The Elusive Concept of a Final Judgment

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Understanding when and how to access the appellate courts is critical for every Maryland attorney. Unfortunately, these concepts continue to induce confusion among members of the Bar. This article discusses a recent decision of the Maryland Court of Appeals which aims to offer clarity.

For the majority of appeals, the process commences after the trial court enters an unqualified, final disposition that resolves all issues litigated (a final judgment).[1] But finality alone is insufficient. Under Maryland Rule 2-601(a), a final judgment becomes appealable only when it is set forth on a separate document signed by a judge or clerk and entered on the court docket. In other words, the 30-day clock to note an appeal does not start ticking until a final judgment is properly docketed.[2]

These rules are seemingly not perplexing. In application, of course, a simple rule is not always so simple. When should an appeal be noted in multi-party litigation which produces separate court decisions resolving the multiple claims at different times? Suppose, moreover, that all claims against the last-standing defendant resolve by voluntary dismissal?

In *Hiob v. Progressive American Ins. Co.*, 440 Md. 466 (2014), the Court of Appeals quashed any lingering uncertainty regarding when to commence an appeal in procedurally complex litigation.

I. *Multiple Dispositions in the Circuit Court*

In February 2008, Deborah Hiob, Douglas Hiob, Margaret Nelson, and the personal representatives of Virginia Hiob and Laura Dusome (collectively, "Petitioners") sued Progressive American Insurance Company ("Progressive") and Erie Insurance Exchange ("Erie") in the Circuit Court for Baltimore County in connection with a dispute over uninsured motorist coverage under two insurance policies.[3] All Petitioners asserted claims against Progressive while only the Estate of Virginia Hiob brought a claim against Erie.[4]

Progressive prevailed on a motion for summary judgment in September 2009, which resolved all claims brought against that defendant.[5] The Circuit Court docketed the summary judgment order on October 7, 2009.[6]

On January 10, 2011, after 14 months of no activity on the court docket, the Estate of Virginia Hiob voluntarily dismissed its claim against Erie by filing a Line of Dismissal (the "Line"), which was docketed that day as "Voluntary Dismissal (Partial)."[7] Concurrently with filing the Line, Petitioners filed a motion requesting that the summary judgment order in favor of Progressive be reduced to a final judgment.[8] The motion was granted on February 8, 2011 and the Circuit Court signed an order stating "final judgment is entered" that same day.[9] The clerk did not make a docket entry indicating that final judgment had been entered until February 25, 2011.[10] On February 15, 2011, 10 days *before* the February 8th order was docketed but 36 days *after* the Line had been entered on the docket, Petitioners noted their appeal from the entry of summary judgment in favor of Progressive.[11]

II. *Appeal to the Court of Special Appeals*

The intermediate appellate court did not reach the merits of Petitioners' appeal.[12] Instead, the Court of Special Appeals dismissed the appeal as untimely, holding that the Line coupled with the summary judgment order in favor of Progressive constituted a final judgment, and that Petitioners' failure to note an appeal within 30 days of the docketing of the Line divested the appellate court of jurisdiction.[13]

III. *The Court of Appeals' Ruling*

After granting certiorari, the Court of Appeals held that the Line did not qualify as a final judgment and that the requirements of Rule 2-601 were not satisfied until February 25, 2011, when the Circuit Court signed and docketed the order incorporating the summary judgment ruling into a final judgment.[14] Under the savings provision of Rule 8-602(d) discussed below, the Court held that the notice of appeal was timely.[15]

IV. *Significance of Hiob*

The significance of *Hiob* lies not in the Court's revival of an appeal but rather its interpretation of vesting appeal rights in a case of complicated — yet common — procedural history.

The *Hiob* Court explained that, as a threshold matter, a judgment must be *final* before it is appealable, meaning the judgment is "'intended by the court as an unqualified, final disposition of the matter in controversy … [and] it must adjudicate or complete the adjudication of all claims against all parties. '"[16] While finality is required, it is not independently "sufficient to constitute a final, appealable judgment and start the time for an appeal."[17] Under Rule 2-601(a), the judgment must also be: (i) set forth on a separate document, distinct from "an oral ruling of the judge, a docket entry, or a memorandum";[18] (ii) signed by a judge or clerk;[19] and (iii) entered on the court docket.[20] As the Court in *Hiob* observed, "it is the separate document, not

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finality alone, that starts the time for filing an appeal."[21]

Deciding whether Petitioners' appeal was timely hinged on the answer to one question: Did the Line of Dismissal satisfy the final judgment rule? The Court of Appeals held that it did not.

