Circuit Court for Anne Arundel County
Case No. C-02-CV-23-001496

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1839

September Term, 2024

BEVERLY A. CHERRY

v.

HOMEWARD RESIDENTIAL, INC.

Leahy,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: January 22, 2026

* 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 Maryland Rule 1-104(a)(2)(B).

Appellant, Beverly A. Cherry, filed an action for quiet title in the Circuit Court for Anne Arundel County against appellee, Homeward Residential, Inc. Homeward Residential had been the servicer of appellant's mortgage but, by the time this action was filed, was defunct. Appellant, purportedly relying upon a listing on the website of the Maryland State Department of Assessments and Taxation ("SDAT"), served her complaint on the (former) resident agent of Homeward Residential. After Homeward Residential failed to respond, appellant obtained an order of default.

Shortly thereafter, the former resident agent of Homeward Residential notified the court that it was unable to forward the summons and complaint to any party because it was no longer the resident agent. The circuit court entered an order vacating the order of default, but after appellant filed a motion to alter or amend judgment, the court reinstated the order of default.

Ultimately, PHH Mortgage Corporation, the successor by merger to Homeward Residential, became aware of the action and moved to vacate the reinstatement of the order of default. The circuit court granted PHH Mortgage's motion, vacated the order of default, and granted appellant leave to file an amended complaint and to serve it on PHH Mortgage's resident agent.

Appellant filed a notice of appeal, presenting three questions for our review, which we have rephrased and consolidated into one: Whether the circuit court erred in ruling that service of process was invalid.

PHH Mortgage included in its brief a motion to dismiss, contending that this appeal is not taken from a final judgment, that the order appealed from does not fit within any of

the limited exceptions to the final judgment rule, and that, therefore, we should dismiss the appeal.

At oral argument, appellant conceded that this is an interlocutory appeal and that none of the exceptions to the final judgment rule that would permit the appeal to proceed apply in this case. Accordingly, we shall dismiss the appeal.

BACKGROUND

Appellant purchased the subject property in Millersville, Maryland, in 2007, financed by a first and a second mortgage. Homeward Residential serviced those loans. In 2010, appellant's loans underwent a modification. She alleged that Homeward Residential defrauded her into believing that the first and second mortgages were to be combined but that, unbeknownst to her, the second mortgage was not combined during the modification. As a result, she alleged, she was unaware that the second mortgage continued in force, and she subsequently defaulted on the loan.

In 2019, Homeward Residential was merged into its corporate successor, PHH Mortgage Corporation. In July 2023, appellant filed a three-count quiet title complaint in the Circuit Court for Anne Arundel County, naming as defendants Homeward Residential, Inc., and MERSCORP Holdings, Inc ("MERS").[1] Appellant served a copy of the complaint on The Corporation Trust, Inc., which had been the resident agent for Homeward Residential prior to its merger into PHH Mortgage. After failing to receive an answer from

[1] It appears that the proper name of that defendant is Mortgage Electronic Registration Systems, Inc.

Homeward Residential, appellant, on October 16, 2023, filed a request for an order of default. Attached were a copy of a page from the SDAT website, indicating that Homeward Residential's status was "MERGED" and that it was not in good standing, as well as a declaration of service from appellant's process server stating that he had served the complaint on The Corporation Trust, Inc. On November 3, 2023, the circuit court issued an order of default and a notice of default order.

By letter dated November 14, 2023, and filed November 20, 2023, The Corporation Trust, Inc., notified the Clerk of the Circuit Court that it was unable to forward the documents (i.e., the summons and complaint) to any party because "[a]ccording to [its] records and/or the records of the Secretary of State, [it was] not the registered agent for the party [the court was] attempting to serve." On December 1, 2023, MERS filed a motion to vacate the order of default.[2] In its motion, MERS averred that it had never received a copy of either the summons, the complaint, or the request for order of default and that it had been unaware of the suit until it received a copy of the order of default and ensuing notice of default order. In response, appellant filed, on December 14, 2023, a notice of dismissal as to MERS, and the court thereafter denied MERS's motion to vacate as moot.

