Rel: February 15, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1171031

Clifford Goodman Wright, as administrator of the Estate of Mary Evelyn Wright, deceased

v.

Phyllis Harris et al.

Appeal from Cleburne Circuit Court
(CV-13-900053)

BRYAN, Justice.

Clifford Goodman Wright ("Wright"), the administrator of the estate of Mary Evelyn Wright ("Mary"), deceased, appeals from a summary judgment entered by the Cleburne Circuit Court

("the trial court") in favor of Dawn Reid, Phyllis Harris, and Tuwanda Worrills (hereinafter referred to collectively as "the nurses"), who, during all relevant times, were employed by the Cleburne County Hospital Board, Inc., d/b/a Cleburne County Nursing Home ("the Hospital Board"). For the reasons set forth herein, we dismiss the appeal as being from a nonfinal judgment.

Facts and Procedural History

This is the second appeal to this Court involving this litigation. In Wright v. Cleburne County Hospital Board, Inc., 255 So. 3d 186, 189 (Ala. 2017), a plurality of this Court summarized the pertinent procedural history:

> "In October 2013, [Mary] commenced a personal-injury action against 'Cleburne County Hospital and Nursing Home, Inc.' Mary asserted in her complaint that she had suffered injuries from a fall while she was a resident of a nursing home allegedly operated by the defendant ('the nursing home'). Mary died, allegedly from her injuries, the day after the complaint was filed. Wright was appointed the administrator of Mary's estate and was substituted as the plaintiff.
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> "In response to the complaint, the Hospital Board filed an answer indicating that it operated the nursing home where the incident occurred and that it was the proper defendant in the action. Thereafter, Wright amended the complaint to correctly identify the Hospital Board as the defendant. Wright also amended the complaint to add

> the nurses as defendants and to assert wrongful-death claims against the nurses and the Hospital Board."

As amended, Wright's complaint asserted claims against the nurses, the Hospital Board, and various fictitiously named parties under the Alabama Medical Liability Act, § 6-5-540 et seq., Ala. Code 1975. Wright's claim against the Hospital Board included 13 separate allegations of negligence. Wright's claims against each of the nurses included 13 separate allegations of negligence. Regarding each claim, Wright alleged:

> "The said Defendants, separately and severally, violated the applicable standard of care as stated above which combined and concurred with the negligent conduct of the other Defendants in this action to proximately cause the injuries to [Mary] from October 4 - 25 and the death of [Mary] on October 25, 2013."

Additionally, Wright alleged that the Hospital Board was vicariously liable for the actions of its agents, specifically, the actions of the nurses.

The Hospital Board and the nurses subsequently sought an order from the trial court declaring that the damages cap set out in § 11-93-2, Ala. Code 1975, applied to Wright's claims, and the trial court entered an order so providing. 255 So. 3d

at 190. Pursuant to Rule 5, Ala. R. App. P., this Court granted Wright permission to appeal from the trial court's interlocutory order regarding the applicability of § 11-93-2 to his claims. 255 So. 3d at 188. After holding that § 11-93-2 did not apply to Wright's claims against the nurses insofar as those claims were asserted against the nurses in their "individual capacities," this Court reversed the trial court's order and remanded the cause for further proceedings. 255 So. 3d at 196.

On remand, the nurses moved for a summary judgment, arguing that Wright had failed to present sufficient evidence regarding any duty of care owed by the nurses individually to Mary, a breach of such a duty, or a causal relationship between a breach of such a duty and Mary's injuries and subsequent death. Wright filed a response, opposing the nurses' motion. Both the nurses' motion and Wright's response were supported by evidence. On July 9, 2018, the trial court entered an order providing, in relevant part:

> "Based upon the undisputed evidence, the submissions of the parties, and the oral arguments of the parties, the court finds that the motion for summary judgment filed on behalf of the [nurses] is well taken and due to be granted. [Wright] failed to establish a duty owed by the [nurses] to [Mary]

> that would make them individually liable to [Wright]. Additionally, [Wright] has failed to establish a causal connection between any alleged breach in the standard of care and [Mary]'s injury and death. Because there is no genuine issue of material fact, the [nurses] are entitled to a judgment as a matter of law.
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> "WHEREFORE, said motion is granted and the [nurses] are dismissed with prejudice. The Court further finds that there is no just reason for delay under [Rule] 54(b)[, Ala. R. Civ. P.,] and hereby directs entry of judgment in favor of [the nurses]."