Although the Line settled the lone unresolved claim in the case, it lacked any indicia of a final judgment. Indeed, the parties filed the Line without court participation or approval.[22] The Line did not require the signature of a clerk or a judge; it did not on its face establish that judgment had been issued;[23] it failed to incorporate the earlier summary judgment ruling in favor of Progressive, which under Rule 2-602(a) the trial court retained authority to modify until the entry of a final judgment;[24] and the accompanying docket entry did not indicate to the parties or the public that the court had "reached a final, unqualified decision."[25] Because the Line did not strictly comply with Rule 2-601, which "is interpreted in favor of the preservation of appeal rights[,]"[26] its docketing did not trigger Petitioners' 30-day deadline in which to note an appeal from the summary judgment ruling.

Hiob addressed the common fact pattern in which pieces of litigation are resolved at different times. In complex, multi-party cases, one defendant (or one plaintiff) often obtains a final outcome before the other(s). The *Hiob* opinion therefore offers a valuable lesson for those who navigate this space—when the final claim in a case is resolved, whether by dispositive ruling, jury verdict, or voluntary settlement, always confirm that the resolution is memorialized on a separate document, which is signed by a judge or clerk and entered on the docket. Only then will your client's appeal rights vest.

V. *Better Safe Than Sorry*

The old adage of better being safe than sorry has special meaning in the appellate context. Under the savings provision of Rule 8-602(d), a notice of appeal filed after a trial court announces or signs a decision, but before that decision is docketed, is treated as filed on the same day as, but after, the decision is entered on the court docket.[27] The *Hiob* Court applied the savings provision to find that Petitioners' notice of appeal, which was filed after the final judgment was announced but before it was docketed, was timely.[28]

Nevertheless, the takeaway is clear. After the trial court announces a dispositive ruling which resolves all claims in your case, eliminate the risk of missing your appellate window by promptly commencing an appeal. And when the dispositive ruling is docketed, simply file an amended notice of appeal. What do you have to lose?

Endnotes

[1] "There are, of course, exceptions to this general rule." *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 475, n.5 (2014) (summarizing exceptions).
[2] Md. Rule 8-202(a).
[3] The merits of Petitioners' claims against Progressive and Erie were not before the Court of Appeals and thus are not discussed herein.
[4] *Hiob*,440 Md. at 481.
[5] *Id.*
[6] *Id.*
[7] *Id.* at 481-82.
[8] *Id.* at 482.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.* at 482-83.
[14] *Id.* at 503.
[15] *See infra* at § V (examining the timeliness of an appeal commenced after a final judgment is announced but before it is docketed).
[16] *Hiob*, 440 Md. at 489 (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)).
[17] *Id.*
[18] *Id.* at 479-80.
[19] "Who must sign the document depends on the type of judgment. When there is a decision by the court denying all relief, the clerk 'shall prepare, sign, and enter the judgment.' Rule 2-601(a). More complex types of judgments require a signature by the judge." *Id.*
[20] The separate-document rule is "mechanically applied in determining whether an appeal is timely" to fulfill the "purpose of providing clear and precise judgments and to eliminate uncertainty as to when an appeal must be filed." *Id.* (internal citations and quotations omitted).
[21] *Id.* at 490.
[22] *Id.* at 495.
[23] *Id.* at 496.
[24] *Id.* at 495.
[25] *Id.* Emphasizing that the docket entry reading "Voluntary Dismissal (Partial) as to Erie Insurance Exchange" is "ambiguous as to whether judgment has been entered" (*id.* at 500), the Court of Appeals opined that "[t]he ambiguity as to finality is especially apparent … because neither the docket entry, nor the Line of Dismissal, indicates that the prior summary judgment order in favor of Progressive is now a final order." *Id.* at 501.
[26] *Id.* at 480.
[27] However, Maryland Rule 8-602(d) will not save an appeal that is improperly noted. If, for instance, Petitioners had noted their appeal after the trial court entered summary judgment in favor of Progressive but then failed to take any action when the final judgment was announced and entered 14 months later, the notice of appeal would have been fatally premature.
[28] *Id.* at 484.