On February 22, 2024, the circuit court issued an order vacating the order of default against Homeward Residential because, after reviewing the file, it determined that service of process had not been proper. The court further ordered appellant to file an amended

[2] Appellant's complaint listed the same resident agent for both named defendants. Although the summons and return of service for MERS are not in the record, we presume they were substantially similar to those for Homeward Residential.

complaint naming Homeward Residential as the only remaining defendant and to provide a proper address. At the same time, the court issued a notice of contemplated dismissal.

On February 26, 2024, appellant filed a motion to alter or amend judgment, contending that service had been proper because it had been served on the resident agent for Homeward Residential that was listed on the SDAT website. Thereafter, on April 29, 2024, the circuit court issued an order vacating its February 22 order and reinstating the November 3, 2023, order of default.

Several weeks later, on May 14, 2024, counsel for PHH Mortgage entered his appearance and, at the same time, filed a motion to vacate the April 29 order. On June 20, 2024, appellant filed a response to PHH Mortgage's motion to vacate the April 29 order, followed by an amended response eight days later. The circuit court set the matter for a hearing on August 29, 2024, which was postponed until September 27, 2024. Following that hearing, the circuit court granted PHH Mortgage's motion to vacate the April 29 order, and as a result, the prior order of default, entered November 3, 2023, was vacated.

On October 9, 2024, appellant filed a motion for reconsideration,[3] which the court denied. Appellant then noted this appeal.[4]

[3] Appellant's motion was filed more than ten days after the September 27 hearing, which would greatly narrow the scope of her ensuing appeal, which was filed within thirty days of the denial of the motion for reconsideration but more than thirty days after the initial ruling. Md. Rule 2-534. Because, as we explain, this appeal is not permitted by law, we need not explore this issue further.

[4] On November 7, 2024, appellant also filed an amended complaint, naming PHH Mortgage as the defendant.

DISCUSSION

Maryland Code (1974, 2020 Repl. Vol.), Courts & Judicial Proceedings Article ("CJP"), § 12-301 provides:

> Except as provided in § 12-302[5] of this subtitle, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended. In a civil case, a plaintiff who has accepted a remittitur may cross-appeal from the final judgment.

This statute has long been interpreted to mean that, "[g]enerally, parties may appeal **only** upon the entry of a final judgment." *McLaughlin v. Ward*, 240 Md. App. 76, 82 (2019) (emphasis added). We have appellate jurisdiction "'when the appeal is taken from a final judgment or is otherwise permitted by law[.]'" *Id.* at 83 (quoting *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 661 (2014)). But if "we lack appellate jurisdiction, . . . we must dismiss" the appeal. *Id.* (citing Md. Rule 8-602(b)).[6]

[5] CJP § 12-302 sets forth a list of exceptions to the general rule set forth in CJP § 12-301. Neither party contends that it has any application to this case.

[6] Maryland Rule 8-602(b) provides:

> (b) **When mandatory.** — The court shall dismiss an appeal if:
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> (1) the appeal is not allowed by these Rules or other law; or
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> (2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202.

The circuit court's ruling vacating the order of default is not a final judgment.

> A ruling must ordinarily have the following three attributes to be a final judgment: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy; (2) unless the court acts pursuant to Maryland Rule 2-602(b) to direct the entry of a final judgment as to less than all of the claims or all of the parties, it must adjudicate or complete the adjudication of all claims against all parties; and (3) it must be set forth and recorded in accordance with Rule 2-601.

Id. (cleaned up) (quoting *Metro Maint. Sys. S., Inc. v. Milburn*, 442 Md. 289, 298 (2015)).

