STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Ken-24-132

Andrew Robbins et al.

v.

Maine Commission on Indigent
Legal Services et al.

ORDER DISMISSING APPEAL

Andrew Robbins, Brandy Grover, Ray Mack, Malcolm Pierce, and Lanh Danh Huynh (collectively, Robbins) have filed a motion to dismiss the appeal of the Maine Commission on Indigent Legal Services (MCILS) from an interlocutory order of the Superior Court (Kennebec County, *Murphy, J.*) denying preliminary approval of a proposed settlement of the case. *See* Combined Order, *Robbins v. Maine Commission on Indigent Legal Services*, No. KENSC-CV-22-54, (Feb. 27, 2024), https://www.courts.maine.gov/news/robbins/combined-order.pdf

Robbins's motion to dismiss asserts that MCILS's appeal should be dismissed because it is interlocutory and is not within any of the exceptions that we have recognized to the final judgment rule. *See Stewart Title Guar. Co. v. State Tax Assessor*, 2006 ME 18, ¶ 3, 92 A.2d 1162; M.R. App. P. 2B(a)(2). In its memorandum opposing dismissal, MCILS contends that several of the exceptions apply.

In the Combined Order from which MCILS appeals, the court denied the parties' "Supplemental Joint Motion to Conduct Preliminary Review of Amended Class Action Settlement, Direct Notice to Class Members of Amended Proposed Settlement, and Make Further Orders as Part of the Settlement Approval Process" and set a schedule for future phases of the case. MCILS objects to the Combined Order for a variety of reasons, including that it denies the parties the ability to negotiate further before going to trial in June 2024 on the initial phase of the case. MCILS argues that the court abused its discretion in determining that the parties' proposed settlement agreement was not a "fair, reasonable, and adequate" resolution of the claims asserted in the complaint. MCILS further contends the court erred by including claims not asserted by Robbins in the Combined Order, by requiring MCILS to admit to liability as a condition for approval of a settlement, and by basing its denial of approval in part on its disagreement with MCILS's caseload standards for rostered attorneys.[1] MCILS contends that it is entitled to appellate review now because otherwise its opportunity to obtain review of the Combined Order will be lost.

[1] MCILS contends that the court in its Combined Order "identif[ied] a new claim alleging actual denial of counsel, and designat[ed] a subclass to pursue that newly identified claim." However, Robbins's complaint alleges that, "[l]ike all of the Class members, the Class representatives *are being denied* their right to counsel in violation of the Sixth Amendment to the U.S. Constitution and Article I, § 6 of the Maine Constitution as a result of MCILS's ongoing failure to adequately supervise, administer, and fund indigent-defense services." (Emphasis added.) MCILS also asserts that the court's order infringes on its powers as an executive agency by "insisting" that MCILS had to admit

As the Court's designated motions justice, I chose to refer Robbins's motion to dismiss to the entire Court for decision rather than to act alone. *See* M.R. App. P. 10(a)(4). Accordingly, this Order reflects the opinion of all members of the Court. We agree with Robbins that the MCILS appeal is not within any of the recognized exceptions to the final judgment rule and we dismiss the appeal as interlocutory.[2]

We have consistently recognized three major exceptions to the final judgment rule: the death knell exception, the collateral order exception, and the judicial economy exception. *Bank of New York v. Richardson*, 2011 ME 38, ¶ 9, 15 A.3d 756.[3] We have also in some cases invoked a fourth "separation of

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liability on Robbins's complaint as part of any proposed settlement and by criticizing MCILS's recent decision to impose caseload standards on its rostered defense counsel. The court did not insist that MCILS admit liability; rather it commented that if liability were not disputed the court could itself beef up the enforcement tools that it found lacking in the proposed settlement. Regarding the caseload standards, the court commented that imposing limits on the caseloads of rostered counsel would only aggravate the shortage of indigent defense counsel caused by the severe diminution in the number of MCILS-rostered criminal defense attorneys. The court's comments are not the equivalent of orders.

[2] Although oral argument on the motion to dismiss was requested, we have elected to decide the motion without oral argument.

