

No. 1-11-1124

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FLORENCE MASON, on behalf of Kyle Raymond Thicklin, a minor,)	Appeal from the Circuit Court of Cook County.
)	
Petitioner-Appellee,)	
)	No. 00 D 650020
v.)	
)	
JERRY DILLON,)	Honorable
)	Martin D. Coghlan,
Respondent-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The appeal is dismissed for lack of jurisdiction.

¶ 2 This matter arises from an order of the circuit court denying the motion of the respondent, Jerry Dillon, to quash a subpoena *duces tecum* requiring the production of bank records. On appeal, the respondent contends that the circuit court erred in denying his motion where the documents that are the subject of the subpoena contain information that is protected by the physician-patient privilege, as set forth in section 8-802 of the Code of Civil Procedure (Code) (735 ILCS 5/8-802

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(West 2010)). For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

¶ 3 The record establishes the following relevant facts. In January 2002, the respondent, a dentist who holds an interest in his professional dental practice and several other business entities, was ordered to make monthly payments in the amount of \$825 for the benefit and support of the parties' minor child. Thereafter, the respondent filed a motion, pursuant to sections 505 and 510 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505, 5/510 (West 2008)), seeking to modify his child-support payments based on a substantial change in circumstances. In March 2009, the circuit court granted the respondent's motion and ordered that his child-support obligation be reduced from \$825 to \$729.91 per month.

¶ 4 The petitioner subsequently filed an amended petition for a rule to show cause against the respondent, asserting, *inter alia*, that he had failed to disclose required financial information in the affidavit supporting his motion to modify child support. On August 25, 2010, the circuit court granted the petitioner leave to conduct limited discovery on the issues raised in the petition for a rule to show cause. The limited discovery was confined to the following: 15 specific written interrogatories, an oral deposition lasting no longer than 90 minutes, and subpoenas for records. In response to the petitioner's discovery requests, the respondent tendered the tax returns for 2007, 2008, and 2009 filed by himself, individually, and by Dillon Dental Services, and Jerkytt Enterprises. He also tendered the 2008 tax return filed by D&M Enterprises.

¶ 5 In April 2011, the petitioner sought to vacate the March 2009 judgment modifying the amount of the respondent's child-support payment. Her petition, which was filed under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)), claimed, *inter alia*, that the respondent had

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submitted fraudulent information in establishing his right to a modification because he had failed to accurately disclose his income derived from the business entities in which he held an ownership interest. While that petition was pending, the petitioner caused the clerk of the circuit court to issue a subpoena *duces tecum*, requiring the respondent's bank to produce documents of "[a]ny and all transactions for any and all accounts held in the name of DILLON DENTAL SERVICES LTD ***, JERKYTT ENTERPRISES LLC ***, D&M ENTERPRISES OF ILLINOIS LTD ***, and JERRY DILLON ***, for the time period beginning on January 1, 2007, to the present."

¶ 6 The respondent filed a *pro se* "EMERGENCY MOTION FOR INJUNCTIVE RELIEF," requesting that the court quash the subpoena *duces tecum* issued to his bank. The respondent's motion asserted that production of the subject bank records would result in disclosure of the names, addresses, and telephone numbers of his patients, which the respondent alleged constituted confidential information protected by the physician-patient privilege (see 735 ILCS 5/8-802 (West 2010)). In its prayer for relief, the respondent's motion requested that the circuit court "issue an Injunction and 'Quash the Subpoena for Records.'" On May 10, 2011, the circuit court denied the motion to quash the subpoena and for injunctive relief. This appeal followed.

