

FAST FIVE

RHODE ISLAND APPELLATE PRACTICE

This term, the Rhode Island Supreme Court spilled much ink on the final judgment rule. See [Maciel v. Davey, No. 2012-222-Appeal](#) and [Baker v. Mitchell, No. 2013-17-Appeal](#). In two orders the Court dismissed interlocutory appeals based on the appellant's failure to appeal from a final judgment. This edition of the Fast Five on Rhode Island Appellate Practice is devoted to the "final judgment rule."

(1) APPEALS TO THE RHODE ISLAND SUPREME COURT MUST SATISFY THE "FINAL JUDGMENT RULE."

As a general rule, orders entered by a trial court are not appealable until the case has concluded and a final judgment has entered. This principle, known as the "final judgment rule," is codified at R.I. Gen. Laws § 9-24-1, which provides that an appeal may be taken only from a "final judgment, decree or order of the superior court." The rule is premised on notions of judicial efficiency and is designed to prevent the piecemeal adjudication of disputes. See *R.I. Econ. Dev. Corp. v. Parking Co., L.P.*, 892 A.2d 87, 95 (R.I. 2006) (citing *Industrial Nat'l Bank v. Colt*, 224 A.2d 900, 902 (R.I. 1966)).

(2) COMMON LAW AND STATUTORY EXCEPTIONS TO THE FINAL JUDGMENT RULE.

There are both common law and statutory exceptions to the final judgment rule. The Court "may hear an appeal from an interlocutory order if public policy considerations warrant or if immediate action is necessary in order to avoid imminent and irreparable harm." *Furtado v.*

Laferriere, 839 A.2d 533, 536 (R.I. 2004) (citing *Westinghouse Broadcasting Co. v. Dial Media, Inc.*, 410 A.2d 986, 989 (R.I. 1980)). In addition, an interlocutory order may be considered final for purposes of appeal if the order (1) grants or continues an injunction, (2) appoints a receiver, (3) orders the sale of real or personal property or (4) orders or denies a new trial after a trial by jury. R.I. Gen. Laws § 9-24-7.

Correspondingly, Rule 54(b) of the Superior Court Rules of Civil Procedure allows an interlocutory order in a case involving multiple claims or multiple parties to be certified as an appealable final order if the Superior Court determines that there is no just reason for delay. *Furtado*, 839 A.2d at 536 (citing R.I. Super. Ct. R. Civ. P. 54(b)).

(3) APPEAL FROM GRANT OF SUMMARY JUDGMENT IN FAVOR OF ONE DEFENDANT DEEMED INTERLOCUTORY WITHOUT ENTRY OF RULE 54(b) JUDGMENT.

In an order this term, the Rhode Island Supreme Court made clear that an appeal from a grant of summary judgment in favor of only one of multiple defendants is interlocutory in nature unless judgment has entered in favor of that defendant pursuant to Superior Court Rule of Civil Procedure 54(b). [Maciel v. Davey, No. 2012-222-Appeal](#). In *Maciel*, the Superior Court granted one defendant's motion for summary judgment but denied that defendant's motion for entry of judgment pursuant to Rule 54(b). *Id.* at 1. Although final judgment never entered, the plaintiff filed an appeal. *Id.* After a Rule 12A conference, the Supreme Court dismissed plaintiff's appeal. *Id.* at 2. In doing so, the Court noted that "[a]n appeal from an order that grants a motion for summary judgment is considered interlocutory and not final for purposes of appeal." *Id.* at 1 (citing *Furtado*, 839 A.2d at 536). While the Court "may hear an appeal from an interlocutory order if public policy considerations warrant or if immediate action is necessary in order to avoid imminent and irreparable harm," none of those exceptions were implicated in

Maciel. Id. Consequently, the Court dismissed the plaintiff's appeal. *Id.* at 2.

(4) APPEAL FROM INTERLOCUTORY ORDER DISMISSED WHEN FINAL JUDGMENT HAD NOT ENTERED.

In [Baker v. Mitchell, No. 2013-17-Appeal](#), the Supreme Court denied and dismissed the defendant's appeal and remanded the record to the Superior Court after concluding that the final judgment rule was not satisfied.

In the underlying partition action, the Superior Court entered an order continuing a hearing on a motion to sell the property at issue and, in doing so, stated that no further continuances would be allowed without the potential for sanctions. *Id.* at 1. One of the defendants appealed from that order, maintaining that the conditions set forth in the Superior Court's order were unwarranted and prejudicial. *Id.* at 2.

On appeal, the Supreme Court held that the defendant's appeal was interlocutory and, therefore, not reviewable at this time. *Id.* In doing so, the Court emphasized that it "has steadfastly maintained that, with very few exceptions, 'it will entertain a direct appeal only from a final judgment,'" that completely terminates the litigation between the parties. *Id.* at 2 (quoting *Martino v. Ronci*, 667 A.2d 287, 288 (R.I. 1995)). While there is an exception for orders of the sale of real or personal property, such exception was inapplicable because the Superior Court's order merely continued the date for the sale of real property and, consequently, an order directing that the property be sold had not entered. Therefore, defendant's interlocutory appeal was improper.

(5) DID YOU KNOW?

A final judgment must be set forth on a separate document. *See* R.I. Super. Ct. R. Civ. P. 58(a); *see also Furtado*, 839 A.2d at 535-36. A notice of appeal from a final judgment encompasses not only the judgment, but also all earlier interlocutory orders that merger into the

judgment. *See Greensleeves, Inc. v. Smiley*, 942 A.2d 284, 290 (R.I. 2007).

For more updates on Rhode Island appellate law, pointers for practice before the Rhode Island Supreme Court and past editions of the Fast Five on Rhode Island Appellate Practice, please visit my blog site <http://www.RIAppeals.com>.



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