UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0614

September Term, 2015

PROMISE C. HARRIS

v.

WEYMOUTH SPENCE, et al.

Meredith,
Leahy,
Zarnoch, Robert, A.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 2, 2016

Appellant Promise Harris, a student at Washington Adventist University ("WAU"), was accused of smoking marijuana in a dormitory lobby and suspended from school. Harris commenced an action in the Circuit Court for Montgomery County against WAU, and WAU employees Weymouth Spence, Timothy Nelson, Adrienne Matthews, and Edwin Monge, (collectively, "Appellees").[1] Harris's complaint alleged, *inter alia*, that he was entitled to, yet denied, the school disciplinary procedures set out in the student handbook. Summary judgment was granted in favor of the Appellees on four of the five counts of Harris's original complaint on May 7, 2015.

Mr. Harris filed a notice of appeal on May 29, 2015 from the order granting partial summary judgment. Recognizing that the order was not a final order disposing of the case in the circuit court, Mr. Harris indicated that the appeal was interlocutory.

We hold that the judgment from which Harris appeals was not a final judgment, nor does it fall under any permissible interlocutory appeal enumerated in Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP") § 12-303. Accordingly, this appeal must be dismissed.

BACKGROUND

On February 7, 2013, Mr. Harris was accused of smoking marijuana in the hallway of a dormitory at WAU. According to an incident report, university security officers responded to a call from the dormitory front desk worker, known only as Brittany, who

[1] Two additional defendants named in the complaint, "Brittany (Last Name Unknown)" and Ms. Jean Warden, Vice President of Student Life, were never served with process.

claimed that three individuals were smoking "what smelled like marijuana in the back lobby." When the Director of Safety and Security, Edwin Monge, arrived along with other campus security officers, Mr. Harris denied smoking marijuana and suggested to the officers that video camera footage would exonerate him. Mr. Harris answered all of the security officer's questions, permitted the officer to search his person and property, and went to the security office to give a written statement.

A few days later, Mr. Harris was summoned to the office of Jean Warden, Vice President of Student Life. Ms. Warden requested a written statement of the incident, and Mr. Harris was asked to sign a form indicating that he had been advised of his rights and responsibilities under the WAU Student Handbook's Student Bill of Rights.

On February 13, 2013, Mr. Harris was called to another meeting with Ms. Warden, Timothy Nelson, University Dean of Men, and Adrienne Mathews, University Dean of Women. During this meeting, Mr. Harris was informed that he was suspended effective February 13, 2013, through January 2014.[2] Mr. Harris was also told that this decision was based in part on a report written by Mr. Monge, in which he stated that "we were able to determine that the individuals in question were indeed smoking and attempting to hide the fact after they were confronted by [university] staff."

[2] Harris's complaint and brief states that he was expelled from WAU, when he was actually "suspended . . . for the remainder of that semester and for the first semester of the 2013-2014 school year."

On February 14, 2013, Ms. Adrianne Harris wrote a letter on behalf of her son to appeal the decision. Ms. Harris stated:

> In speaking with other School Employees (and according to the Student Handbook), I was told that before making the decision to fully suspend Promise Harris from WAU, [certain] procedures should have taken place[.]
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> * * *
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> It is my understanding that these procedures did not occur for such a serious accusation. I also thought that a person cannot be convicted of a crime or a wrongful act unless there is some type of actual "Physical" Proof to prove that the misconduct has taken place.

Ms. Harris requested that WAU reconsider its decision and readmit her son. In the alternative, she requested that the security footage be made available to the Conduct and Guidance Committee for their review.

On March 19, 2013, a Conduct and Guidance Committee hearing was held to evaluate the decision regarding Harris's suspension. Mr. Harris and his mother complained that they did not receive sufficient notice of the committee meeting,[3] and failed to appear. Thus, Mr. Harris contends that "[University President] Weymouth Spence, Jean Warden, Timothy Nelson, Adrienne Mathew, and Edwin Monge convinced the Conduct and Guidance Committee to uphold the [suspension of Harris] in abs[entia]."

[3] We note that the record shows that Mr. Harris and his mother were given less than 24 hours' notice of the committee meeting. On March 19, 2013, Ms. Harris and Mr. Harris received a voicemail from Ms. Warden notifying them that a Committee meeting was scheduled later that day to review his case. After the meeting was held, Ms. Warden sent an email telling Mr. Harris that "the committee did meet" and that Mr. Harris had until 10 a.m. the following morning to respond "or the committee w[ould] not be able to address [his] concerns."

