aggrieved party to appeal from an interlocutory order:

> (i) Granting or dissolving an injunction, but if the appeal is from an order granting an injunction, only if the appellant has first filed his answer in the cause; [and]
>
> (ii) Refusing to dissolve an injunction, but only if the appellant has first filed his answer in the cause[.]

Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 12-303(3)(i), (ii).[8]

An appeal from an interlocutory order granting an injunction or refusing to dissolve an injunction is allowed if two conditions are met. First, the aggrieved party must have filed an "answer in the cause." *Breuer v. Flynn*, 64 Md. App. 409, 416 (1985) (citing CJP § 12-303(3)(i) and (ii)). The purpose of requiring the filing of an answer is to prevent delay. *Wagner v. Cohen*, 6 Gill 97, 102 (1847). "Precedent from [our Court] indicates that the type of 'answer' required here is not necessarily a formal answer under Rule 2-323." The Honorable Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issues*, 93 (2018). A motion to dismiss a complaint for declaratory and injunctive relief, for example, is regarded as an answer for § 12-303 purposes. *Md. Comm'n on Hum. Rels. v.*

[8] These provisions are the Maryland counterpart to 28 U.S.C. § 1292(a)(1), which grants appellate jurisdiction over orders of federal district courts granting or refusing to dissolve injunctions, among other injunction-related orders. *See Finality of Judgments and Other Appellate Trigger Issues*, 93, *infra*; *Funger v. Mayor & Council of Town of Somerset*, 244 Md. 141, 150-51 (1966); *Anne Arundel Cnty. v. Cambridge Commons L.P.*, 167 Md. App. 219, 226 (2005) ("[i]nterpretations of the federal provision may be relevant to an analysis of Section 12-303."). *See* n.12, *infra*.

Balt. Cnty. Sav. & Loan Ass'n, Inc., 52 Md. App. 357, 366 (1982); *see also Scott v. Seek Lane Venture, Inc.*, 91 Md. App. 668, 690 (1992) (explaining that, although the defendant's "motion was not titled an 'answer,' it clearly responded to the claims raised in the [plaintiffs'] complaint and stated [the defendant's] defenses.").

Second, an aggrieved party must note the appeal within thirty days of the entry of the order, subject to an exception not applicable in the instant case.[9] Md. Rule 8-202(a). "The date of entry of [an interlocutory] order serves as the date of 'judgment' for the purposes of determining the timeliness of appeal." *Finality of Judgments and Other Appellate Trigger Issues*, 48 (citing *Billman v. Md. Deposit Ins. Fund Corp.*, 312 Md. 128, 134 (1988). "If the appeal is not filed within thirty days after the entry of an appealable interlocutory order, this Court lacks jurisdiction to entertain the interlocutory appeal." *In re Guardianship of Zealand W.*, 220 Md. App. 66, 78 (2014).

We do not reach the merits of the issues raised in appellant's opening brief because appellant did not timely notice an appeal from the Injunction Order. If appellant wished to challenge the Injunction Order by way of an interlocutory appeal, as her opening brief suggests, she was required to file, within thirty days of July 26, 2021, an "answer in the cause" *and* a notice of appeal by the same date. CJP § 12-303(3)(i); Md. Rule 8-202(a). Appellant first filed an "answer in the cause" on August 23 by way of the motion to dismiss, *see Balt. Cnty. Sav. & Loan Ass'n, Inc., supra,* but she did not file the notice of appeal from

[9] Rule 8-202(c) tolls the thirty-day deadline when a revisory motion is filed within ten days of the entry of judgment. The parties agree that this exception does not apply, albeit for different reasons.

the Injunction Order until November 3, 2021, over two months past the appeal deadline. By that time, the door to an interlocutory appeal from the Injunction Order under CJP § 12-303(3)(i) was closed. Accordingly, the issues raised in appellant's opening brief are not before us and will not be considered.

II.

The only issue that we could consider on appeal is whether the court erred in striking the First NOA. As noted, Rule 8-202(a) provides that a party must file her notice of appeal "within 30 days after entry of the judgment or order from which the appeal is taken." The court entered an order striking the First NOA on December 13, 2021. The Second NOA, filed on December 20, 2021, was timely only as to the court's order striking the First NOA. *See Edery v. Edery*, 213 Md. App. 369, 377, n.7 (2013) (a notice of appeal "operates as an appeal of any order that is appealable at that time."); *Cnty. Comm'rs of Carroll Cnty. v. Carroll Craft Retail, Inc.*, 384 Md. 23, 42 (2004) (an order striking a notice of appeal is an appealable judgment).

The Association contends that appellant conceded the issue by failing to raise this question and address it in her opening brief. It argues that, in any event, the court did not err in striking the First NOA because appellant did not timely notice an appeal from the Injunction Order. It further argues that, because appellant never moved to dissolve the Injunction Order, she mischaracterized the First NOA as one seeking to challenge a "refusal to dissolve the [July 26, 2021] injunction."

In response, appellant filed a reply brief. According to appellant, the Association missed the mark. First, she argues, "[a]ppellees fail to address that [appellant] moved to dissolve the injunction in a timely filed motion to dismiss." "Appellant timely filed a motion to dismiss the complaint for injunctive relief and damages and a notice of appeal of the circuit court's refusal to do so." In rebuttal at oral argument, appellant clarified that because the complaint sought injunctive relief, the motion to dismiss, if granted, would have eliminated both the complaint for injunctive relief and the Injunction Order. Appellant's point, as best we understand, is that her motion to dismiss should be construed as a motion to dissolve an injunction and the Denial Order should be treated as an order refusing to dissolve an injunction under CJP § 12-303(3)(ii). Second, relying on *Carroll Craft Retail, Inc.*,[10] appellant argues that the circuit court was not permitted to strike the First NOA because the Rules do not give it discretion to evaluate whether a party is permitted "to appeal [from] an order granting an injunction or refusal to dissolve an injunction or both[.]" That determination, according to appellant, falls within the ambit of this Court.