"A plaintiff may seek a default judgment against a defendant who fails to plead as provided by the rules." *Bliss v. Wiatrowski*, 125 Md. App. 258, 265 (1999) (citing Md. Rule 2-613).[7] As pertinent here, an "entry of default **judgment** is a final judgment and is

[7] Maryland Rule 2-613 provides:

> (a) **Parties to whom applicable.** — In this Rule, the term "plaintiff" includes counter-plaintiffs, cross-plaintiffs, and third-party plaintiffs, and the term "defendant" includes counter-defendants, cross-defendants, and third-party defendants.
>
> (b) **Order of default.** — If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default. The request shall state the last known address of the defendant.
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> (c) **Notice.** — Promptly upon entry of an order of default, the clerk shall issue a notice informing the defendant that the order of default has been entered and that the defendant may move to vacate the order within 30 days after its entry. The notice shall be mailed to the defendant at the address stated in the request and to the defendant's attorney of record, if any. The court may provide for additional notice to the defendant.
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> (d) **Motion by defendant.** — The defendant may move to vacate the order of default within 30 days after its entry. The motion shall state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.

(continued…)

subject to the general revisory power of the court only with respect to the relief granted; however, an **order** of default is interlocutory in nature and can be revised by the court at any time up until the point a final judgment is entered." *Id.* "A trial judge possesses very broad discretion to modify an interlocutory order where that action is in the interest of justice." *Banegura v. Taylor*, 312 Md. 609, 619 (1988). Thus, "no appeal may be taken from the entry of an order of default." *Curry v. Hillcrest Clinic, Inc.*, 337 Md. 412, 427 (1995). Nor would an immediate appeal lie from either the grant or the denial of a motion to vacate an order of default because the court's ruling in such a circumstance is interlocutory. *Id.*

> (e) **Disposition of motion.** — If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the court shall vacate the order.
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> (f) **Entry of judgment.** — If a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (c) of this Rule was mailed. If, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court, may rely on affidavits, conduct hearings, or order references as appropriate and, if requested, shall preserve to the plaintiff the right to trial by jury.
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> (g) **Finality.** — A default judgment entered in compliance with this Rule is not subject to the revisory power under Rule 2-535 (a) except as to the relief granted.

In this case, the circuit court clearly did not intend to make an unqualified, final disposition of the matter in controversy. To the contrary, in vacating the order of default, it ordered appellant to file an amended complaint, naming PHH Mortgage, the real party in interest, as defendant, and to serve that complaint on the resident agent of PHH Mortgage.

For the same reason, the order challenged on appeal did not adjudicate or complete the adjudication of all claims against all parties. Indeed, as appellee points out, the court's order did not even address the merits of appellant's claims.

Finally, the court's order does not satisfy the requirements of Maryland Rule 2-601 concerning the entry of judgment.[8] Nor should that be a surprise because the court's order vacating its previous order of default was not intended to be a final judgment.

[8] Maryland Rule 2-601 provides:

> (a) **Separate document — Prompt entry.** —
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> (1) Each judgment shall be set forth on a separate document and should include a statement of an allowance of costs as determined in conformance with Rule 2-603.
>
> (2) Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise.
>
> (3) Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed.

(continued…)

The circuit court's ruling vacating the order of default is not otherwise appealable.

"In the absence of a final judgment, appellate review is limited to three exceptions: (1) appeals from interlocutory orders specifically allowed by statute; (2) immediate appeals permitted under Maryland Rule 2-602; and (3) appeals from interlocutory rulings allowed

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(4) A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule.

(5) Unless the court orders otherwise, entry of the judgment shall not be delayed pending determination of the amount of costs.

(b) **Applicability** — **Method of entry** — **Availability to the public.** —

(1) **Applicability.** — Section (b) of this Rule applies to judgments entered on and after July 1, 2015.

(2) **Entry.** — 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.

(3) **Availability to the public.** — Unless shielding is required by law or court order, the docket entry and the date of the entry shall be available to the public through the CaseSearch feature on the Judiciary website and in accordance with Rules 16-903 and 16-904.