That same day, the Hospital Board filed a motion "partial[ly]" joining the nurses' summary-judgment motion. Among other things, the Hospital Board asserted:

> "Specifically, the [nurses] argued that [Wright] failed to establish a causal connection between any alleged breach of duty and the injury and death of [Mary], a failure which is fatal to [Wright]'s claims. ... [Wright]'s claims against [the Hospital Board] should be dismissed for the same reason: lack of a causal connection between the alleged breach and the injury and death of [Mary]."

The trial court scheduled a hearing on the Hospital Board's motion for August 10, 2018.

On July 26, 2018, Wright filed a notice of appeal from the trial court's July 9, 2018, order. The next day, Wright filed a motion to stay all further proceedings in the trial court, asserting, in relevant part:

> "2) The [Hospital Board] adopted the causation arguments of the [nurses] that are among the issues on appeal on July 9, 2018, after the order dismissing the [nurses] was issued.
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> "3) Allowing the Supreme Court to rule on the appeal without further proceedings would be in the interests of judicial economy; failing to stay the actions could lead to duplicate proceedings should [Wright] prevail in an appeal and the stay is not granted."

The trial court subsequently granted Wright's motion and stayed the proceedings.

Analysis

On appeal, Wright challenges the legal determinations in the trial court's July 9, 2018, order. The trial court's July 9, 2018, order resolved only Wright's claims against the nurses; his claim against the Hospital Board is still pending in the trial court. The trial court's July 9, 2018, order was therefore not a final judgment. However, the trial court's July 9, 2018, order included a certification of finality pursuant to Rule 54(b), Ala. R. Civ. P. Thus, before we can consider Wright's arguments that the trial court erred in entering a summary judgment in favor of the nurses, we must determine whether this Court has jurisdiction to hear this appeal.

"'[I]t is well settled that this Court may consider, ex mero motu, whether a judgment or order is sufficiently final to support an appeal.' Natures Way Marine, LLC v. Dunhill Entities, LP, 63 So. 3d 615, 618 (Ala. 2010).

> "'"Ordinarily, an appeal can be brought only from a final judgment. Ala. Code 1975, § 12-22-2. If a case involves multiple claims or multiple parties, an order is generally not final unless it disposes of all claims as to all parties. Rule 54(b), Ala. R. Civ. P. However, when an action contains more than one claim for relief, Rule 54(b) allows the court to direct the entry of a final judgment as to one or more of the claims, if it makes the express determination that there is no just reason for delay."'

"North Alabama Elec. Coop. v. New Hope Tel. Coop., 7 So. 3d 342, 344-45 (Ala. 2008)(quoting Grantham v. Vanderzyl, 802 So. 2d 1077, 1079-80 (Ala. 2001)).

> "'Rule 54(b) provides, in part:
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> > "'"When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

"'This Court recently explained the appropriate standard for reviewing Rule 54(b) certifications, stating:

> "'"'If a trial court certifies a judgment as final pursuant to Rule 54(b), an appeal will generally lie from that judgment.' Baugus v. City of Florence, 968 So. 2d 529, 531 (Ala. 2007).
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> "'"Although the order made the basis of the Rule 54(b) certification disposes of the entire claim against [the nurses in this case], thus satisfying the requirements of Rule 54(b) dealing with eligibility for consideration as a final judgment, there remains the additional requirement that there be no just reason for delay. A trial court's conclusion to that effect is subject to review by this Court to determine whether the trial court exceeded its discretion in so concluding."