We decline to address the arguments raised for the first time in appellant's reply brief. Rule 8-504(a) provides that "[a] brief *shall* . . . include" a "statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue[,]" and "[a]rgument in support of the party's position on each issue." Md. Rule 8-504(a)(3), (6) (emphasis added). "The use of the word 'shall' indicates

[10] *See* n.3 *supra.*

that the provision is mandatory[.]" *Monumental Life Ins. Co. v. U.S. Fid. & Guar. Co.*, 94 Md. App. 505, 544 (1993).

Appellant defaults in two respects. First, she does not include in her opening brief the only question that we could consider on appeal, *i.e.*, whether the court erred in striking the First NOA. *See* Md. Rule 8-504(a)(3). In *Green v. North Arundel Hospital Association, Inc.*, our Court advised that "[a]ppellants can waive issues for appellate review by failing to mention them in their 'Questions Presented' section of their brief." 126 Md. App. 394, 426 (1999), *aff'd on other grounds*, 366 Md. 597 (2001). We reasoned that "[c]onfining litigants to the issues set forth in the 'Questions Presented' segment of their brief ensures that the issues presented are obvious to all parties and the Court." *Id.* By failing to list the question in her brief, appellant waived the issue.

Second, appellant does not address, in her opening brief, the arguments supporting her position that the court erred in striking the First NOA.[11] Instead, she raises the arguments later in the reply brief. In *Federal Land Bank of Baltimore v. Esham*, we explained that "[t]he function of a reply brief is limited. The appellant has the opportunity and duty to use the opening salvo of [her] original brief to state and argue clearly each point of [her] appeal." 43 Md. App. 446, 459 (1979); *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004) ("[a]n appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief."). "A

[11] In her opening brief, appellant mentions, for purposes of procedural context only, that she "noted a timely appeal of the refusal of the circuit court to dissolve the preliminary injunction within 15 days of the circuit court's order." She fails, however, to affirmatively argue that the court erred in striking the First NOA. *See* Md. Rule 8-504(a)(6).

reply brief cannot be used as a tool to inject new arguments." *Strauss v. Strauss*, 101 Md. App. 490, 509 n.4 (1994). The Court of Appeals reasoned that "to hold back the main force of an argument to a reply brief" would "diminish the opportunity of the appellee to respond to it." *Oak Crest Vill., Inc.*, 379 Md. at 241-42. Therefore, "appellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief." *Gazunis v. Foster*, 400 Md. 541, 554 (2007).

Appellant's reply brief arguments, which are premised on the character and effect of the motion to dismiss and Denial Order, are absent from her opening brief. "To allow new issues or claims to be injected into the appeal by a reply brief would work a fundamental injustice upon the appellee[s], who would then have no opportunity to respond in writing to the new questions raised by the appellant." *Esham*, 43 Md. App. at 459. Accordingly, we decline to consider arguments raised for the first time in appellant's reply brief.[12] Because appellant did not raise the question and address arguments, in her opening

[12] We note in passing, however, that a denial of a motion to dismiss for failure to state a claim upon which relief can be granted is not a final, appealable order. *See* Md. Rule 8-131(e). Federal appellate courts, applying the federal analogue to CJP § 12-303(3), *see* n.8 *supra*, have declined to construe an order denying a motion to dismiss a complaint as one refusing to dissolve a preliminary injunction issued earlier in the case. *See Dahlen v. Kramer Mach. & Eng'g Prod. Co.*, 303 F.2d 293, 294-95 (10th Cir. 1961) (declining to treat a motion to dismiss as a motion to dissolve an existing interlocutory injunction, "when such motion did not seek dissolution of such interlocutory injunction, nor in any wise attack or challenge same, and the appellants had not requested dissolution and the court had not refused dissolution of such interlocutory injunction."); *see also*, *Kitchen v. Heyns*, 802 F.3d 873, 876 (6th Cir. 2015) (rejecting a litigant's claim that a dismissal order was reviewable as an order dissolving a prior injunction order where the order did not mention the injunction); *Beasley v. Union Pacific R.R.*, 652 F.2d 749, 750 (8th Cir. 1981) (in the summary judgment context). The reasoning of federal courts appears to align with our Court's view that while an appeal will ordinarily lie from an interlocutory injunction-related order under CJP § 12-303(3), "that provision cannot be used . . . as a transparent

brief, that pertain to the only issue that could properly be before this Court, we affirm the order striking the First NOA.[13]

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY STRIKING APPELLANT'S NOVEMBER 3, 2021 NOTICE OF APPEAL AFFIRMED; REMAINING ISSUES ON APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

artifice for appealing that which is not appealable." *Sec. Admin. Servs., Inc. v. Baltimore Gas & Elec. Co.*, 62 Md. App. 50, 53 (1985).

[13] Appellant presents, variously in her opening and reply briefs, three "motions": (1) a "request for expedited review"; (2) a "motion for stay of proceedings below"; and (3) a "motion for dismissal of [the Association]" from the underlying lawsuit "for lack of standing." With one exception not applicable here, the Rules do not provide that motions may be included in briefs. *See* Md. Rule 8-431; *cf.* Md. Rule 8-603(c) (a motion to dismiss an appeal, based on certain grounds, may be included in appellee's brief). Accordingly, we decline to receive appellant's "motions." *See Paltrow v. Paltrow*, 37 Md. App. 191, 201 (1977), *aff'd on other grounds*, 283 Md. 291 (1978) (declining to receive a supplemental motion to dismiss appeal because the Rules do not provide for such a supplemental motion).