

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
SECOND DISTRICT

<i>In re</i> MARRIAGE OF ANN M. EDWARDS,)	Appeal from the Circuit Court of Kane County.
)	
Petitioner-Appellant,)	
)	
and)	No. 00—D—1308
)	
VICTOR L. EDWARDS,)	Honorable
)	Marmarie J. Kostelny,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

Held: Petitioner’s appeal of the ruling on respondent’s petition for a rule to show cause was premature, as her own petition for contribution was pending and the trial court’s finding that the order was “final and appealable” was insufficient to invoke Rule 304(a); we dismissed the appeal pursuant to *Knoerr*.

Petitioner, Ann M. Edwards, appeals from an order of the circuit court of Kane County directing her to execute a written declaration that would enable respondent, Victor L. Edwards, to claim one of their sons as a dependent on his federal income tax return. We dismiss the appeal for lack of jurisdiction.

On July 2, 2002, the trial court entered a judgment dissolving the parties' marriage. On November 24, 2004, by agreement of the parties, the judgment was modified so as to incorporate a joint parenting agreement. The agreement provided that the parties' two minor children, Michael (who was then 12 years old) and Patrick (who was then 10 years old) would reside with Ann. Under the heading "Tax Issues," the agreement provided:

“[Victor] shall be allowed to claim Michael for each year in which he is eligible to be claimed commencing in the tax year 2004. [Ann] shall be allowed to claim Patrick for each year in which he is eligible to be claimed commencing in tax year 2004.”

On February 24, 2010, Victor filed a petition for a rule to show cause, alleging, on information and belief, that Ann violated the joint parenting agreement by claiming Michael as a dependent for the 2009 tax year. Victor further alleged that Ann had refused to execute a written declaration pursuant to section 152(e)(2)(A) of the Internal Revenue Code (26 U.S.C. §152(e)(2)(A) (2006)) that would enable Victor to claim Michael as a dependent. On the same day that Victor filed his petition, Ann filed a petition seeking a contribution from Victor toward the cost of the children's post-secondary education. On April 6, 2010, the trial court ordered Ann to execute the written declaration pursuant to section 152(e)(2)(A) of the Internal Revenue Code. Ann moved for reconsideration of the order. The trial court denied the motion on May 18, 2010. A bystander's report of the hearing on the motion indicates that, after the trial court announced its ruling, “Ann *** asked [the trial judge] if this was a final and appealable order, and [the trial judge] indicated that it was.” According to the bystander's report, Ann “then requested that a statement to that effect be included in the final order.” The written order denying Ann's motion for reconsideration states,

“This order is final and appealable[.]” Ann filed a notice of appeal on June 2, 2010. The record does not show any disposition of Ann’s petition for a contribution to the children’s educational expenses.

Victor has not filed a brief. The record and the issues raised on appeal are such that review of the merits would ordinarily be appropriate under *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). However, the absence of appellate jurisdiction forecloses consideration of the merits of the appeal. We have an independent duty to examine our jurisdiction and to dismiss an appeal if jurisdiction is wanting. *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985). Our jurisdiction is limited to appeals from final judgments unless an appeal is within the scope of one of the exceptions established by our supreme court permitting appeals from interlocutory orders in certain circumstances. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). None of the exceptions apply here.

A judgment is final if it terminates the litigation between the parties on the merits or disposes of the parties’ rights with regard to either the entire controversy or a separate part of it. *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998). Where the trial court enters a final judgment as to only part of the controversy, appellate jurisdiction depends on Supreme Court Rule 304(a) (eff. Feb. 26, 2010), which provides, in pertinent part, “[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims *only if* the trial court has made an express written finding *that there is no just reason* for delaying either enforcement or appeal or both.” (Emphases added.) For purposes of this rule, a “claim” is “ ‘any right, liability or matter raised in an action.’ ” *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008) (quoting *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990)).

As noted, the record shows no disposition of Ann’s petition for a contribution toward educational expenses. The petition raised a claim for purposes of Rule 304(a). Because this claim remained pending, Ann could not appeal from the order entered on Victor’s petition without a proper written finding pursuant to Rule 304(a). Although the written order denying Ann’s motion for reconsideration states, “This order is final and appealable,” it does not state that there is “no just reason to delay appeal.” We have noted that, “[w]hile it is true that the absence of Rule 304(a)’s precise wording does not conclusively preclude appellate jurisdiction, it must be clear that Rule 304(a) is intended to be invoked.” *Matson v. Department of Human Rights*, 322 Ill. App. 3d 932, 939 (2001). An express finding of “no just reason” to delay appeal indicates that the trial court decided whether an immediate appeal was appropriate “in light of fairness to the parties, the conservation of judicial resources, and the expedition of the resolution of the controversy.” *Id.* at 939. In *Matson*, we held, “[i]f an order adjudicating fewer than all the claims does not state ‘that there is no just reason for delaying appeal,’ the appellate court has no jurisdiction over an appeal from such judgment, and it is proper for the appellate court to dismiss the appeal on its own motion.” *Id.* at 940; *cf. Coryell v. Village of LaGrange*, 245 Ill. App. 3d 1, 5 (1993) (written order stating “‘said order is final and appealable’” did not satisfy the requirements of Rule 304(a), where no Rule 304(a) finding was requested, the order did not refer to Rule 304(a), and it did not specify that there was “‘no just reason for delaying’” an appeal). Omission of such language might conceivably be excused when a written order states that it is final and appealable “pursuant to Rule 304(a)” (see *Kucharski v. Floro*, 191 Ill. App. 3d 1032, 1033 (1989)), but the order in this case includes no such reference to Rule 304(a).

The fact that, after Ann inquired whether the order in question was “final and appealable,” the trial court honored Ann’s request to include language to that effect in the order does not justify reading the language as a Rule 304(a) finding. The trial court likely viewed Ann’s inquiry as seeking nothing more than the court’s legal conclusion as to whether the post-dissolution matters had reached a point where an appeal could be taken. There is nothing to indicate that the trial court intended to actively exercise its prerogative to vest this court with jurisdiction over an appeal that would otherwise be premature. In this regard, we caution the trial court that such findings, which do not meet the requirements of Rule 304(a), are largely if not entirely superfluous. Unless a court believes the criteria for an appeal under Rule 304(a) have been met, it should be circumspect about expressing any views regarding the finality or appealability of an order. To avoid misleading the litigants, a court should conduct a careful jurisdictional analysis before including language like that at issue here.

Because the record does not establish a basis for this court to exercise jurisdiction, this appeal must be dismissed. We note, however, that *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049-50 (2007), provides for the possible reinstatement of an appeal, like this one, that is dismissed as premature. In *Knoerr*, we stated:

“[W]e dismiss respondent’s appeal because *on the present record*, respondent’s notice of appeal is premature. We presume that respondent can timely file a notice of appeal upon the resolution of the pending petition for a rule to show cause and any other pending claims in this matter. However, if pending claims have been resolved and the time to file a new notice of appeal has expired, [Supreme Court] Rule 303(a)(2) [(eff. May 1, 2007)] allows respondent to establish the effectiveness of the present notice of appeal. In the latter event,

respondent may file a petition for rehearing and to supplement the record, thereby establishing our jurisdiction to address the merits.” (Emphasis added.) *Knoerr*, 377 Ill. App. 3d at 1049-50.

Thus, if, during the pendency of this appeal, the trial court disposed of the petition for a contribution to educational expenses (and any other matters that may have come before the court while that petition was pending), Ann may file a petition for rehearing and to supplement the record in order to establish jurisdiction.

For the foregoing reasons the appeal is dismissed.

Appeal dismissed.