The Original Complaint and Notice of Appeal

On December 31, 2014, Mr. Harris and his mother, Adrianne M. Harris, filed a five-count complaint alleging: 1. Defamation of Character; 2. Breach of Contract; 3. Breach of Implied Covenant of Good Faith and Fair Dealing; 4. Wrongful Expulsion in Violation of Public Policy; and 5. Negligence. The university officials named as parties in the complaint were President Weymouth Spence, Dean Timothy Nelson, Dean Adrienne Matthews, and Director Edwin Monge. Vice President Jean Warden and a student named Brittany (last name unknown), were also named in the complaint, but were never served with process.

Appellees filed a motion to dismiss, or in the alternative, for summary judgment on March 20, 2015. In support of their motion, Appellees stated that no response to count one for defamation was required because "[t]he only statement that is alleged to be defamatory is alleged to have been made by Brittany, the women's resident hall front desk attendant who has yet to be served with process." Appellees' motion requested only that the Court "dismiss the Second, Third, Fourth, and Fifth Counts of [Harris's] Complaint with prejudice" for failure to state a claim upon which relief can be granted. Mr. Harris and his mother filed an opposition on April 13, 2015, in which they argued, presumably to keep count one alive even without service on Brittany, that a claim of defamation per se is valid when all of the individuals named as defendants in the complaint were acting as agents of WAU. They also maintained that sufficient facts were provided to show Appellees'

arbitrary or capricious breach of contract, and that Mr. Harris was denied due process in the university's disciplinary procedures.

The court held a hearing on the motion on April 27, 2015. Ms. Harris appeared, but her son did not. The court granted summary judgment for Appellees on counts two through five, and dismissed Ms. Harris from the action for lack of standing. The court made it clear at the hearing that the grant of summary judgment was limited to counts two through five, and that count "1 still stands. . . although there has not been service as to [two] of the defendants."[4] The court's order was entered on May 7, 2015.

On May 11, 2015, Appellees filed an answer to the remaining count of defamation, alleging that the complaint fails to state a claim upon which relief can be granted, and on May 29, 2015, they filed for summary judgment. That same day, Mr. Harris filed a notice of interlocutory appeal from the May 7th order.

Continuing Proceedings

On June 18, 2015, Mr. Harris moved to vacate the dismissal of count two for breach of contract from the May 7th order because of "the misrepresentations and fraudulent claims made by the defense in influencing the Court to issue a decree of summary judgment." This motion only referred to count two, and was filed more than thirty days after the May 7th order. Appellees filed a timely response on July 6, 2015, noting that Mr. Harris's motion to vacate was untimely, and arguing that Mr. Harris failed to show "fraud,

[4] On July 1, 2015, the court dismissed Jean Warden from the proceedings without prejudice under Rule 2-507, because she had never been served with process.

mistake, or irregularity." The circuit court denied Mr. Harris's motion to vacate on August 12, 2015.

On the same day that he filed his motion to vacate, Mr. Harris also filed an amended complaint alleging two counts each of defamation and breach of contract, and one count each of false imprisonment, civil conspiracy, intentional infliction of emotional distress, breach of express contract, promissory estoppel, and unjust enrichment.

Then on July 6, 2015, Appellees filed a second motion to dismiss, or in the alternative, for summary judgment on all counts in the amended complaint.[5] After the parties participated in limited discovery, on October 8th, the court heard Appellees' motion for summary judgment. The circuit court granted Appellees' motion for summary judgment on count one of the original complaint; determined that counts five, six and seven of the amended complaint had been previously dismissed; and granted Appellees' motion to dismiss counts one through five of the amended complaint.

On December 22, 2015, the circuit court entered an order stating that "for reasons stated by the court during the October 8, 2015 hearing, the said second motion to dismiss, or in the alternative for summary judgment is hereby granted and all of [Harris's] claims are dismissed with prejudice." Notably, Mr. Harris did not file a notice of appeal to this order.

[5] Appellees filed a supplemental memorandum of law in support of Harris's second motion on September 29, 2015, and Harris did not file a response.

In the present appeal from the May 7, 2015 order, Mr. Harris presents the following questions:

1. Did the Court err in ruling the Washington Adventist University 2012-2013 WAU Student Handbook and Planner was not a contract?

