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RECENT DEVELOPMENT

***NNOLI v. NNOLI*: APPEAL OF A DENIAL OF A MOTION TO QUASH AN ARREST WARRANT ISSUED FOR CONTEMPT IS A NON-APPEALABLE INTERLOCUTORY ORDER**

By: Ian Bartman

The Court of Appeals of Maryland held that an appeal of a denial of a motion to quash an arrest warrant issued for contempt is a non-appealable interlocutory order. *Nnoli v. Nnoli*, 389 Md. 315, 324, 884 A.2d 1215, 1220 (2005). The Court concluded that an Order denying a motion to quash an arrest warrant is neither a final judgment nor within the scope of Maryland's exceptions to the final judgment rule. *Id.*

Nina Nnoli ("Nina") filed divorce from Emmanuel Nnoli ("Emmanuel") in 1988 in the Circuit Court for Montgomery County. Custody of the Nnoli's two children, who at that time were with Emmanuel's extended family, was awarded to Nina. Emmanuel refused to return the children as ordered by the court. After an April 1992 hearing on a contempt petition filed by Nina, Emmanuel was found in civil contempt. The contempt Order provided that Emmanuel could purge the contempt by turning the children over to the court.

After extensive procedural pleadings and appeals by both parties, the circuit court issued an arrest warrant against Emmanuel, ordering his incarceration until he purged himself of the contempt. In January 2000, Emmanuel filed a motion in circuit court to dismiss the arrest warrant. He argued that since his children had been returned to their mother's custody, the arrest warrant should be dismissed. The court held a hearing and Emmanuel did not appear, but he was represented by counsel. The court denied the motion and refused to consider it until Emmanuel personally appeared before the court. Emmanuel then sought a *writ of mandamus* from the Court of Appeals, which was also denied.

Emmanuel filed another motion challenging the arrest warrant, captioned "Motion to Quash Arrest Warrant," which is the subject of the instant case. In that motion, Emmanuel argued that the arrest warrant should be quashed because his children were emancipated and

it would be impossible for him to purge the contempt Order. The circuit court held a hearing on the motion in July 2003 and again Emmanuel failed to appear personally. The court again indicated that it would not address the motion unless Emmanuel attended the hearing. Emmanuel appealed to the Court of Special Appeals, which affirmed the lower court's decision in an unreported opinion.

Emmanuel filed a petition for a *writ of certiorari* to the Court of Appeals, which was granted. In its opinion, the Court does not reach the merits of Emmanuel's appeal, but instead addresses whether the Order of the circuit court denying Emmanuel's motion to quash the warrant for his arrest is appealable. *Id.* at 323, 884 A.2d at 1219. The Court cites the general rule pertaining to appeals in Maryland as "subject to a few, limited exceptions, a party may appeal only from a final judgment." *Id.* (citing MD. CODE ANN., CTS. & JUD. PROC. Section 12-301 (Cum. Supp. 2004)). The Court found the prior case of *In re Samone H.*, 385 Md. 285, 297-98, 869 A.2d 370, 379 (2005) as dispositive, holding that "[t]o constitute a final judgment, the trial court's determination 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." *Nnoli* at 324, 884 A.2d at 1219-20. Additionally, a court may examine whether any further order is to be issued or action to be taken in a case to determine whether the order is final, and thus appealable. *Id.* at 324, 884 A.2d at 1220. According to *Salvagno v. Frew*, 388 Md. 605, 615, 881 A.2d 660, 666 (2005), three exceptions to the final judgment rule include appeals permitted by: statute, Maryland Rules, the common law collateral order doctrine. *Id.*

The Court determined that under the general rule, the circuit court's ruling is not final because it neither determined nor concluded Emmanuel's rights, nor denied him the means to prosecute them. *Id.* The Order denying Emmanuel's motion to quash the arrest warrant did not constitute a ruling on the underlying issue of the propriety of the contempt Order, which he sought to attack with his habeas corpus petition pending before the court. *Id.* at 324-25, 884 A.2d at 1220. Furthermore, the circuit court was willing to consider Emmanuel's petition asserting that he lacked the present ability to perform the purge provision in the contempt Order; however, before the court would hear his argument, Emmanuel was required to comply with the terms of the arrest warrant by appearing personally before the court, which he did not do. *Id.* at 325, 884 A.2d at 1220.