(c) **Recording and indexing.** — Promptly after entry, the clerk shall (1) record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court and (2) note on the docket the date the clerk sent copies of the judgment in accordance with Rule 1-324.

(d) **Date of judgment.** — On and after July 1, 2015, regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule. The date of a judgment entered prior to July 1, 2015 is computed in accordance with the Rules in effect when the judgment was entered.

under the common law collateral order doctrine." *Md. Bd. of Physicians v. Geier*, 451 Md. 526, 546 (2017).

There is no statute specifically permitting an interlocutory appeal in this case.[9] Maryland Rule 2-602(b),[10] which permits a circuit court, under limited circumstances, to enter judgment "as to one or more but fewer than all of the claims or parties[,]" was not invoked by the circuit court.[11] The court's ruling clearly contemplated that appellant retained a full opportunity to litigate her claims and was not intended to be a judgment.

The collateral order doctrine is an "extremely narrow" exception to the final judgment rule. *Spivery-Jones v. Receivership Est. of Trans Healthcare, Inc.*, 438 Md. 330, 359 (2014) (quotation marks and citation omitted). It is a "legal fiction" that allows an appellate court "to consider orders that would otherwise not be appealable at the time they

[9] *See* CJP § 12-303, which lists those interlocutory orders from which an appeal may be taken in a civil case. An order vacating an order of default is not included among the immediately appealable interlocutory orders listed.

[10] Maryland Rule 2-602(b) provides:

> (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:
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> (1) as to one or more but fewer than all of the claims or parties; or
>
> (2) pursuant to Rule 2-501(f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

[11] Maryland Rule 8-602(g) authorizes us to order a limited remand or to enter a final judgment on our own initiative in a case where the circuit court had discretion to direct the entry of a final judgment pursuant to Rule 2-602(b), but in this case, the circuit court lacked the discretion to do so, and Rule 8-602(g) does not apply.

are entered." *Geier*, 451 Md. at 554. For the collateral order doctrine to apply, the interlocutory order at issue

> must satisfy the following four requirements: (1) the order must conclusively determine the disputed question; (2) the order must resolve an important issue; (3) the order must resolve an issue that is completely separate from the merits of the action; and (4) the issue would be effectively unreviewable if the appeal had to await the entry of a final judgment.

Id. at 546. "Each of the four elements, moreover, must be satisfied to constitute a collateral order." *Spivery-Jones*, 438 Md. at 360.

To determine whether the order challenged on appeal conclusively determined the disputed question, we look to Rule 2-613(e), which provides: "If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead, the court shall vacate the order [of default]." As PHH Mortgage observes in its brief, appellant does not contest that "there is a substantial and sufficient basis for an actual controversy as to the merits of the action," or otherwise, she presumably would not have brought suit. (Cleaned up.) Thus, we focus on whether it was "equitable to excuse the failure to plead[.]" We further agree with PHH Mortgage that the circuit court properly could have found that it was equitable to excuse the failure to plead where PHH Mortgage was not served with the complaint because appellant served the former resident agent of a defunct predecessor in interest instead and that the court could have done so even were service technically proper. Therefore, the first element of the collateral order doctrine is absent, and this appeal is not proper.

The third element, that the order must resolve an issue that is completely separate from the merits of the action, also is absent because the circuit court's ruling is inextricably

intertwined with the merits of the action. *See* Md. Rule 2-613(e) (requiring that the court find "that there is a substantial and sufficient basis for an actual controversy as to the merits of the action" before it may vacate an order of default).

Because at least two elements of the collateral order doctrine are absent in this case, we conclude that the interlocutory order before us in this appeal is not appealable under the collateral order doctrine. And because the challenged order is not appealable on any other ground permitted by law, we must dismiss the appeal.

APPEAL DISMISSED. APPELLANT TO PAY THE COSTS.