2. Did the Court err in ruling that Washington Adventist University had an unfettered right to expel/suspend Appellant Promise Harris without going through the procedures outlined in the "Student Bill of Rights" of the 2012-2013 WAU Student Handbook and Planner?

3. Did the Court err by not ordering a copy of the surveillance videotape before rendering a decision in this case?

4. Did the Court err by relying solely on testimony from a perjured affidavit to render its decision?

5. Should the Judge have recused herself from hearing the motions based upon her having a perceived personal relationship with counsel for appellee?

DISCUSSION

Appellees move to dismiss this appeal because it is not an appeal from a final judgment, nor is it a permissible interlocutory appeal. Appellees note that Mr. Harris's original complaint included five causes of action and that, on April 29, 2015, the circuit court granted summary judgment in favor of Appellees on counts two through five. Count one was not adjudicated at that time. Because count one was not finally adjudicated until December 22, 2015, Appellees contend the May 29 notice of appeal "is not from a final judgment and should be dismissed."

Appellees also point out that Mr. Harris's notice of interlocutory appeal, filed on May 29, 2015, fails to explain why the case is appealable under Maryland Rule 2-602, or CJP § 12-301. Appellees aver the notice of appeal does not involve an appeal from one of

the enumerated interlocutory orders under § 12-303, nor does it satisfy either of the other two exceptions to the final judgment rule: the collateral order doctrine, and certified/certifiable orders that adjudicate completely one of multiple claims under Rule 2-602(b) or 8-602(e)(1)(C).

A. The Final Judgment Rule

Except where the right of appeal is constitutionally required, the existence of appellate jurisdiction in Maryland is determined entirely by statute. *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 262 (2009). Generally, an appeal is only proper if it is from a final judgment. CJP § 12-301 provides, "the right to 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." *See also Porter Hayden Co. v. Commercial Union Ins. Co.* 339 Md. 150, 160-61 (1995) (holding that "the jurisdiction of Maryland's appellate courts is generally limited to appeals taken from final judgments or from a few appealable interlocutory orders"). This Court lacks the power to review the merits of a case unless a final judgment has been rendered and properly entered. *See, e.g., Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric.,* 439 Md. 262, 289 (2014). In *Baltimore County v. Baltimore County Fraternal Order of Police Lodge No. 4,* the Maryland Court of Appeals explained that a trial court's ruling constitutes a final judgment, if it "'adjudicate[s] or completes the adjudication of *all claims against all parties*.'" 439 Md. 547, 563-64 (2014) (emphasis added) (quoting *Rohrbeck v.*

Rohrbeck, 318 Md. 28, 41 (1989)). The Court observed that the order at issue "evinced an intent to dispose of all pending matters and put the parties out of court." *Id*. at 564.

Regarding final judgment, Rule 2-602 provides:

> [A]n order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action. . . or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:
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> (1) is not a final judgment;
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> (2) does not terminate the action as to any of the claims or any of the parties; and
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> (3) 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.

Porter Hayden Co. v. Commercial Union Insurance Co. illustrates the principle that a judgment on less than the entire claim is not a final judgment. 339 Md. at 150. Porter, an insured installer of asbestos-containing insulation products, was facing multiple product liability actions. *Id.* at 151-52. Porter filed an action against his insurance company, Commercial Union Insurance Company ("Commercial Union"), seeking a declaratory judgment that Commercial Union had a duty to defend and indemnify Porter for all of the product liability lawsuits under a series of the comprehensive general liability insurance policies. *Id.* at 153. Porter filed a motion for partial summary judgment that only addressed Commercial Union's obligations under two of the policies submitted by Porter, and the circuit court granted this motion. *Id.* at 154-56. After granting certiorari, the Court of Appeals dismissed the case and held that the circuit court order granting partial summary judgment was not an appealable final judgment, because it "only resolved part of [Porter's] action" when it addressed only two of the policies listed in the complaint. *Id.* at 160-62.

