

[J-92-2001]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

MARY CHALKEY, A/K/A MARY MATULA,	:	No. 10 WAP 2001
	:	
Appellant	:	
	:	Appeal from the Order of the Superior
	:	Court entered August 7, 2000 at No.
v.	:	1622PGH1998, vacating the Order of the
	:	Court of Common Pleas of Cambria
	:	County, Civil Division, entered August 11,
FRANKLIN DELANO ROUSH, JR.,	:	1998 at No. 1997-3857, and remanding
	:	for further proceedings.
Appellee	:	
	:	Argued: September 10, 2001

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: AUGUST 21, 2002

In Nationwide Mut. Ins. Co. v. Wickett, 563 Pa. 595, 763 A.2d 813 (2000), this Court endorsed a plain meaning approach to Section 7532 of the Judicial Code, 42 Pa.C.S. §7532, and, in particular, to the legislative prescription that declarations of rights, status and legal relations "shall have the force and effect of a final judgment or decree." See Wickett, 563 Pa. at 604, 763 A.2d at 818 ("Section 7532 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."). Thus, the Court determined that an order that would be non-final under ordinary principles of appealability (since it resolved the claims as between less than all the parties, see Pa.R.A.P. 341(b)(1)), must nevertheless be deemed final by virtue of the legislative

designation. Id. (citing Pa.R.A.P. 341(b)(2)).¹ In the present case, the common pleas court issued an order affirmatively granting, inter alia, declaratory relief ("the contract for sale of land between Defendant and Plaintiff is hereby declared NULL and VOID"), which, under the reasoning applied in Wickett, would seem plainly to constitute a final order.² Nevertheless, here the Court chooses a uniform rule of appealability over the legislative designation.

¹ While Wickett involved summary disposition of claims against less than all parties, its reasoning was tied to the character of the proceedings, and the issuance of orders actually declaring the substantive rights of parties. See Wickett, 563 Pa. at 603, 763 A.2d at 818. Therefore, for present purposes, I do not view the some versus all parties distinction as a reasonable basis for distinguishing the present case from Wickett. Additionally, although Wickett was styled as a declaratory judgment proceeding, whereas the present action is framed more generally as an action in equity, Section 7532 applies in either paradigm. See 42 Pa.C.S. §7532 (prescribing the jurisdiction of the courts over declaratory relief "whether or not further relief is or could be claimed").

² I recognize that the issuance of the order was improper in the procedural posture of the case, as the rules require the making of an adjudication prior to the entry of judgment. See Pa.R.C.P. No. 1517. Nevertheless, it seems to me that if the prevailing judicial interpretation of Section 7532 as derived from Wickett were to be applied consistently, in actions in which declaratory relief is affirmatively granted by a court of equity, even out of turn, the court's judgment as rendered would be afforded the effect of a final order.

Respectfully, I disagree with the majority's position that Section 7532 of the Judicial Code, perforce, yields the contrary conclusion. See Majority Opinion, slip op. at 8-9 n.13. Section 7539 merely provides that, when a proceeding involves determination of factual questions, they may be tried and determined in the same manner as such issues are resolved in other civil actions. See 42 Pa.C.S. §7539. The difficulty arising in the present line of cases, however, stems from the fact that issues have not been determined in the same manner as other civil actions, since the common pleas court has omitted a procedural step (the adjudication) and entered what appears on its face (and, under Wickett, on the face of the Declaratory Judgment Act) to be a final order. Moreover, reliance on Section 7539 as a basis for distinction would seem to undermine the uniform rule that the Court announces, since that provision does not address cases in which there are no factual disputes, for example, where an equitable decree is rendered on stipulated facts. See, e.g., State Farm v. Crayley, 784 A.2d 781, 786-788 (continued...)

I dissented in Wickett because I believed that the Court could and should adopt an interpretation aligning declaratory judgment jurisprudence with that which applies to civil actions generally. See Wickett, 563 Pa. at 605, 763 A.2d at 819 (Saylor, J., dissenting). I am able to join the majority's disposition here because, given the choice between applying Wickett's reasoning consistently to require an immediate appeal in proceedings involving premature judgments in declaratory judgment proceedings and aligning Rule 227.1 jurisprudence concerning declaratory judgments with that pertaining to civil judgments generally, I favor the latter course. I strongly believe, however, that the Court is best served by promulgating and interpreting its rules according to fundamental principles that are consistently applied, as this alleviates the potential for legitimate confusion among those practicing in the appellate courts and engenders greater respect for the rules.

(Pa. Super. 2001) (following Wickett to determine that an order declaring rights on stipulated facts was immediately appealable and post-trial motions were ineffective to toll the period allowed for appeal, with the observation that "[w]e find no authority that restricts the application of the Declaratory Judgment Act to cases involving preliminary objections"), appeal granted, ___ Pa. ___, 786 A.2d 985 (2002).

The determination in Lane Enterprises is also distinguishable, since the appeal did not involve a declaratory judgment; moreover, in that case the trial court issued an opinion but no dispositive order. See Lane Enterprises v. L.B. Foster Co., 700 A.2d 465, 470 (Pa. Super. 1997) (observing that "the [trial] court filed an opinion addressing issues which had been submitted to it, albeit prior to issuing a verdict"), rev'd per curiam, 551 Pa. 306, 710 A.2d 54 (1998).