"'Centennial Assocs. v. Guthrie, 20 So. 3d 1277, 1279 (Ala. 2009). Reviewing the trial court's finding in Schlarb v. Lee, 955 So. 2d 418, 419-20 (Ala. 2006), that there was no just reason for delay, this Court explained that certifications under Rule 54(b) are disfavored:

> "'"This Court looks with some disfavor upon certifications under Rule 54(b).

> "'"'It bears repeating, here, that "'[c]ertifications under Rule 54(b) should be entered only in exceptional cases and should not be entered routinely.'" State v. Lawhorn, 830 So. 2d 720, 725 (Ala. 2002)(quoting Baker v. Bennett, 644 So. 2d 901, 903 (Ala. 1994), citing in turn Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373 (Ala. 1987)). "'"Appellate review in a piecemeal fashion is not favored."'" Goldome Credit Corp. [v. Player, 869 So. 2d 1146, 1148 (Ala. Civ. App. 2003)](quoting Harper Sales Co. v. Brown, Stagner, Richardson, Inc., 742 So. 2d 190, 192 (Ala. Civ. App. 1999), quoting in turn Brown v. Whitaker Contracting Corp., 681 So. 2d 226, 229 (Ala. Civ. App. 1996))(emphasis [omitted]).'
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> "'"Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004)."

"'In considering whether a trial court has exceeded its discretion in determining

> that there is no just reason for delay in entering a judgment, this Court has considered whether "the issues in the claim being certified and a claim that will remain pending in the trial court '"are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results."'" Schlarb, 955 So. 2d at 419-20 (quoting Clarke-Mobile Counties Gas Dist. v. Prior Energy Corp., 834 So. 2d 88, 95 (Ala. 2002), quoting in turn Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373, 1374 (Ala. 1987), and concluding that conversion and fraud claims were too intertwined with a pending breach-of-contract claim for Rule 54(b) certification when the propositions on which the appellant relied to support the claims were identical). See also Centennial Assocs., 20 So. 3d at 1281 (concluding that claims against an attorney certified as final under Rule 54(b) were too closely intertwined with pending claims against other defendants when the pending claims required "resolution of the same issue" as issue pending on appeal) ....'

"Lighting Fair, Inc. v. Rosenberg, 63 So. 3d 1256, 1263-64 (Ala. 2010).

"In Smith v. Slack Alost Development Services of Alabama, LLC, 32 So. 3d 556, 562-63 (Ala. 2009), this Court discussed whether the Rule 54(b) certification was appropriate in that case:

> "'In the instant case, it is apparent that at least some of the issues presented in the still pending claim against Smith are the same as the issues presented in the appeal now brought by Smith and Smith & Weems Investments. Weems and Smith are business partners accused of breaching the

> same real-estate contract, and, as Hazel did, Weems and Smith have both argued that Slack Alost never presented them with the original offering statement or the amended offering statement for the Bel Sole condominium development, in violation of § 35-8A-408[, Ala. Code 1975]. In Centennial Associates, Ltd.[v. Guthrie, 20 So. 3d 1277 (Ala. 2009)], we stated that "'[i]t is uneconomical for an appellate court to review facts on an appeal following a Rule 54(b) certification that it is likely to be required to consider again when another appeal is brought after the [trial] court renders its decision on the remaining claims or as to the remaining parties.'" 20 So. 3d at 1281 (quoting 10 Charles Alan Wright et al., Federal Practice and Procedure § 2659 (1998)). Repeated appellate review of the same underlying facts would be a probability in this case, and, in light of this Court's stated policy disfavoring appellate review in a piecemeal fashion, see Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004), we accordingly hold that the trial court exceeded its discretion in certifying the judgment entered against Weems as final pursuant to Rule 54(b).'
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> "See also Howard v. Allstate Ins. Co., 9 So. 3d 1213, 1215 (Ala. 2008)('It would ... be contrary to the interests of justice to adjudicate these remaining claims against Gonzales and Elizondo separately from the claims against the other defendants; the common issues are intertwined.')."

Patterson v. Jai Maatadee, Inc., 131 So. 3d 607, 609-11 (Ala. 2013)(emphasis added).