In *Arteno v. Arteno*, 257 Md. 227 (1970), Mr. Arteno was sued by his former wife for failing to make support payments. *Id.* at 222. She sought to recover the arrearages, and prayed for a declaratory judgment regarding the support agreement. *Id.* Judgment was entered for the wife with respect to the arrearages, but the matter of declaratory judgment was left open. *Id*. The Court of Appeals held that the husband's appeal was improper for lack of a final judgment, because the issue of declaratory judgment had not been resolved. *Id*. at 229; *see Greyhound Lines, Inc. v. Alderson*, 23 Md. App. 224, 225-26 (1974) (finding the appeal premature where a verdict was returned by the jury in the negligence portion of a bifurcated case, but judgment had not been entered, there was no trial for damages, and no resolution of other cross-claims between co-defendants).

In the present case, the May 7th order from which Mr. Harris appeals granted summary judgment to Appellees on counts two through five, but did not dispense with count one of Mr. Harris's original complaint. The circuit court made the record clear that she was not dismissing the entire case because "count one still stands." The order did not adjudicate all claims against all parties such that it would effectively put the parties out of court. *Balt. Cnty. Fraternal Order of Police Lodge No. 4***,** 439 Md. at 563-64. Thus, the May 7th order granting partial summary judgment was not a final judgment from which Mr. Harris could appeal.

We note that the final judgment entered on December 22, 2015 dispensing with all remaining counts in both Mr. Harris's complaint and amended complaint does not alter the outcome in this case, although there are circumstances in which a premature appeal may

be permitted to proceed before the appellate court. Rule 8-602(d), known as the "savings rule," permits an appellate court, "through application of a legal fiction, to treat [a prematurely filed notice of appeal] as if timely filed after a final judgment." *Doe v. Sovereign Grace Ministries, Inc.*, 217 Md. App. 650, 662-63 (quoting *Jenkins v. Jenkins*, 112 Md. App. 390, 410 (1996)). Rule 8-602(d) provides:

> A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

Application of this "savings rule," however, is limited to situations in which a circuit court has made a decision that *will* become a final judgment once entered, but the notice of appeal was merely prematurely filed. *See, e.g.*, *Sovereign Grace Ministries, Inc.*, 217 Md. App. at 663. The order from which Mr. Harris appeals was not a final judgment as it adjudicated fewer than all of the claims in the action. The "savings rule" cannot save Mr. Harris's appeal because it cannot convert his notice of appeal of the May 7th order into an appeal of the separate and final judgment entered seven months later. *See id*. (citing *Carr v. Lee*, 135 Md. App. 213, 226 (2000)).

B. Interlocutory Appeal

Permissible interlocutory appeals are enumerated in CJP § 12-303. Only those interlocutory orders specifically mentioned in CJP § 12-303 are immediately appealable. *Spivery-Jones v. Receivership Estate of Trans Healthcare, Inc.*, 438 Md. 330, 354 (2014).

Mr. Harris failed to specify under which subsection of CJP § 12-303 his interlocutory notice of appeal was proper.[6] In our own review, we cannot identify any subsection that would apply to the circuit court's May 7th order granting partial summary judgment to the Appellees. Therefore, we hold that Mr. Harris's notice of appeal from the

[6] **CJP § 12-303. Appeals from certain interlocutory orders.** A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case: (1) An order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income, interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order; (2) An order granting or denying a motion to quash a writ of attachment; and (3) An 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; (ii) Refusing to dissolve an injunction, but only if the appellant has first filed his answer in the cause; (iii) Refusing to grant an injunction; and the right of appeal is not prejudiced by the filing of an answer to the bill of complaint or petition for an injunction on behalf of any opposing party, nor by the taking of depositions in reference to the allegations of the bill of complaint to be read on the hearing of the application for an injunction; (iv) Appointing a receiver but only if the appellant has first filed his answer in the cause; (v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court; (vi) Determining a question of right between the parties and directing an account to be stated on the principle of such determination; (vii) Requiring bond from a person to whom the distribution or delivery of property is directed, or withholding distribution or delivery and ordering the retention or accumulation of property by the fiduciary or its transfer to a trustee or receiver, or deferring the passage of the court's decree in an action under Title 10, Chapter 600 of the Maryland Rules; (viii) Deciding any question in an insolvency proceeding brought under Title 15, Subtitle 1 of the Commercial Law Article; (ix) Granting a petition to stay arbitration pursuant to § 3-208 of this article; (x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order; and (xi) Denying immunity asserted under § 5-525 or § 5-526 of this article.

May 7, 2015 order is not a permissible interlocutory appeal under CJP § 12-303, and this Court does not have jurisdiction over the case.

APPEAL DISMISSED.

COSTS TO BE PAID BY APPELLANT.