[3] MCILS cites federal case law to support its contention that an appeal from a denial of a settlement agreement is appealable. *See In re Touch Am. Holdings, Inc. Erisa Litig.*, 563 F.3d 903, 906 (9th Cir. 2009); *U.S.S.E.C. v. Citigroup Glob. Markets, Inc.*, 752 F.3d 285, 292 (2d Cir. 2014); *New York v. Dairylea Coop. Inc.*, 698 F.2d 567, 570-71 (2d Cir. 1983); *Durrett v. Hous. Auth. of City of Providence*, 896 F.2d 600, 602 (1st Cir. 1990); *United States v. City of Hialeah*, 140 F.3d 968, 973-75 (11th Cir. 1998). The federal cases MCILS cites, however, are based on a federal exception to the final judgment rule contained within 28 U.S.C.A. § 1292(a)(1) (Westlaw through P.L. 118-41) ("[T]he courts of appeals shall have jurisdiction from . . . interlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court."). MCILS does not argue that the court's denial of the settlement agreement here is an effective denial of injunctive relief. Even

powers" exception that applies when immediate appellate review is necessary to avoid a trial court's infringement on powers constitutionally allocated to a different branch of government. *Forest Ecology Network v. Land Use Regul. Comm'n*, 2012 ME 36, ¶¶ 18-23, 39 A.3d 74; *Bar Harbor Banking & Tr. Co. v. Alexander*, 411 A.2d 74, 77 (Me.1980).

MCILS's appeal is not within the judicial economy exception because the case would continue in the trial court regardless of our decision on the appeal. *See United States of America, Dep't of Agric., Rural Hous. Serv. v. Carter*, 2002 ME 103, ¶ 13, 799 A.2d 1232 ("If the availability of the judicial economy exception depended on our deciding the case in a certain way, then the judicial economy exception would eviscerate the final judgment rule because we would have to decide the merits in order to determine if the appeal was properly before us."). If we were to affirm the Combined Order, the case would go to trial. Because the parties were seeking only preliminary approval of their proposed settlement, the case would continue even if we were to vacate the Combined Order. *Id.* ¶ 13; *cf. Trump v. Sec'y of State*, 2024 ME 5, ¶¶ 18-21, 307 A.3d 1089.

As for the death knell exception, it is not clear from MCILS's arguments how MCILS's rights will be irreparably lost if review is delayed until the final

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if MCILS had made the argument, however, Maine law differs from federal law. *See Sanborn v. Sanborn*, 2005 ME 95, ¶ 4, 877 A.2d 1075 ("[A]n order granting or denying a motion for a preliminary injunction is not a final judgment and generally is not an action from which we will entertain an appeal.").

judgment. *See Dairyland Ins. Co. v. Christensen*, 740 A.2d 43, 45 (Me. 1999). The only right that would be lost, at least temporarily, is the right to approval of the proposed settlement. MCILS's argument does not make clear why the parties cannot negotiate further. *Id.* ("The cost and delay of litigating the claims involving Dairyland, which appellants cite as a justification for their death knell exception claim, does not qualify as a loss of substantial rights or permanent foreclosure of relief."). It is also not apparent from the materials on appeal that MCILS has asked to amend the court's scheduling order or sought any continuance.

The appeal also does not meet the requirements of the collateral order exception. *See Hanley v. Evans*, 443 A.2d 65, 66 (Me. 1982) ("[F]irst, it must be a final determination of a claim separable from and collateral to the gravamen of the lawsuit; second, it must present a major and unsettled question of law, and third, the need for appellate review must be urgent, in the sense that the rights claimed will be irreparably lost...."). The court's order denying approval likely meets the requirement that it addresses a matter separable from the "gravamen of the lawsuit." However, as discussed, the appeal does not meet the irreparable loss of rights test. *See Dairyland Ins. Co.*, 740 A.2d at 45; *Pierce v. Grove Mfg. Co.*, 576 A.2d 196, 200 (Me. 1990); *Blessing v. Dow Chemical Co.*, 521

A.2d 1176, 1178-79 (Me. 1987). Further, this appeal does not present a major or unsettled question of law.

Finally, the appeal is not within the "separation of powers exception." Unlike the situation in *Forest Ecology Network*, 2012 ME 36, ¶¶ 15-23, 39 A.3d 74, and the first case in which we applied the "separation of powers" exception, *Bar Harbor Banking & Trust Co.*, 411 A.2d at 77, the court's denial of approval of the proposed preliminary settlement did not include any order that prevents or interferes with MCILS's exercise of its powers. *See* note 1, *supra.*

For these reasons, with the concurrence of the entire Court, MCILS's appeal is DISMISSED.

Dated: May 1, 2024

For the Court,

Associate Justice