¶ 7 Before considering the merits of the respondent's substantive arguments on appeal, this court is obligated to examine whether it has jurisdiction and to dismiss the appeal if jurisdiction is lacking. *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159, 692 N.E.2d 306 (1998); *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440, 490 N.E.2d 1252 (1985). Article VI, section 6, of the 1970 Illinois Constitution provides that final judgments may be appealed as a matter of right from the circuit court to the appellate court. Ill. Const. 1970, art. VI, § 6. There is no corresponding

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constitutional right to appeal from interlocutory orders of the circuit court. Rather, article VI, section 6, vests the supreme court with the authority to provide for such appeals, by rule, as it sees fit. Ill. Const. 1970, art. VI, § 6. Except as specifically provided by those rules, the appellate court is without jurisdiction to review judgments, orders or decrees which are not final. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210, 642 N.E.2d 1264 (1994); *Flores v. Dugan*, 91 Ill. 2d 108, 112, 435 N.E.2d 480 (1982).

¶ 8 Pursuant to its constitutional authority to provide for appeals from other than final judgments, the supreme court has adopted Rule 307(a)(1), which provides that "[a]n appeal may be taken to the Appellate Court from an interlocutory order of the court: (1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010). The respondent seeks to invoke the jurisdiction of this court under Rule 307(a)(1), claiming that the circuit court's refusal to quash the subpoena *duces tecum* amounted to a denial of injunctive relief.

¶ 9 When determining whether an order "constitutes an appealable injunctive order under Rule 307(a)(1) we look to the substance of the action, not its form." *In re A Minor*, 127 Ill. 2d 247, 260, 537 N.E.2d 292, 297 (1989). An injunction has been defined as a " 'judicial process operating in personam and requiring [a] person to whom it is directed to do or refrain from doing a particular thing' " (*In re A Minor*, 127 Ill. 2d at 261 (quoting Black's Law Dictionary 705 (5th ed. 1983)) or as " 'a judicial process, by which a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ, the most common sort of which operate as a restraint upon the party in the exercise of his real or supposed rights' " (*In re A Minor*, 127 Ill. 2d

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at 261 (quoting *Wangelin v. Goe*, 50 Ill. 459, 463 (1869)).

¶ 10 "Not every nonfinal order of a court is appealable, even if it compels a party to do or not do a particular thing." *In re A Minor*, 127 Ill. 2d at 261-62. Orders that are properly characterized as "ministerial" or "administrative" cannot be the subject of an interlocutory appeal because they regulate only the procedural details of the litigation before the court. *In re A Minor*, 127 Ill. 2d at 262. Such an order "do[es] not affect the relationship of the parties in their everyday activity apart from the litigation, and are therefore distinguishable from traditional forms of injunctive relief." *In re A Minor*, 127 Ill.2d at 262.

¶ 11 The supreme court has expressly held that pretrial discovery orders are not appealable under Rule 307. *In re A Minor*, 127 Ill. 2d at 261-62; *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171, 429 N.E.2d 483 (1981). Though such orders may have the qualities of an injunction in the sense that they compel the parties to do or not to do a particular thing, they are not considered to be injunctive "because they [do] not form part of the power traditionally reserved to courts of equity, but, instead, [are] part of the inherent power possessed by any court to compel witnesses to appear before it and give testimony." *Almgren*, 162 Ill. 2d at 211 (quoting *In re A Minor*, 127 Ill. 2d at 262).

¶ 12 In this case, the substance of the order denying the motion to quash the subpoena *duces tecum* was not injunctive in nature. Rather, it constituted a pretrial discovery order mandating that certain documents be produced to the petitioner. As such, the court's order was ministerial and administrative, falling precisely within the inherent power of the court to regulate the procedural details of the litigation before it. Although the respondent's *pro se* motion to quash indicated that he sought an "injunction," the motion did not specify against whom the injunction should issue or

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the nature of the injunctive relief sought. In light of these circumstances, we cannot say that the denial of the motion to quash the subpoena *duces tecum* may be characterized as denying injunctive relief. Therefore, we do not have jurisdiction under Rule 307(a)(1) to review the propriety of that order, and we must dismiss this appeal for lack of jurisdiction.

¶ 13 For the foregoing reasons, the appeal is dismissed for lack of jurisdiction.

¶ 14 Dismissed.