After deciding that the circuit court's ruling was not a final judgment under the general rule, the Court searched for a statute expressly permitting Emmanuel's appeal. *Id.* at 325-26, 884 A.2d at 1220-21. The Court held that Maryland Code Section 12-304 of the Courts and Judicial Proceedings Article, a statute governing appeals in contempt cases, does not apply because Emmanuel is not appealing from an order adjudging him in contempt. *Id.* at 326, 884 A.2d at 1221. The Court then examined the three exceptions to the final judgment rule. *Id.* at 326, 884 A.2d at 1221.

First, Maryland Code Section 12-303 of the Courts and Judicial Proceedings Article does not apply to the circuit court's ruling. *Nnoli* at 327, 884 A.2d 1222. Thus, the ruling is not an appealable interlocutory order. *Id.* Section 12-303(3)(x) allows an interlocutory appeal in cases involving a parent's deprivation of care and custody of his or her child. *Nnoli* at 327, 884 A.2d 1222. Although the purge provision in the contempt Order permits Emmanuel to purge himself by returning his children, the Order denying his motion to quash the arrest warrant is not within the scope of Section 12-303(3)(x). *Id.* By denying the motion to quash the arrest warrant, the circuit court did not rule on the underlying contempt Order; and even so, there still could be no appeal under Section 12-303(3)(x) because the terms of the original Order remained and were not satisfied. *Id.* at 327-28, 884 A.2d 1222.

The Court next analyzed Emmanuel's appeal as it related to Maryland Rule 2-602. *Id.* at 328, 884 A.2d at 1222. The Court found that Rule 2-602 applies to cases involving multiple parties or claims in which a judgment is entered for some but not all of the parties or claims in an action. *Nnoli* at 328, 884 A.2d 1222 (citing *Quartertime Video v. Hanna*, 321 Md. 59, 64, 580 A.2d 1073, 1075 (1990)). Under this Rule, a court can order final judgment to some parties or claims in an action if it finds "expressly" in a written order that there is "no just reason for delay." *Nnoli* at 328, 884 A.2d 1222. However, the discretion afforded under Rule 2-602 is limited and reserved for the "very infrequent harsh case." *Nnoli* at 328, 884 A.2d 1222. According to *Smith v. Lead*, 386 Md. 12, 25, 871 A.2d 545,553(2005), the rationale for such limited discretion under this Rule is to prevent "piecemeal appeals," which could result in inefficient and costly delays, hardship, and procedural problems. *Nnoli* at 328-29, 884 A.2d at 1222. The Court held that Rule 2-602 is not applicable to the instant case and even if somehow it was found to be, it lacked the required written order entered by the circuit court expressly finding

that the denial of the motion to quash the warrant was appealable. *Id.* at 329, 884 A.2d at 1223.

Finally, the Court addressed the third exception to the final judgment rule, the collateral order doctrine. *Id.* The doctrine is a very narrow exception to the final judgment rule, and its requirements should be strictly applied. *Id.* One requirement, “unreviewability on appeal” was found to be of particular importance to the Court and is unsatisfied except in “extraordinary situations.” *Id.* No extraordinary situation was presented when Emmanuel unsuccessfully attempted to relitigate his challenge to the contempt Order without appearing personally before the circuit court. *Id.* Therefore, the “unreviewability on appeal” requirement remained unsatisfied. *Id.* Although the Order denying the motion to quash the arrest warrant denied Emmanuel’s right to avoid participation in an aspect of the proceedings, it was not an extraordinary situation, and thus non-appealable under the collateral order doctrine. *Id.* at 330, 884 A.2d at 1223.

The Court of Appeals’ opinion in *Nnoli* is a thorough review of Maryland’s final judgment rule. The opinion reminds parties and attorneys that the right to appeal is dependant on whether a final judgment has been entered for a party on a claim or issue. If a final judgment has not been entered, very few exceptions permit appeal before final judgment. An Order by a circuit court denying a motion to quash an arrest warrant is not one of these exceptions. Had Emmanuel appeared at his hearing, as initially directed by the circuit court, he would have forgone this appeal and most likely reached the merits of his case.