

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: June 16, 2008

The majority adopts a policy-based rationale in reaching its present determination concerning whether orders in a declaratory judgment action foreclosing some but not all avenues of relief should be deemed final under Rule of Appellate Procedure 341(b)(2). See Majority Opinion, slip op. at 14 (explaining that “[o]ur decision is rooted in this Court’s well-documented efforts of avoiding piecemeal litigation.”). The difficulty is that the Court in Nationwide Mutual Insurance Company v. Wickett, 563 Pa. 595, 763 A.2d 813 (2000), and in some of the decisions that followed, has applied a very different approach in interpreting Rule 341(b)(2) and the effect of the Declaratory Judgment Act in the appealability arena. I believe that this persisting schism is likely to continue to cause disharmony and confusion.¹

At this juncture, I believe that it would be preferable: to concede that this Court has had great difficulty with Wickett in the years since its issuance; to recognize that Wickett’s rationale is irreconcilable with a scheme of appealability implementing considered limits designed to control piecemeal litigation; and therefore, to limit Wickett to its facts.

¹ For example, it is difficult to glean from the majority opinion whether its holding will extend to circumstances in which a pre-trial order not only rejects one or more theories of relief, but also has some broader impact on available forms of relief. It would be very difficult, in my view, to conclude that such an order does not represent a declaration of rights such as would be immediately appealable under the rationale of Wickett, 563 Pa. at 604, 763 A.2d at 818 (“[The Declaratory Judgment Act] simply states that an order in a declaratory judgment action that either affirmatively or negatively declares the rights and duties of the parties constitutes a final order.”). To the degree that the majority’s present approach will not encompass such orders, it appears to open a wide area of uncertainty and potential disagreement concerning the effect of discrete pre-trial orders on the scope of relief remaining available in declaratory judgment actions.