Thus, the question presented is whether this is one of those exceptional cases that warrants piecemeal appellate consideration of its constituent issues and, as to which, there is no just reason for delay. See Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004). Although the question is committed to the sound discretion of the trial court, see Centennial Assocs., Ltd. v. Guthrie, 20 So. 3d 1277, 1279 (Ala. 2009), we conclude that, based on the record in this case, the trial court exceeded its discretion in determining that no just reason exists for delaying appellate review of the summary judgment in favor of the nurses.

The trial court's July 9, 2018, order indicates that it determined that Wright had failed to present sufficient evidence of the existence of a causal link between the nurses' actions and Mary's injuries and subsequent death. The parties to this appeal therefore argue the issue of causation in their respective appellate briefs. Causation, however, is also an integral component of the claim still pending in the trial court against the Hospital Board. As noted above, Wright's complaint alleged the following regarding each of his claims:

> "The said Defendants, separately and severally, violated the applicable standard of care ... which combined and concurred with the negligent conduct of the other Defendants in this action to proximately cause the injuries to [Mary] from October 4 - 25 and the death of [Mary] on October 25, 2013."

In other words, Wright's theory of the case appears to be that the nurses and the Hospital Board acted in concert to cause Mary's injuries and her subsequent death. Thus, "'the issues in the claim[s] being certified and [the] claim that will remain pending in the trial court "'are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results.'"'" Lighting Fair, Inc. v. Rosenberg, 63 So. 3d 1256, 1263 (Ala. 2010)(quoting Schlarb v. Lee, 955 So. 2d 418, 419-20 (Ala. 2006), quoting in turn Clarke-Mobile Ctys. Gas Dist. v. Prior Energy Corp., 834 So. 2d 88, 95 (Ala. 2002), quoting in turn Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373, 1374 (Ala. 1987)).

Moreover, the Hospital Board has moved for a summary judgment in the trial court and has adopted the nurses' argument regarding the issue of causation. Wright's motion seeking a stay of the hearing on the Hospital Board's summary-judgment motion demonstrates his acknowledgment that the arguments presented in that motion "are among the issues on

appeal" and that the trial court's consideration of those arguments "could lead to duplicate proceedings." The trial court's grant of Wright's motion to stay bolsters Wright's assessment of the similarity between the issues raised on appeal and the issues still pending before the trial court.

We recognize that, because the issue of causation is relevant to both the appeal pending before this Court and the claim remaining in the trial court, the trial court and the parties may view its Rule 54(b) certification of the order being appealed as an effective means of testing the sufficiency of the evidence regarding that issue before conducting further proceedings in the trial court. Insofar as the trial court's decision to stay further proceedings against the Hospital Board is based on such a conclusion, we find persuasive the analysis of the United States Court of Appeals for the Second Circuit set out in Hogan v. Consolidated Rail Corp., 961 F.2d 1021 (2d Cir. 1992), addressing a similar consideration regarding Rule 54(b), Fed. R. Civ. P., upon which our Rule 54(b) was patterned. See Scrushy v. Tucker, 955 So. 2d 988, 995 n.1 (Ala. 2006)("Federal cases are authoritative in construing the Alabama Rules of Civil

Procedure because the Alabama rules were patterned after the Federal Rules of Civil Procedure. Borders v. City of Huntsville, 875 So. 2d 1168, 1176 n. 2 (Ala. 2003).").

In Hogan, June Hogan sued Norfolk & Western Railway Company ("N & W"), Consolidated Rail Corporation ("Conrail"), and Excelsior Truck Leasing Company, in a federal district court ("the district court"), asserting claims arising from the death of her husband. 961 F.2d at 1023. Conrail cross-claimed against N & W. Id. N & W moved for a summary judgment regarding all claims asserted against it, which the district court granted, certifying its order as final pursuant to Rule 54(b), Fed. R. Civ. P. 961 F.2d at 1023-24. Hogan and N & W appealed. 961 F.2d at 1024. The Court of Appeals addressed the district court's Rule 54(b) certification as follows:

> "In the present case, we do not regard the district court's reason for entering a Rule 54(b) certification as sufficient. ... [T]he court's purpose in seeking to enter an immediate final judgment of dismissal in favor of N & W was to obtain pretrial appellate review of its assessment of the evidence against N & W. Thus, the court noted Conrail's assertion that N & W would be 'at least partly responsible for any liability that might be determined against Conrail,' and stated that the reason for its certification was its desire that 'the correctness vel non of its ... summary

> judgment ... be determined prior to trial,' in order to avoid, if it had erred in its assessment of the sufficiency of the evidence against N & W, 'a complete new trial.' June 4, 1991 Order at 2. Though we sympathize with the district court's desire to avoid a retrial of the entire case if its assessment of the evidence as to N & W's role is erroneous, the interrelationship of the dismissed and surviving claims is generally a reason for not granting a Rule 54(b) certification, not a reason for granting it, see, e.g., Cullen v. Margiotta, 811 F.2d [698,] 710 [(2d Cir. 2013)]; id. at 711 ('In a case involving multiple claims, the court should not enter final judgment dismissing a given claim unless that claim is separable from the claims that survive.'), either because the remaining proceedings in the district court may 'illuminate appellate review of' the dismissed claims, Cullen v. Margiotta, 618 F.2d at 228, or because those proceedings may suggest that the dismissal should be modified as is expressly permitted by Rule 54(b). Here, for example, it is possible that further discovery by plaintiff or further investigation by Conrail could bring to light evidence sufficient to warrant submitting claims against N & W to a jury. Were this to occur, it would be open to the district court under Rule 54(b), if no final judgment has been entered, to amend its interlocutory order accordingly. The appropriate course of action for the district court, in order to minimize the likelihood of a duplicative retrial, is to take care not to grant summary judgment without viewing all the evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences in favor of that party, not to ask for an interim opinion from the court of appeals, thereby forcing successive appellate panels to review the case."

961 F.2d at 1025-26.

We similarly conclude that an interim appellate opinion on the issue of causation is unwarranted in this case. The interrelationship of Wright's claims against the nurses, which are the subject of this appeal, and his claim against the Hospital Board, which is still pending in the trial court, on the issue of causation indicates that piecemeal appellate review is not warranted. See Centennial Assocs., Ltd., 20 So. 3d at 1281 ("'An appellate court also should not hear appeals that will require it to determine questions that remain before the trial court with regard to other claims.'"(quoting 10 Charles Alan Wright et al., Federal Practice and Procedure § 2659 (1998))).

As a practical matter, we also note that the alleged facts underlying Wright's claims against the nurses are substantially the same as those underlying his claim against the Hospital Board. Thus, judicial economy would best be served by providing singular appellate review of all the evidence the parties and the trial court deem relevant to each of Wright's claims, given the substantial similarity of the alleged facts supporting them. See Centennial Assocs., Ltd., 20 So. 3d at 1281.

Conclusion

We reiterate that "[t]his Court looks with some disfavor upon certifications under Rule 54(b)," Schlarb, 955 So. 2d at 419, and that Rule 54(b) certifications should be entered only in exceptional cases. Dzwonkowski, 892 So. 2d at 363. Because the "claim[] that remain[s] pending in the trial court present[s] issues that are 'intertwined' with the issues presented in the claim[s] certified as final pursuant to Rule 54(b)," Smith v. Slack Alost Dev. Servs. of Alabama, LLC, 32 So. 3d 556, 562 (Ala. 2009), we conclude that the trial court exceeded its discretion in certifying the summary judgment in favor of the nurses as a final judgment pursuant to Rule 54(b). Accordingly, the trial court's Rule 54(b) certification was invalid; this appeal is from a nonfinal judgment; and we dismiss the appeal. See Patterson, 131 So. 3d at 611. In so doing, we express no opinion regarding the merits of Wright's claims against the nurses or his claim against the Hospital Board.

APPEAL DISMISSED.

Parker, C.J., and Mendheim, Stewart, and Mitchell, JJ., concur.